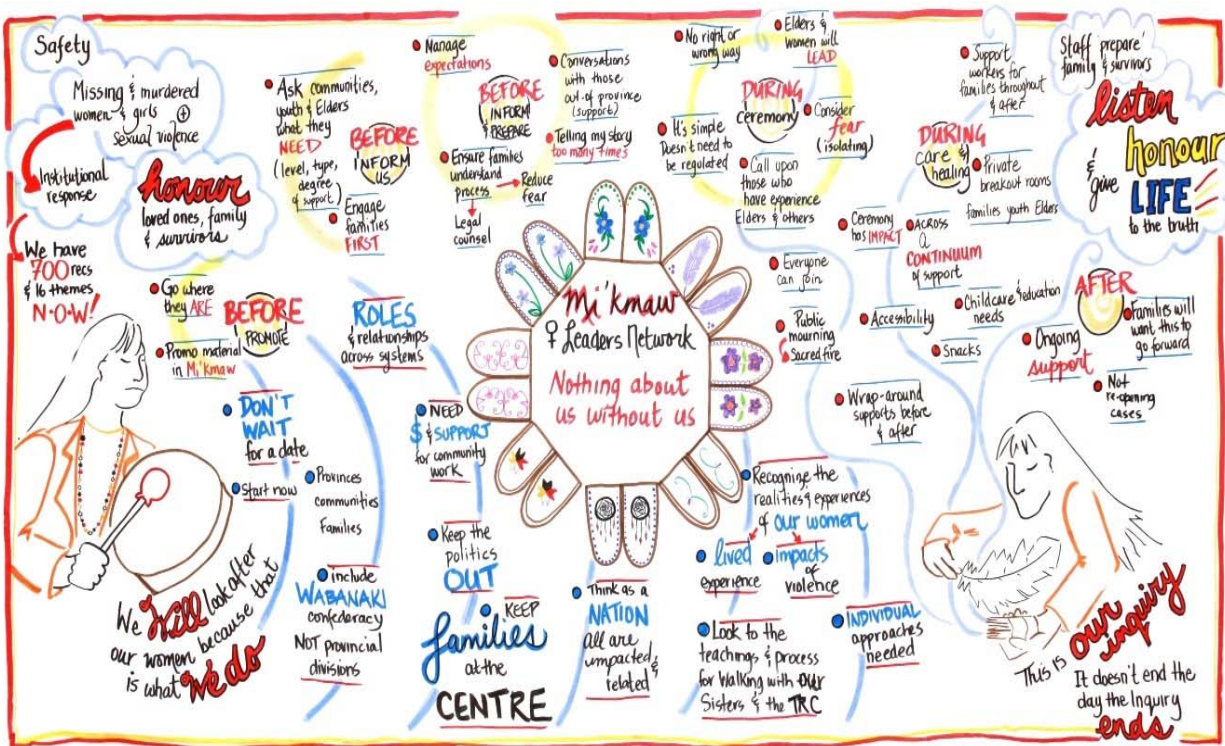


NATIONAL INQUIRY INTO MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

CLOSING SUBMISSION PROVINCE OF NOVA SCOTIA

December 14, 2018



National Inquiry into Missing and Murdered Indigenous Women and Girls

Closing Submission – Province of Nova Scotia

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INTRODUCTION

Missing and Murdered Indigenous Women and Girls in Nova Scotia: Reconciliation Through Acknowledgement and Collaboration

*We have a simple philosophy: simple to say; hard to follow. The philosophy is not to be defensive when challenged but to listen and to seek a resolution that all parties can agree to. The process takes time and respect.*¹

1. To all Indigenous women, children, and the 2SLGBTIQ+ community, we are listening.
2. We acknowledge and commemorate both survivors and those who have been lost to violence and their families and friends. We thank the Commissioners, Elders, staff, and most importantly the families, witnesses, and knowledge keepers that have had the courage and determination to come forward and participate in this difficult process to ensure change.
3. Nova Scotia fully supports this National Inquiry process and is committed to reconciliation with Indigenous peoples; we are here to listen, to learn, and to support systemic and institutional changes that will end the cycle of violence against Indigenous women, girls, and 2SLGBTIQ+ peoples.
4. Nova Scotia is a smaller province, but we suffer from many of the same systemic issues that are seen across Canada. When designing and delivering services and supports to the Indigenous population in Nova Scotia, we rely on a collaborative approach between ourselves, the Federal Government, and Indigenous communities.
5. We acknowledge that Indigenous women, girls, and 2SLGBTIQ+ people have distinct needs and we will continue to focus on collaborative solutions to address them.

¹ *Mi'kmaw Family & Children's Services of Nova Scotia Self Evaluation Report, Feb 11th, 2000 (with permission).*

6. With these brief submissions, Nova Scotia wishes to respectfully acknowledge the importance of this National Inquiry process, and that we look forward to the Commissioners' Final Report and Recommendations.
7. We hope to communicate Nova Scotia's experience and understanding of the key issues most relevant to this Province, outline some of the work done to date to effect change and implement solutions, and provide some useful reflections and lessons learned to guide the collaborative work that must still be done across Nova Scotia to end the cycle of violence.
8. We begin by providing a background of the work done in advance and during the National Inquiry by the Nova Scotia Status of Women (SW) office. We then discuss Nova Scotia's collaborative approach and some positive outcomes from our work with the Federal Government and the Mi'kmaq. We then canvass the work done to address issues such as overrepresentation of Indigenous people in the criminal justice system and in the child welfare system and discuss initiatives to reduce sexual exploitation and gender-based violence.

BACKGROUND TO THE INQUIRY AND THE WORK OF THE NOVA SCOTIA ADVISORY COUNCIL ON THE STATUS OF WOMEN

National Roundtables on Missing and Murdered Aboriginal Women and Girls

An ongoing learning journey built through collaboration and relationship building

9. The 2015 and 2016 National Roundtables on Missing and Murdered Aboriginal Women and Girls were important precursors to the National Inquiry and created a framework for action to prevent and address violence against Indigenous women and girls to which provinces and territories could bring focus.
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10. Three key focus areas for action were described as: prevention and awareness, community safety and policing, and justice responses.
11. SW provides a bridge-building role, creating opportunities to bring focus to issues affecting women and girls through an intersectional gender lens.
12. SW identified that government could contribute to the issue of violence against Indigenous women and girls by working collaboratively with the Mi'kmaq to bring focus to prevention and awareness.

Addressing Violence Against Aboriginal Women and Girls - Visioning Session

13. This focus on prevention and awareness was strongly guided by a collaboration with the Nova Scotia Native Women's Association (NSNWA), which had entered into a multi-year capacity building partnership agreement with SW through joint funding from Aboriginal Affairs, Community Services, and Justice, to look for opportunities to collaborate on issues of concern and interest to the NSNWA that would lead to better outcomes for Indigenous women and girls.
 14. The first significant initiative was hosting a visioning session in November 2015, to share news of emerging frameworks for action to end violence against Indigenous women and girls, and to seek the guidance of Mi'kmaw women from across Nova Scotia on opportunities to work differently together.
 15. The important ideas gathered at the visioning session - finding ways to collaborate, supporting local solutions, and investing in leadership - continue to shape our path forward in Nova Scotia.
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Indigenous Girls Roundtable: Peaked Cap Project

16. In 2016-17, SW supported a unique project to develop a girls' leadership experience modelled on the United Nations Girls Roundtables which create spaces for girls to share knowledge with political leaders.
17. The advice received from NSNWA was that to move to a space where this sort of supportive engagement was possible, an investment of time to build trust and safety was required. The project was developed collaboratively with Leave Out Violence (LOVE), a NS not-for-profit focused on amplifying the voices of marginalized youth.
18. The girls chose the Mi'kmaw Peaked Cap as their imagery and spent seven months exploring together what their hopes and challenges were, and how they might share that learning with leaders. They worked with a local filmmaker to craft their story, which was showcased to Nova Scotia leaders at a dialogue day.
19. This was a powerful experience that created a connection between the leaders and the girls; in 2017 the young women leaders from the Peaked Cap project travelled to the United Nations Commission on the Status of Women as part of Canada's delegation, where they hosted a workshop to share their experience of finding collective resilience with international leaders.

Mi'kmaw Women Leaders Network and Supports to Families and the National Inquiry

A "family first" approach to support the Inquiry

20. As the National Inquiry began to frame its principles and develop its outreach in preparation for community hearings, a spirit of collaboration guided how we considered what appropriate role the government of Nova Scotia could play to support the National Inquiry in Nova Scotia.
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21. Following the path provided by the visioning session, the wisdom and leadership of Indigenous women was sought with a gathering day to have conversation together about how the Province might support Indigenous women as they developed how to walk along with their families and the National Inquiry in a good way.
 22. From these early discussions, Nova Scotia embraced a “family-first” approach, and a philosophy of “nothing about us without us” for our collective work to support the National Inquiry.
 23. This led to the development of the Mi’kmaw Women Leaders Network (MWLN), which worked actively together to imagine how families of MMIWG would be supported, and how the National Inquiry would be welcomed and supported in Nova Scotia.
 24. The MWLN became an organic, collaborative group including representatives from the NSNWA, the Mi’kmaw Legal Support Network, the Mi’kmaw Native Friendship Centre and other key Mi’kmaw women leaders, as well as Provincial government contributors from SW, Justice, and Aboriginal Affairs.
 25. The network initially came together to share information and stay connected on the National Inquiry with a focus on supporting families and communities throughout the process.
 26. They also developed a culturally-grounded and family-centred plan for hosting the National Inquiry when they came to Membertou for Community Hearings in October 2017 – the first hearings to be held in a First Nation community.
 27. The MWLN met for over a year to plan for the eventual visit of the National Inquiry Commissioners, families, and community. The MWLN was vital to the success of the entire event, ensuring assistance and support to families, organizations, and the National Inquiry
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team. The MWLN became the key mechanism for collaboration with the National Inquiry regional team in preparing for the hearings.

28. The MWLN used a collaborative space approach and ensured a strong steady presence of ceremony and support at the Inquiry, including a full day of ceremonies prior to the hearings.
29. The MWLN also offered care and support to hearing participants and community members by hosting a welcoming family room with memorials, art therapy, and support.²
30. Feedback suggested this approach was helpful and beneficial, not only for the families and survivors giving testimony, but also for the Inquiry team as it allowed them to focus on their difficult tasks knowing that there was an additional layer of support and care available to families and survivors throughout the hearings.
31. This model of care and collaboration was shared with other jurisdictions and helped to enhance supports for family members at subsequent hearings.

Nova Scotia's Family Information Liaison Unit (FILU) and the National Inquiry

32. In the early stages of establishing the FILU in Nova Scotia, Mi'kmaw collaborators identified that the initial model proposed by Justice Canada that would see FILU workers housed within provincial Victim Services was not workable for family members of MMIWG, who may not trust mainstream systems and services.
33. With the assistance of the SW office, the Nova Scotia Department of Justice met with the MLSN and the NSNWA to build a more collaborative, community-focused approach to the delivery of critical support and information services to families and survivors.

² The "Nothing About Us Without Us" graphic on the cover page of this submission was developed by the MWLN (of which Nova Scotia is a member) and prominently displayed on a large banner throughout the Membertou Community Hearing (used with permission).

34. This enhanced model includes Community Outreach Specialist workers housed within NSNWA, who are members of the Mi'kmaw community that connect directly with individuals and family members. An Indigenous Victim Case Coordinator within the Department of Justice facilitates the process to meet the needs of each client.
35. This model is built on the same community-focused and collaborative approach that underpins Nova Scotia's relationship with Mi'kmaw communities and organizations.
36. Nova Scotia's participation in the National Inquiry has been centred around a "family-first" approach. The FILU team members are integral members of the Mi'kmaw Women Leaders Network and were on site for the full day of ceremonies prior to the National Inquiry hearings held in Membertou and offered support for the entire three days of testimony.
37. The FILU team is also taking a lead role in working with family members and survivors who testified in Membertou to plan and hold a family healing gathering, set to occur in December of 2018.
38. The Nova Scotia FILU is a positive example of the Federal, Provincial, and Mi'kmaw organizations partnering to deliver support and information in a responsive manner to the needs of the families of MMIWG. Continued support for the program would ensure that the family first healing process continues beyond the mandate of the National Inquiry.

THE NOVA SCOTIA OFFICE OF ABORIGINAL AFFAIRS AND OUR COLLABORATIVE METHOD TO DEVELOPING GOVERNANCE AND PROGRAM DELIVERY

39. The Office of Aboriginal Affairs (OAA) is mandated to advance important socio-economic initiatives with the Mi'kmaq and the broader Indigenous community and advance rights-based negotiations and consultation with the Mi'kmaq of Nova Scotia.
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40. Our relationship with the Mi'kmaq of Nova Scotia is fundamental to building trust, understanding, and cooperation on a wide array of complex issues.
 41. We have unique treaties in Nova Scotia and our shared history is based on peace and friendship.
 42. The OAA participates in a significant amount of work done to advance reconciliation and governance efforts, and our approach is based on collaboration with Mi'kmaw partners, to address issues affecting Mi'kmaq and other Indigenous Women, Girls, and 2SLGBTIQ+ peoples.
 43. The OAA provides funding and support to a variety of organizations that develop and offer programming and services for Mi'kmaw and other Indigenous women, as well as for the Mi'kmaq and other Indigenous individuals more broadly.
 44. Examples include:
 - providing capacity funding to the NSNWA to support leadership and opportunities for Indigenous women in Nova Scotia related to addressing social, emotional, and health concerns and employment and training opportunities;
 - supporting the Mi'kmaw Native Friendship Centre that provides an important place of connection for the urban Indigenous community. Nova Scotia continues to support its programs and services such as housing, literacy, employment, addictions, early childhood development, victim services and many others;
 - providing funding for the Mi'kmaw Legal Support Network, which provides culturally appropriate justice-related projects and programs to all Indigenous people residing in Nova Scotia;
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- supporting the Clean Foundation, Nova Scotia Youth Conservation Corps Aboriginal Leadership Program, which provides training and employment opportunities within the environmental field to 20 Indigenous youth. Last year, 50% of the Indigenous participants were women;
 - supporting the Wabanaki 2Spirit Society to hold a Two Spirit youth cultural gathering to educate and empower Two Spirit youth and to explore partnerships and relationship building; and
 - creating the Aboriginal Community Development fund – a grant funding program to support community-led initiatives and projects that generate economic benefits for Nova Scotia Mi’kmaq and other Indigenous people in the Province through a variety of business, cultural, social, ecological and economic development activities.
45. All these collaborative partnerships offer broad opportunities for Nova Scotia to connect with Mi’kmaw and other Indigenous communities and support meaningful change.

Relationships and Reconciliation

46. Reconciliation is founded on trust and mutual respect and we continue to work to strengthen this relationship, promote reconciliation and improve outcomes for Indigenous people in our province through several collaborative forums, processes, and initiatives.

The Mi’kmaq-Nova Scotia-Canada Tripartite Forum

47. The Government of Nova Scotia has a collaborative relationship with the Mi’kmaq spanning several decades, built on respect, understanding, and shared work.
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48. It was, in fact, a previous Public Inquiry that led to the development of one of our longest-standing formal collaboration structures, the Mi'kmaq-Nova Scotia-Canada Tripartite Forum (TPF).
 49. Formed in 1997, the TPF stems from the *Royal Commission on the Donald Marshall Jr. Prosecution (1989)* (The Marshall Inquiry), which produced a landmark report with recommendations to address human rights issues and the relationship between Mi'kmaw people and the justice system in Nova Scotia.
 50. The TPF is a nationally unique, innovative, and collaborative forum that coordinates Mi'kmaw and tripartite initiatives among governments and Mi'kmaw communities, enabling discussion and resolution of issues of mutual concern. Together we develop capacity in Mi'kmaw communities and foster positive relationships with all Nova Scotians.
 51. Through the seven policy and program committees on Justice, Education, Health, Social, Economic Development, Sport and Recreation, and Culture and Heritage, the TPF develops strategies to improve socio-economic status, education, awareness of Mi'kmaw culture and history, and increased governance capacity.
 52. Within these committees a variety of projects and programming have been developed that seek to improve outcomes for Indigenous women. Opportunities to increase Mi'kmaw Women Leadership in the forum are also currently under discussion.
 53. As the focal point for Jordan's Principle, OAA coordinates with 3 other line departments responsible for ensuring the delivery and development of programming and services to meet the needs of Indigenous people in Nova Scotia.
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54. Through the TPF Health Committee, efforts to apply Jordan's Principle are undertaken and we coordinate closely with the Mi'kmaq and Federal Government to ensure health concerns are known and addressed by the parties.
55. Through the TPF Social Committee, two Indigenous child welfare symposia were supported in 2016 and 2017. These symposia informed further *Child and Family Services Act* revisions and the development of the Mi'kmaw Child Welfare Initiative.

Treaty Education Nova Scotia

56. In 2015, the Province of Nova Scotia signed an agreement with the Mi'kmaq of Nova Scotia that created a new partnership called Treaty Education Nova Scotia.
 57. Treaty Education Nova Scotia refers to the process of creating a greater understanding of the Mi'kmaq, of inherent Indigenous rights, recognition of the Peace and Friendship Treaties as historical and living agreements and the continuing relationships between the Mi'kmaq and all peoples of Nova Scotia.
 58. In the past two years, Treaty Education Nova Scotia has begun to transform the curriculum of grades K-12 in all public schools in Nova Scotia, is building greater awareness and understanding in the public service, and is starting a public education campaign, "*We Are All Treaty People*".
 59. An important outcome of this work is that Mi'kmaw and Indigenous peoples, including women and girls, see themselves and their culture reflected and valued in school, work, and broader society.
 60. Treaty Education Nova Scotia is a long-term, generational process and the partnership provides a foundation for positive relations and reconciliation between the Mi'kmaq and the Province.
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Mi'kmaw Kina'matnewey Education Agreement

61. Nova Scotia is the first jurisdiction in Canada to foster a provincial structure that supports Mi'kmaw leadership leading Mi'kmaw education.
62. Mi'kmaw Kina'matnewey (the Mi'kmaw Education Authority) was established in 1997 by the Mi'kmaq in partnership with Canada and Nova Scotia.
63. Over the past 20 years, Mi'kmaw Kina'matnewey has been successful in improving education outcomes for Mi'kmaw students. For example, the Grade 12 graduation rates for Mi'kmaw Kina'matnewey students in 2017/18 was 91% compared to the national average for Indigenous students at 35%.
64. In June 2018, Nova Scotia signed an agreement with Mi'kmaw Kina'matnewey to help guide public school programs and services to support Mi'kmaw students who are members of the Mi'kmaw Kina'matnewey communities and attend public school.
65. It also ensures there are opportunities for Mi'kmaw Kina'matnewey to participate in educational decisions that impact Nova Scotia's education system.
66. Greater knowledge of our shared history has been championed as a method for moving toward reconciliation by the Truth and Reconciliation Commission.

Supporting Indigenous Governance

67. In addition to the TPF, in Nova Scotia there are two established processes to address issues of mutual concern, as well as asserted and established Aboriginal and Treaty Rights: (1) the Made-in-Nova Scotia Negotiation Process (MNSP); and (2) the Duty to Consult with Aboriginal Peoples pursuant to the Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference.
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Made-in-Nova Scotia Negotiation Process

68. The MNSP is the formal tripartite Aboriginal and Treaty Rights negotiation process involving Nova Scotia, Canada, and the Mi'kmaq of Nova Scotia, as represented by the Assembly of Nova Scotia Mi'kmaq Chiefs (ANSMC) through the Kwilmu'kw Mawklusuaqn Negotiations Office (KMKNO).
69. Since 2007, the negotiation process helps foster and maintain a positive and productive relationship between the Province and the Mi'kmaq of Nova Scotia as the parties work toward mutually beneficial short term and long-term negotiated arrangements.
70. At present, the parties are focused on developing new interim and incremental approaches to addressing and implementing Mi'kmaw rights in Nova Scotia, called Rights Reconciliation Arrangements. This innovative work involves finding mutually agreeable ways to enhance clarity and predictability in the exercise of Mi'kmaw rights.

TOR Consultation Process for the Duty to Consult

71. In partnership with the Mi'kmaq of Nova Scotia and Canada, Nova Scotia developed the Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference (TOR) in 2007, which lays out a consultation process for the parties to follow when governments are making decisions that have the potential to adversely impact asserted Mi'kmaw Aboriginal and Treaty rights.

Annual Meeting of the ANSMC and the Provincial Cabinet

72. Initiated in 2008, the annual meeting between the ANSMC and the Provincial Cabinet is a meeting where senior leadership of the Mi'kmaq and the Province meet to discuss opportunities, issues and share major ideas of mutual importance.
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73. Nova Scotia continues to identify and support opportunities to improve social and economic prosperity for Nova Scotia's Indigenous peoples and communities.
74. This work increases participation of Indigenous people in the workforce and strengthens the provincial economy, supporting inclusive economic growth.

INDIGENOUS PEOPLE AND THE JUSTICE SYSTEM

75. We know that Indigenous people are overrepresented as offenders, underrepresented as leaders, and may continue to face discrimination within the justice system.
76. While there is still much work to be done, the Province of Nova Scotia is collaborating with First Nations to improve representation overall of Indigenous people as leaders and to incorporate cultural aspects of the Mi'kmaq into our public prosecution, corrections and justice system.
77. Building a more inclusive justice system also means ensuring Indigenous citizens see themselves reflected at all levels of that system and feel greater trust when interacting with the justice system.

The Indigenous Blacks & Mi'kmaq (IB&M) Initiative

78. The Indigenous Blacks & Mi'kmaq (IB&M) Initiative at the Schulich School of Law was established in 1989, also in response to the Marshall Inquiry. The intent of the program is to increase representation of Indigenous Blacks and Mi'kmaq in the legal profession to reduce discrimination.
 79. The IB&M Initiative involves community outreach and recruitment; providing student financial and other support; developing scholarships in the areas of Aboriginal law and African Canadian legal perspectives; and promoting the hiring and retention of graduates.
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80. The Nova Scotia Department of Justice (DOJ) has been a proud supporter of the IB&M Initiative since its creation. In addition to an annual grant, the DOJ has also committed to hiring a graduate each year to article with the Province.
81. Since the IB&M Initiative began, more than 200 Black and Indigenous graduates have gone on to pursue careers with private law firms, Indigenous organizations, and government legal departments. They have taken up a range of leadership roles across Nova Scotia and beyond.
82. In 2018, the DOJ introduced a new mentorship program within the IB&M Initiative. The mentorship program allows IB&M students to have a work term within the DOJ during the academic year. Students are assigned a mentor and work on projects within the Department's Corrections, Policy, Legal, Court Services and Public Safety Divisions.
83. Continued support of the IB&M Initiative and similar programs across Canada is critical to ensuring that the legal community and justice system is representative of the public it serves.

Judicial Diversity

84. The Marshall Inquiry recommended that government appoint qualified visible minority judges and administrative board members wherever possible.
85. In 2016, the Nova Scotia government changed its appointment guidelines for becoming a provincial or family court judge, setting the legal experience requirement at 10 years, down from 15 years.
86. While the requirements to become a judge should be high, Nova Scotia recognizes that the required years of experience should not be barriers to attracting diverse lawyers to the bench.
87. Following these changes, the Nova Scotia government appointed Catherine Benton to its Provincial Court. Judge Benton became the second Mi'kmaq and first Mi'kmaw woman to serve as a judge in the Nova Scotia Provincial and Family Courts.

88. In addition to improving diversity in the judiciary, Nova Scotia has also achieved gender parity in its Provincial and Family courts; currently 18 of the 35 Provincial and Family Court judges in Nova Scotia are women.
89. The DOJ also oversees 11 agencies, boards and commissions (ABCs) and has developed an ABC Diversity Recruitment and Inclusion Strategy. Stakeholder consultations have been held with representation from over thirty diverse groups, including Indigenous communities.
90. The goal is to increase the number of applications and appointments to ABCs, and to ensure an inclusive environment and culture on these boards. The objective is for this approach to be rolled out more broadly across government.

Diversity within Government

91. The DOJ recognizes the challenges associated with over representation of Indigenous peoples in the criminal justice system.
 92. The DOJ is partnering with the Mi'kmaw Legal Support Network and the ANSMC in developing an Indigenous Justice Strategy ("IJS"). The IJS will be focused on four key pillars of: Partnership; Prevention; People; and Program and Policy.
 93. All divisions of the DOJ have instituted cultural competency training and are considering responsive programming. The Department is focused on ensuring diversity in hiring and that its staff have appropriate training to understand the historical context and cultural needs of Indigenous people.
 94. There is much more room for improvement in the diversity of all levels of government and the judiciary. Nova Scotia will continue to promote the need for diversity at all levels of courts, within government departments and within ABCs.
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Court Facilities & Practices

95. On June 21, 2018, Nova Scotia's first Aboriginal Wellness and Gladue Court was officially opened in Wagmatcook First Nation.
 96. The new court supports a recommendation from the Marshall Inquiry calling for more Provincial Court sittings on Nova Scotia reserves and aligns with the Calls to Action outlined in the 2015 Final Report of the Truth and Reconciliation Commission (TRC).
 97. In addition to addressing Indigenous justice concerns and needs, the new court highlights the successes that can come from collaboration among communities, groups and all levels of government.
 98. Partners in the project include the Wagmatcook and We'koqma'q First Nations, the Nova Scotia Judiciary, the Mi'kmaw Legal Support Network, Nova Scotia Legal Aid, the Public Prosecution Service, Public Prosecution Services Canada, Victoria County, RCMP, the Nova Scotia Barristers' Society, and the Government of Nova Scotia.
 99. The Wagmatcook Court has a circular design that is representative of Indigenous healing circles and reflects a unique approach to justice.
 100. The Wellness Court component will attempt to identify and address the root cause of the offending behaviour and develop a recovery support plan that links Indigenous people to support services.
 101. The court in Wagmatcook will allow Indigenous offenders to accept responsibility for their actions, which is more consistent with Indigenous culture.
 102. The Wagmatcook Court is also one of the first provincial courts in Canada to hold regular sittings in a First Nations community. Wagmatcook joins Eskasoni to become Nova Scotia's second First Nation community to offer court services on reserve.
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103. In late 2016, Corporal De-Anne Sack, Indigenous Policing Coordinator of the Community, Indigenous, and Diversity Policing section of the RCMP in Nova Scotia, reached out to the Department of Justice to explore the possibility of using the sacred eagle feather in Nova Scotia courts. The subsequent introduction of the sacred eagle feather for Indigenous witnesses to swear their oaths in Nova Scotia Provincial Court, Family Court, and Supreme Court represents another important symbol of respect, inclusion, and reconciliation.

104. The eagle feather can be used in the same way as a holy book. Those testifying in court or signing statements would hold the eagle feather while swearing an oath to tell the truth (as we have seen during the hearings for this National Inquiry).

105. Governments of all levels must be open to exploring options to change processes and allow for more inclusion of Indigenous customs and traditional knowledge.

106. Incorporation of Indigenous culture into the justice system is a step forward in reconciliation. Building greater trust in the justice system and being more reflective of Indigenous customs across Canada's criminal justice system will lead to better outcomes for Indigenous women and girls who are victims or may be accused of offences.

Mi'kmaw Legal Support Network

107. Nova Scotia recognizes the criminal justice system needs to be more receptive to Indigenous laws, customs, and principles of justice.

108. The Marshall Inquiry led to creation of the Mi'kmaw Justice Institute in 1997, which in turn became the Mi'kmaw Legal Support Network (MLSN) in 2002.

109. The MLSN is an independent entity, approved by the thirteen Nova Scotia Chiefs and is governed by a Board of Directors.

110. MLSN is the umbrella organization that provides legal support services throughout Nova Scotia through three offices located in Eskasoni, Millbrook, and Halifax, and two sub offices in Paqtnkek and Bear River.
111. MLSN offers the Court Worker Program, Customary Law Program, Victim Support Services Program, and Gladue reports. An overview of each of these services is attached as Appendix “B”.
112. Each of these services is critical to ensuring that the justice system is respectful and inclusive to the culture of the Mi’kmaw people.
113. Nova Scotia is committed to greater awareness and access to the programs and services MLSN offers to Indigenous communities across Nova Scotia.

Supporting Restorative Justice Alternatives

114. Restorative justice is a response to crime that seeks to understand and respond to the impact of crime on individuals and community.
115. Restorative justice is a different way of thinking about crime and our response to crime as a just society.
116. Restorative justice seeks to bring together those who have been harmed and those who have responsibilities for the harm to promote healing and make things better in the future. Similar to Indigenous legal customs, restorative justice seeks to build understanding and responds to the needs generated by a crime. We know that much can be learned from these systems that will improve Canada’s criminal justice system as a whole.
117. Restorative justice offers potential for justice agencies and communities to work together in partnership to address existing issues and challenges in the criminal justice system.
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118. The success of this partnership depends upon a system-wide approach, one which makes possible a wide range of alternatives at various points in the system.

119. Nova Scotia is proud to be a leader in Canada in incorporating restorative justice into our criminal justice system and will continue to incorporate restorative justice principles and measures into our criminal justice system.

Public Prosecution Service

120. The Nova Scotia Public Prosecution Service (PPS) was established in 1990, following the Marshall Inquiry, as the first statutorily-based independent prosecution service in Canada.

121. All criminal prosecutions within the jurisdiction of the Attorney General of Nova Scotia are the responsibility of the independent Director of Public Prosecutions. Crown Attorneys, responsible to the Director of Public Prosecutions, conduct criminal prosecutions independent of the Attorney General.³

122. The PPS has recently finalized a “Policy for Fair Treatment of Indigenous Peoples in Criminal Prosecutions in Nova Scotia”, developed by the PPS Equity & Diversity Committee in consultation with Indigenous lawyers that work within the criminal justice system (the Policy).

³ The only limitation on the operational independence of the Director of Public Prosecutions permitted by the *Public Prosecutions Act* arises when the Attorney General issues written instructions to the Director of Public Prosecutions. These instructions are binding and must be made public. This procedure preserves the ultimate prosecutorial authority of the Attorney General. This provides a means of ensuring accountability to the electorate for the manner in which public prosecutions are conducted.

123. The key objective of the Policy is to contribute to a decrease in the rates of victimization, crime and incarceration among Indigenous peoples in Nova Scotia by conducting culturally competent prosecutions involving Indigenous peoples.
124. The Policy recognizes that the particular circumstances, culture, and history of discrimination of Indigenous peoples and their over-representation within the justice system warrants that they receive special, and sometimes differential, consideration whether as accused persons or as victims of crime.
125. The Policy includes specific guidance to Crown Attorneys on individual case management, including the initial decision to prosecute, referrals to Restorative Justice when appropriate, and bail, trial and sentencing phases of criminal prosecutions.
126. The Policy was approved by the PPS in October 2018 and presented to all Crown Attorneys at their 2018 Fall Education Conference. The PPS is preparing a public launch of this new Policy for early 2019. A complete copy of the Policy is attached as Appendix “D”.

Correctional Services

127. Nova Scotia Correctional Services, as a division of the DOJ, has instituted cultural competency training and responsive programming throughout the corrections system, and delivers a range of programs and supports to all women offenders, including Indigenous women and women from other marginalized communities. Programs such as “Beyond Trauma: A Healing Journey for Women” attempt to provide culturally responsive training and supports during custody.
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128. The Elizabeth Fry Society of Mainland Nova Scotia, in partnership with Correctional Services, was recently granted funding through Poverty Reduction Government Innovation to pilot a new project titled “Circles of Support”, to provide collaborative and culturally responsive case management to women offenders under community supervision, using a restorative justice approach.

129. Correctional Services has created a Female Offender Working Group that is tasked with exploring and promoting implementation of programs and supports that are gender and culturally responsive, trauma-informed, and holistic.

130. As an active member of the FPT Heads of Corrections Subcommittee on Women as Correctional Clients, Correctional Services shares the Subcommittee’s priority of promoting women-centered programming that includes services specifically designed for First Nations, Métis, and Inuit Women.

131. The Working Group is currently reviewing Correctional Services policies and procedures to ensure the unique needs of female offenders, including Indigenous women, are addressed.

CHILD WELFARE IN NOVA SCOTIA AND REDUCING THE NUMBER OF FIRST NATIONS CHILDREN IN CARE

132. Reducing the number of First Nations children in care was the first Call to Action outlined in the 2015 Final Report of the TRC.

133. Testimony throughout this National Inquiry process has highlighted the negative effects that the child welfare system has had on Indigenous women and girls across Canada, as a continuation of colonial violence.

134. We are encouraged to see the number of children in care trending downward generally in Nova Scotia and consistently within Mi'kmaw populations.
135. However, Mi'kmaw children represent 18% of the total number of children in care in Nova Scotia, while persons of Aboriginal ancestry represent only 2.7% of the total population of Nova Scotia.
136. The number of children in care in Nova Scotia has steadily decreased over the past 5 years and this trend has also been evident within the Mi'kmaw population, moving from 259 to 186 children in care as of April 2018. In addition, over 75% of those 186 children in care are placed within kinship foster homes.
137. While these changes represent an improvement, we know there is more work to be done. Mi'kmaw women and children remain over represented within our system.
138. The Mi'kmaq of Nova Scotia, through the KMNKO, have requested the Governments of Canada and Nova Scotia support their efforts to increase autonomy over child welfare practices for Indigenous people living in Nova Scotia, through creation of the Mi'kmaw Child Welfare Initiative.
139. The Province has committed funding from the DCS to demonstrate support for the Initiative this year, with a budget proposal to support this work for each of the next four years, while the KMKNO submits a 5-year funding proposal to the federal government.
140. The end goal of the Initiative is self-governance for child welfare, a Mi'kmaq Child Welfare Law, and the establishment of an independent Mi'kmaw child and family services agency that offers culturally appropriate family support services across Nova Scotia.
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Mi'kmaw Family and Children's Services and Our Evolving Approach

141. Mi'kmaw Family and Children's Services (MFCS) is a registered charitable organization operating as a Child Welfare Agency with dual delegation by the Mi'kmaw Chiefs and the Department of Community Services.
142. MFCS is mandated by the *Children and Family Services Act* to respond to allegations of child abuse or neglect of Mi'kmaw children under the age of 19 residing on reserve across Nova Scotia.
143. While the mandate of MFCS is the same as all Community Services child welfare offices, MFCS was created in recognition of the importance of the preservation of Mi'kmaw cultural identity and practices.
144. It is essential that the provision of child welfare services involve Mi'kmaw people, recognizing their priorities, needs and the current variety of service modes.
145. The thirteen Nova Scotia Mi'kmaq Chiefs sit on the MFCS Board of Directors. Chief Deborah Robinson is the current Chair of the Board.
146. MFCS operates from two primary locations: the Eskasoni office which serves First Nation communities in Cape Breton; and Sipekne'katik office which serves First Nation communities on the mainland of Nova Scotia. MFCS delivers child welfare services to all community members of Nova Scotia's thirteen Mi'kmaw Bands.
147. Indigenous Services Canada (ISC) provides funding to deliver delegated services and a tripartite agreement defines the roles and responsibilities of the three parties: DCS, MFCS, and ISC. Included in the tripartite agreement is a requirement for a Tripartite Committee and a Working Group.
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148. We understand the importance and value of collaborative work. As such, the Tripartite Committee of senior staff from DCS, MFCS, and ISC began meeting in January of 2011 to develop and implement an action plan to support the Agency's efforts to address concerns and improve service delivery.
149. This group has helped make significant recommendations for change and continues to meet collaboratively on a regular basis to ensure further improvements.
150. In the fall of 2012, the Tripartite working group recommended a significant increase in staffing, to stabilize the program, and bring it in line with the provincial staffing levels.
151. On November 8, 2013, what is now ISC approved an increase in staffing from 64 positions to 109 positions.
152. In December 2013, an operational review was completed by an independent consultancy which submitted to the Tripartite Committee a set of recommendations to improve the Agency's services and structure.
153. Longer term goals include replacing the Eskasoni building, opening a third site on the Mainland, and initiating a strategy to recruit and train more Mi'kmaw social workers.
154. The DCS provides ongoing support to MFCS via staff training, consultative services, on-site support, residential services, and technological support.
155. In recognition of the uniqueness of Mi'kmaw child protection work, in January 2016 the DCS hired a Child Welfare Specialist who works closely with MFCS staff. This Specialist is a member of the Mi'kmaw Community and works with departmental Child Welfare staff who support Indigenous children and their families across the province.
156. The Specialist provides a culturally appropriate interpretation of the DCS Child Welfare policy for MFCS and departmental staff.
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Children and Family Services Act Amendments

157. A child's connection to their family and community remains a critical factor for every child involved with child protection. All attempts are made to engage with family members who may be able to provide supports to the child and their family.

158. We especially acknowledge the importance of understanding, connecting, and using the strengths of an Indigenous child's immediate family, extended family, and their community.

159. Every effort is made to involve these important family and cultural supports when working within the child protection mandate to ensure the best interests of the child are met.

160. Nova Scotia supported engagement and collaboration between the KMKNO, through the ANSMC, and the Department of Community Services, which resulted in 24 of the 90 recent amendments to the *Children and Family Services Act* ("CFSA").

161. These amendments led to improvements and better clarity in areas of language, inclusion of community, Mi'kmaw practices, and legal rights.

162. Some examples include more accurate definitions, such as:

- "Mi'kmaq child" means a child of Mi'kmaq ancestry who is; (i) *registered as an Indian under the Indian Act (Canada), or (ii) considered Mi'kmaq according to band custom and law;*
 - "Customary care" means the care and supervision of a Mi'kmaq child or Aboriginal child *by a person who is not the child's parent, according to the custom of the child's band or Aboriginal community;*
 - change from using the term "agent of the Minister" to "representative or person designated by the Minister".
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163. The Minister of Community Services recognizes the significance of the inclusion of community for Indigenous children involved with child protection and as such amendments were also made to:

- Recognize that the child's community includes "all persons who have a beneficial and meaningful relationship with the child and, where the child is a registered member of a Band, includes members of the child's Band";
- Recognize the importance of early inclusion of the child's Band in decision making that impacts the child;
- Provide notification of court proceedings to the child's Band;
- Provide an opportunity for the child's Band to participate or designate others to participate in court hearings;
- Provision that the Court may recognize that an adoption of a person in accordance with the custom of a Band of an Aboriginal community has the effect of an adoption under the *CFSA*; and
- The provision that at least 15 days prior to entering an adoption agreement, DCS must notify MFCS of this plan if it is determined that the child is or may have rights as a Mi'kmaw child.

164. Other significant amendments include the specific obligation to develop a cultural connection plan for a child in permanent care and custody and the priority to consider a kinship when placement is being considered or an Indigenous placement provider where kinship is not possible.

165. Amendments also incorporate the recognition of Mi'kmaw practices within the parameters of legal decision making such as placement in customary care and custody, the utilization of

family group conferencing (the *Wikimanej Kikmanaq* Program), and support of the inherent legal rights that an adoption order does not affect any right the adopted person may have to exercise the existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed in section 35 of the *Constitution Act, 1982*.

Children and Family Services Act Policy Revisions

166. The direction, recommendations and context provided by the Mi'kmaq to guide these specific amendments was invaluable and was also used in the creation of significant policy revisions.

167. An entire chapter of the Child Welfare Manual has been dedicated to Mi'kmaq issues that were developed by Mi'kmaq representatives.

168. This chapter includes foundational information premised on the requirement that social workers providing services to the Mi'kmaq people understand their historical experiences, the associated impact of these experiences, and are culturally aware and equipped to provide these services.

169. This chapter includes policy related to:

- Mi'kmaq Cultural Connection Plan and the tool used to create this plan;
 - Mi'kmaq Family Group Conference Program (*Wikimanej Kikmanaq*);
 - Customary Care and supporting principles;
 - Notice to Band;
 - Emergency Protection Orders on Reserve;
 - Custom Adoption; and
 - Specific information and direction related to administrative duties.
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170. Smaller working groups that include representatives from ISC and MFCS have committed to meeting regularly to improve understanding and coordination of any Jordan's Principle situations.

171. This has helped all parties understand the provision of services within child welfare that ultimately will lead to better and more efficient coordination of services.

Child Welfare Prevention & Early Intervention

172. Prevention and Early Intervention provides programs and services to help address issues early to prevent family breakdown, and mitigate the need for more intrusive, statutory interventions.

173. Since 2012, Prevention & Early Intervention has provided funding for the delivery of the following programs for off-reserve Indigenous children, youth and families to Mi'kmaw community-based organizations:

- a. Youth Outreach is a community outreach program designed to improve the immediate and long-term social, educational/vocational, economic and health outcomes for vulnerable Indigenous youth off-reserve. Priority is given to youth between the ages of 16 and 24 who are facing multiple challenges with limited supports. This program is delivered by the Native Council of Nova Scotia (NCNS) currently in two locations, Sydney and Halifax-Truro;
 - b. Parenting Journey is a home visitation program that provides individual support for Indigenous families off-reserve experiencing complex social, emotional and familial challenges that may impact overall family functioning, parent-child relationships and the well-being and development of children/youth. This program is also delivered by the NCNS in two locations, Sydney and Halifax-Truro;
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- c. Family Resource Programs are community-based programs and services that support the healthy development and well-being of Indigenous children and youth off-reserve by strengthening families and communities. Holistic approaches to supporting positive outcomes for children and youth are family focused and involve parents and family members, with consideration of the broader community and cultural context. This program is delivered by the NCNS in Digby and by the Mi'kmaw Native Friendship Centre in Halifax.

174. In addition, DCS funds the Native Council's Social Counselling Program, a program provided to Indigenous persons and families off-reserve in Nova Scotia that provides supportive counselling and navigation supports.

175. In addition, non-Mi'kmaw organizations who receive Prevention & Early Intervention program funding have included in their Service Agreements a requirement that they reach out to, engage, and provide culturally relevant and competent programs and services to intended populations such as the Mi'kmaq, African Nova Scotian, and Newcomer children, youth, and families.

Child Welfare Prevention & Early Intervention: Plans for the Future

176. The following are further early intervention initiatives that are being developed to prevent the need for Indigenous children to be taken into care:

- a. Increased and new Prevention & Early Intervention programming for intended populations, including off-reserve Mi'kmaw children, youth, and families;
 - b. A cultural competency framework, including a change management strategy to roll-out across services, which will set expectations that existing mainstream Prevention & Early Intervention and broader Child Welfare services will effectively meet the
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needs of children, youth, and families from non-mainstream cultures, and enable services to meet these expectations;

- c. Additional direction, requirements and support provided for existing Prevention & Early Intervention programs, to help them to tailor their programming to the needs of key intended populations in their community, including Mi'kmaw children, youth, and families;
- d. Involvement of communities in the planning, design and delivery of Prevention & Early Intervention programs and initiatives. Community leaders and members will be mobilized in support of protecting children. This will empower local communities to identify child welfare issues and address them.

ADDRESSING GENDER BASED VIOLENCE

177. Gender based violence represents a broad and complex concern to Nova Scotians.

178. The following are a few of the initiatives undertaken by the Nova Scotia government through our collaborative approach to address this complex issue.

Engaging Indigenous Communities Through the Sexual Violence Strategy

179. As we have learned, collaboration is essential in producing effective change.

180. Nova Scotia's Sexual Violence Strategy (2014-2017) was developed over a 3-year funding commitment and includes the following:

- a. An award-winning public awareness campaign on sexual violence was launched in October 2016. The campaign includes videos, posters and a website;
 - b. Two young Indigenous women worked on the committee that developed this campaign and one of the youth engagement sessions was held with the Youth
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Outreach Program at the Native Council. Engagement with Indigenous youth on these issues is essential to reflecting their experiences in the Strategy.

- c. An online training course, Supporting Survivors of Sexual Violence, was launched in April 2017. One of the six modules is focused on Indigenous Perspectives. It explores the connections between colonization, intergenerational trauma, racism and sexual violence. It also focuses on Mi'kmaw resilience and pathways to healing.

181. This work was guided by an advisory committee made up of Mi'kmaw service providers and a Mi'kmaw lawyer who sat on the Provincial Training Committee. As of October 2018, over 3,000 users have registered to take the course.⁴

182. Funding was provided to support Indigenous-led projects through the Community Support Network Grants including a victim support navigator at the Mi'kmaw Native Friendship Centre and community based sexual violence responses in Paqtnkek and Eskasoni.

183. Prevention Innovation Grants were awarded to 19 projects led by and for the Mi'kmaw Community between 2015-2018. One of these projects enabled youth in Eskasoni to develop a colouring book for survivors of sexual and gender-based violence.⁵

184. DCS also funded the development of a Toolkit, "Responding to and Preventing Sexual Violence in Mi'kmaw Communities", that can be used across the province to mobilize community-based responses to sexual and gender-based violence in a culturally specific way.

⁴ <http://www.breakthesilenceNS.ca/training>

⁵ <https://nscs.learnridge.com/wp-content/uploads/2018/09/Mikmaq-Colouring-Book.pdf>

185. The Toolkit was created in partnership between Paqtnkek Health Centre and Antigonish Women's Resource Centre.⁶

186. A Mi'kmaw Community Engagement Gathering took place in April 2016 in Truro. This provided an opportunity for over 70 Indigenous service providers and community leaders to address the unique needs of Indigenous communities in responding to and preventing sexualized and gender-based violence.

Sexual Violence Prevention and Supports

187. The Department of Community Services is currently operationalizing Sexual Violence Prevention and Supports (SVPS), as a program area within Prevention and Early Intervention.

188. Established in 2017-2018, the following represents some of their key activities:

- a. DCS is working with a community partner to implement a program to support youth, including Indigenous youth, who are being sexually exploited and/or trafficked (ages 16-21);
- b. DCS is developing a Community Mobilization Program that will be implemented by three community-based organizations, one of which is the Nova Scotia Native Women's Association. This SVPS Community Mobilization Program will help engage and work with communities to build stronger community responses to support victims/survivors of sexual and gender-based violence and to encourage citizens of all ages to take a role in preventing and responding to sexual and gender-based violence;

⁶ <https://nscs.learnridge.com/wp-content/uploads/2017/05/Mikmaw-Community-Engagement-Toolkit-Fillable-may-16.pdf>

- c. DCS is developing a community-based Youth Outreach Program that will provide targeted, individualized outreach and support to youth dealing with or at risk of sexual and gender-based violence or exploitation. Marginalized groups, such as the Mi'kmaq, African Nova Scotians, low-income and/or rural youth between the ages of 12 and 19, are the intended recipients of this program;
- d. Prevention Innovation Grants will continue to be available to support:
 - i. community-based primary prevention initiatives;
 - ii. expansion of best practices;
 - iii. conducting better research & evaluation;
 - iv. better use of technology;
 - v. youth groups abilities to reach out to peers in innovative ways; and,
 - vi. marginalized populations including Indigenous communities.

Building a Focus on Indigenous Women and Girls into Nova Scotia's Plan to Prevent Domestic Violence

189. All persons in Nova Scotia should live free from domestic violence and abuse.

Unfortunately, that is not true for too many Nova Scotians, including Indigenous women, girls, and 2SLGBTIQ+ peoples.

190. Domestic violence is a complex problem, and addressing these issues requires a coordinated and sustained effort.

191. In 2011, the Tripartite Forum Justice Working Committee produced a report on *Addressing Mi'kmaq Family Violence*, which presents a culmination of five years of research and examination supported by Dr. Jane MacMillan.

192. This initiative built important knowledge and direction through community-based research and forums that brought focus to the issues of family violence in Mi'kmaw communities and families. This work offers a guiding vision and specific direction to efforts to address and prevent violence within Mi'kmaw communities.
193. Through collaborative work with community, government, and academic partners engaged in the prevention of gender-based violence, a symposium was held in January 2017 that identified key evidence-based themes to focus on to address prevention: safety and resilience of Indigenous women and girls; engaging men and boys; and healthy relationships for youth.
194. Following that foundational work, the Province committed to work with stakeholders and provide funding to create “Standing Together”—a four-year action plan to prevent domestic violence in Nova Scotia, and enhance supports to victims and survivors, particularly those who are not being served by mainstream supports.
195. This initiative will embrace community-led learning and innovation, with a focus on understanding root causes and systemic challenges that increase the risk of violence for Indigenous women and girls.
196. Nova Scotia has also expanded its Domestic Violence Court Programs, now operating in Sydney and Halifax. These court programs represent a different way to address domestic/intimate partner violence.
197. Unlike a traditional court, which is adversarial, the Domestic Violence Court Program is more therapeutic, using a coordinated community response that quickly connects family members to services and supports where they live. The creation and operation of these court programs are an example of community, government and the judiciary working together to make meaningful change.
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198. In December 2018, Nova Scotia and Canada announced joint funding for a collaborative pilot project to support women survivors of gendered violence and their families from Halifax's urban Indigenous and African Nova Scotian communities. The project, called *Creating Communities of Care Through a Customary Law Approach*, will walk alongside the new Domestic Violence Court Program in Halifax to enable more robust and culturally-grounded victim supports

199. Project partners, including MLSN, Elizabeth Fry Society, Nova Scotia Association of Black Social Workers, Mi'kmaw Native Friendship Centre, SW, and DOJ, will work together to develop supports and services that reflect the cultural practices of survivors, enable systems to respond more restoratively, and create further space for nurturing and incorporating Mi'kmaw and Afro-centric processes into our legal and justice systems.

Emergency Protection Orders and Mi'kmaw Communities

200. Justices of the Peace and Family and Provincial Court judges are authorized to issue Emergency Protection Orders under Nova Scotia's *Domestic Violence Intervention Act*. However, that provincial law does not extend to First Nations communities.

201. In March 2017, Nova Scotia designated Justices of the Peace and Family and Provincial Court judges as able to issue emergency protection orders under the Federal *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

202. The law ensures Indigenous families have the same access to protections from domestic violence as other Nova Scotians have and will help families living in First Nation communities better access the justice system.

203. Information respecting the application process is available on line at www.nsfamilylaw.ca and is in both English and Mi'kmaq (written and oral).

LISTENING AND LEARNING: FROM ENGAGEMENT TO RECONCILIATION

204. The following lessons in reconciliation are being learned from our journey of listening, building bridges and seeking guidance from the knowledge of Indigenous women and girls and the communities that support them.

205. We are learning that we must:

- a. Recognize the interlinked challenges of violence and economic security;
- b. Build capacity and foster leadership amongst Indigenous women and girls to promote resilience to address isolation and systemic marginalization;
- c. Invest proactively in support for Indigenous girls that act to both empower them and invite them to explore the wider world with supportive allies;
- d. Be humble and open to learning from and with the community through shared work, identification of issues, and development of collaborative solutions;
- e. Consider how government can recognize the on-going impacts of colonization and inter-generational trauma so that we create space to honour and engage an Indigenous lens, and specifically an Indigenous women's lens, on any work we undertake; and,
- f. Be intentional about addressing gaps in policy and service delivery.

206. Increasing collaboration and commitments at the Federal level has further strengthened our work in Nova Scotia. The challenges faced by Nova Scotia's Indigenous population today are complex and long-standing and responding to these challenges requires a coordinated approach to achieve meaningful reconciliation.

207. We continue to learn that:

- a. It is critical that we maintain open and transparent dialogue with our Federal and Indigenous partners;
- b. As programming and action plans are being developed federally, it is important to recognize and support the efforts underway in the provinces and territories, and the long-standing relationships that have been built and maintained;
- c. Commitments made by the Federal government should consider the potential economic and social capacity implications to provinces and territories;
- d. Federal action plans should be developed to ensure that provinces are able to maintain their established and well-functioning processes that respect the self-governance abilities and aspirations of the Mi'kmaq.

CONCLUSION

208. Nova Scotia's unique relationship with the Mi'kmaq of Nova Scotia has led to some positive outcomes in addressing the root causes of violence experienced by Indigenous women, girls, and 2SLGBTIQ+ peoples - but we recognize that more must and will be done.

209. We have learned that listening and respectful collaboration are pathways that engage the Mi'kmaq and all Indigenous peoples in a culturally sensitive manner to their individual needs and are critical to reducing the service gaps that affect Indigenous communities.


210. Every Nova Scotian should feel safe and supported while achieving their aspirations in our Province, and those same privileges must be provided to all Indigenous women, girls and 2SLGBTIQ+ people in Nova Scotia.

211. We recognise and fully support the pathways for healing and reconciliation that this National Inquiry brings to Nova Scotia and all of Canada.
212. The families of missing and murdered Indigenous women, girls, and 2SLGBTIQ+ people have shared their tragic and hopeful stories at the family hearings across Canada, and we are grateful for the courage and determination of each of those witnesses.
213. Nova Scotia recognizes and supports the family members and survivors that came forward to share their truths at the Membertou Community Hearing. Their voices particularly resonate with us, as we know that we can – and must – do better for them.
214. We repeat our thanks to the National Inquiry Commissioners, staff and volunteers, witnesses, and knowledge keepers who have diligently worked to allow all parties to critically examine these issues across Canada.
215. We look forward to the Commissioners' recommendations in the upcoming Final Report, to inform and guide our continuing work across Nova Scotia.
216. Identifying, understanding, and then collectively addressing these issues is the only way we can achieve meaningful change and eliminate violence against our Indigenous women, girls, and 2SLGBTIQ+ peoples.

Wela'like. Respectfully Submitted, at Halifax, Nova Scotia, December 14, 2018



for Edward Gores, Q.C.
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APPENDIX “A” – DOCUMENTS AND REPORTS REFERENCED BY THE NOVA SCOTIA ADVISORY COUNCIL ON THE STATUS OF WOMEN

1. Addressing Violence Against Aboriginal Women and Girls – Visioning Session Report (2015),
https://women.gov.ns.ca/sites/default/files/documents/NSNWA%20Addressing%20Violence%20Against%20Aboriginal%20Women%20and%20Girls%20Booklet_FINAL.pdf
<https://women.gov.ns.ca/sites/default/files/documents/NSNWAFrameworks.pdf>
 2. Peaked Cap Video (2016),
<https://www.youtube.com/watch?v=OcQziFQK7wA&feature=youtu.be>
 3. Sexual Violence Strategy Final Evaluation Report (2018),
https://novascotia.ca/coms/svs/docs/SVS_Evaluation_FINAL_REPORT.pdf
 4. Sexual Violence Strategy Online Training Resource,
<https://breakthesilencens.ca/training>
 5. Mi’kmaw Women Leaders Network visual (2017),
<https://women.gov.ns.ca/sites/default/files/documents/AboriginalWomen/MWLN%20MIWG%20Planning.pdf>
 6. Addressing Mi’kmaq Family Violence: Family Violence and Aboriginal Communities (2011),
<http://tripartiteforum.pinwheeldesign.ca/wp-content/uploads/2017/12/Tripartite-Family-Violence.pdf>
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APPENDIX “B” - MI’KMAW LEGAL SUPPORT NETWORK PROGRAMS

•**Mi’kmaw Court Worker Program** – Designed to help Indigenous people in conflict with the criminal justice system obtain fair, equitable, culturally-sensitive treatment.

•**Mi’kmaw Customary Law Program** – Serves Indigenous youth and adults, offering a culturally relevant community justice service that holds offenders accountable, offers reparations to victims, and meets the needs of Indigenous/Mi’kmaw community members. Three types of circles are available: Justice; Healing; and Sentencing.

•**Victim Support Services Program** – Assists victims of crime through the court process as well as providing victims with non-therapeutic emotional support and referrals to local Indigenous and non-Indigenous service providers.

•**Gladue Reports** – MLSN completes a report with the following three criteria: 1) Youth; 2) High harm offence; and 3) Period of custody is likely. During fiscal year 2017-2018, MLSN received a total of 92 Gladue Report requests province-wide (2016-2017 = 93; 2015-2016 = 59). MLSN utilized 16 Aboriginal writers across the province, all with strong writing skills and familiarity with the Gladue reporting process. MLSN was pleased to announce the hiring of a Gladue Administrator, Shannon Googoo, in December 2017. The Gladue Administrator position was required to assist in the management of the high number of Gladue requests, providing administrative support including record keeping, file management, and coordination of assignments and report tracking.

APPENDIX “C” – LIST OF ACRONYMS

2SLGBTIQ+ Two-Spirited Lesbian Gay Bisexual Transgender Intersex Queer Plus

ABC	Agencies, Boards and Commissions
ANSMC	Association of Nova Scotia Mi’kmaq Chiefs
CFSA	Children and Family Services Act
DCS	Nova Scotia Department of Community Services
DOJ	Nova Scotia Department of Justice
FILU	Family Information Liaison Unit
FPT	Federal Provincial & Territorial
IB&M	Indigenous Black & Mi’kmaq Initiative
IJS	Indigenous Justice Strategy
ISC	Indigenous Services Canada
KMKNO	Kwilmu’kw Maw-klusuaqn Negotiations Office
MFCS	Mi’kmaq Family and Children’s Services
MLSN	Mi’kmaq Legal Support Network
MMIWG	Missing and Murdered Indigenous Women and Girls
MNSP	Made-in-Nova Scotia Negotiation Process
MWLN	Mi’kmaq Women Leaders Network
NCNS	Native Council of Nova Scotia
NSNWA	Nova Scotia Native Women’s Association
OAA	Nova Scotia Office of Aboriginal Affairs
PPS	Nova Scotia Public Prosecution Service
SVPS	Sexual Violence Prevention and Supports Program
SW	Nova Scotia Status of Women
TOR	Mi’kmaq-Nova Scotia-Canada Consultation Terms of Reference
TPF	Mi’kmaq-Nova Scotia-Canada Tripartite Forum
TRC	Truth and Reconciliation Commission



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

DOCUMENT TITLE:

**Policy for Fair Treatment of Indigenous Peoples
in Criminal Prosecutions in NS**

NATURE OF DOCUMENT: DPP DIRECTIVE

FIRST ISSUED: OCTOBER 2, 2018

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE **"WORDS & PHRASES"** SECTION OF THIS PART OF THE MANUAL.

NOTE: For the purposes of this policy, “Indigenous peoples” means any person who self-identifies as Indigenous. If a Crown Attorney has questions about this, they should speak with their Chief Crown Attorney.

Introduction

The Supreme Court of Canada has recognized the unique history of Indigenous (also known as Aboriginal) peoples¹ in Canada and has distinguished them from other minority groups. Their treatment by the criminal justice system in Canada is likewise unique and the governing authorities are *R. v. Gladue*, [1999] 1 S.C.R. 688 (“Gladue”) and *R. v. Ipeelee*, [2012] 1 S.C.R. 433 (“Ipeelee”). Beyond these authorities, Indigenous peoples have special legal and constitutional status.

Despite their unique status, Indigenous peoples have been historically disadvantaged as a result of colonial laws and policies, and have become disproportionately involved in the criminal justice system in Nova Scotia, as elsewhere in Canada. *Gladue* and *Ipeelee* address this in detail and subsequent case law has expanded on their application.

Indigenous peoples have experienced years of dislocation, deprivation of economic opportunity and enforced familial disruption through residential schooling and child welfare systems, where Indigenous children were taken from their communities in large numbers (which is still an ongoing issue within Canada). They have also suffered years of lost culture, language and traditions; access to historic hunting and fishing resources; family and estate proceedings; and land disputes. This has led many Indigenous peoples to low incomes, high unemployment, lack of opportunities, lack of education, loneliness and community fragmentation. The disproportionate rate of suicide, imprisonment and substance abuse among the Indigenous peoples is a testimony to the wrongs suffered by Indigenous peoples over decades.²

Many Indigenous offenders have been subject to systemic and direct discrimination and racism. Traditional sentencing principles of deterrence and denunciation are, for many Indigenous peoples, far removed from their understanding of sentencing. The traditional concepts of sentencing in Indigenous communities place a primary emphasis upon the principles of rehabilitation and restoration. Indigenous communities have a fundamentally different perspective on the process of achieving justice – one that emphasizes community healing and community based sanctions.

In recognition of their particular circumstances, culture, and history of marginalization, racism and discrimination, Indigenous peoples warrant special, and sometimes differential,

¹ In this policy document, the terms ‘Aboriginal’ and ‘Indigenous’ are both used to include all persons who identify as First Nations, Métis, Inuit, and Innu, regardless of whether they reside on a Reserve or are registered or are entitled to be registered under *The Indian Act* R.S.C., 1985, c. I-5

² *Aboriginal Justice*, Province of Ontario Ministry of Attorney General, March 21, 2005, at para. 2.

consideration within the criminal justice system.³ Considering the individual facts of each case and the specific *Gladue* background of the accused person, this may require an emphasis on restorative justice and remedial/rehabilitative measures, rather than incarceration.⁴

In reflection of this principle, the *Criminal Code* requires a different methodology for assessing a fit sentence for an Indigenous offender, in order to achieve a truly fit and proper sentence. The fundamental purpose of s.718.2(e) of the *Criminal Code* is to treat Indigenous offenders fairly by taking into account their differences.

Indigenous peoples are entitled to be treated fairly by the criminal justice system, in accordance with their special circumstances.⁵ **Crown Attorneys should recognize and factor in the unique systemic or background factors that may have contributed to an Indigenous person's criminal conduct. As well, Crown Attorneys should also consider procedures and sanctions appropriate in the circumstances of the offender because of his or her particular Indigenous heritage or connection.** The maintenance of social harmony, safety and stability, within Indigenous communities, and as between these communities and non-Indigenous communities, should be a significant consideration of a Crown Attorney, in cases involving an Indigenous offender.⁶

Crown Attorneys should maintain a flexible and open approach to all criminal matters, including serious offences, arising in the Indigenous community and, whenever possible, should work with the Indigenous community (such as the *Mi'kmaw Legal Support Network*), to ensure that the ultimate dispositions represent the wisest possible choices in terms of community safety and social harmony, in both the short and the long term.⁷

This policy is also intended to align, in part, with those standards adopted by the Federal Department of Justice in the *Aboriginal Justice Strategy*,⁸ but is particularized to the individual and unique circumstances of the Mi'kmaq of Nova Scotia, as well as those of other Indigenous heritage interacting with the justice system in Nova Scotia.

In addition to providing strategic guidance for criminal prosecutions in Nova Scotia, the purpose of this policy is also to support Indigenous community-based justice programs that offer alternatives to mainstream justice processes in appropriate circumstances and, where available, through specialized *Gladue Courts* and the *Mi'kmaw Customary Law Program*.

³ *Ibid*, para. 4.

⁴ *Ibid*, not verbatim but influenced.

⁵ *Ibid*, para. 5.

⁶ *Ibid*.

⁷ *Supra*, note 2, para. 6.

⁸ *Aboriginal Justice Strategy*, Department of Justice, Canada, 2015, Ottawa.

This policy is in part a response to the specific recommendations of the 1989 *Royal Commission on the Donald Marshall Jr. Prosecution*, directed at the Attorney General, that Crown Attorneys⁹:

- a) Gain exposure to materials explaining the nature of systemic discrimination toward Black and Native peoples in Nova Scotia in the criminal justice system; and
- b) Explore means by which Crown Attorneys can carry out their functions so as to reduce the effects of systemic discrimination in the Nova Scotia criminal justice system.

Finally, this policy is also an acknowledgement of the *Truth and Reconciliation Commission: Calls to Action* regarding Justice, and in particular the following specific *Calls to Action* that have relevance to the role of Crown Attorneys¹⁰:

- #27 – which speaks to (among other things) the need to ensure lawyers receive appropriate skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism;
- #30 – which speaks to the need for provincial governments (among others) to commit to eliminating the overrepresentation of Indigenous peoples in custody over the next decade; and
- #38 – which speaks to the need for provincial governments (among others) to commit to eliminating the overrepresentation of Indigenous youth in custody over the next decade.

Policy Objectives

The objectives of this policy are multi-faceted, and include:

1. To acknowledge, within the criminal justice system in Nova Scotia, the generations of formal and informal discrimination, suppression, subjugation and segregation of Indigenous communities in Canada, including the impact on victims, and descendants of victims, of residential schooling which were state-sponsored institutions designed to eradicate the cultures, languages and community integrity of Indigenous communities.¹¹
2. To contribute to a decrease in the rates of victimization, crime and incarceration among Indigenous peoples in Nova Scotia by conducting culturally competent prosecutions involving Indigenous peoples.

⁹ *Royal Commission on the Donald Marshall Jr. Prosecution*, Recommendation #14, December 1989

¹⁰ *Truth and Reconciliation Commission: Calls to Action*, 2015

¹¹ Canada, Truth and Reconciliation Commission of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada: Canada's Residential Schools: The History, Volume I, Parts. 1-2* (Ottawa: The Commission, 2015). For the legal classification of such injustices, see Convention on the Prevention and Punishment of the Crime of Genocide, 28 November 1949, Can TS 1949/27, arts 2-4.

3. To provide Crown Attorneys with the training, education and direction needed to properly identify and address issues of racism and discrimination within individual cases and the criminal justice system as a whole.
4. To respect and meaningfully implement those guiding principles enunciated by the Supreme Court of Canada in *Gladue*, and then those further clarified and strengthened in *Ipeelee* and many other cases thereafter, both at the bail and sentencing stages.
5. To sensitize and train Crown Attorneys to include Indigenous values such as those referenced in the *Gladue* decision throughout their range of contact with the criminal justice system in Nova Scotia.
6. To support Indigenous peoples in assuming greater responsibility for the administration of justice in their communities by partnering with those communities to implement culturally appropriate criminal prosecutions and, where available, conducting them in Gladue Courts, or in other culturally-appropriate methods.
7. To support the implementation of community-based justice programs funded by the Federal *Aboriginal Justice Strategy* (the “AJS”), such as Gladue Courts and the *Mi’kmaw Customary Law Program*.
8. To support the implementation of effective alternatives to the mainstream justice system in appropriate circumstances, in order to increase the involvement of Indigenous communities in the local administration of justice and to decrease rates of crime and incarceration of Indigenous peoples in communities through the Directives (below) and by collaborating with AJS-funded programs, such as the *Mi’kmaw Customary Law Program*.

Directives for Individual Case Management

I. The Decision to Prosecute

As with all cases, in making the decision to prosecute, Crown Attorneys must consider whether there is a realistic prospect of conviction and whether it is in the public interest to proceed. The presence of racism and discrimination within an individual case, can impact on both analyses.

Where a Crown Attorney is made aware that an Accused is Indigenous, the Crown should:

- Review disclosure to identify any possible issues of racism and discrimination in the conduct of the State, at every stage of the file, including any investigation done by law enforcement or any involvement of agencies such as Department of Community Services, Correctional Services, or Probation. Example: Is there concern for racial profiling or inappropriate “carding”?

- If issues of racism and discrimination are suspected, consider whether the issues impact on prospect of conviction or the public interest. Example: racial profiling or carding may constitute a violation of the *Charter* right not to be arbitrarily detained and could lead to remedies under s. 24(1) or s. 24(2) of the *Charter*.
- Consult with Chief Crown Attorney as well as members of the PPS Equity & Diversity Committee to obtain guidance on appropriate steps to address any suspected issues of racism and discrimination in a file, at the earliest stage possible.

In addition, the Crown Attorney should consider the circumstances of an Indigenous accused when:

- Making decisions that affect a referral to Restorative Justice (RJ); and
- Making decisions on Crown election (which can affect sentence).

II. Restorative Justice

Restorative Justice (RJ), whether it is pre or post-conviction, is an important means of reducing the number of Indigenous persons in custody and is consistent with Indigenous justice principles which place emphasis on community healing and community-based sanctions. In some cases, the *Mi'kmaw Legal Support Network* can facilitate an Indigenous person's completion of RJ. Crown Attorneys should consult with the PPS Restorative Justice policy for further guidance.

III. Support for the Indigenous Victim

As soon as a Crown Attorney becomes aware that a Victim is Indigenous, the Crown should make an inquiry with Victim Services or with the Victim directly, about the option of having a Victim Support Worker from the *Mi'kmaw Legal Support Network* (see contact information in Appendix B) and if there is interest, make the referral.

IV. Arraignment

The Crown Attorney should inform themselves of an accused's Indigenous status or heritage by:

- inquiring of Defence Counsel for an accused of their client's Indigenous status or heritage; or
- solicit the Court to make such inquiry at the time of arraignment or election.

The Crown Attorney should advise the Court of an accused's Indigenous status at the earliest possible stage in the proceedings, including at judicial interim release hearings.

The Crown Attorney should inquire of Defence Counsel or ask the Court to inquire with the Accused about whether they wish to have their case proceed in a Gladue Court (if possible). Where a Gladue Court is not available, the Crown Attorney should ensure that the accused is represented by *Mi'kmaw Legal Support Network* ("MLSN"), or having been advised of MLSN, waived their representation.

V. Bail

When determining a position on bail, the Crown Attorney must apply the general principles set out in the *Criminal Code* and consider the background and unique circumstances of an Indigenous accused and their connections to the Indigenous community.¹² The Crown Attorney should also consider the distance and remoteness of many Indigenous communities and the barriers that this creates for access to bail hearings and forms of release.¹³

Seeking the detention of an Indigenous accused should remain an exceptional measure unless the release of the accused would jeopardize the safety and security of the victim or the public.¹⁴ Although the Crown Attorney should keep in mind the principles referred to by the Supreme Court in *Gladue*, a Gladue report should not be requested by the Crown Attorney for a bail hearing¹⁵; however, if the accused wishes to consent to remand so that a Gladue Report can be prepared, the Crown should support this endeavor (see Appendix A for Gladue Report process).

As with all individuals who come before the court, conditions of release shall not be imposed with intent to change an Indigenous person's behaviour or to punish. Such conditions often relate to therapeutic or rehabilitative measures and are more appropriate following conviction. The Crown Attorney must ensure that any conditions they recommend on a bail release are necessary and appropriate to the circumstances of the Indigenous person and relate to the alleged offence. The Crown Attorney should only request conditions that are necessary to ensure public safety or to ensure attendance, and with which an accused can realistically comply.¹⁶

Where an Indigenous accused is brought to court in custody, the Crown Attorney should:

- If the Crown Attorney will oppose bail, inquire of Defence Counsel for an accused as to whether the accused wishes to have a formal Gladue Report prepared and considered at any bail hearing or alternatively, to have *Gladue* factors presented and considered by the Court at any bail hearing, without a formal Gladue Report being prepared;

¹² *D. 20: Indigenous peoples, Crown Prosecution Manual*, Criminal Law Division – Ministry of the Attorney General, Ontario, November 14, 2017, para. 15.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

- Inform the Court if an accused expresses interest in having *Gladue* factors considered at a bail hearing but does not wish to have a formal Gladue Report prepared, and only proceed with a bail hearing when those factors can be presented to the Court through one of the following means:
 - Submissions of Defence Counsel or Agent for the Accused,
 - Representations made by the *Mi'kmaw Legal Support Network* or another Indigenous organization;
 - The Accused (through assistance of questions from the Court or Crown); or
 - Relatives and/or friends of the Indigenous person who is before the court.

The Crown should consider opposing release of an Indigenous Accused as a last resort. In making this determination, the Crown Attorney should use any available sources to apply the following checklist of non-exhaustive biographical factors, to consider what, if any, impact those factors may have on the Indigenous person's ability to secure a release plan:

- Has the person been affected by substance abuse in the community?
- Has the person been affected by poverty?
- Has the person or their family faced overt or systemic racism?
- Has the person been affected by family breakdown?
- Has the person been affected by unemployment, low income and a lack of employment opportunity?
- Has the person been affected by dislocation from an Indigenous community, child welfare, loneliness and community fragmentation?¹⁷

Assessment of the factors, where present, compel a Crown to carefully consider all bail options which will safely release an accused Indigenous person into the community. Crowns should also take into account any difficulties the Accused may have in getting to court due to distance and inability to fund travel and make note of such issues in the file. If the Indigenous person does not attend a future court appearance, a Crown can weigh this circumstance in any subsequent bail proceeding.

VI. Trial

When a victim and/or Accused is Indigenous, the Crown Attorney should canvas the following:

- The victim's and/or accused's interest in receiving support from the *Mi'kmaw Legal Support Network*;
- Whether the victim and/or accused require Mi'kmaw interpretation services at trial; and

¹⁷ M.E. Turpel-LaFond, "Sentencing within a Restorative Justice Paradigm: Procedural Implications of R. v. Gladue", (2000), 43 C.L.Q. 34 at 40. And see Gillian Balfour, "Sentencing Aboriginal Women to Prison", in JM Kilty, ed, *Within the Confines: Women and the Law in Canada* (Toronto: Women's Press, 2014) at 100.

- Whether the victim and/or accused wishes to use an eagle feather when promising to tell the truth before testifying.

Also, during trial, the Crown Attorney should be mindful of the cultural differences in the manner of speech of an Indigenous witness, and be further mindful of the differences in characteristic demeanor of a witness. For example, while direct eye-contact between Anglo-Europeans is typically perceived as a truthful hallmark, direct eye contact by speakers in Indigenous cultures is often considered to be a mark of profound disrespect.¹⁸

VII. Sentencing

While the *Gladue* case speaks specifically to the sentencing process, the principles that it embodies extend across the criminal justice system. This was recognized by the Supreme Court in *R. v. Ipeelee*, 2012 SCC 13 where LeBel, J. for the majority acknowledged that “certainly sentencing will not be the sole-or even the primary means of addressing Aboriginal overrepresentation in penal institutions (at para. 69).” The Ontario Court of Appeal has held that *Gladue* factors should be considered in all decisions within the justice system. In *Attorney General of Canada v. Leonard*, 2012 ONCA 622, Sharpe J.A. explained (at para. 60):¹⁹

As I have already attempted to explain, *Gladue* stands for the proposition that insisting that Aboriginal defendants be treated as if they were exactly the same as non-Aboriginal defendants will only perpetuate the historical patterns of discrimination and neglect that have produced the crisis of criminality and overrepresentation of Aboriginals in our prisons. Yet it is on the idea of formal equality of treatment the minister rests his *Gladue* analysis. That approach was soundly rejected by the Supreme Court in both *Gladue* and *Ipeelee*, which emphasize that consideration of the systemic wrongs inflicted on Aboriginals does not amount to discrimination in their favour or guarantee them an automatic reduction in sentence. Instead, *Gladue* factors must be considered in order to avoid the discrimination to which Aboriginal offenders are too often subjected and that so often flows from the failure of the justice system to address their special circumstances. Treating *Gladue* in this manner resonates with the principle of substantive equality grounded in the recognition that "equality does not necessarily mean identical treatment and that the formal 'like

¹⁸ As per Justice Kilpatrick in *R v Hainnu*, 2011 NUCJ 14 where the Court held at para. 45, as follows: “There are references in common law jurisprudence to direct eye contact between accuser and accused as being a reliable measure of truthfulness. The demeanour of a witness is culturally determined. For this reason, demeanour alone is an uncertain measure of reliability or truthfulness. Direct eye contact by speakers in some circumstances is considered to be a mark of profound disrespect. This is particularly true in many aboriginal cultures where a child may be taught to avoid direct eye contact. It makes little sense to apply Anglo-European values to a credibility assessment involving citizens from a different culture.”

¹⁹ *Supra*, note 8, at section 10.

treatment' model of discrimination may in fact produce inequality': (references omitted).

The importance of addressing the historical disadvantages faced by Indigenous peoples makes it imperative that Crown attorneys, who occupy an important public office and serve as “ministers of justice”, take their role seriously in seeking to address the over-representation of Indigenous peoples in the justice system at each and every stage of proceedings.²⁰

At sentencing, when an offender is Indigenous:

- The Crown Attorney should request a Gladue Report on the date a sentencing hearing is scheduled in a proceeding, unless expressly waived by the accused. The Crown Attorney should ask the Court to canvas this directly with all self-represented accused. Or, alternatively, the Crown Attorney should obtain any recently prepared Gladue Reports from other files involving the accused. **Note: Indigenous persons are entitled to have a Gladue Report prepared for any offence, regardless of how minor or serious it is.**
- The Crown Attorney should not insist on the preparation of *both* a Pre-Sentence Report and a Gladue Report, if the Indigenous person only wants to have one of the two completed.
- If the Indigenous person requests a sentencing or justice circle, the Crown Attorney should ask the Court to pre-select a date for the circle, which will accommodate the schedules of the Court/Judge, Defense Counsel, the Indigenous person, and the Crown Attorney. This will assist the *Mi'kmaq Legal Support Network* in making the necessary arrangements for the circle. If the sentencing is for an assigned file, the assigned Crown Attorney should ensure they are able to attend the circle. If it is not for an assigned file, the Crown Attorney who is present in court to pre-select a date for the circle should ensure they are able to attend the circle or speak to their Chief Crown Attorney to arrange for another Crown Attorney to attend.
- The Crown Attorney should inform themselves of the personal and family biographies, as laid out in any Pre-Sentence Report and any Gladue Report.
- The Crown Attorney should, at any Indigenous person's sentencing hearing, ask the Court to note the express direction of the Supreme Court of Canada in *Ipeelee* to take judicial notice of the systemic and background factors affecting Indigenous peoples in Canadian society.²¹

²⁰ *Supra*, note 8, at section 10.

²¹ *R. v. Ipeelee*, *supra*, at paragraph 60: *Courts have, at times, been hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people in Canadian society (see, e.g., R. v. Laliberte, 2000 SKCA 27, 189 Sask. R. 190). To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational*

- The Crown Attorney *must not* seek to find proof of a causal link between systemic factors and the offending behaviour which brings the Indigenous person before the Court.²²
- The Crown Attorney should consider secure custody as a sentence of last-resort for Indigenous persons, canvassing in every instance the suitability of sentencing alternatives, with sentencing principles 718.2(d)&(e) being considered in every case where secure custody is a possible outcome.²³
- The Crown Attorney should use any available sources of information to apply the following checklist of non-exhaustive biographical factors in situating the moral responsibility of an Indigenous person when formulating a recommendation for a sentencing hearing:
 - Has the person been affected by substance abuse in the community?
 - Has the person been affected by poverty?
 - Has the person faced overt or systemic racism?
 - Has the person been affected by family breakdown?
 - Has the person been affected by unemployment, low income and a lack of employment opportunity?
 - Has the person been affected by dislocation from an Indigenous community, child welfare, loneliness and community fragmentation?²⁴

Guidance about how such factors would be applied is discussed in *R. v. Ipeelee*, supra, at paragraph 60 which notes that such factors contextualize the case specific information to be considered in formulating a sentencing recommendation. While such factors may not necessarily lead to a different sentence, consideration of the factors, where present, compel a Crown Attorney to carefully consider all non-custodial options, including custody served in the community in conjunction with all other sentencing considerations.

...To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how

attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples.

²² As per Rosinski, J. citing *Ipeelee*, supra at paras. 80-83 in *R. v. Denny*, 2016 NSSC 76.

²³ These important principles of restraint are set out in paras. 718.2(d) and (e) of the Code. In *R. v. Gladue*, at paras. 31-33, 36, the Supreme Court of Canada stated that sentencing courts consider all available sanctions other than imprisonment—and that imprisonment was to be a sanction of last resort for Indigenous peoples.

²⁴ As applied by Atwood JPC in *Denny*, supra, note 2, citing: M.E. Turpel-LaFond, *Sentencing within a Restorative Justice Paradigm: Procedural Implications of R. v. Gladue*, (2000), 43 C.L.Q. 34 at 40. And see Gillian Balfour, *Sentencing Aboriginal Women to Prison*, in JM Kilty, ed, *Within the Confines: Women and the Law in Canada* (Toronto: Women's Press, 2014) at 100.

that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples. These matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary *context* for understanding and evaluating the case-specific information presented by counsel. Counsel have a duty to bring that individualized information before the court in every case, unless the offender expressly waives his right to have it considered...²⁵

- The Crown Attorney should consider circumstances of an Indigenous accused when:
 - making decisions that impact sentencing options including, but not limited to, Notice to Seek Increased Penalty.²⁶
 - factor the information contained in any Pre-Sentence Report and/or Gladue Report when formalizing a sentence position; especially in cases where secure custody is available.

²⁵ *R. v. Ipeelee*, supra, at paragraph 60

²⁶ Per *R. v. Anderson*, 2014 SCC 41 Crown Attorneys are not constitutionally required to consider the Aboriginal status of an accused when deciding whether to seek a mandatory minimum. However, pursuant to this APS, Nova Scotia Crown Attorneys should consider Aboriginal status in the exercise of prosecutorial discretion at every stage of the proceedings.

Languages

French

In support of Section 41 of the *Official Languages Act*, the Nova Scotia Public Prosecution Service is committed to respecting the needs of official language minority communities in the context of all Canadian Indigenous communities by:

- Recognizing that many Indigenous persons in Canada speak French as a first language and that some Indigenous persons in Nova Scotia may also speak French as a first language.²⁷ In accordance with section 530 of the *Criminal Code*, an accused has a statutory right to French or bilingual criminal court proceedings.²⁸

Mi'kmaw

- Recognizing that Indigenous communities in Nova Scotia have different language needs than the majority population; that Mi'kmaw is the mother-tongue and principle language spoken in certain Indigenous communities in Nova Scotia; that, especially in Cape Breton, some Indigenous persons have limited function in English and may require translation services for both simple and complex court proceedings.
- Recognizing that some English legal terms are not conducive to direct translation, and that the translation thereof may require lengthy explanations in order to convey proper meaning into the Mi'kmaw language. Recognizing that Mi'kmaw translation services are readily available in the Courts of Nova Scotia.

²⁷ Such was the case with the aboriginal complainant in *R. v. Martin Comeau*, 2018 NSPC Yarmouth, pending/unreported.

²⁸ Per, *R. v. Beaulac*, [1999] 1 S.C.R. 768, [1999] S.C.J. No. 25, 134 C.C.C. (3d) 481 and on the provisions of ss. 530 and 530.1 of the *Criminal Code*.

Appendix A

GLADUE REPORT PROCESS

1. Identification of Aboriginal Offender

- Defense, Probation, and Crowns should ask: “Are you Aboriginal?” and/or “Has Gladue been canvassed?” before sentencing every offender, in order to identify eligible candidates for a Gladue Report, especially when custody is being considered.

2. Court Order for Preparation of Report

- Defense, Probation Services, Crown, or Self-Rep ask, in Court, for Report to be done before sentencing.
- Order is made for preparation of Report by the Court and sent to the Mi’kmaq Legal Support Network (“MLSN”).
- Sentencing should be adjourned for 2 months for preparation of Report (can be completed faster, when accused in custody).

3. Supporting Documentation Provided to MLSN

- Crown to fax MLSN Head Office in Eskasoni the following: JEIN Bail Report; PIS; any other relevant info regarding facts. This should be done immediately after Court makes order. MLSN Fax: 902-379-2047.

4. Referral Processed by MLSN

- All orders are sent to MLSN Head Office in Eskasoni.
- MLSN contracts a Researcher/Writer to prepare the Report and provides Writer with supporting documentation received from Crown. Once contract signed with the Writer, MLSN notifies the Court and confirms completion date.

5. Preparation of Gladue Report

- Interviews are conducted by Writer with four generations:
 - Initial interview with Client to learn their history, connection to Aboriginal community and names of individuals who have been influential in their life.
 - At least 3 other persons will be interviewed, hopefully spanning 3 other generations of Client’s family.
- Research:
 - Writer does research about Client’s community and Aboriginal experiences in Canada, which are relevant to the experience of the Client (i.e. Indian Residential Schools, *Indian Act* references, life on reserve versus off reserve).
- Report:
 - Report is written in a manner that assumes the readers know little or nothing about Aboriginal people, to ensure depth of understanding.
 - It will include information obtained from interviews with four generations.

- Information is provided about Client's community and about Aboriginal experiences in Canada in general.
- Writer makes recommendations on sentence for client and identifies culturally relevant services to assist with treatment and rehabilitation.
- Screening:
 - In some cases, the MLSN will send a Report back to the Court indicating that a Gladue Report cannot be completed as Gladue factors do not apply to the offender. MLSN is in the best position to make this determination. Only they should screen-out clients.

6. Sentencing Hearing

- Parties receive the Gladue Report and it must be factored into determination of sentence. Questions to ask (taken from *R. v. Gladue*, [1999] 1 S.C.R. 688):
 - What understanding of criminal sanctions is held by the community?
 - What is the nature of the relationship between the offender and his or her community?
 - What combination of systemic or background factors contributed to this particular offender coming before the courts for this particular offence?
 - How has the offender who is being sentenced been affected by, for example, substance abuse in the community, or poverty, or overt racism, or family or community breakdown?
 - Would imprisonment effectively serve to deter or denounce crime in a sense that would be significant to the offender and community, or are crime prevention and other goals better achieved through healing?
 - What sentencing options present themselves in these circumstances?

Appendix B

CONTACT INFORMATION FOR MI'KMAW LEGAL SUPPORT NETWORK

Cape Breton Office

29 Medicine Trail
PO Box 7703
Eskasoni, Nova Scotia
B1W 1B2
1-902-379-2042

Millbrook Office

19 Church Road
Truro, Nova Scotia
B2N 6N5
1-902-895-1141

Dartmouth Office

15 Alderney Drive, Suite 3
Dartmouth, Nova Scotia
B2Y 2N2
1-902-468-0381