

NATIVE COUNCIL OF NOVA SCOTIA

COMMUNITY LEGAL ISSUES FACILITATOR (CLIF)

The 1986 Statistics Canada Census states that there are 14,220 persons who identify themselves as aboriginal people in Nova Scotia. Of these, 4,610 are said to live on reserves. The remaining 9,610 as identified by Statistics Canada reside off reserve in the various communities, villages, towns and cities throughout Nova Scotia. The Native Council of Nova Scotia acts as the authority and political voice for the off reserve aboriginal people.

Numerous studies, investigations and Royal Commissions throughout Canada have confirmed what aboriginal people have said for years. Aboriginal people suffer a very real disadvantage in dealing with police forces, prosecutors, defence counsel and the courts. These issues are not limited to on reserve situations. The clearest example of this in Nova Scotia is the Donald Marshall, Jr. case which involved an encounter in the City of Sydney with a municipal police force. Any proposals to deal with aboriginal justice issues which address only on reserve situations would have minimal impact to prevent a Donald Marshall, Jr. case arising again in the future.

The Native Council of Nova Scotia proposes that the Tri-partite Committee on Justice and the Tri-partite Committee on Policing both endorse the Community Legal Issues Facilitator (CLIF) Proposal. In brief, Native Council proposes that an Aboriginal Justice Committee be established in each zone of the Native Council. The function of the Aboriginal Justice Committee, in its preliminary phase, would be:

- (i) to act as liaison with local police detachments or municipal forces to ensure that policing in the zone meets and is attuned to the needs of the aboriginal people within that zone;
- (ii) consultation with Crown prosecutors, judges and defence counsel for orientation and sensitization on aboriginal justice issues;

- (iii) to act as an advisor to judges on sentencing where probation, treatment or community service orders would be appropriate;
- (iv) to act as a general public education forum for liaison with local groups and the community at large and to address racism and education issues.

In addition to the functions set out above, the Aboriginal Justice Committee for the zone which will consist of Metropolitan Halifax-Dartmouth and surrounding areas will establish a pilot project diversion program. It is expected that this will be a replacement for the function in paragraph (iii) above. There are very few off reserve diversion programs operating in Canada. Halifax-Dartmouth has the highest concentration of off reserve aboriginal people in Nova Scotia. We do not have sufficient experience to know whether a diversion program in other parts of Nova Scotia is presently needed. This is something that will be determined over a period of time through the work of the Aboriginal Justice Committee in that zone. However, the Statistics Canada Census states that in 1986 there were 3,975 aboriginal people residing in Halifax, Dartmouth and Bedford. This makes it the highest concentration of aboriginal people in Nova Scotia. This highlights the need for a diversion program in the Halifax-Dartmouth Metropolitan area.

Zone Aboriginal Justice Committee

The Province of Nova Scotia is divided up into 13 zones as shown on the attached map. The Native Council proposes that for the purposes of CLIF the Halifax and Dartmouth zones will be combined into one zone. This would include all of Halifax County from the Lunenburg County line on the South Shore, to Musquodoboit Harbour on the Eastern Shore. This zone extends as far as the Hants County line to the west. This would create twelve remaining zones.

In each zone individuals will be selected to serve on the Aboriginal Justice Committee. They will be asked to establish a catalogue or inventory of aboriginal justice issues in their area and to prioritize them as to need. They would consult with the police in the zone and identify policing concerns. It would be hoped that regional policing issues could be worked out between the Zone Aboriginal Justice Committee and the local detachment or municipal force. Any issues which could

not be worked out would be referred to the Co-ordinator of the Halifax-Dartmouth Zone who would, in turn, act as a liaison with the Tri-partite Forum on Policing. It is hoped that the Co-ordinator, having a broader range of experience and expertise, would be able to be of assistance in solving many problems or disputes without the requirement for referral to the Tri-partite Committee.

The Zone Aboriginal Justice Committee would also act as an advisory committee to judges in the zone. Aboriginal people who live off reserve do still live in communities. They know each other and understand each other's strengths and weaknesses. The community will understand the individual history and background of any individual accused and would be able to provide valuable insights at the time of sentencing. The Aboriginal Justice Committee would also prepare an inventory of suitable and appropriate community work projects which would be of benefit to that aboriginal community. These could, in the appropriate circumstance, serve as recommendations to a judge for consideration in a probation or community service order.

The Aboriginal Justice Committee in the zone would also serve as an educational tool for prosecutors, judges, defence counsel and the general public. This would, therefore, serve the third purpose of the Tri-partite Committee which is to address racism and education issues.

The Aboriginal Justice Committee would not, initially, have any legislative base. It is recognized that they would be simply advisory. However, it would be expected that direction would be sent to prosecutors and police to ensure cooperation with the Justice Committee. It would also be expected that a presentation could be made to the judiciary to ensure general cooperation throughout the courts. We believe that there is widespread acceptance of the need of a facility such as CLIF and significant problems would not likely be encountered. However, if they were, they would be referred back to the Tri-partite Committee for discussion and resolution.

Halifax-Dartmouth Metropolitan Area

The Zone Aboriginal Justice Committee in Halifax-Dartmouth Metropolitan area would have the same general mandate as all other zone justice committees. The policing function, the sensitization of prosecutors, defence counsel and judges, and the public education function would be identical.

However, instead of simply acting as an advisory committee to judges at the time of sentencing, it is proposed that a diversion program be established. For this purpose, a group of individuals would be trained to act on a justice panel. We would propose that 10 individuals be trained. Three individuals would be selected to sit on each justice panel. The selection would be on a rotating basis but with variance as required to ensure that there are no actual or apparent conflicts of interest.

A Co-ordinator would be hired in the Halifax-Dartmouth zone. His prime function would be to act as an administrator for the zone. He would also act as a resource person for other zones. The Co-ordinator would develop policies, programs and protocol for the Halifax-Dartmouth zone. He would also make these available to all other zones and it would be expected that these would be adopted, with any necessary changes, in each zone as applicable.

There has already been prepared, and agreed upon, a diversion program for the Shubenacadie Reserve. We would expect to endorse and adopt the principal features of this proposal, with changes as necessary with respect to provisions on eligibility, the formation of the justice panel, the right of persons to be present before the panel, etc. It is expected that full time staff persons will have to be hired in the Halifax-Dartmouth Zone to coordinate and administer the process. Facilities would also have to be made available. In addition, a per diem would likely be required for all members of aboriginal justice panels. Some general administrative costs will also be incurred.

Summary

We believe that the CLIF concept will be workable and adaptable to all situations. It will be sensitive to the needs of the particular community. It will prepare the analysis of justice from the "bottom up", rather than from the political process down. By beginning as an advisory committee, individuals in each zone will gain expertise on justice and policing issues. A much clearer view of justice and policing problems off reserve will become apparent as the projects unfold. CLIF is seen as a transition phase project. The end result can not yet be clearly seen. It will depend upon the kinds of problems encountered and the kinds of solutions which seem appropriate to those problems. It may be that some legislative or constitutional base will become required and appropriate in the future. However, in the meantime, it would be useful for all parties involved to begin the process

in a consultative and advisory basis throughout the Province with the diversion pilot project in Metropolitan Halifax-Dartmouth.

We would request that the Tri-partite Subcommittee on Policing and the Tri-partite Subcommittee on Justice each consider this proposal with the hope that it may be approved in the January meeting for implementation in the spring.

(c:\natcoun\proposal)

COMMUNITY LEGAL ISSUES FACILITATOR (CLIF)

Project Initiatives Budget

January 1, 1991 - March 31, 1992

1. SALARIES		
a/ Community Legal Initiatives Facilitator	\$500 X 12	\$ 6,000.00
b/ Local Aboriginal Justice Committee Support Secretary	\$350 X 12	4,200.00
c/ Benefits 10%		1,020.00
2. TRAVEL		
a/ Community Legal Initiative Facilitator	\$200 X12	2,400.00
3. ADMINISTRATION		
a/ Office Rent	\$500 X 3	1,500.00
b/ Telephone/Fax/Postage/Toll-free line	\$800 X 3	2,400.00
c/ Furniture/Equipment/Filing Cabinets	\$400 X 3	1,200.00
d/ Supplies/pens/Files/Discs	\$400 X 3	1,200.00
e/ Printing Project Information Fact Sheet	\$500 X 3	1,500.00
f/ Financial Audit/Bank Charges	\$300 X 3	900.00
4. ZONE ABORIGINAL JUSTICE COMMITTEE SUPPORT (10 Zones)		
a/ Zone Aboriginal Justice Committee Monthly Stipend	10 X \$400/mo X 3	12,000.00
b/ Zone Aboriginal Justice Committee Monthly Travel/Telephone/Meetings/Allowance	10 X \$200/mo x 3	6,000.00
5. ABORIGINAL JUSTICE COMMITTEE PROVINCIAL QUARTERLY SEMINAR		
a/ Meeting Room		200.00
b/ Seminar Meeting Costs-coffee, Materials		500.00
c/ Resource Person stipend		400.00
d/ Quarterly Seminar Travel (One car per Zone) 10 X \$150		1,500.00
6. SPECIAL PROFESSIONAL SERVICES		
a/ Legal/Policing/Public Relations	\$2000 X 3	6,000.00
	TOTAL	<u>\$48,920.00</u>

CLIF

Policing

- a) RCMP
- b) Municipal Police

Justice

- a) advisory committee on sentencing
- b) probation
- c) liaison with judges and lawyers
- d) diversion

Human Rights

- a) public education

Delivery

- a) where available
- b) personnel
- c) funding

JULY 1992

(C:\dbc\clif)

HALIFAX POLICE DEPARTMENT

EXEC OFF. _____
CID _____
SUPP. SYS. _____
CIU / DRUGS _____
MGMT. AUDIT _____
ZONE COMMANDERS _____
FOLDERS _____
TRAFFIC _____
BOOKING _____
BULLETIN BD. _____
LICENSE DIV. _____
COMM. REL. _____
HUMAN RESOURCES _____

DATE May 7, 1992

TIME 0840 hours

SUBJECT Developing Crime

Prevention Strategies

in Aboriginal

Communities

TO THE CHIEF OF POLICE

SIR:

HALIFAX POLICE DEPT.
RECEIVED
MAY 8 1992
DEPUTY CHIEF'S OFFICE
FIELD OPERATIONS

HALIFAX POLICE DEPT.
RECEIVED
MAY 13 1992
CHIEF'S OFFICE

After reviewing "Developing Crime Prevention Strategies in Aboriginal Communities" report, I found that the "problem oriented policing" approach, where the police and community work together to discuss and try to solve problems in the community, is similar to the "Community Constable Program".

In looking at the report, it would seem that in order to be successful in an aboriginal community, as a police officer, the member would have to be of aboriginal descent, or be well versed in the values, culture and structure of the community. An understanding of "the Elders" and "Band council", and their role in the community, would also have to be part of the police officers training, this would help foster a good working relationship, between the police and the community.

The Community Constable's in Halifax, have for the past two years, been meeting with students from the Micmac Friendship Center, to discuss policing, the laws and the police culture. This has been quite successful, with students having a better understanding of the police role. Several of the suggestions made in this document re: policing in the aboriginal community have already

CHECKED BY _____

Name and Rank

HPD1

HALIFAX POLICE DEPARTMENT

EXEC OFF. _____
CID _____
SUPP. SYS. _____
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ZONE COMMANDERS _____
FOLDERS _____
TRAFFIC _____
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LICENSE DIV. _____
COMM. REL. _____
HUMAN RESOURCES _____

DATE _____

TIME _____

SUBJECT _____

page 2

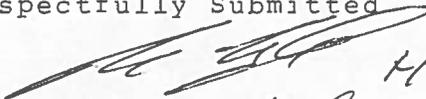
TO THE CHIEF OF POLICE

SIR:

been under taken by the Halifax Police Department. Section 2 of the document "Developing and implementing problem oriented policing in Aboriginal communities" is comparable to the Community constables program in place, in the Gottingen Street area for the past two years, June 1990 to date. This process is slow, however positive results have been realized by the community and the police department.

Community style policing can be very successful, only if the police and community are willing to work together for the good of the community.

Respectfully Submitted

 41391
 41218

Constable Martin Coyle

Constable Robert Small

CHECKED BY

 H018
Name and Rank

HPD1

THIS AGREEMENT made this _____ day of _____, A.D., 1992.

BETWEEN: SHUBENACADIE BAND,
(hereinafter called the "Band")

OF THE FIRST PART

- and - HER MAJESTY THE QUEEN in right of the Province of Nova Scotia, as represented by the Attorney General and the Minister Responsible for Aboriginal Affairs (hereinafter called the "Province")

OF THE SECOND PART

WHEREAS the Royal Commission on the Donald Marshall Jr., Prosecution recommended that the Province in cooperation with native communities formulate proposals for the establishment of appropriate diversion programs for Natives;

AND WHEREAS the aforesaid Commission recommended that a Tripartite Forum (Micmac/Provincial/Federal Government) be established to mediate and resolve outstanding issues between the Micmac and Government, including Native justice issues, which Tripartite Forum has been established;

AND WHEREAS the Band has proposed to the Tripartite Forum that a diversion program be formulated and implemented for the benefit of registered Indians who are members of the Band;

AND WHEREAS with the approval of the Tripartite Forum the parties hereto are desirous of implementing a diversion program as a pilot program for the benefit of the Band and for the purpose of determining the viability of such a program for other Bands and for the public in general;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements contained herein and subject to the terms and conditions set out herein, the parties agree as follows:

1.0 DIVERSION PROGRAM

1.01 The parties hereto agree that a diversion program for the Band shall be implemented according to and subject to the terms and conditions as detailed in Schedules "A" and "B" attached hereto and forming part of this Agreement, said Schedule "A" being a description of the diversion program including eligibility requirements and Schedule "B" being a description of the procedures to be carried out in implementing the diversion program.

2.0 TERM AND REVIEW

2.01 The term of this Agreement shall commence on the date of signing and shall continue in force for a period of two years from such date, unless earlier terminated or wound up in the manner described in this Agreement.

2.02 The terms and conditions of the diversion program as described in Schedules "A" and "B" attached hereto shall be reviewed by the parties upon the first anniversary date of this Agreement, or at such earlier date as may be agreed upon by the parties.

2.03 The parties may, pursuant to the terms of Schedule "A" and "B" revise the terms and conditions of the diversion program as may be mutually agreeable to the parties.

2.04 Any revisions made to the diversion program pursuant to paragraph 2.03 shall be set out in a written memorandum signed by the parties, and such written memorandum shall be deemed to be incorporated in and form part of this Agreement.

3.0 WINDING UP, SUSPENSION AND TERMINATION

3.01 The parties may by mutual consent terminate this Agreement and wind up the diversion program.

3.02 This Agreement may be terminated by the Province if the Band has breached or defaulted or failed to comply with any of the terms and conditions of this Agreement, including the provisions set out in Schedules "A" and "B", and the Band has failed to remedy the same after being given seven days written notice by the Province to remedy the breach or default.

3.03 The Province may, in lieu of termination of the diversion program as set out in paragraph 3.02 herein, suspend the operation of the diversion program for such period of time and on such terms and conditions as the Province considers appropriate upon giving the Band written notice of such suspension.

3.04 This Agreement may be terminated by the Band if the Province has breached or defaulted or failed to comply with any of the terms and conditions of this Agreement, including the provisions set out in Schedules "A" and "B", and the Province has failed to remedy the same after being given seven days written notice by the Band to remedy the breach or default.

3.05 The Band may, in lieu of termination of the diversion program as set out in paragraph 3.02 herein, suspend the operation of the diversion program for such period of time and on such terms and conditions as the Band considers appropriate upon giving the Province written notice of such suspension.

4.0 FUNDING

4.01 (a) The Province agrees to pay to the Band, in the first year of the diversion program, from monies budgeted by the Province to the Tripartite Forum, a sum representing one-half of the cost of funding the diversion program as approved by the Tripartite Forum in December, 1991, which sum shall not exceed in any event the amount of thirty-three thousand six hundred (\$33,600.00) dollars.

(b) The Province further agrees to fund one-half of the cost of an evaluation of the diversion program, which evaluation is to be carried out during the first year of the diversion program, and one-half of such other sums as approved by the Tripartite Forum to fund the diversion program during the first year.

4.02 (a) Three months prior to the first anniversary date of this Agreement, the Band shall submit to the Tripartite Forum a budget containing an estimate of all sums required for the second year for the purposes of the diversion program, including a detailed statement of estimated revenues arising from fees, costs and payments to be made to the Band by persons diverted pursuant to this Agreement.

(b) Upon approval of the budget by the Tripartite Forum, the Province shall pay to the Band a sum equal to one-half of the deficiency, if any, between the estimated revenues and the estimated expenditures.

4.03 The funds paid to the Band pursuant to this Agreement shall be accounted for by the Band according to the procedures set out for accounting for fees, costs and payments made to the Band as detailed in Schedule "B" attached hereto.

4.04 All records and accounts with respect to the financial operation of the program and with respect to the diversion of members of the Band maintained by the Band pursuant to this Agreement shall be open to audit and examination by the Province.

4.05 In the event this Agreement is wound up or terminated pursuant to paragraph 3.0 herein, any unexpended funds as of the date of the winding up or termination shall be dealt with in accordance with the procedures in Schedule "B".

5.0 GENERAL

5.01 Any waiver by the parties hereto of any breach of this Agreement by the other, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement by the other.

5.02 This Agreement, including the schedules, shall constitute the whole agreement between the parties and no representation or statement not expressly contained herein shall be binding upon either party.

5.03 Subject to the provisions for amendment as set out in Part 7 of Schedule "A" and Part 6 of Schedule "B", this Agreement may only be altered by a written memorandum signed by both parties which memorandum shall be supplemental to and shall be deemed to form part of this Agreement. This Agreement shall not be changed, modified or discharged orally.

Schedule "A"

SHUBENACADIE BAND DIVERSION PROGRAM

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PREAMBLE

SHUBENACADIE BAND DIVERSION PROGRAM

A. BACKGROUND

The Shubenacadie Band diversion program proposal was initiated by Chief Reg Maloney, Vice President of the Union of Nova Scotia Indians and Chief of the Shubenacadie Band at Indian Brook. The proposal is consistent with Recommendations 18 & 20(b) of the Royal Commission Report on the Donald Marshall Jr. Prosecution. Recommendation 18 states:

We recommend that the Province, in close cooperation with the Native and Black communities, formulate proposals for the establishment of appropriate diversion programs for Natives and Blacks, and that the Province actively recommend such programs to the Federal Government with proposals for any necessary amendments to the Criminal Code.

Recommendation 20(b) states:

We recommend that a community-controlled Native Criminal Court be established in Nova Scotia initially as a five year pilot project, incorporating the following elements:

- (b) diversion and mediation services to encourage resolution of disputes without resort to Criminal Courts;

B. PHASE-IN PROCESS

1. This specific proposal and program design pertains to the Shubenacadie Band at Indian Brook only. Other Bands throughout the province may use this program design as a guide in the event that they wish to make a submission to the Attorney General for their own diversion program.
2. In order to ensure successful implementation of the program and acceptance by the Native and non-Native communities, it is important to phase the program in on a gradual basis and in a consistent manner with appropriate attention to program detail at each stage of expansion. Program growth is critical both in terms of expansion to other Bands and expansion of the scope of the process itself.

1/24/92

3. Prior to commencing the diversion program at Indian Brook and prior to expanding the program to other Reserves, the following matters must be addressed:

- * Identification of a diversion panel by Chief and Council.
- * Identification of a diversion officer to attend to administrative requirements as per Section 9.
- * Identification of training needs and provision of appropriate training.
- * Development and documentation of procedures pursuant to Section 4.17.
- * Meeting between Chief, Director of Community Corrections, Director of Public Prosecutions and appropriate staff regarding program for that specific reserve.
- * Approval by Attorney General.

C. ENABLING LEGISLATION/LEGISLATIVE REQUIREMENTS

1. No federal or provincial legislation presently exists which specifically provides for the implementation of a diversion program.
2. Section 141(2) of the Criminal Code provides a degree of support for the establishment of formal diversion programs as follows:

- 141 (1) Everyone who asks for or obtains or agrees to receive or obtain any valuable consideration for himself or any other person by agreeing to compound or conceal an indictable offence is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
- (2) No offence is committed under subsection (1) where valuable consideration is received or obtained or is to be received or obtained under and agreement for compensation or restitution or personal services that is
- (a) entered into with the consent of the Attorney General; or
 - (b) made as part of a program, approved by the Attorney General, to divert persons charged with indictable offences from criminal proceedings. R.S., c.C-34, s. 129; R.S.C. 1985, c.27 (1st Supp.), s. 19.

3. Section 15 of the Canadian Charter of Rights and Freedoms confirms constitutional equality rights and protections for minorities including Native persons. This diversion program is consistent with Section 15 of the Charter.
4. Section 35 of the Constitution Act, 1982 as amended by the Constitution Amendment Proclamation, 1983 entrenches existing Aboriginal and Treaty Rights as follows:
 - 35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

The Comprehensive Land Claims policy which was adopted by the Government of Canada in December 1986 states that:

"the Federal Government's policy approach...is to acknowledge the desire expressed by communities to exercise greater control and authority over the management of their affairs...the objectives of the Government's policy on community self-government are based on the principles that local control and decision making must be substantially increased..."

PROGRAM DESCRIPTION

1. PROGRAM PURPOSE

- 1.1 To divert eligible registered Indians, in suitable circumstances, at as early a stage as possible following the laying of a charge and prior to conviction, from the existing Court and criminal justice system to the Mi'kmaq community and;
- 1.2 To permit wrongful conduct that forms the basis of an offence to be dealt with by the Mi'kmaq community in a way consistent with Mi'kmaq norms of conduct and Mi'kmaq concepts of criminal behaviour, having regard to general Canadian concepts of criminal behaviour.

2. DECISION TO DIVERT AND REFERRAL PROCESS

- 2.1 The decision to divert will be made by the Crown Attorney shortly following receipt of the case from the police.
- 2.2 Pending a decision to divert, the Mi'kmaq person charged shall appear in the Criminal Court, as required.
- 2.3 With the consent of the defendant and before the taking of a plea or the entering of an election as to the mode of trial, if possible, the Crown shall request the Court to adjourn the case for sufficient period or periods to permit the diversion decision to be made.
- 2.4 If a decision to divert is made, the Crown shall, with the consent of the defendant, request the Court to adjourn plea, election or trial for sufficient time period or periods to permit the diversion hearing to be held and any disposition agreement to be complied with.
- 2.5 Upon successful completion of the diversion agreement, the Crown Attorney shall withdraw the charge.
- 2.6 No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of being dealt with by this diversion program shall be admissible in evidence against him in any civil or criminal proceedings.
- 2.7 Nothing in this program shall be construed to prevent any person from laying an information, obtaining the issue or confirmation of any process or proceeding with the prosecution of any offence in accordance with law.

- 2.8 The decision to divert a particular Mi'kmaq person shall be made by the Crown Attorney in accordance with the eligibility criteria which are identified in Section 3.
- 2.9 The Crown Attorney shall communicate the decision in writing to the Mi'kmaq person and the Chief and Council of the Band to which the person being diverted belongs.
- 2.10 If the Crown Attorney decides not to divert, the Mi'kmaq person or the Chief and the Council of the person's Band may request a review of that decision by the Regional Crown Attorney. If the Regional Crown Attorney decides not to divert, and the Mi'kmaq person or the Chief and Council of the Band concerned so requests, the Regional Crown Attorney shall provide in writing, to the person requesting, the reason(s) for refusing diversion.
- 2.11 If the Regional Crown Attorney decides not to divert, the Mi'kmaq person or the Chief and Council of that person's Band may request a review of that decision by the Director of the Public Prosecution Service. If the Director decides not to divert, and the Mi'kmaq person or the Chief and Council of the Band concerned so requests, the Director shall provide in writing to the person requesting the reason(s) for refusing diversion.

3. ELIGIBILITY CRITERIA

3.1 General

- 3.1.1 The decision to divert is to be made having regard to the needs of the Mi'kmaq person and the interests of both the Mi'kmaq and non-Mi'kmaq communities, other public interest factors and, without restricting the generality of the foregoing, the following factors shall be taken into account:
- i. the background of the Mi'kmaq person, including previous criminal convictions, previous participation in diversion programs, other outstanding charges, and outstanding probation orders or custodial dispositions;
 - ii. the nature and extent of the relationship between the actions of the Mi'kmaq person and the non-Mi'kmaq community, including whether the offence took place off the Shubenacadie Band Reserve or involved non-Mi'kmaq persons or property;

- ii. Federal and Provincial Summary Conviction offences, except motor vehicle offences.

3.3.3 Notwithstanding anything provided herein, the following offences shall not be subject to diversion:

- i. homicide, murder, attempted murder, manslaughter, criminal negligence causing death;
- ii. armed robbery and other offences involving the use of firearms or weapons, the circumstances of which are considered major;
- iii. assaults causing serious bodily harm;
- iv. treason, armed insurrection;
- v. kidnapping;
- vi. arson, other than mischief;
- vii. other crimes of violence, the circumstances of which are major;
- viii. alcohol/drug related driving offences.
- ix. Family violence and sexual assault.

3.3.4 In respect of matters not described in paragraph 3.3.3, diversion shall take place with the concurrence of the Crown and the Shubenacadie Band.

4. DIVERSION HEARING

- 4.1 When a decision is made to divert a Mi'kmaq person, a Justice Panel shall be appointed by the Chief and Council of the Shubenacadie Band.
- 4.2 The diversion hearing must be held within 30 days following receipt of notification from the Crown Attorney that the person has been diverted.
- 4.3 The Panel shall consist of three members of the band appointed by the Chief and Council. If there is a Mi'kmaq victim from another Band, one member of the Panel may be selected by the Chief and Council of the Band of the victim if that Band wishes to participate in the diversion process.

- iii. the seriousness of the charge(s); and
- iv. whether there is a victim.

3.2 Person

- 3.2.1 The person diverted must be a registered Indian who is a member of the Shubenacadie Band and who lives on the Reserve lands of the Shubenacadie Band in Nova Scotia or lives off the Reserve and commits an offence on the Shubenacadie Band Reserve.
- 3.2.2 The person diverted must accept responsibility for the act or omission that forms the basis of the offence that he/she is alleged to have committed, and be prepared, for the purpose of the diversion, to fully and freely disclose and discuss those acts or omissions before the Mi'kmaq Justice Panel.
- 3.2.3 The person diverted must, having been informed of the diversion program, fully and freely consent to participate, having been given a reasonable opportunity to consult with legal counsel.
- 3.2.4 In the absence of special factors, in respect of the matters specified herein, the following Mi'kmaq are suitable persons to be routinely diverted:
 - i. a member of the Shubenacadie Band and,
 - ii. a person who does not have a significant criminal record, who has not been removed from a previous diversion agreement for failure to comply and who is not a risk to the community.

3.3 OFFENCE

- 3.3.1 There must, in the view of the responsible Crown Attorney, be sufficient evidence to proceed with the prosecution of the offence, and any such prosecution must not be in any way barred at law.
- 3.3.2 In the absence of special factors, suitable Mi'kmaq persons shall normally be diverted in respect of the following:
 - i. property-related offences occurring on the Shubenacadie Band Reserve that do not involve more than \$ 5,000.00 in loss or damage; and

- 4.4 In no case shall a Panel member be related by blood or marriage to the person diverted or the victim, if any. The Chief shall designate which member of the Panel shall be Chair, and the Chair shall be responsible for convening and administering the Hearing.
- 4.5 The Justice Panel shall hold a public hearing at the Shubenacadie Reserve, unless for good and sufficient reason, such as maintaining the confidentiality of the victim, a closed hearing is deemed desirable.
- 4.6 At a closed hearing, such persons as the Panel directs may be present.
- 4.7 The following are entitled to be present, provide information and make submissions, but not participate in the questioning process unless authorized by the Panel:
- i. the investigating police;
 - ii. the Crown Attorney
 - iii. the victim, if any, and a person on the victim's behalf;
 - iv. a person on behalf of the person diverted;
 - v. a representative of the Director of Community Corrections, Department of Solicitor General; and
 - vi. a representative of the Union of Nova Scotia Indians.
- 4.8 The Justice Panel may request other persons who have relevant information to attend all or portions of the Hearing for the purpose of giving information.
- 4.9 The hearing shall commence with an acknowledgement by the person diverted of his/her responsibility for the wrongful act or omission that forms the basis of the offence alleged and an explanation of his/her act or omission.
- 4.10 The person may be questioned by the Justice Panel, but not questioned by others without the permission of the Panel. Questions or areas of questioning may be suggested to the Panel by participants.
- 4.11 At the conclusion of the statements of the person diverted, other participants may provide information and make suggestions and submissions. The person diverted may at any stage be called upon by the Justice Panel to provide further information or explanations.

- 4.12 The Justice Panel shall, by consensus and with the agreement of the person diverted, determine an appropriate disposition of the case.
- 4.13 Without restricting the measures the Justice Panel may deem appropriate, the following may be considered as appropriate forms of disposition:
- i. restitution to and reconciliation with the victim and his/her family through a private or public apology, payment, work or service;
 - ii. community work or service consistent with procedures developed pursuant to 4.17;
 - iii. participation in training, education, spiritual, counselling or treatment programs;
 - iv. temporary banishment from parts or areas of the community, or from some or all community activities;
 - v. restrictive conditions on conduct, such as staying away from the victim, reporting to a designated person periodically, and good behaviour;
 - vi. a fee (which may be waived) or payment to the Band in respect of the costs of the hearing and the administration of the disposition agreement, if any, consistent with procedures developed pursuant to Section 4.17;
 - vii. payment not to exceed \$2,000.00 to the Shubenacadie Band pursuant to procedures made consistent with Section 4.17;
 - viii. any combination of the above.
- 4.14 The Mi'kmaq person who is diverted shall freely and voluntarily enter into a signed, written agreement which identifies his/her obligations to meet the terms of the disposition.
- 4.15 If the Mi'kmaq person who is diverted does not agree to sign the diversion agreement, the Justice Panel will ensure that the matter is referred back to the Crown Attorney who has charge of the case forthwith.
- 4.16 The Justice Panel shall ensure that the terms of the diversion agreement require that the obligations of the person diverted will be satisfied in sufficient time to proceed to the existing Court in case of noncompliance.

- 4.17 The Chief and the Council shall develop such procedures, pursuant to this document, to ensure an orderly, consistent application of the diversion process.

5. ENSURING COMPLIANCE WITH DIVERSION AGREEMENT

- 5.1 The Justice Panel shall ensure that the diversion agreement is closely monitored on an ongoing basis in order to determine whether the conditions of the agreement are satisfied as required.
- 5.2 If the person fails to comply with the diversion agreement, the Justice Panel shall review the matter consistent with procedures which are developed pursuant to Section 4.17.
- 5.3 The Justice Panel will notify the Crown Attorney in writing confirming whether the diversion agreement has been successfully completed or otherwise.

6. RECORDS

- 6.1 A person's compliance or noncompliance in a Mi'kmaq diversion program may be:
- i. brought to the attention of the Justice Panel;
 - ii. considered by the existing Criminal Courts in sentencing after a finding of guilt and
 - iii. considered by the Crown Attorney in deciding whether to divert.
- 6.2 All record of a person's participation in a Mi'kmaq diversion program shall be destroyed ten (10) years after the completion of a diversion agreement, and may not in any circumstances be used against a person after the expiry of five (5) years from the completion of a diversion agreement.

7. PROGRAM REVIEW

- 7.1 The terms of the Mi'kmaq diversion program shall be reviewed by the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band commencing twelve months following approval of the program by the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band.

- 7.2 All sections of the program are subject to revision with the agreement of the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band which has implemented this proposal.
- 7.3 A meeting to review the Mi'kmaq diversion program may be held at an earlier time with the agreement of the Attorney General and the Union of Nova Scotia Indians or the Shubenacadie Band.

SCHEDULE "B"

May 28, 1992

SHUBENACADIE BAND DIVERSION PROGRAM

PROCEDURES PURSUANT TO CLAUSE 4.17

These Procedures are made pursuant to Clause 4.17 of the Shubenacadie Band Diversion Program approved by the Tripartite Forum in December, 1991 and form part of that Program.

1. THE DIVERSION PROCESS

1.1 The Diversion Officer shall meet with the person diverted, or persons requesting information on diversion, to explain the diversion program and process and to ensure that the person freely and voluntarily agrees to participate in the program. The Diversion Officer may meet with the person before or after receipt of notification that a decision has been made by the Crown Attorney to divert. The person diverted, or considering diversion, shall be informed at this initial meeting of the person's right to obtain, at the person's own expense, independent legal advice on the diversion program.

1.2 Once a decision to divert has been made by the Crown Attorney and the Diversion Officer is satisfied that the person understands and voluntarily agrees to participate, the Diversion Officer shall request the Chief and Council to appoint or assign a Justice Panel to hear the case.

1.3 The Diversion Officer shall arrange a date, mutually convenient to all concerned if feasible, and place on the Reserve for the Diversion Hearing and shall accordingly notify the person diverted, the members of the Justice Panel, the responsible Crown Attorney, the investigating police officer, the victim if any, and the Director of Community Corrections or designate.

1.4 At the conclusion of the Diversion Hearing the Diversion Officer shall prepare a written Diversion Agreement incorporating the terms of the disposition arrived at, including any fee or costs or payment to be made to the Band, and shall meet with the person diverted to explain the Agreement and to ensure the person understands that person's obligations. The person diverted shall sign the Agreement and shall be provided with a copy. A copy of the signed Diversion Agreement shall be sent forthwith to the Crown Attorney and to the investigating police officer.

1.5 The Agreement shall state that the person diverted understands his or her obligations and freely and voluntarily agrees to the obligations. The Agreement shall specify that the person diverted shall meet with the Diversion Officer when requested to review progress in complying with the Agreement.

1.6 The Diversion Officer shall monitor progress in complying with the Agreement, and may seek information from others concerning

compliance.

2. COMMUNITY WORK AND SERVICE

2.1 The Diversion Officer shall keep informed of projects in the reserve community that would be suitable to provide a work or service opportunity for a person diverted and shall make this information available to Justice Panels.

2.2 A person shall be designated to supervise and oversee each community work and service project, and that person shall report periodically or as requested to the Diversion Officer on the progress of the person diverted. The person supervising community work shall not be paid for such supervision from the Diversion Program or funds allocated for the Diversion Program.

2.3 The length of time for which a person may be requested to provide community work or service shall not exceed 200 hours. If the person is unemployed, the number of hours should not exceed 35 per week; if employed, the number of hours should not exceed 10 per week.

3. THE HEARING

3.1 At the Hearing, the Chair of the Justice Panel shall open the hearing. The Chair shall introduce himself/herself and ask if any members of the press or media are in attendance. If any are, those persons shall be asked to remove themselves from the hearing. A member of the press or media wishing to remain may be permitted by the Panel to be present as a member of the general public if agreeing not to publish or broadcast or report on the identity of the person diverted or of the victim or the circumstances of individual cases. After dealing with the press and media issues, the Chair shall introduce the other members of the Panel and request those persons present (other than the general public) to introduce themselves, indicating their reasons for attending.

3.2 The Chair shall provide a brief introduction to the hearing process to include purpose, procedures and parameters as well as an outline of the role of the Panel in the Hearing. Any preliminary questions shall be answered at this point. Only one person may speak at once.

3.3 The Chair shall request input from those present as follows:

(a) The person diverted shall be asked to provide a detailed account of the circumstances giving rise to the charges;

(b) The victim, if any, or someone on behalf of the victim, shall be asked to describe the incident, the impact of the incident on the victim and his/her expectations of the Hearing. If the victim or someone on behalf of the victim is not present and the victim has sent a written statement, this shall be read to the

Panel and those present;

(c) The police shall be asked to present their report. If the police investigator is not present, a written police report may be read if one is available;

(d) Any witnesses shall be asked to describe what they know concerning the incident;

(e) Any other person entitled to participate shall be asked to provide any comments they may have; and

(f) With the permission of the Panel, any other person who requests to speak may be heard.

3.4 The Panel shall direct and facilitate participation and discussion regarding the facts that have been presented in order to clarify the issues involved and reach a consensus and agreement concerning an appropriate disposition of the case.

3.5 During the discussion, the Chair shall request the person diverted to indicate the measures he/she would be prepared to undertake and shall also consult the victim as to the type of compensation/restitution, if any, that would be appropriate.

3.6 Where the Hearing is unable to produce a consensus of opinion, or where otherwise deemed necessary or appropriate, the Panel may defer a resolution of the matter for a period not exceeding two weeks. During the deferral period the Panel members and/or the Diversion Officer and the person diverted may communicate with each other for the purpose of seeking a fair, just and mutually agreeable resolution to the case. If during that process a consensus is not reached as the appropriate disposition, the Panel shall at the end of the period make a non-negotiable determination as to what it considers an appropriate disposition, and this determination shall be communicated to the person diverted. The person diverted shall have one week from notification to accept or reject in total the Panel's proposed resolution. If the Panel's proposed resolution is not accepted by the end of the one week period, and in the absence of extenuating circumstances related to why the person has been unable to respond in the one week period, the Panel shall remit the matter to the Crown Attorney for resolution in the regular courts.

3.7 After a resolution has been agreed upon, the Diversion Officer or his/her designate shall meet with the person diverted to review the Diversion Agreement and the person's obligations.

3.8 The Justice Panel may award to the victim costs associated with travelling and being in attendance at the Hearing, and may specify the amount. The amount specified may be included in the Diversion Agreement, to be paid by the person diverted to the Band and processed in the manner specified in Part 4 of these Procedures. The costs awarded to the victim shall be paid to the

victim by the Band from monies collected under clause 4.1.

4. FEES, COSTS, PAYMENTS TO BAND

4.1 The Chief and Council may set a schedule of fees or costs that may be collected by a Diversion Officer or levied by a Justice Panel, and may set any guidelines deemed appropriate in respect of the payments to the Band. In the absence of fee and cost guidelines approved by the Chief and Council, a Justice Panel may not charge or impose the same. If the Chief and Council decide to impose a fee(s) or empower a Panel to charge a fee(s), the fee(s) may not exceed \$25.00. Such a fee(s) may be waived by the Panel in individual cases. Such a fee(s) is intended to defray some of the administrative costs of the Program. If the Chief and Council decide that Justice Panels should be able to obtain costs from the persons diverted, the maximum costs that may be proposed and agreed to by the person diverted is \$250.00. Such costs are intended to recover expenses associated with that person's hearing, such as the travel expenses and per diems of the Justice Panel members and the expenses of the victim to attend the hearing. In the absence of guidelines from the Chief and Council concerning payments to the Band, a Justice Panel may not require, and a person diverted may not be requested to make, a payment to the Band in excess of \$1,000.00. Such a payment to the Band is intended to offset some of the expenses of administering and operating the Diversion Program.

4.2 All fees, costs and payments made to the Band by persons diverted shall be deposited to a separate bank account maintained by the Band in the name of the Band at a Canadian chartered bank for the purpose of the Diversion Program, and only for this purpose [the "Diversion Account"]. This may be the same account maintained by the Band in respect of funding for the Program received from Canada and Nova Scotia. All monies deposited to the Diversion Account and all interest earned on the Diversion Account shall be expended by the Band for the purposes of the diversion program, and only for those purposes. Such purposes are the payment of per diems and travelling costs to Justice Panel members, costs to the victim when specified by the Justice Panel, the salary and travel expenses (in the course of her duties, within Nova Scotia) of the Diversion Officer, the training within Nova Scotia of Justice Panel members and the Diversion Officer, the reasonable advertisement and production, publication, printing and distribution of informational material on the Program, book and record keeping and audits, bank charges, postage, stationary and supplies and such other items as are included in the approved Budget for the Program. In the event the diversion program is suspended or wound up, any remaining monies shall be distributed and disposed of by the Band as is directed and instructed by the Tripartite Forum. Proper accounting records shall be kept of all monies so received and expended, including a record of the date, amount and purpose of all receipts and expenditures of funds into and out of the Diversion Account. Canada and Nova Scotia shall have unrestricted access to the records related to the operation of the Diversion Account for

auditing purposes. The Band undertakes to reimburse to the Diversion Account any monies expended from the Diversion Account for purposes other than the Diversion Program.

5. FAILURE TO COMPLY WITH DIVERSION AGREEMENT

5.1 When a Diversion Officer is of the opinion that a person is not complying with the terms of a Diversion Agreement, the Diversion Officer shall attempt to meet with the person, discuss the situation and, if still of the opinion that the person has not been complying with the Agreement, provide the person with both a written and verbal warning and direction to comply. Such a meeting and warning should be the normal process but is not a prerequisite to the Diversion Officer bringing a case directly to a Justice Panel; a Diversion Officer may proceed directly to a Justice Panel if in the Officer's opinion circumstances warrant.

5.2 If, after issuing one warning or making reasonable efforts to meet with and warn the person, the Diversion Officer remains of the opinion that the person is not complying and is not likely to comply with the Agreement, the Diversion Officer shall

(i) inform the Justice Panel which made the original disposition, or such other Panel as the Chief directs; and

(ii) convene, or attempt to convene, a meeting of the Panel with the person diverted.

5.3 The Justice Panel shall review the situation with person diverted, but may act without the person diverted being present if securing attendance is not feasible. The Justice Panel may receive information from the Diversion Officer, the person or persons supervising work or service and others having relevant information. In the event that the Panel finds the person has not complied with the Agreement and compliance to the original or a modified Agreement is not likely, the Panel shall inform the responsible Crown Attorney, who may then take such action as is deemed appropriate.

6. ADJUSTMENTS AND AMENDMENTS TO PROCEDURES

6.1 Justice Panels may, within the spirit and intent of these Procedures, adjust or modify the letter of the procedures in Part 3 as they deem appropriate in order to dispense justice fairly or to accommodate unusual circumstances.

6.2 The Chief and Council may, within the spirit and intent of these Procedures and subject to clause 6.4, amend the provisions contained in Parts 1, 2, 3 and 5 of these Procedures.

6.3 The Chief and Council may not amend or change the provisions contained in Part 4 of these Procedures without the express written approval of the Attorney General.

6.4 In the event the Chief and Council consider it advisable to amend the provisions contained in Parts 1, 2 or 5 of these Procedures, they shall consult with the Attorney General and consider the views, if any, expressed by the Attorney General on the amendment being considered. The Chief and Council agree that if they cannot reach a consensus with the Attorney General on appropriate amendments they will not amend Parts 1, 2 or 5.

BETWEEN:

SHUBENACADIE BAND,
(hereinafter called the "Band")

OF THE FIRST PART

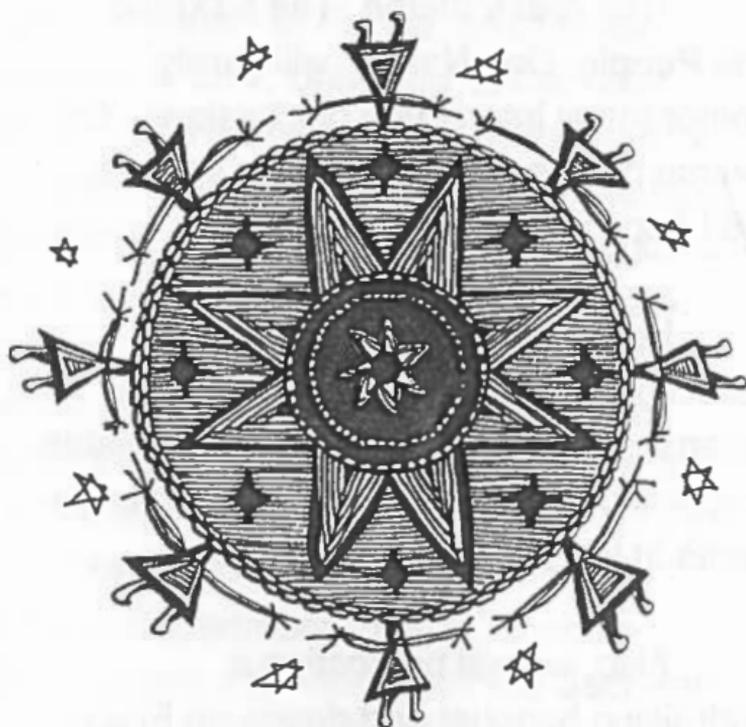
- and -

HER MAJESTY THE QUEEN, in right of
the Province of Nova Scotia, as
represented by the Attorney General
and the Minister Responsible for
Aboriginal Affairs
(hereinafter called the "Province")

OF THE SECOND PART

A G R E E M E N T

18th
ANNUAL
GENERAL
ASSEMBLY



THE MI'KMAQ
One People, One Nation

October 2nd & 3rd, 1992
Holiday Inn Dartmouth

**Message from
the President**

It is my pleasure to advise you that the 18th Annual General Assembly of the Native Council of Nova Scotia will be held Friday and Saturday, October 2nd and 3rd, 1992, at the Holiday Inn Dartmouth, 99 Wyse Road, Dartmouth, Nova Scotia.

This year's theme "The Mi'kmaq: One People, One Nation" will surely prompt many interesting discussions. On reverse please find the two day agenda, and I hope you will join us.

Unfortunately, due to funding restrictions, we cannot assist you with expenses, however, our staff are available to assist in making accomodation arrangements at the Holiday Inn Dartmouth.

Also, we will be hosting a fundraising banquet and dance on Friday, October 2nd and tickets are available for a cost of \$ 35.00.

I invite you to attend our two day Assembly and also, if you can, our fundraising banquet. **John Hucker**, Secretary General, Canadian Human Rights Commission will be our banquet speaker, who I am sure will provide a most enlightening address.

I look forward to meeting with you.

The Guest Speaker

John Hucker
Secretary Genreal
Canadian Human Rights Commission

LL.B (University of Wales), LL.M. (Yale University); Barrister and Solicitor, Ontario; Formerly Professor of Law, Queen's University; Visiting Professor of Law, University of Florida; and Senior Lecturer in Law, University of the West Indies; Mr. Hucker has taught courses on Human Rights and Civil Liberties and has published articles on various topics including Human Rights and Immigration Law. He has served as a legislative consultant to the Government of Canada and has been a Special Lecturer at the University of Ottawa Faculty of Common Law. Since 1977 he has held senior positions in various Departments of the Canadian Government and was appointed Secretary General of the Canadian Human Rights Commission in April, 1988.

Guest speaker on the Canadian Constitution tentatively scheduled for this evening, as well. To be announced.

*Going Forward To
A Better Future*



Dwight A. Dorey
President

**Reservations
Banquet and Dance Tickets**

**18th ANNUAL GENERAL ASSEMBLY
Banquet and Dance Tickets**

Name: _____

Title: _____

Company: _____

Address: _____

Postal : _____

Tel: _____

Fax: _____

Please reserve _____ seat(s) at
\$35.00 per seat.

Enclosed is a cheque made payable
to the Native Council of Nova Scotia
for \$_____.

Advance payment is required. No reservations
or cancellations after September 28, 1992.

Mail or Fax reservations to the:

**Native Council of Nova Scotia
P.O. Box 1320, Truro
Nova Scotia, B2N 5N2**

Fax: (902) 895-0024

Attention: JoAnne Sylliboy

AGENDA
Friday, October 2, 1992

REGISTRATION:

7 - 9 pm Thursday, October 1, 1992
 8 - 9:30 am Friday, October 2, 1992
 HOLIDAY INN DARTMOUTH

Friday, Oct. 2, 1992

9:30 am Opening Prayer in Micmac

Presidents Welcome and introduction of staff, quests and members at large.

Assembly opening prayer

Roll call of Official Assembly Delegates

Nomination and Selection of the Chairperson and Co-chairperson.

TENTATIVE BUSINESS AGENDA

1. Reading and adoption of the Proposed Rules of Order for the 18th Annual General Assembly.
2. Reading and adoption of the Business Agenda for the 18th Annual General Assembly.
3. Reading and adoption of the Minutes of the 17th Annual General Assembly.
4. Selection of Resolutions Committee.

12 Noon **LUNCHEON RECESS**

1:00 pm President's Report

NCNS Constitutional Amendments.

Summary of NCNS Programs

3:00 pm **RECESS**

3:15 pm Discussion of Royal Commission on Aboriginal People/ "Mawewokutinej"

Procedures Report of the Resolutions Committee.

7:00 pm **RECEPTION**

7:30 pm 18th Annual General Assembly Banquet.

9:00 pm - 1:00 am NCNS Aboriginal Rights Fundraising Dance, Featuring the 505 Band.

AGENDA
Saturday, October 3, 1992

Saturday, October 3, 1992

9:30 am Opening Prayer in Micmac

Roll Call of Official Delegates

Panel Presentation
 "Canada's Constitutional Amendments"

10:30 am **RECESS**

10:45 am Canada's Constitution, continued discussions.

Treaty Rights Update

12 Noon **LUNCHEON RECESS**

1:00 pm Mi'kmaq Constitution

Tripartite Forum Update

Bilateral Process Update

3:00 pm **RECESS**

3:15 pm Resolutions

NCNS Auditor's Report

Appointment of the Auditors for the Association

Appointment of the Lawyers for the Association

Swearing In of the Board of Directors

Closing Remarks

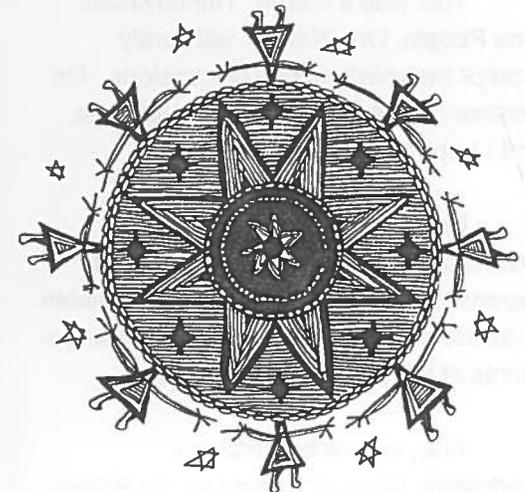


Native Council of Nova Scotia
 P.O. Box 1320, Truro
 Nova Scotia, B2N 5N2

Tel: (902) 895-1523
Fax: (902) 895-0024

18th

**ANNUAL
 GENERAL
 ASSEMBLY**



THE MI'KMAQ
One People, One Nation

October 2nd & 3rd, 1992
 Holiday Inn Dartmouth



Native Council of Nova Scotia

The Self-Governing Authority for Mi'kmaq Aboriginal residing Off-Reserve in Nova Scotia throughout Traditional Mi'kmaq Territory

"Going Forward To a Better Future"

Newsletter

August /92

Volume 11, Number 3

PRESIDENT'S Message

Respectfully submitted, Dwight A. Dorey

Circumstances have developed over fishing rights which warrant this appeal to our General Membership.

Recently I have learned that some of our people have been exercising their Aboriginal and Treaty Rights to fish and then selling their catch to non-Natives.

Fortunately it is only a few individuals, at least that we know of. But even just one or two individuals can make things bad for all our people. So I ask these people to stop the sale of fish which are caught under the entitlement of Mi'kmaq Aboriginal and Treaty Rights.

Now I will explain why I make this appeal.

Dually elected leaders of our people have been fighting both legal and political battles for many years in order to get our inherent rights recognized and protected. We have had some wins but we have also had many more setbacks.

We have on many, many occasions argued that our Treaties are still valid, that we still have Aboriginal Rights and Title in the Maritimes and that we the Mi'kmaq have the inherent right to govern ourselves. Finally, we are making some headway, winning some of those legal and political battles, and we want to ensure that all our people including our children to come, will one day be able to benefit from their rights without hindrance or harassment.

Achieving this objective requires careful planning and serious strategizing with top legal and political advice, and we have both.

"If we are to achieve our collective goals and reach our objective of re-establishing our Self-Government jurisdictions, we must demonstrate our ability and desire to govern ourselves"

If we are to achieve our collective goals and reach our objective of re-establishing our Self-Government jurisdictions, we must demonstrate our ability and desire to govern ourselves. This means establishing some guidelines and limits upon ourselves in order to address needs for conservation and resource management.

If we as a collective people, "the Mi'kmaq Nation" are to benefit and prosper from our third order of Government within Canada, then we must actively pursue a relationship of joint responsibility and control over the natural resources. Once the jurisdiction of our governments, in relation to the other two levels are worked out to include our say and approval over management regimes, then we are in a better position to expand upon those rights currently recognized and upheld by the courts, that is the right to fish and hunt for food. Eventually, yet without undue delay, we see that our rights will be recognized to include commercial operations to sustain our own economy as it relates to Self-Government.

However, the process of achieving that objective requires careful planning and if and when the time comes for us to go to court, we want and we need the best

possible case scenario to run with. We want to win, win, win, when we are in court over a commercial issue. It is this kind of careful planning that led us into court over the 1988 Moose Harvest, which we won.

Re-establishing our system of Self-Government will take time, exactly how long will depend a great deal on the co-operation and support of the people.

It is this kind of support that I now seek from our people, Self-Government will not amount to much if the people show no faith or respect for their own authority over matters as important as the fish and wildlife, the environment, policing, etc.

We must ask that people have a bit more patience and allow their elected representatives the necessary time and flexibility to follow through on a low risk plan to secure our own governing authority and thereby achieve our goal of self-determination.

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OUTREACH News

LEVEL 2 & 3 Upgrading

Once again the course we know as BTSD will operate in our area. At the present time it looks like the Parade School in Onslow will be the location. It will again have a capacity of twenty seats. We have 11 returnees and 9 new students. Because of the large numbers of clients on the waitlist CEIC explored the possibility of increasing the capacity of this course. The local Community College is quite willing to do this if CEIC contribute financially to the cost. They will get back to CEIC with an approximate dollar figure so CEIC can judge whether we can afford this in light of the many demands on funds.

COMPUTER Based Literacy

Previously CEIC had made a commitment to the Task Force that they would be willing to purchase seats on this training (and thereby assist in the on-going operation), if they were able to secure funding to get the program up and started. The Task Force is now giving serious consideration to turning over the operation of this project to the Community College along with any funding which they had received to date. CEIC indicated to Provincial counterparts that they would still be interested in purchasing seats up to the original dollar limit. Depending on the cost etc, if they took over the project this might mean that they would be in a position to purchase more seats than previously thought.

LEVEL 4 Upgrading

This course will run as a Community College course with no cost (tuition) attached to it. It will run in two terms of twenty weeks each. There will be twenty seats available and the College will do the review and selection of the participants. Any interested clients can go to the school and apply. CEIC can provide income support to any of our participants who are drawing UI benefits (Feepayer) or those clients who are on Social Assistance may be able to arrange something with their respective agencies. Since CEIC would not actually be purchasing these seats there would be no supplementary allowances payable. Those clients who are not currently in receipt of any form of assistance could still attend this program, but at their own expense.

As with the Level 2 & 3 program the Community College is more than willing to expand the capacity of this program, assuming that CEIC will pay for the incremental costs associated with purchasing additional seats for our clients. This however, would require some careful thought as CEIC would then have both full purchase and non-sponsored clients in the same program together at the same time.

For more information on the above please contact our office.

*Respectfully submitted,
Bill Pictou*

*Arts & Crafts
Display Tables
Available at
the Annual
General Assembly*

*October 2nd & 3rd
Holiday Inn Dartmouth
99 Wyse Road*

Contact

*JoAnne Sylliboy
for table reservations*

895-1523

No Charge!

Invitation

I am pleased to announce that the 18th Annual General Assembly of the Native Council of Nova Scotia will be held on October 2nd & 3rd, 1992 at the Holiday Inn, 99 Wyse Road, Dartmouth, Nova Scotia.

There will be many important issues discussed with respect to off-reserve Aboriginal People in Nova Scotia, and all off-reserve Aboriginal People in the province are welcome to attend.

Dwight A. Dorey, President

Native RCMP constable posted to Lennox Island

Community recognizes non-traditional role

Courtesy of The Guardian, Charlottetown
By Mike Nesbitt

LENNOX ISLAND - RCMP Constable Tim Jesty, on his first posting in Summerside, is about to take over the Lennox Island satellite of the detachment.

There is really nothing unusual about the posting except for the fact Const. Jesty is a native member of the police force.

Having grown up in North Sydney, Cape Breton, he is happy to have the Maritime posting which allows him to be close to family members.

COMPLETED TRAINING

He completed his basic training in Regina last March and is nearing the end of a six month period of detachment training before being assigned to the Lennox Island satellite.

Const. Jesty grew up as an off reserve member of the Eskasoni Band and had only casual contact with the RCMP through a first cousin who happened to be a reserve special constable.

One day, he saw a television commercial

which said the force was interested in minorities and women as constables, so he applied.

"I don't really know what drew me," he explained in an interview. "I never had much contact with the police, I had never had a traffic ticket, never smoked, never drank until I was 19. When I heard that grade 12 was enough to apply with I took the opportunity. It's a good respectable job with a good future."

NO APOLOGIES

Const. Jesty understands the need for the RCMP to recruit minorities to provide a broader representation among the various communities across Canada. He makes no apologies in being able to take advantage of the need.

"Under the regular rules I might have had to wait a long time or may not have been accepted at all," he said. "It is good to have people in communities that understand and are accepted by the community. I am a constable, but someone in crisis will more easily accept a person representing something familiar and may be easier to deal with."

He has no illusions about his role. In the community, some shake his hand and acknowledge that he is a native in a non-traditional position but he is aware that his recognition as a constable will become more important in time.

"Being a native doesn't solve everything," he said. "I'll be building on what John (Const. John Cuddington) has achieved. He has developed a good rapport in the community. I am very comfortable in the community and enjoy being out here."

POSITIVE INTRODUCTION

Const. Cuddingham agreed. Many in the community are comfortable with him and were surprised when a new constable was introduced. He felt, however, that Const. Jesty was a positive introduction in the area.

"Anything that can improve the perception of law enforcement in a community is the first step in a 1,000 mile journey". Const. Cuddington said. "The appreciation and understanding of a community helps close the gap between the offender and the law. It increases general support in the community as well."

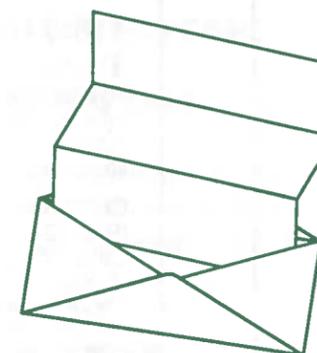
Chief Jack Sark said during the St. Ann's Sunday celebrations that the people in the community are rediscovering their heritage and culture and making a place for it in modern life.

Const. Jesty's presence on the Island is evidence that modern life and minority values can develop a strong bond.

Send your comments and suggestions for the NCNS Newsletter to:

JoAnne Sylliboy

Native Council of Nova Scotia
P.O. Box 1320
Truro, Nova Scotia
B2N 5N2



Mi'kmaq appointed to NAPO Board

OTTAWA - A Nova Scotia Micmac was appointed to the board of the National Anti-Poverty Organization (NAPO) at the organization's national conference and convention, held at Ottawa, May 24, 1992.

Bill Pictou, Director of the Native Outreach Program, was officially appointed to the NAPO Board. Pictou informed the Micmac News that NAPO is a non-profit organization whose mandate is to eliminate poverty in Canada.

NAPO was founded in 1971 at Canada's first and only nation-wide poor people's conference. While it has a variety of specific priorities and structures since that time, it has continuously been directed by activities working within low-income communities, the majority of whom have had personal experience with poverty.

NAPO has experienced success in overcoming many barriers faced by low income communities, however, many issues continue to be ongoing such as

social assistance and other income assistance programs, health, housing, education and training, and opportunities for participation by poor people in decision making processes and policy making. NAPO has, and continues to work with other governmental organizations who have similar goals and it is hoped that such cooperation will lead to a stronger voice with regards to influencing the decision making process and policies.

Currently, NAPO is concentrating on addressing issues concerning social housing, specifically cooperative housing. The federal government has cut the budget for social housing by 35%, which has resulted in cooperative housing being phased out.

Mr. Pictou hopes that his participation with this organization as a strong lobby group will establish more Tawaak Housing units in urban areas of Nova Scotia, as there is a drastic need for off-reserve housing.

Another priority for NAPO is lobbying against the recent reduction of CRF funds in the CEIC. The labour market development board, through the CEIC, has drastically reduced the CRF funding budget and transferred more income into Unemployment Insurance training funding. CRF Funding is used in providing training programs to those people who are not receiving unemployment insurance, such as social assistance recipients, which may include single mothers.

NAPO also functions as an advisory agency and has an extensive library on government services. Publications can be purchased for a small fee.

NAPO is in the process of organizing a committee to look at poverty levels of the Atlantic provinces. The committee will be holding an open meeting this coming October and will feature guest speakers from other regional organizations mandated to achieve similar goals.

By Christine Gibson
Micmac News

"The Four Directions"

CBC-TV is in the process of developing a dramatic half-hour anthology series that will be creatively driven by the Native community.

The series will give voice to communities of the First Nations. Voices from the four directions of this land, from all the territories of the First Nations: from ocean shores to prairie grasslands, from city streets to northern bush, in villages, camps, office towers and living rooms. Voices that have never been silent but that have yet to be heard on network television. This series will reflect the rich diversity of First Nations' cultures. The CBC wants to collect these voices for this new network series.

This is a call for those voices.

Acknowledging the depth of creative talent within First Nations communities, the CBC has made a commitment to develop 4 - 6 half-hour dramatic scripts to first draft. This process has already begun under producers Roxana Spicer and Loretta Todd. But it's only the first stage of what could evolve into a full 13 - part prime time anthology series developed creatively by Native writers telling Native stories.

As with all anthology series, the success of the series will come from within the artistic community. The stories should reflect life as experienced by the First Nations. Everyday life. Tragedy and joy, celebration and confrontation, loss and love.

The stories can range from drama to comedy, and everything in between but it is the strength of the stories themselves that will drive the series.

The guidelines are straight-forward: 1-2 page story ideas. Longer outlines or scripts are also welcome (if submitting script, please attach one page synopsis). But proposals should state succinctly what the story is about and how it plays out in terms of the three act structure dictated by the half-hour television format. The three acts are approximately the same length. The characters are clearly defined.

Within the conventions, of three acts, writers should feel free to explore dramatic structure as it relates to First Nations' storytelling and drama.

The budget dictates that the stories be contemporary, rather than period pieces (unless cast and set requirements are minimal).

Share them with us.

The deadline: December 15th, 1992.

Please send submissions plus resume to:

Roxana Spicer and Loretta Todd

c/o: "The Four Directions"
Canadian Broadcasting Corporation
P.O. Box 500
Station "A"
Toronto, Ontario
M5W 1E6

DesBrisay Museum Programs

The DesBrisay Museum, Jubilee Road, Bridgewater, N.S. will present the following programs featuring Native People of Canada:

September 13, 1992 - (1:00 pm - 4:00 pm)

Indian artifacts and crafts will be on display to October 8, 1992.

September 20, 1992 - (2:00 pm - 4:00 pm)

Vita Rordam will show slides from Winisk, Ontario, a Cree Indian settlement on the south coast of Hudson Bay. Members of N.S. Native Women's will provide refreshments.

September 28 to October 2, 1992 (both days included)

Films about Canadian Indians will be shown during the noon hour (12:00 to 1:00 pm). Length of films between 40 and 45 minutes.

September 30 and October 7, 1992

Screening of films, highlighting Canadian Native People, will take place in the evening, starting at 7:00 pm. These programs will include guest speakers and discussions.

October 1, 1992

TREATY DAY - Program to be announced.

Admissions is free and everyone is welcome.

For further information, please contact:

Vita Rordam
11 Atlantic Street, Apt. 25
Bridgewater, Nova Scotia
B4V 3B4

Tel: (902) 543-7343

Outreach Staff

Valerie Brown
Bridgewater 527-1808

Anna Farrell
Cape Breton 567-1240

Carol Dee Thompson
Digby, Yarmouth, Kings Counties . . . 467-3680

Thomas Tapper
Eastern Shore 885-2788

Bill Pictou, Co-ordinator
Colchester, Cumberland, Pictou and
Antigonish Counties 895-1523

PATHWAYS

All Nova Scotia 758-2049
or 895-1523

**NCNS 18th Annual General Assembly
Aboriginal Rights Fundraising
Dinner & Dance Tickets
on Sale Now!**

Dinner & Dance - \$ 35.00
Dance Only - \$ 5.00

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The Nova Scotia Human Rights Commission investigates complaints of discrimination, provides information & education, promotes positive race relations & affirmative action, conducts research & liaises with community groups & organizations.

Central Office: Lord Nelson Arcade, 7th Floor, Halifax (902) 424 - 4111 T.D.D./Voice, Fax: (902) 424 - 0596
Other Offices: Sydney, New Glasgow and Digby

Nova Scotia Human Rights Commission Honourable Joel R. Matheson, Q.C. Minister

TA'N TEL-MILIKISKIK Workbook Seven

We are now taking orders for the seventh volume of the Micmac Language Learning Workbook Series. Introducing, seasons, months, and weather conditions. Price \$ 25.00/volume



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quantities last!

HOUSING Update

Respectfully submitted,
Sidney Peters

RRAP - 1992 Changes

The Guidelines for RRAP have been increased to allow homeowners to borrow more than \$10,000 on a promissory note. It now states that homeowners can borrow up to a maximum of \$25,000.

We did receive approval from CMHC to administer some Urban Native RRAP in two areas (Bridgewater and Truro). CMHC approved \$ 30,000 for Urban Native only. To date these funds have been expended.

We now have permission from CMHC to RRAP, RNH units over five years old. This opens up the possibility of RNH homeowners receiving help through the RRAP program.

If clients received ERP in the past, they are still not eligible for RRAP. Only one ERP or RRAP is allowed per household.

Final RRAP budgets came down on July 1st, 1992. RNHG are trying to commit these budgets by year end. RRAP was decreased 14% from the 1991 allocation.

ERP - 1992 Changes

Final ERP budgets were received on July 1st, 1992. The ERP grant went from \$ 1,500 forgivable to \$4,500 in August, 1992. No other changes have occurred to the delivery of ERP at this time.

Section 55

The RNH program has received drastic cuts in it's 1992 budget allocations. CMHC have approved only four units of new housing for mainland Nova Scotia and one unit for Cape Breton. This is a 60% reduction in units from 1991. There are only certain areas in which lease - to - purchase and self - build can be delivered. All other areas would be strictly rental.

In general this program is still very popular with our clients. We receive numerous calls from potential RNH clients. Unfortunately, we don't have the units to handle the demand. It is very frustrating to some RNH clients to be put on waiting lists. The outlook for this program is slim. This program is targeted to be hit with another reduction of 15% in 1993. Eventually, this program will be non-existent within Nova Scotia.

Staff

The Rural and Native Housing Group have had to cut it's staff because of budget restraints in the operating capital for 1992. It's possible that further staff cuts are forthcoming by 1993, if reductions continue.

Our present staff consists of:

Sidney Peters - Director/Inspector
Dianne Smith - Administrative Assistant
John K. Martin - Housing Development
Officer/Inspector
Cecilia Phillips - New Housing Officer (RNH)

Aboriginal Rights Fundraising MUGS



The NCNS 1992 Aboriginal Rights Fundraising effort will be under way beginning at the end of August through the sale of "Netukulimk" Mugs.

The design on each mug will be that of the "Hunter" imprinted in green on one side of the mug with the word "Netukulimk" inscribed down the side, on a white background.

"Netukulimk" - A Mi'kmawey concept which includes the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community at large.

These mugs will surely be a cherished commemoration of the Mi'kmaw tradition. Support the NCNS Aboriginal Rights Fundraiser. Price of each mug is \$ 5.00, and will be available at the NCNS office in Truro, as well as, at the upcoming 18th Annual General Assembly.

A GLOSSARY OF TERMS

ANTI - RACIST:

An approach to education that challenges and combats racism in the education process in all its forms, by identifying and changing institutional policies, procedures, culture and values as well as individual behaviours and practices which have a discriminatory impact on individuals or groups with non-dominant identities. The concept of anti-racist education originated in the U.K. and is based on the recognition that: racism exists in the education system because it exists in the society; racism is not the result of individual idiosyncrasy or eccentricity; while racist behavior can be motivated by malicious intent, racism is caused, not by human nature, but by concrete historical, social, cultural, political and economic factors; racism can be conscious as well as unconscious; the measure of racism is its impact on non-dominant people rather than the intent of dominant people; the challenge to racism must be rooted in the history of resistance of non-dominant people; and, finally, the fight against racism is the responsibility of both, the people of colour as well as White people.

ETHNOCENTRISM:

Belief in the superiority of one's own race and culture.

EUROCENTRISM:

Exclusive or almost total attention to events and people originating in Europe as well as consideration of all information from the perspective of White people who came to North America from Europe.

See you at the
18th Annual
General Assembly

October 2nd & 3rd, 1992
Holiday Inn, 99 Wyse Road
Dartmouth, Nova Scotia

SOCIAL COUNSELLING Update

The Native Council of Nova Scotia, in its ongoing effort to make its services more accessible to off-reserve Aboriginal People, is pleased to inform you that, beginning September 3rd, there will be a new full-time Aboriginal Social Worker for the N.C.N.S.

Social Counselling Agency, who will be working out of the Provincial Office in Truro.

There will, also, be a second Aboriginal Social Worker who will be available in mid-September, to be working out of the Bridgewater Regional Office.

N.C.N.S. Regional Offices

Bridgewater Regional Office

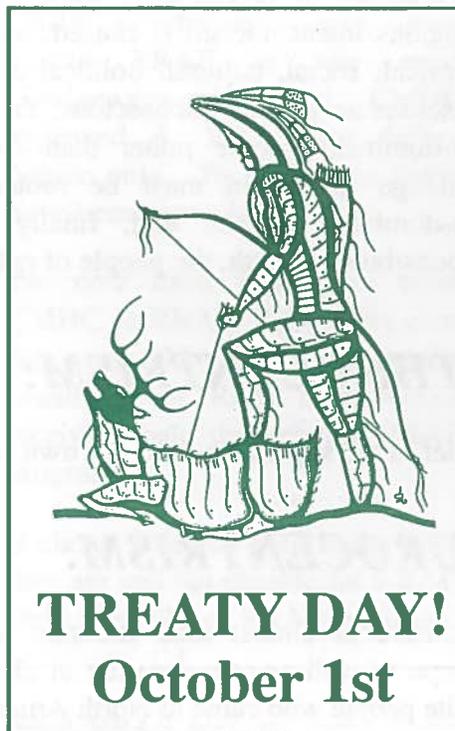
224 Dufferin Street
Suite 203
Bridgewater, N.S.
B4V 2G7
(902) 527-1808

Sydney Regional Office

2nd Floor, CN Building
75 Dodd Street
Sydney, N.S.
B1P 1T7
(902) 567-1240

Eastern Shore Regional Office

Blewater Development Corporation
Sheet Harbour
Nova Scotia
B0J 3B0
(902) 885-2788



EDUCATION Update

The N.C.N.S. Achievement Awards

Tracy Freeman, Jill R. Francis and Lisa Rose Lowe of Zone 9 were presented with the N.C.N.S. Honour Awards by their zone executives for passing their grades with honours.

The Stephen Hamilton Award

The Stephen Hamilton Award will be presented to a worthy individual at our 18th Annual General Assembly on the 2nd of October. We encourage you to nominate an individual. This award, gives recognition to individuals that have promoted education for the benefit of Native people. October 2nd is not far off, please submit nominations as soon as possible. For further information, and/or nomination forms, please contact our office.

*Respectfully submitted,
Spencer Wilmot*



NCNS REPRESENTATION

- Barbara MacDonald NCNS Representative Native Communications Society
- Darliea Slauenwhite NCNS Representative Micmac Native Friendship Centre
- Darliea Slauenwhite NCNS Representative Dalhousie Indigenous Law Program
- Victoria Campbell, Katherine Dorey
and Barbara Dorey NCNS Representatives to Nova Scotia Native Women's Association
- Bill Pictou NCNS Representative Pathways Steering Committee
- Tim Martin NCNS Representative Hunting & Fishing Negotiations and NCNS Mi'kmaq Wildlife Management Office
- Spencer Wilmot NCNS Representative Human Rights Network
- Spencer Wilmot NCNS Representative Micmac Learning Centre
- Spencer Wilmot NCNS Representative Transition Year Program
- Spencer Wilmot NCNS Representative Mi'kmaq Students in the Public School System
- Spencer Wilmot NCNS Representative Mi'kmaq/Nova Scotia/Canada Tripartite Sub-Committee on Human Rights

The N.C.N.S. Newsletter is a quarterly publication of the Native Council of Nova Scotia. Produced through the desktop publishing facilities recently formed within the organization. This publication and its contents remain the property of the Native Council of Nova Scotia and reproduction, in whole or in part, is prohibited without the express written consent of this Council and its Board of Directors.



Annette Googoo

Executive Assistant

First Nations Mi'kmaq

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Forum Sub-committee on [aboriginal] P



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Shubenacadie Band Diversion Program

Justice Panel Selection Process



*Imp. Meuser
Fu Info*

1. Community orientation of the Shubenacadie Band Diversion Program (SBDP) Clause 4, sub-section(s) 1 and 4.
2. Seek input and nominations from the community to recommend individuals from the community to be recruited and recommended for Justice Panel consideration.
3. Actively recruit individuals for Justice Panel consideration.
4. Develop a criterion of eligibility for individuals actively seeking Justice Panel candidacy.
5. Develop an interview guideline for Justice Panel candidates.
6. Interview and recommend individuals for Justice Panel appointment.
7. Seek consensus from Chief and Council for Justice Panel appointment.
8. Train/orient Justice Panel appointees with the SBDP and Procedures Document Pursuant to Clause 4.17 of the SBDP and other related materials.
9. Develop short and long term training/orientation packages appropriate for delivery to Justice Panel Members.
10. Gather input and reflection on direction of Justice Panel and diversion process.
11. Actively recruit alternate Justice Panel candidates through network of Justice Panel appointees, community and Chief and Council.
12. Provide continuity in training/orientation/education/awareness/policy etc..

Shubenacadie Band Diversion Program Abstract

The Mi'Kmaq of the Indian Brook Reserve, Shubenacadie Band has made final agreements with the Province of Nova Scotia and the Federal Government of Canada in the establishment of a Native Mi'Kmaq Diversion Program. The Shubenacadie Band Diversion Program proposal was initiated by Chief Reg Maloney, Vice President of the Union of Nova Scotia Indians and Chief of the Shubenacadie Band at Indian Brook. The proposal is consistent with the Recommendations 18 & 20 (b) of the Royal Commission Report on the Donald Marshall Jr. Prosecution.

The Shubenacadie Band Diversion Programs purpose is to divert eligible registered Indians, in suitable circumstances, at as early a stage as possible following the laying of a charge and prior to conviction, from the existing Court and criminal justice system to the Mi'Kmaq community and; To permit wrongful conduct that forms the basis of an offense to be dealt with by the Mi'Kmaq community in a way consistent with Mi'Kmaq norms of conduct and and Mi'Kmaq concepts of criminal behavior having regard to general Canadian concepts of criminal behavior.

The decision to divert will be made by the Crown Attorney shortly following receipt of the case from the police. The person diverted must accept responsibility for the act or omission that forms the basis of the offence that he/she is alleged to have committed, and be prepared, for the purpose of the diversion, to fully and freely disclose and discuss those acts or omissions before the Mi'Kmaq Justice Panel. The person diverted must fully and freely consent to participate.

In regards to the offence, there must, in the view of the responsible Crown Attorney, be sufficient evidence to proceed with the prosecution of the offence. In the absence of special factors, suitable Mi'Kmaq persons shall normally be diverted in respect of the following (i) property related offences occurring on the Shubenacadie Band Reserve that do not involve more than \$5,000 in loss or damage; and (ii) Federal and Provincial Summary Conviction offences except motor vehicle offences. Certain offences shall not be subject to diversion such as; homicide, murder, attempted murder, manslaughter, criminal negligence causing death etc. etc. In respect of matters not described, diversion shall take place with the concurrence of the Crown and the Shubenacadie Band.

When a decision is made to divert a Mi'Kmaq person, a Justice Panel shall be appointed by the Chief and Council of the Shubenacadie Band. The Panel shall consist of three members and in no case shall a Panel Member be related by blood or marriage to the person diverted or to the victim, if any. The Justice Panel shall hold a public hearing at the Shubenacadie Reserve and shall by consensus and with the agreement of the person diverted, determine an appropriate disposition of the case. The Mi'Kmaq person diverted shall freely and voluntarily enter into a signed, written agreement which identifies his/her obligations to meet with the terms of the disposition. If the person diverted does not agree to sign the diversion agreement, the Justice Panel will ensure that the matter is referred back to the Crown Attorney. A program review of the terms of the Mi'Kmaq diversion program shall be reviewed by the Attorney General, Union of Nova Scotia Indians and the Shubenacadie Band. All sections of the program are subject to revision with the agreement of the Attorney General, Union of Nova Scotia Indians and the Shubenacadie Band.

May 28, 1992

SHUBENACADIE BAND DIVERSION PROGRAM

PROCEDURES PURSUANT TO CLAUSE 4.17

These Procedures are made pursuant to Clause 4.17 of the Shubenacadie Band Diversion Program approved by the Tripartite Forum in December, 1991 and form part of that Program.

1. THE DIVERSION PROCESS

1.1 The Diversion Officer shall meet with the person diverted, or persons requesting information on diversion, to explain the diversion program and process and to ensure that the person freely and voluntarily agrees to participate in the program. The Diversion Officer may meet with the person before or after receipt of notification that a decision has been made by the Crown Attorney to divert. The person diverted, or considering diversion, shall be informed at this initial meeting of the person's right to obtain, at the person's own expense, independent legal advice on the diversion program.

1.2 Once a decision to divert has been made by the Crown Attorney and the Diversion Officer is satisfied that the person understands and voluntarily agrees to participate, the Diversion Officer shall request the Chief and Council to appoint or assign a Justice Panel to hear the case.

1.3 The Diversion Officer shall arrange a date, mutually convenient to all concerned if feasible, and place on the Reserve for the Diversion Hearing and shall accordingly notify the person diverted, the members of the Justice Panel, the responsible Crown Attorney, the investigating police officer, the victim if any, and the Director of Community Corrections or designate.

1.4 At the conclusion of the Diversion Hearing the Diversion Officer shall prepare a written Diversion Agreement incorporating the terms of the disposition arrived at, including any fee or costs or payment to be made to the Band, and shall meet with the person diverted to explain the Agreement and to ensure the person understands that person's obligations. The person diverted shall sign the Agreement and shall be provided with a copy. A copy of the signed Diversion Agreement shall be sent forthwith to the Crown Attorney and to the investigating police officer.

1.5 The Agreement shall state that the person diverted understands his or her obligations and freely and voluntarily agrees to the obligations. The Agreement shall specify that the person diverted shall meet with the Diversion Officer when requested to review progress in complying with the Agreement.

1.6 The Diversion Officer shall monitor progress in complying with the Agreement, and may seek information from others concerning

compliance.

2. COMMUNITY WORK AND SERVICE

2.1 The Diversion Officer shall keep informed of projects in the reserve community that would be suitable to provide a work or service opportunity for a person diverted and shall make this information available to Justice Panels.

2.2 A person shall be designated to supervise and oversee each community work and service project, and that person shall report periodically or as requested to the Diversion Officer on the progress of the person diverted. The person supervising community work shall not be paid for such supervision from the Diversion Program or funds allocated for the Diversion Program.

2.3 The length of time for which a person may be requested to provide community work or service shall not exceed 200 hours. If the person is unemployed, the number of hours should not exceed 35 per week; if employed, the number of hours should not exceed 10 per week.

3. THE HEARING

3.1 At the Hearing, the Chair of the Justice Panel shall open the hearing. The Chair shall introduce himself/herself and ask if any members of the press or media are in attendance. If any are, those persons shall be asked to remove themselves from the hearing. A member of the press or media wishing to remain may be permitted by the Panel to be present as a member of the general public if agreeing not to publish or broadcast or report on the identity of the person diverted or of the victim or the circumstances of individual cases. After dealing with the press and media issues, the Chair shall introduce the other members of the Panel and request those persons present (other than the general public) to introduce themselves, indicating their reasons for attending.

3.2 The Chair shall provide a brief introduction to the hearing process to include purpose, procedures and parameters as well as an outline of the role of the Panel in the Hearing. Any preliminary questions shall be answered at this point. Only one person may speak at once.

3.3 The Chair shall request input from those present as follows:

(a) The person diverted shall be asked to provide a detailed account of the circumstances giving rise to the charges;

(b) The victim, if any, or someone on behalf of the victim, shall be asked to describe the incident, the impact of the incident on the victim and his/her expectations of the Hearing. If the victim or someone on behalf of the victim is not present and the victim has sent a written statement, this shall be read to the

Panel and those present;

(c) The police shall be asked to present their report. If the police investigator is not present, a written police report may be read if one is available;

(d) Any witnesses shall be asked to describe what they know concerning the incident;

(e) Any other person entitled to participate shall be asked to provide any comments they may have; and

(f) With the permission of the Panel, any other person who requests to speak may be heard.

3.4 The Panel shall direct and facilitate participation and discussion regarding the facts that have been presented in order to clarify the issues involved and reach a consensus and agreement concerning an appropriate disposition of the case.

3.5 During the discussion, the Chair shall request the person diverted to indicate the measures he/she would be prepared to undertake and shall also consult the victim as to the type of compensation/restitution, if any, that would be appropriate.

3.6 Where the Hearing is unable to produce a consensus of opinion, or where otherwise deemed necessary or appropriate, the Panel may defer a resolution of the matter for a period not exceeding two weeks. During the deferral period the Panel members and/or the Diversion Officer and the person diverted may communicate with each other for the purpose of seeking a fair, just and mutually agreeable resolution to the case. If during that process a consensus is not reached as the appropriate disposition, the Panel shall at the end of the period make a non-negotiable determination as to what it considers an appropriate disposition, and this determination shall be communicated to the person diverted. The person diverted shall have one week from notification to accept or reject in total the Panel's proposed resolution. If the Panel's proposed resolution is not accepted by the end of the one week period, and in the absence of extenuating circumstances related to why the person has been unable to respond in the one week period, the Panel shall remit the matter to the Crown Attorney for resolution in the regular courts.

3.7 After a resolution has been agreed upon, the Diversion Officer or his/her designate shall meet with the person diverted to review the Diversion Agreement and the person's obligations.

3.8 The Justice Panel may award to the victim costs associated with travelling and being in attendance at the Hearing, and may specify the amount. The amount specified may be included in the Diversion Agreement, to be paid by the person diverted to the Band and processed in the manner specified in Part 4 of these Procedures. The costs awarded to the victim shall be paid to the

victim by the Band from monies collected under clause 4.1.

4. FEES, COSTS, PAYMENTS TO BAND

4.1 The Chief and Council may set a schedule of fees or costs that may be collected by a Diversion Officer or levied by a Justice Panel, and may set any guidelines deemed appropriate in respect of the payments to the Band. In the absence of fee and cost guidelines approved by the Chief and Council, a Justice Panel may not charge or impose the same. If the Chief and Council decide to impose a fee(s) or empower a Panel to charge a fee(s), the fee(s) may not exceed \$25.00. Such a fee(s) may be waived by the Panel in individual cases. Such a fee(s) is intended to defray some of the administrative costs of the Program. If the Chief and Council decide that Justice Panels should be able to obtain costs from the persons diverted, the maximum costs that may be proposed and agreed to by the person diverted is \$250.00. Such costs are intended to recover expenses associated with that person's hearing, such as the travel expenses and per diems of the Justice Panel members and the expenses of the victim to attend the hearing. In the absence of guidelines from the Chief and Council concerning payments to the Band, a Justice Panel may not require, and a person diverted may not be requested to make, a payment to the Band in excess of \$1,000.00. Such a payment to the Band is intended to offset some of the expenses of administering and operating the Diversion Program.

4.2 All fees, costs and payments made to the Band by persons diverted shall be deposited to a separate bank account maintained by the Band in the name of the Band at a Canadian chartered bank for the purpose of the Diversion Program, and only for this purpose [the "Diversion Account"]. This may be the same account maintained by the Band in respect of funding for the Program received from Canada and Nova Scotia. All monies deposited to the Diversion Account and all interest earned on the Diversion Account shall be expended by the Band for the purposes of the diversion program, and only for those purposes. Such purposes are the payment of per diems and travelling costs to Justice Panel members, costs to the victim when specified by the Justice Panel, the salary and travel expenses (in the course of her duties, within Nova Scotia) of the Diversion Officer, the training within Nova Scotia of Justice Panel members and the Diversion Officer, the reasonable advertisement and production, publication, printing and distribution of informational material on the Program, book and record keeping and audits, bank charges, postage, stationary and supplies and such other items as are included in the approved Budget for the Program. In the event the diversion program is suspended or wound up, any remaining monies shall be distributed and disposed of by the Band as is directed and instructed by the Tripartite Forum. Proper accounting records shall be kept of all monies so received and expended, including a record of the date, amount and purpose of all receipts and expenditures of funds into and out of the Diversion Account. Canada and Nova Scotia shall have unrestricted access to the records related to the operation of the Diversion Account for

auditing purposes. The Band undertakes to reimburse to the Diversion Account any monies expended from the Diversion Account for purposes other than the Diversion Program.

5. FAILURE TO COMPLY WITH DIVERSION AGREEMENT

5.1 When a Diversion Officer is of the opinion that a person is not complying with the terms of a Diversion Agreement, the Diversion Officer shall attempt to meet with the person, discuss the situation and, if still of the opinion that the person has not been complying with the Agreement, provide the person with both a written and verbal warning and direction to comply. Such a meeting and warning should be the normal process but is not a prerequisite to the Diversion Officer bringing a case directly to a Justice Panel; a Diversion Officer may proceed directly to a Justice Panel if in the Officer's opinion circumstances warrant.

5.2 If, after issuing one warning or making reasonable efforts to meet with and warn the person, the Diversion Officer remains of the opinion that the person is not complying and is not likely to comply with the Agreement, the Diversion Officer shall

(i) inform the Justice Panel which made the original disposition, or such other Panel as the Chief directs; and

(ii) convene, or attempt to convene, a meeting of the Panel with the person diverted.

5.3 The Justice Panel shall review the situation with person diverted, but may act without the person diverted being present if securing attendance is not feasible. The Justice Panel may receive information from the Diversion Officer, the person or persons supervising work or service and others having relevant information. In the event that the Panel finds the person has not complied with the Agreement and compliance to the original or a modified Agreement is not likely, the Panel shall inform the responsible Crown Attorney, who may then take such action as is deemed appropriate.

6. ADJUSTMENTS AND AMENDMENTS TO PROCEDURES

6.1 Justice Panels may, within the spirit and intent of these Procedures, adjust or modify the letter of the procedures in Part 3 as they deem appropriate in order to dispense justice fairly or to accommodate unusual circumstances.

6.2 The Chief and Council may, within the spirit and intent of these Procedures and subject to clause 6.4, amend the provisions contained in Parts 1, 2, 3 and 5 of these Procedures.

6.3 The Chief and Council may not amend or change the provisions contained in Part 4 of these Procedures without the express written approval of the Attorney General.

6.4 In the event the Chief and Council consider it advisable to amend the provisions contained in Parts 1, 2 or 5 of these Procedures, they shall consult with the Attorney General and consider the views, if any, expressed by the Attorney General on the amendment being considered. The Chief and Council agree that if they cannot reach a consensus with the Attorney General on appropriate amendments they will not amend Parts 1, 2 or 5.



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**Shubenacadie Band
Diversion Program**

**(S.B.D.P)
July '92**

Program Overview

The Project is currently in its fifth month of operation and has to date successfully completed and or established;

- * Procedures Document Pursuant to Clause 4.17 of the S.B.D.P. Finalized
- * Diversion Hearing Training Package (short-term) - in co-operation with the Department of Solicitor General
- * Establishment of a (12) twelve person Justice Panel with 2 two alternate members
- * Program evaluator and evaluation recognized
- * Selection and hiring of Part-time assistant
- * Office / files / accounts set-up
- * Justice Panel Training / Orientation delivered
- * Solicitor General and Attorney General personnel (Marc Chisolm, Fred Honsberger), orientation to Police Forces and Crown's re: S.B.D.P.
- * Orientation with Attorney General / Solicitor General / R.C.M.P. / Indian Brook Residence at Indian Brook Reserve
- * Mediation and Arbitration Training for Diversion Officer
- * Program Overview and Discussion, Indian Brook Reserve
- * Briefing with Tri - Partite Policing Sub-Committee

Further program developments too numerous to mention, which are of equal importance include: documentation, budget preparation, networking, presentations, resource access, community sensitization, service providers information, referral etc.....



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SHUBENACADIE BAND DIVERSION PROGRAM

PREAMBLE

SHUBENACADIE BAND DIVERSION PROGRAM

A. BACKGROUND

The Shubenacadie Band diversion program proposal was initiated by Chief Reg Maloney, Vice President of the Union of Nova Scotia Indians and Chief of the Shubenacadie Band at Indian Brook. The proposal is consistent with Recommendations 18 & 20(b) of the Royal Commission Report on the Donald Marshall Jr. Prosecution. Recommendation 18 states:

We recommend that the Province, in close cooperation with the Native and Black communities, formulate proposals for the establishment of appropriate diversion programs for Natives and Blacks, and that the Province actively recommend such programs to the Federal Government with proposals for any necessary amendments to the Criminal Code.

Recommendation 20(b) states:

We recommend that a community-controlled Native Criminal Court be established in Nova Scotia initially as a five year pilot project, incorporating the following elements:

- (b) diversion and mediation services to encourage resolution of disputes without resort to Criminal Courts;

B. PHASE-IN PROCESS

1. This specific proposal and program design pertains to the Shubenacadie Band at Indian Brook only. Other Bands throughout the province may use this program design as a guide in the event that they wish to make a submission to the Attorney General for their own diversion program.
2. In order to ensure successful implementation of the program and acceptance by the Native and non-Native communities, it is important to phase the program in on a gradual basis and in a consistent manner with appropriate attention to program detail at each stage of expansion. Program growth is critical both in terms of expansion to other Bands and expansion of the scope of the process itself.

1/24/92

3. Prior to commencing the diversion program at Indian Brook and prior to expanding the program to other Reserves, the following matters must be addressed:

- * Identification of a diversion panel by Chief and Council.
- * Identification of a diversion officer to attend to administrative requirements as per Section 9.
- * Identification of training needs and provision of appropriate training.
- * Development and documentation of procedures pursuant to Section 4.17.
- * Meeting between Chief, Director of Community Corrections, Director of Public Prosecutions and appropriate staff regarding program for that specific reserve.
- * Approval by Attorney General.

C. ENABLING LEGISLATION/LEGISLATIVE REQUIREMENTS

1. No federal or provincial legislation presently exists which specifically provides for the implementation of a diversion program.
2. Section 141(2) of the Criminal Code provides a degree of support for the establishment of formal diversion programs as follows:

141 (1) Everyone who asks for or obtains or agrees to receive or obtain any valuable consideration for himself or any other person by agreeing to compound or conceal an indictable offence is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

- (2) No offence is committed under subsection (1) where valuable consideration is received or obtained or is to be received or obtained under and agreement for compensation or restitution or personal services that is
- (a) entered into with the consent of the Attorney General; or
 - (b) made as part of a program, approved by the Attorney General, to divert persons charged with indictable offences from criminal proceedings. R.S., c.C-34, s. 129; R.S.C. 1985, c.27 (1st Supp.), s. 19.

3. Section 15 of the Canadian Charter of Rights and Freedoms confirms constitutional equality rights and protections for minorities including Native persons. This diversion program is consistent with Section 15 of the Charter.
4. Section 35 of the Constitution Act, 1982 as amended by the Constitution Amendment Proclamation, 1983 entrenches existing Aboriginal and Treaty Rights as follows:
 - 35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

The Comprehensive Land Claims policy which was adopted by the Government of Canada in December 1986 states that:

"the Federal Government's policy approach...is to acknowledge the desire expressed by communities to exercise greater control and authority over the management of their affairs...the objectives of the Government's policy on community self-government are based on the principles that local control and decision making must be substantially increased..."

PROGRAM DESCRIPTION

1. PROGRAM PURPOSE

- 1.1 To divert eligible registered Indians, in suitable circumstances, at as early a stage as possible following the laying of a charge and prior to conviction, from the existing Court and criminal justice system to the Mi'kmaq community and;
- 1.2 To permit wrongful conduct that forms the basis of an offence to be dealt with by the Mi'kmaq community in a way consistent with Mi'kmaq norms of conduct and Mi'kmaq concepts of criminal behaviour, having regard to general Canadian concepts of criminal behaviour.

2. DECISION TO DIVERT AND REFERRAL PROCESS

- 2.1 The decision to divert will be made by the Crown Attorney shortly following receipt of the case from the police.
- 2.2 Pending a decision to divert, the Mi'kmaq person charged shall appear in the Criminal Court, as required.
- 2.3 With the consent of the defendant and before the taking of a plea or the entering of an election as to the mode of trial, if possible, the Crown shall request the Court to adjourn the case for sufficient period or periods to permit the diversion decision to be made.
- 2.4 If a decision to divert is made, the Crown shall, with the consent of the defendant, request the Court to adjourn plea, election or trial for sufficient time period or periods to permit the diversion hearing to be held and any disposition agreement to be complied with.
- 2.5 Upon successful completion of the diversion agreement, the Crown Attorney shall withdraw the charge.
- 2.6 No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of being dealt with by this diversion program shall be admissible in evidence against him in any civil or criminal proceedings.
- 2.7 Nothing in this program shall be construed to prevent any person from laying an information, obtaining the issue or confirmation of any process or proceeding with the prosecution of any offence in accordance with law.

- 2.8 The decision to divert a particular Mi'kmaq person shall be made by the Crown Attorney in accordance with the eligibility criteria which are identified in Section 3.
- 2.9 The Crown Attorney shall communicate the decision in writing to the Mi'kmaq person and the Chief and Council of the Band to which the person being diverted belongs.
- 2.10 If the Crown Attorney decides not to divert, the Mi'kmaq person or the Chief and the Council of the person's Band may request a review of that decision by the Regional Crown Attorney. If the Regional Crown Attorney decides not to divert, and the Mi'kmaq person or the Chief and Council of the Band concerned so requests, the Regional Crown Attorney shall provide in writing, to the person requesting, the reason(s) for refusing diversion.
- 2.11 If the Regional Crown Attorney decides not to divert, the Mi'kmaq person or the Chief and Council of that person's Band may request a review of that decision by the Director of the Public Prosecution Service. If the Director decides not to divert, and the Mi'kmaq person or the Chief and Council of the Band concerned so requests, the Director shall provide in writing to the person requesting the reason(s) for refusing diversion.

3. ELIGIBILITY CRITERIA

3.1 General

- 3.1.1 The decision to divert is to be made having regard to the needs of the Mi'kmaq person and the interests of both the Mi'kmaq and non-Mi'kmaq communities, other public interest factors and, without restricting the generality of the foregoing, the following factors shall be taken into account:
- i. the background of the Mi'kmaq person, including previous criminal convictions, previous participation in diversion programs, other outstanding charges, and outstanding probation orders or custodial dispositions;
 - ii. the nature and extent of the relationship between the actions of the Mi'kmaq person and the non-Mi'kmaq community, including whether the offence took place off the Shubenacadie Band Reserve or involved non-Mi'kmaq persons or property;

- iii. the seriousness of the charge(s); and
- iv. whether there is a victim.

3.2 Person

- 3.2.1 The person diverted must be a registered Indian who is a member of the Shubenacadie Band and who lives on the Reserve lands of the Shubenacadie Band in Nova Scotia or lives off the Reserve and commits an offence on the Shubenacadie Band Reserve.
- 3.2.2 The person diverted must accept responsibility for the act or omission that forms the basis of the offence that he/she is alleged to have committed, and be prepared, for the purpose of the diversion, to fully and freely disclose and discuss those acts or omissions before the Mi'kmaq Justice Panel.
- 3.2.3 The person diverted must, having been informed of the diversion program, fully and freely consent to participate, having been given a reasonable opportunity to consult with legal counsel.
- 3.2.4 In the absence of special factors, in respect of the matters specified herein, the following Mi'kmaq are suitable persons to be routinely diverted:
 - i. a member of the Shubenacadie Band and,
 - ii. a person who does not have a significant criminal record, who has not been removed from a previous diversion agreement for failure to comply and who is not a risk to the community.

3.3 OFFENCE

- 3.3.1 There must, in the view of the responsible Crown Attorney, be sufficient evidence to proceed with the prosecution of the offence, and any such prosecution must not be in any way barred at law.
- 3.3.2 In the absence of special factors, suitable Mi'kmaq persons shall normally be diverted in respect of the following:
 - i. property-related offences occurring on the Shubenacadie Band Reserve that do not involve more than \$ 5,000.00 in loss or damage; and

- ii. Federal and Provincial Summary Conviction offences, except motor vehicle offences.

3.3.3 Notwithstanding anything provided herein, the following offences shall not be subject to diversion:

- i. homicide, murder, attempted murder, manslaughter, criminal negligence causing death;
- ii. armed robbery and other offences involving the use of firearms or weapons, the circumstances of which are considered major;
- iii. assaults causing serious bodily harm;
- iv. treason, armed insurrection;
- v. kidnapping;
- vi. arson, other than mischief;
- vii. other crimes of violence, the circumstances of which are major;
- viii. alcohol/drug related driving offences.
- ix. Family violence and sexual assault.

3.3.4 In respect of matters not described in paragraph 3.3.3, diversion shall take place with the concurrence of the Crown and the Shubenacadie Band.

4. DIVERSION HEARING

- 4.1 When a decision is made to divert a Mi'kmaq person, a Justice Panel shall be appointed by the Chief and Council of the Shubenacadie Band.
- 4.2 The diversion hearing must be held within 30 days following receipt of notification from the Crown Attorney that the person has been diverted.
- 4.3 The Panel shall consist of three members of the band appointed by the Chief and Council. If there is a Mi'kmaq victim from another Band, one member of the Panel may be selected by the Chief and Council of the Band of the victim if that Band wishes to participate in the diversion process.

- 4.4 In no case shall a Panel member be related by blood or marriage to the person diverted or the victim, if any. The Chief shall designate which member of the Panel shall be Chair, and the Chair shall be responsible for convening and administering the Hearing.
- 4.5 The Justice Panel shall hold a public hearing at the Shubenacadie Reserve , unless for good and sufficient reason, such as maintaining the confidentiality of the victim, a closed hearing is deemed desirable.
- 4.6 At a closed hearing, such persons as the Panel directs may be present.
- 4.7 The following are entitled to be present, provide information and make submissions, but not participate in the questioning process unless authorized by the Panel:
- i. the investigating police;
 - ii. the Crown Attorney
 - iii. the victim, if any, and a person on the victim's behalf;
 - iv. a person on behalf of the person diverted;
 - v. a representative of the Director of Community Corrections, Department of Solicitor General; and
 - vi. a representative of the Union of Nova Scotia Indians.
- 4.8 The Justice Panel may request other persons who have relevant information to attend all or portions of the Hearing for the purpose of giving information.
- 4.9 The hearing shall commence with an acknowledgement by the person diverted of his/her responsibility for the wrongful act or omission that forms the basis of the offence alleged and an explanation of his/her act or omission.
- 4.10 The person may be questioned by the Justice Panel, but not questioned by others without the permission of the Panel. Questions or areas of questioning may be suggested to the Panel by participants.
- 4.11 At the conclusion of the statements of the person diverted, other participants may provide information and make suggestions and submissions. The person diverted may at any stage be called upon by the Justice Panel to provide further information or explanations.

- 4.12 The Justice Panel shall, by consensus and with the agreement of the person diverted, determine an appropriate disposition of the case.
- 4.13 Without restricting the measures the Justice Panel may deem appropriate, the following may be considered as appropriate forms of disposition:
- i. restitution to and reconciliation with the victim and his/her family through a private or public apology, payment, work or service;
 - ii. community work or service consistent with procedures developed pursuant to 4.17;
 - iii. participation in training, education, spiritual, counselling or treatment programs;
 - iv. temporary banishment from parts or areas of the community, or from some or all community activities;
 - v. restrictive conditions on conduct, such as staying away from the victim, reporting to a designated person periodically, and good behaviour;
 - vi. a fee (which may be waived) or payment to the Band in respect of the costs of the hearing and the administration of the disposition agreement, if any, consistent with procedures developed pursuant to Section 4.17;
 - vii. payment not to exceed \$2,000.00 to the Shubenacadie Band pursuant to procedures made consistent with Section 4.17;
 - viii. any combination of the above.
- 4.14 The Mi'kmaq person who is diverted shall freely and voluntarily enter into a signed, written agreement which identifies his/her obligations to meet the terms of the disposition.
- 4.15 If the Mi'kmaq person who is diverted does not agree to sign the diversion agreement, the Justice Panel will ensure that the matter is referred back to the Crown Attorney who has charge of the case forthwith.
- 4.16 The Justice Panel shall ensure that the terms of the diversion agreement require that the obligations of the person diverted will be satisfied in sufficient time to

- 4.17 The Chief and the Council shall develop such procedures, pursuant to this document, to ensure an orderly, consistent application of the diversion process.

5. ENSURING COMPLIANCE WITH DIVERSION AGREEMENT

- 5.1 The Justice Panel shall ensure that the diversion agreement is closely monitored on an ongoing basis in order to determine whether the conditions of the agreement are satisfied as required.
- 5.2 If the person fails to comply with the diversion agreement, the Justice Panel shall review the matter consistent with procedures which are developed pursuant to Section 4.17.
- 5.3 The Justice Panel will notify the Crown Attorney in writing confirming whether the diversion agreement has been successfully completed or otherwise.

6. RECORDS

- 6.1 A person's compliance or noncompliance in a Mi'kmaq diversion program may be:
- i. brought to the attention of the Justice Panel;
 - ii. considered by the existing Criminal Courts in sentencing after a finding of guilt and
 - iii. considered by the Crown Attorney in deciding whether to divert.
- 6.2 All record of a person's participation in a Mi'kmaq diversion program shall be destroyed ten (10) years after the completion of a diversion agreement, and may not in any circumstances be used against a person after the expiry of five (5) years from the completion of a diversion agreement.

7. PROGRAM REVIEW

- 7.1 The terms of the Mi'kmaq diversion program shall be reviewed by the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band commencing twelve months following approval of the program by the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band.

- 7.2 All sections of the program are subject to revision with the agreement of the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band which has implemented this proposal.
- 7.3 A meeting to review the Mi'kmaq diversion program may be held at an earlier time with the agreement of the Attorney General and the Union of Nova Scotia Indians or the Shubenacadie Band.



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**ORIENTATION DAY
NOVEMBER 19, 1992
HALIFAX - INDIAN BROOK**

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Tentative Agenda:

8:30 - 9:00 A.M.	Coffee & Tea
9:00 - 10:15 A.M.	Jackie Nibby, Diversion Officer Shubenacadie Band Diversion
10:15 - 10:30 A.M.	<u>BREAK</u>
10:30 - 11:30 A.M.	Dr. Donald Clairmont Institute of Criminology, Dalhousie University
11:35 - 12:35 P.M.	<u>LUNCHEON</u> <u>HALIFAX POLICE CLUB</u>
12:35 - 1:30 P.M.	Enroute - Indian Brook Reserve Shubenacadie Band
1:30 - 2:00 P.M.	Eagle's Nest Recovery Facility N.A.D.A.C.A - Ben Martin
2:00 - 2:15 P.M.	Enroute - Multi-Purpose Centre
2:15 - 3:15 P.M.	Refreshments - Native Chanters - Justice Panel - Chief & Council
3:15 - 4:00 P.M.	Enroute - Halifax

**COMMUNITY DECISION-MAKING
AT
INDIAN BROOK**

A MODEL FOR THE FUTURE

Submitted By Kevan Peterson

to

**Correctional Service of Canada
Nova Scotia District Office**

September 22, 1992

INTRODUCTION

This paper is a description of the efforts at the Nova Scotia District of the Correctional Service of Canada to establish a broader community awareness and support for Corrections within the Aboriginal community. Toward that end, a Community Decision-Making Committee has been established as a pilot project at Indian Brook reservation. This description is drawn to a large extent from an earlier paper prepared by the author for submission to Simon Fraser University School of Criminology. The author would also like to acknowledge the generous contributions of the Shubenacadie Band Diversion Project Justice Panel Selection Process by Ms. Jackie Nibby, Diversion Project Officer.

This model is not to be seen as a "how to" guide for the establishment of an Aboriginal Community Decision-Making Committee. Rather, it is more of an account of the efforts made in the Nova Scotia District and an explanation of the objectives and principles that directed the initiatives. One of the most important elements of this model is that it is to be used with a generous flexible approach. The needs of various communities, regions, departments, agencies and levels of government will all impact on the expectations of this type of initiative. The general objective of this initiative is to take first step toward a new method of communicating and dealing with Aboriginal Communities.

The model begins with a brief history of the initial meeting between Mr. Jack Stewart, Mr. Dan Christmas and Mr. Bernard Knockwood and the agreements that led to the initiative. This is followed by a description of the Ad Hoc Committee and the development of the necessary support from the committee members. Following that

is a detailing of the principles of partnership and then the preliminary objectives of the Correctional Service of Canada. Finally, there is a delineation of the implementation steps taken to achieve the establishment of the Community Decision-Making Committee.

I. Initial Meeting Between Jack Stewart, Dan Christmas, and Bernard Knockwood

This initial meeting took place at the Union of Nova Scotia Indian Offices in Membertou, Nova Scotia, on June 27, 1991. The agreements arising out of this meeting relate to identified areas of concern to the Micmac peoples and how they can best be addressed jointly by the CSC and the Micmac peoples. These areas were identified as follows:

(1) EDUCATION/UNDERSTANDING/COMMUNICATION

(a) It was recognized that both the CSC and the Micmacs jointly lack a fundamental understanding of organizational structures, decision making processes and processes that would allow a meaningful partnership.

Toward alleviating this concern it was agreed that:

- (i) CSC must understand the role of Chiefs, Councils, and Band Staff within the Micmac community and be aware of the family and clan structures that link all Bands; and
- (ii) the organization of the CSC, its relationship to the National Parole Board, its policies and procedures, as well as its basic terminology, has not been adequately communicated to the average member of the Micmac community

(b) It was further recognized that First Nations and non-First Nations

communities differ in structure and inter-relatedness. Due to the relatively small size of many First Nation communities, and the clan structure that influences community decision-making, the return of an offender could be considered a major decision for the Band. Therefore, it was strongly suggested that by presenting an offender's community assessment to the community as a whole, a more holistic approach of consensus and discussion could take place on a more meaningful level to all participants providing a clear direction for release and expectations as to the outcome.

To address this concern it was agreed that:

- (i) the entire approach to doing community assessments should be reviewed to ensure the best consultation with the Band occurs and that the needs, rights and responsibilities of the offender and the Band are fully addressed.

2) CASE MANAGEMENT AND THE NATIVE OFFENDER

It was agreed that the approach taken in case management must be reviewed in the context of Micmac culture. The meeting focused on reviewing the current process of moving the offender from sentence to warrant expiry and examining areas where procedures might change to accommodate the Micmac community and thereby provide a greater degree of support for the offender. The intention of this expanded assessment would be to ensure that dynamics unique to a First Nations community are captured. Ensuring that it was not skewed by cultural experience, and that the offender fully understood the range of options available and the methods of accessing these options.

(4) INVOLVEMENT IN NATIONAL PAROLE BOARD PANEL HEARINGS

The meeting endorsed the presence and participation of a representative selected by the First Nation community to sit with the National Parole Board to provide first-hand expectations, conditions and the level of support directed by the community. The intention of the recommendation is not to supersede the power of the National Parole Board, but rather to compliment case management and to re-enforce accountability of the offender to the both the National Parole Board and the First Nations community to which s/he is to be released.

It was decided that an attempt should made to establish a committee at Indian Brook reservation, located just outside Shubenacadie, within 100 km. of Halifax, Nova Scotia. A Community Decision-Making Committee, once established, could be used for enhanced communications, such as, training by Correctional staff and Cross-Cultural workshops for Correctional staff, and would be of substantial benefit to the Aboriginal community and the Service. After having received training regarding the structure and processes of the criminal justice system, this committee could:

- (1) offer enhanced community assessments for Parole release hearings;
- (2) provide enhanced information for front end loading and assessment;
- (3) develop more appropriate treatment plans for specific offenders from the community;
- (4) develop more specific treatment programs that address the special needs of the Aboriginal offender and community;

(5) provide specific conditions for specific offenders that address the community's concerns that the National Parole Board could attach to any release to the community.

(6) act as a community resource for victims, their families, the general community and offender's families as to the structure and functions of the criminal justice system.

When discussion between Mr. Jack Stewart, Mr. Dan Christmas and Mr. Bernard Knockwood were concluded and the agreements had been reached, it was suggested that these agreements should be brought to the attention of the Grand Chief. After the agreements and the directional focus of Jack Stewart, Dan Christmas and Bernard Knockwood were explained to the Grand Chief, he told them to go ahead with it, saying that, it was a good idea whose time was long overdue. The Grand Chief's approval meant a great deal to those in attendance and the project that has come forth from that meeting is to a large extent due to the commitment felt by Mr. Jack Stewart, Mr. Dan Christmas and Mr. Bernard Knockwood to the Grand Chief.

After this initial meeting some time passed before an opportunity arose to advance this initiative. In January, 1992, there was a meeting at the Nova Scotia District Offices of the Correctional Service of Canada. This impromptu meeting turned into a meeting of interested representatives of various governmental departments that operate within the Criminal Justice System.

II. AD HOC COMMITTEE OF INTEREST

The concerns and agreements raised at the initial meeting between Mr. Jack

Stewart, Mr. Dan Christmas and Mr. Bernard Knockwood, were later raised again at a meeting in the Nova Scotia District Offices of CSC that involved representatives of the National Parole Board, the Solicitor General of Nova Scotia, the Solicitor General of Canada, Ministry Secretariat, The Confederacy of Mainland Micmacs, the Union of Nova Scotia Indians, the Nova Scotia District of the CSC and the Truro Area Office of CSC. These people formed an Ad Hoc Committee that accepted the agreements worked out between Mr. Jack Stewart, Mr. Dan Christmas and Mr. Bernie Knockwood and agreed to support, direct and assist the process. The members of the Ad Hoc Committee are:

Chairman: Dan Christmas, Union of N.S. Indians
Donald Julien, Confederacy of Mainland Micmacs
Bernard Knockwood, Regional Consultant, Native Alcohol and Drug Program, Dept. of Health and Welfare
Fred Gibson, Chairman, National Parole Board
Rémi Gobeil, Deputy Commissioner, RHQ, Atlantic
John Trevors, Sr. Board Member, National Parole Board
Helene Chevalier, Regional Director, National Parole Board
Jim Davidson, Assistant Deputy Commissioner Atlantic (CSC)
Jim Crane, Executive Director, Correctional Services (NS)
V.B.(Vince) Macdonald, District Director, N.S. District (CSC)
Dan Stote, Regional Consultant - Atlantic Region - Solicitor General of Canada, Secretariat-Executive Services
Fred Honsberger, Director, Community Corrections, Dept. of Solicitor General (NS)
Ed Buller, Sr. Policy Analyst, Solicitor General of Canada, Corrections Branch
David White, Administrator, Community Corrections, Dept. of Solicitor General (NS)
Terry Mahoney, Area Manager, Truro Area Office (CSC)
Stu Murray, Chief, Social Development, Springhill Institution
Dave Moore, Community Development Officer, Nova Scotia District (CSC)
Bill Nye, Project Officer/Native Programs, (CSC)
Jack Stewart, Coordinator of Community Resources, Nova Scotia

District, (CSC)

The principle behind this Community Decision-Making Committee is to open up the criminal justice system, at all stages, to the Native community. In particular, emphasis will be placed on opening up Corrections, both federal and provincial to more effective communication. The National Parole Board has agreed to let the Community Decision-Making Committee sit in parole hearings of Native offenders from their community, and is also willing to convene hearings on the reserve if it will facilitate community discussion, consensus, and input.

The Community Decision-Making Committee would also serve as a conduit for the Correctional Service to communicate its role function and purpose to the Native communities. This is an area where there is a real need for information to facilitate the communities deeper understanding of what the Correctional Service does; why it does it that way; and how they can influence the system. The committee can also provide cross-cultural training for CSC staff that is urgently needed. These same potential benefits can be realized by any other government department that is willing to use this holistic partnership approach.

III. PRINCIPLES OF PARTNERSHIP

In order to ensure the success of this type of community based project it is imperative that the government departments involved cooperate under the principles of partnership seeking direction and consensus among themselves and the community as the project advances.

These principles are as follows:

1. Justice is a shared responsibility of Governments, communities and individuals.
2. Shared responsibilities can be effectively met through cooperative effort.
3. Each participant should be aware of and take into consideration the role of the others.
4. Constant communication, in clearly understood terms must take place between the partners.
5. Common solutions are best achieved through consensus.
6. The traditional compartmentalizing of treatment and programs for Aboriginal offenders, families, victims and communities should be replaced with a coordinated holistic approach.
7. There is treatment available for Aboriginal offenders that is of benefit both to the offender and to society that reduces the likelihood of recidivism and improves the chances of reconciliation between the offender, the victim and the Aboriginal community.

IV. PRELIMINARY OBJECTIVES

Each party involved in this process will have their own expectations of what the Community Decision-Making Committee will achieve. Other than the general objective of reducing recidivism among Aboriginal offenders, the Correctional Service of Canada has two more specific objectives.

OBJECTIVE #1

To increase communication regarding the criminal justice system, specifically concerning correctional issues arising between the criminal justice system and the Aboriginal community by:

- a) Developing and maintaining an accessible information resource centre on the Indian Brook reserve;

- b) Providing opportunities and communication channels for community enquiries with regard to correctional issues;
- c) Assisting in the development and sponsorship of a Native cultural workshop for CSC staff.

OBJECTIVE #2

To increase community input into the correctional decision-making process by:

- a) Providing training to the community Justice Advisory Committee;
- b) Facilitating access to correctional decision-making personnel and systems
- c) Exploring avenues of increasing control by Aboriginal communities over correctional decisions that impact on the community;
- d) Increasing the general level of community knowledge and the correctional vocabulary on the reserve.
- e) Exploring avenues of increased program participation by Natives in the community.

Some of these objectives will be difficult to formally evaluate, such as, increasing the general level of community knowledge and correctional vocabulary on the reserve. However, others are easier to evaluate. Accounting tasks, such as, keeping track of the number of workshops and training sessions given by the Service and performing evaluations at the end of those sessions will help to ensure that the training being provided is performing it's function. The same process can be used to evaluate the cross-cultural workshops and training sessions given to Service personnel. This project is not so much about performing specific tasks as it is about developing a new process of dealing with Aboriginal offenders and the communities they live in.

V. Implementation

While it is difficult to establish a rigid framework of procedures that must be followed for success, there are some general areas that have to be addressed. During the implementation of this pilot project there arose some general areas of consideration that will likely have to be addressed regardless of the circumstances. These are as follows:

a) Contacting the Involved Agencies/Departments/Communities and Obtaining Support for the Project.

When planning the establishment of the Community Decision-Making Committee it became apparent that in order for it to be a success there would have to be continual consultation with the Ad Hoc Committee. In the event of a disagreement among the members of the Ad Hoc Committee, and/or the Community Decision-Making Committee, it is imperative that a consensus be reached before advancing further with the project. The reason for this is that, in order for the project to succeed it is necessary that the community and the government agencies/departments both support it and participate in decisions fully. This can only be accomplished if all parties feel that they are part of the process and therefore have a sense of ownership in the project. As such, the first step in the implementation plan was to contact all members of the Ad Hoc Committee and advise them of the progress that had been made.

(b) Meet with the Immediately Affected Parties

The next step in the process was to arrange a meeting with the immediately effected parties: the Provincial Community Corrections; the Truro Area Office and the Nova Scotia District Office. The first meeting was with Mr. Dave Moore, Community Development Officer, Nova Scotia District CSC, Mr. Kevan Peterson, Practicum Student, Mr. Terry Mahoney, Area Manager, Truro Area Office and Mr. Dave White, Administrator, Community Corrections, Dept. of the Solicitor General (NS). The purpose of the meeting was to inform and obtain the co-operation of those attending with the establishment of a Community Decision-Making Committee at Indian Brook reserve.

(c) Approaching the Community

There are some important considerations that should guide this stage of implementation. First, and most importantly, it should be remembered that in order for a community based initiative like a Community Decision-Making Committee to succeed it is absolutely essential that the community support the initiative. To facilitate this it is advisable to develop an awareness of the community structures of authority that already exist before approaching the community. The community can then be approached. Usually this will mean contacting the Chief, the Band Council or the Band Manager. Be prepared to explain the positive aspects of this proposal and then be prepared to listen to and address the concerns and needs of the particular community. Each community will be different and will have different needs and

priorities that will have to be considered. The community is a partner in this process and therefore it is imperative that the principles of partnership be employed in all dealings with the community.

(d) Establishing the Community Decision-Making Committee.

The selection of the Community Decision-Making Committee must be left to the discretion of the community. Mainstream Euro-Canadian ideals of what constitutes a 'representative' committee may not reflect the values of Aboriginal communities. The following example is not to be construed as a procedure to be applied generally to all communities in all circumstances. It is meant to only be an example of how one community selected their committee and may be useful for those purposes only. The establishment of the Community Decision-Making Committee at Indian Brook Reserve utilized an already existing Justice Panel that had been selected for the Shubenacadie Band Diversion Project.

The Shubenacadie Band Diversion Project is a cooperative arrangement between the province of Nova Scotia and the federal Department of Justice. Ms. Nibby is employed as a Diversion Officer for the project and has been involved from the beginning with this project.

A draft of the Justice Panel Selection Process follows:

1. Community orientation meeting regarding the Shubenacadie Band Diversion Program (SBDP) Clause 4, ss (1)(4).
2. Seek input and nominations from the community to recommend individual from the community to be recruited and recommended for Justice Panel consideration.

3. Actively recruit individuals for Justice Panel consideration.
4. Develop a criterion of eligibility for individuals actively seeking Justice Panel candidacy.
5. Develop an interview guideline for Justice Panel appointment.
6. Interview and recommend individuals for Justice Panel appointment.
7. Seek consensus from Chief and Council for Justice Panel appointment.
8. Train/orient Justice Panel appointees with the SBDP and Procedures Document pursuant to clause 4.17 of the SBDP and other related materials.
9. Develop short and long term training
10. Gather input and reflection on direction of Justice Panel and diversion process.
11. Actively recruit alternate Justice Panel candidates through network of Justice Panel appointees, the community and Chief and Council.
12. Provide continuity in training/orientation/education/awareness/policy etc. (Nibby, 1992)

This Justice Panel selection process is procedurally fair and thorough. Further, it has the support of the community that lends it the necessary stature and respect within the community. The documentation of the Justice Panel Selection Process was generously provided by Ms. Nibby for the purposes of illustrating one method of selecting a Community Decision-Making Committee.

(e) Training Schedule

After the initial meeting with Ms. Nibby it was agreed that future meetings should be arranged and that more concrete proposals of the expectations the community committee as to input into the case management and parole process

should be discussed and decided upon. A discussion paper was completed and available for the following meeting and is attached for your convenience. The potential points for community input are diverse and numerous, ranging from community assessments to program development. At the second meeting it was agreed that the initial phase of the project would be the education of the committee about corrections, both provincial and federal. Attached is a proposed training schedule that will act as a discussion document for the completion of this initial phase.

(f) Further Actions

The next steps to be taken will have to be reached through a process of consensus, as with all the other implementation procedures. The community will have to assess and decide what areas they feel would be appropriate for them to assume responsibility for. The other partners will have to assess what areas they feel are the most important to be addressed, for their purposes, and then a consensus will be reached that addresses the needs of all partners.

VI. Summary

To summarize, the model detailed in this paper is not a model that employs some form of magic formula. This model is intended to be flexible enough to allow for the divergent between peoples, communities, regions and governments within Nova Scotia and Canada. A basic outline of how a Community Decision-Making Committee was established at Indian Brook Reserve is provided. One of the integral

considerations of this project was the utilization and application of the principles of partnership. A fundamental principle of the project is that no action is taken without first reaching a consensus from all the partners. Included also are, a Discussion Document on Potential Points for Community Input and a Preliminary Training Schedule.

Shubenacadie Band Diversion Program Abstract

The Mi'Kmaq of the Indian Brook Reserve, Shubenacadie Band has made final agreements with the Province of Nova Scotia and the Federal Government of Canada in the establishment of a Native Mi'Kmaq Diversion Program. The Shubenacadie Band Diversion Program proposal was initiated by Chief Reg Maloney, Vice President of the Union of Nova Scotia Indians and Chief of the Shubenacadie Band at Indian Brook. The proposal is consistent with the Recommendations 18 & 20 (b) of the Royal Commission Report on the Donald Marshall Jr. Prosecution.

The Shubenacadie Band Diversion Programs purpose is to divert eligible registered Indians, in suitable circumstances, at as early a stage as possible following the laying of a charge and prior to conviction, from the existing Court and criminal justice system to the Mi'Kmaq community and; To permit wrongful conduct that forms the basis of an offense to be dealt with by the Mi'Kmaq community in a way consistent with Mi'Kmaq norms of conduct and and Mi'Kmaq concepts of criminal behavior having regard to general Canadian concepts of criminal behavior.

The decision to divert will be made by the Crown Attorney shortly following receipt of the case from the police. The person diverted must accept responsibility for the act or omission that forms the basis of the offence that he/she is alleged to have committed, and be prepared, for the purpose of the diversion, to fully and freely disclose and discuss those acts or omissions before the Mi'Kmaq Justice Panel. The person diverted must fully and freely consent to participate.

In regards to the offence, there must, in the view of the responsible Crown Attorney, be sufficient evidence to proceed with the prosecution of the offence. In the absence of special factors, suitable Mi'Kmaq persons shall normally be diverted in respect of the following (i) property related offences occurring on the Shubenacadie Band Reserve that do not involve more than \$5,000 in loss or damage; and (ii) Federal and Provincial Summary Conviction' offences except motor vehicle offences. Certain offences shall not be subject to diversion such as; homicide, murder, attempted murder, manslaughter, criminal negligence causing death etc. etc. In respect of matters not described, diversion shall take place with the concurrence of the Crown and the Shubenacadie Band.

When a decision is made to divert a Mi'Kmaq person, a Justice Panel shall be appointed by the Chief and Council of the Shubenacadie Band. The Panel shall consist of three members and in no case shall a Panel Member be related by blood or marriage to the person diverted or to the victim, if any. The Justice Panel shall hold a public hearing at the Shubenacadie Reserve and shall by consensus and with the agreement of the person diverted, determine an appropriate disposition of the case. The Mi'Kmaq person diverted shall freely and voluntarily enter into a signed, written agreement which identifies his/her obligations to meet with the terms of the disposition. If the person diverted does not agree to sign the diversion agreement, the Justice Panel will ensure that the matter is referred back to the Crown Attorney. A program review of the terms of the Mi'Kmaq diversion program shall be reviewed by the Attorney General, Union of Nova Scotia Indians and the Shubenacadie Band. All sections of the program are subject to revision with the agreement of the Attorney General, Union of Nova Scotia Indians and the Shubenacadie Band.

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SHUBENACADIE BAND DIVERSION PROGRAM

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PREAMBLE

SHUBENACADIE BAND DIVERSION PROGRAM

A. BACKGROUND

The Shubenacadie Band diversion program proposal was initiated by Chief Reg Maloney, Vice President of the Union of Nova Scotia Indians and Chief of the Shubenacadie Band at Indian Brook. The proposal is consistent with Recommendations 18 & 20(b) of the Royal Commission Report on the Donald Marshall Jr. Prosecution. Recommendation 18 states:

We recommend that the Province, in close cooperation with the Native and Black communities, formulate proposals for the establishment of appropriate diversion programs for Natives and Blacks, and that the Province actively recommend such programs to the Federal Government with proposals for any necessary amendments to the Criminal Code.

Recommendation 20(b) states:

We recommend that a community-controlled Native Criminal Court be established in Nova Scotia initially as a five year pilot project, incorporating the following elements:

- (b) diversion and mediation services to encourage resolution of disputes without resort to Criminal Courts;

B. PHASE-IN PROCESS

1. This specific proposal and program design pertains to the Shubenacadie Band at Indian Brook only. Other Bands throughout the province may use this program design as a guide in the event that they wish to make a submission to the Attorney General for their own diversion program.
2. In order to ensure successful implementation of the program and acceptance by the Native and non-Native communities, it is important to phase the program in on a gradual basis and in a consistent manner with appropriate attention to program detail at each stage of expansion. Program growth is critical both in terms of expansion to other Bands and expansion of the scope of the process itself.

1/24/92

3. Prior to commencing the diversion program at Indian Brook and prior to expanding the program to other Reserves, the following matters must be addressed:

- * Identification of a diversion panel by Chief and Council.
- * Identification of a diversion officer to attend to administrative requirements as per Section 9.
- * Identification of training needs and provision of appropriate training.
- * Development and documentation of procedures pursuant to Section 4.17.
- * Meeting between Chief, Director of Community Corrections, Director of Public Prosecutions and appropriate staff regarding program for that specific reserve.
- * Approval by Attorney General.

C. ENABLING LEGISLATION/LEGISLATIVE REQUIREMENTS

1. No federal or provincial legislation presently exists which specifically provides for the implementation of a diversion program.
2. Section 141(2) of the Criminal Code provides a degree of support for the establishment of formal diversion programs as follows:

141 (1) Everyone who asks for or obtains or agrees to receive or obtain any valuable consideration for himself or any other person by agreeing to compound or conceal an indictable offence is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

- (2) No offence is committed under subsection (1) where valuable consideration is received or obtained or is to be received or obtained under and agreement for compensation or restitution or personal services that is
- (a) entered into with the consent of the Attorney General; or
 - (b) made as part of a program, approved by the Attorney General, to divert persons charged with indictable offences from criminal proceedings. R.S., c.C-34, s. 129; R.S.C. 1985, c.27 (1st Supp.), s. 19.

3. Section 15 of the Canadian Charter of Rights and Freedoms confirms constitutional equality rights and protections for minorities including Native persons. This diversion program is consistent with Section 15 of the Charter.
4. Section 35 of the Constitution Act, 1982 as amended by the Constitution Amendment Proclamation, 1983 entrenches existing Aboriginal and Treaty Rights as follows:
 - 35(1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

The Comprehensive Land Claims policy which was adopted by the Government of Canada in December 1986 states that:

"the Federal Government's policy approach...is to acknowledge the desire expressed by communities to exercise greater control and authority over the management of their affairs...the objectives of the Government's policy on community self-government are based on the principles that local control and decision making must be substantially increased..."

PROGRAM DESCRIPTION

1. PROGRAM PURPOSE

- 1.1 To divert eligible registered Indians, in suitable circumstances, at as early a stage as possible following the laying of a charge and prior to conviction, from the existing Court and criminal justice system to the Mi'kmaq community and;
- 1.2 To permit wrongful conduct that forms the basis of an offence to be dealt with by the Mi'kmaq community in a way consistent with Mi'kmaq norms of conduct and Mi'kmaq concepts of criminal behaviour, having regard to general Canadian concepts of criminal behaviour.

2. DECISION TO DIVERT AND REFERRAL PROCESS

- 2.1 The decision to divert will be made by the Crown Attorney shortly following receipt of the case from the police.
- 2.2 Pending a decision to divert, the Mi'kmaq person charged shall appear in the Criminal Court, as required.
- 2.3 With the consent of the defendant and before the taking of a plea or the entering of an election as to the mode of trial, if possible, the Crown shall request the Court to adjourn the case for sufficient period or periods to permit the diversion decision to be made.
- 2.4 If a decision to divert is made, the Crown shall, with the consent of the defendant, request the Court to adjourn plea, election or trial for sufficient time period or periods to permit the diversion hearing to be held and any disposition agreement to be complied with.
- 2.5 Upon successful completion of the diversion agreement, the Crown Attorney shall withdraw the charge.
- 2.6 No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of being dealt with by this diversion program shall be admissible in evidence against him in any civil or criminal proceedings.
- 2.7 Nothing in this program shall be construed to prevent any person from laying an information, obtaining the issue or confirmation of any process or proceeding with the prosecution of any offence in accordance with law.

- 2.8 The decision to divert a particular Mi'kmaq person shall be made by the Crown Attorney in accordance with the eligibility criteria which are identified in Section 3.
- 2.9 The Crown Attorney shall communicate the decision in writing to the Mi'kmaq person and the Chief and Council of the Band to which the person being diverted belongs.
- 2.10 If the Crown Attorney decides not to divert, the Mi'kmaq person or the Chief and the Council of the person's Band may request a review of that decision by the Regional Crown Attorney. If the Regional Crown Attorney decides not to divert, and the Mi'kmaq person or the Chief and Council of the Band concerned so requests, the Regional Crown Attorney shall provide in writing, to the person requesting, the reason(s) for refusing diversion.
- 2.11 If the Regional Crown Attorney decides not to divert, the Mi'kmaq person or the Chief and Council of that person's Band may request a review of that decision by the Director of the Public Prosecution Service. If the Director decides not to divert, and the Mi'kmaq person or the Chief and Council of the Band concerned so requests, the Director shall provide in writing to the person requesting the reason(s) for refusing diversion.

3. ELIGIBILITY CRITERIA

3.1 General

- 3.1.1 The decision to divert is to be made having regard to the needs of the Mi'kmaq person and the interests of both the Mi'kmaq and non-Mi'kmaq communities, other public interest factors and, without restricting the generality of the foregoing, the following factors shall be taken into account:
- i. the background of the Mi'kmaq person, including previous criminal convictions, previous participation in diversion programs, other outstanding charges, and outstanding probation orders or custodial dispositions;
 - ii. the nature and extent of the relationship between the actions of the Mi'kmaq person and the non-Mi'kmaq community, including whether the offence took place off the Shubenacadie Band Reserve or involved non-Mi'kmaq persons or property;

- iii. the seriousness of the charge(s); and
- iv. whether there is a victim.

3.2 Person

- 3.2.1 The person diverted must be a registered Indian who is a member of the Shubenacadie Band and who lives on the Reserve lands of the Shubenacadie Band in Nova Scotia or lives off the Reserve and commits an offence on the Shubenacadie Band Reserve.
- 3.2.2 The person diverted must accept responsibility for the act or omission that forms the basis of the offence that he/she is alleged to have committed, and be prepared, for the purpose of the diversion, to fully and freely disclose and discuss those acts or omissions before the Mi'kmaq Justice Panel.
- 3.2.3 The person diverted must, having been informed of the diversion program, fully and freely consent to participate, having been given a reasonable opportunity to consult with legal counsel.
- 3.2.4 In the absence of special factors, in respect of the matters specified herein, the following Mi'kmaq are suitable persons to be routinely diverted:
 - i. a member of the Shubenacadie Band and,
 - ii. a person who does not have a significant criminal record, who has not been removed from a previous diversion agreement for failure to comply and who is not a risk to the community.

3.3 OFFENCE

- 3.3.1 There must, in the view of the responsible Crown Attorney, be sufficient evidence to proceed with the prosecution of the offence, and any such prosecution must not be in any way barred at law.
- 3.3.2 In the absence of special factors, suitable Mi'kmaq persons shall normally be diverted in respect of the following:
 - i. property-related offences occurring on the Shubenacadie Band Reserve that do not involve more than \$ 5,000.00 in loss or damage; and

- ii. Federal and Provincial Summary Conviction offences, except motor vehicle offences.

3.3.3 Notwithstanding anything provided herein, the following offences shall not be subject to diversion:

- i. homicide, murder, attempted murder, manslaughter, criminal negligence causing death;
- ii. armed robbery and other offences involving the use of firearms or weapons, the circumstances of which are considered major;
- iii. assaults causing serious bodily harm;
- iv. treason, armed insurrection;
- v. kidnapping;
- vi. arson, other than mischief;
- vii. other crimes of violence, the circumstances of which are major;
- viii. alcohol/drug related driving offences.
- ix. Family violence and sexual assault.

3.3.4 In respect of matters not described in paragraph 3.3.3, diversion shall take place with the concurrence of the Crown and the Shubenacadie Band.

4. DIVERSION HEARING

- 4.1 When a decision is made to divert a Mi'kmaq person, a Justice Panel shall be appointed by the Chief and Council of the Shubenacadie Band.
- 4.2 The diversion hearing must be held within 30 days following receipt of notification from the Crown Attorney that the person has been diverted.
- 4.3 The Panel shall consist of three members of the band appointed by the Chief and Council. If there is a Mi'kmaq victim from another Band, one member of the Panel may be selected by the Chief and Council of the Band of the victim if that Band wishes to participate in the diversion process.

- 4.4 In no case shall a Panel member be related by blood or marriage to the person diverted or the victim, if any. The Chief shall designate which member of the Panel shall be Chair, and the Chair shall be responsible for convening and administering the Hearing.
- 4.5 The Justice Panel shall hold a public hearing at the Shubenacadie Reserve , unless for good and sufficient reason, such as maintaining the confidentiality of the victim, a closed hearing is deemed desirable.
- 4.6 At a closed hearing, such persons as the Panel directs may be present.
- 4.7 The following are entitled to be present, provide information and make submissions, but not participate in the questioning process unless authorized by the Panel:
- i. the investigating police;
 - ii. the Crown Attorney
 - iii. the victim, if any, and a person on the victim's behalf;
 - iv. a person on behalf of the person diverted;
 - v. a representative of the Director of Community Corrections, Department of Solicitor General; and
 - vi. a representative of the Union of Nova Scotia Indians.
- 4.8 The Justice Panel may request other persons who have relevant information to attend all or portions of the Hearing for the purpose of giving information.
- 4.9 The hearing shall commence with an acknowledgement by the person diverted of his/her responsibility for the wrongful act or omission that forms the basis of the offence alleged and an explanation of his/her act or omission.
- 4.10 The person may be questioned by the Justice Panel, but not questioned by others without the permission of the Panel. Questions or areas of questioning may be suggested to the Panel by participants.
- 4.11 At the conclusion of the statements of the person diverted, other participants may provide information and make suggestions and submissions. The person diverted may at any stage be called upon by the Justice Panel to provide further information or explanations.

- 4.12 The Justice Panel shall, by consensus and with the agreement of the person diverted, determine an appropriate disposition of the case.
- 4.13 Without restricting the measures the Justice Panel may deem appropriate, the following may be considered as appropriate forms of disposition:
- i. restitution to and reconciliation with the victim and his/her family through a private or public apology, payment, work or service;
 - ii. community work or service consistent with procedures developed pursuant to 4.17;
 - iii. participation in training, education, spiritual, counselling or treatment programs;
 - iv. temporary banishment from parts or areas of the community, or from some or all community activities;
 - v. restrictive conditions on conduct, such as staying away from the victim, reporting to a designated person periodically, and good behaviour;
 - vi. a fee (which may be waived) or payment to the Band in respect of the costs of the hearing and the administration of the disposition agreement, if any, consistent with procedures developed pursuant to Section 4.17;
 - vii. payment not to exceed \$2,000.00 to the Shubenacadie Band pursuant to procedures made consistent with Section 4.17;
 - viii. any combination of the above.
- 4.14 The Mi'kmaq person who is diverted shall freely and voluntarily enter into a signed, written agreement which identifies his/her obligations to meet the terms of the disposition.
- 4.15 If the Mi'kmaq person who is diverted does not agree to sign the diversion agreement, the Justice Panel will ensure that the matter is referred back to the Crown Attorney who has charge of the case forthwith.
- 4.16 The Justice Panel shall ensure that the terms of the diversion agreement require that the obligations of the person diverted will be satisfied in sufficient time to

- 4.17 The Chief and the Council shall develop such procedures, pursuant to this document, to ensure an orderly, consistent application of the diversion process.

5. ENSURING COMPLIANCE WITH DIVERSION AGREEMENT

- 5.1 The Justice Panel shall ensure that the diversion agreement is closely monitored on an ongoing basis in order to determine whether the conditions of the agreement are satisfied as required.
- 5.2 If the person fails to comply with the diversion agreement, the Justice Panel shall review the matter consistent with procedures which are developed pursuant to Section 4.17.
- 5.3 The Justice Panel will notify the Crown Attorney in writing confirming whether the diversion agreement has been successfully completed or otherwise.

6. RECORDS

- 6.1 A person's compliance or noncompliance in a Mi'kmaq diversion program may be:
- i. brought to the attention of the Justice Panel;
 - ii. considered by the existing Criminal Courts in sentencing after a finding of guilt and
 - iii. considered by the Crown Attorney in deciding whether to divert.
- 6.2 All record of a person's participation in a Mi'kmaq diversion program shall be destroyed ten (10) years after the completion of a diversion agreement, and may not in any circumstances be used against a person after the expiry of five (5) years from the completion of a diversion agreement.

7. PROGRAM REVIEW

- 7.1 The terms of the Mi'kmaq diversion program shall be reviewed by the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band commencing twelve months following approval of the program by the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band.

- 7.2 All sections of the program are subject to revision with the agreement of the Attorney General and the Union of Nova Scotia Indians and the Shubenacadie Band which has implemented this proposal.
- 7.3 A meeting to review the Mi'kmaq diversion program may be held at an earlier time with the agreement of the Attorney General and the Union of Nova Scotia Indians or the Shubenacadie Band.

May 28, 1992

SHUBENACADIE BAND DIVERSION PROGRAM

PROCEDURES PURSUANT TO CLAUSE 4.17

These Procedures are made pursuant to Clause 4.17 of the Shubenacadie Band Diversion Program approved by the Tripartite Forum in December, 1991 and form part of that Program.

1. THE DIVERSION PROCESS

1.1 The Diversion Officer shall meet with the person diverted, or persons requesting information on diversion, to explain the diversion program and process and to ensure that the person freely and voluntarily agrees to participate in the program. The Diversion Officer may meet with the person before or after receipt of notification that a decision has been made by the Crown Attorney to divert. The person diverted, or considering diversion, shall be informed at this initial meeting of the person's right to obtain, at the person's own expense, independent legal advice on the diversion program.

1.2 Once a decision to divert has been made by the Crown Attorney and the Diversion Officer is satisfied that the person understands and voluntarily agrees to participate, the Diversion Officer shall request the Chief and Council to appoint or assign a Justice Panel to hear the case.

1.3 The Diversion Officer shall arrange a date, mutually convenient to all concerned if feasible, and place on the Reserve for the Diversion Hearing and shall accordingly notify the person diverted, the members of the Justice Panel, the responsible Crown Attorney, the investigating police officer, the victim if any, and the Director of Community Corrections or designate.

1.4 At the conclusion of the Diversion Hearing the Diversion Officer shall prepare a written Diversion Agreement incorporating the terms of the disposition arrived at, including any fee or costs or payment to be made to the Band, and shall meet with the person diverted to explain the Agreement and to ensure the person understands that person's obligations. The person diverted shall sign the Agreement and shall be provided with a copy. A copy of the signed Diversion Agreement shall be sent forthwith to the Crown Attorney and to the investigating police officer.

1.5 The Agreement shall state that the person diverted understands his or her obligations and freely and voluntarily agrees to the obligations. The Agreement shall specify that the person diverted shall meet with the Diversion Officer when requested to review progress in complying with the Agreement.

1.6 The Diversion Officer shall monitor progress in complying with the Agreement, and may seek information from others concerning

compliance.

2. COMMUNITY WORK AND SERVICE

2.1 The Diversion Officer shall keep informed of projects in the reserve community that would be suitable to provide a work or service opportunity for a person diverted and shall make this information available to Justice Panels.

2.2 A person shall be designated to supervise and oversee each community work and service project, and that person shall report periodically or as requested to the Diversion Officer on the progress of the person diverted. The person supervising community work shall not be paid for such supervision from the Diversion Program or funds allocated for the Diversion Program.

2.3 The length of time for which a person may be requested to provide community work or service shall not exceed 200 hours. If the person is unemployed, the number of hours should not exceed 35 per week; if employed, the number of hours should not exceed 10 per week.

3. THE HEARING

3.1 At the Hearing, the Chair of the Justice Panel shall open the hearing. The Chair shall introduce himself/herself and ask if any members of the press or media are in attendance. If any are, those persons shall be asked to remove themselves from the hearing. A member of the press or media wishing to remain may be permitted by the Panel to be present as a member of the general public if agreeing not to publish or broadcast or report on the identity of the person diverted or of the victim or the circumstances of individual cases. After dealing with the press and media issues, the Chair shall introduce the other members of the Panel and request those persons present (other than the general public) to introduce themselves, indicating their reasons for attending.

3.2 The Chair shall provide a brief introduction to the hearing process to include purpose, procedures and parameters as well as an outline of the role of the Panel in the Hearing. Any preliminary questions shall be answered at this point. Only one person may speak at once.

3.3 The Chair shall request input from those present as follows:

(a) The person diverted shall be asked to provide a detailed account of the circumstances giving rise to the charges;

(b) The victim, if any, or someone on behalf of the victim, shall be asked to describe the incident, the impact of the incident on the victim and his/her expectations of the Hearing. If the victim or someone on behalf of the victim is not present and the victim has sent a written statement, this shall be read to the

Panel and those present;

(c) The police shall be asked to present their report. If the police investigator is not present, a written police report may be read if one is available;

(d) Any witnesses shall be asked to describe what they know concerning the incident;

(e) Any other person entitled to participate shall be asked to provide any comments they may have; and

(f) With the permission of the Panel, any other person who requests to speak may be heard.

3.4 The Panel shall direct and facilitate participation and discussion regarding the facts that have been presented in order to clarify the issues involved and reach a consensus and agreement concerning an appropriate disposition of the case.

3.5 During the discussion, the Chair shall request the person diverted to indicate the measures he/she would be prepared to undertake and shall also consult the victim as to the type of compensation/restitution, if any, that would be appropriate.

3.6 Where the Hearing is unable to produce a consensus of opinion, or where otherwise deemed necessary or appropriate, the Panel may defer a resolution of the matter for a period not exceeding two weeks. During the deferral period the Panel members and/or the Diversion Officer and the person diverted may communicate with each other for the purpose of seeking a fair, just and mutually agreeable resolution to the case. If during that process a consensus is not reached as the appropriate disposition, the Panel shall at the end of the period make a non-negotiable determination as to what it considers an appropriate disposition, and this determination shall be communicated to the person diverted. The person diverted shall have one week from notification to accept or reject in total the Panel's proposed resolution. If the Panel's proposed resolution is not accepted by the end of the one week period, and in the absence of extenuating circumstances related to why the person has been unable to respond in the one week period, the Panel shall remit the matter to the Crown Attorney for resolution in the regular courts.

3.7 After a resolution has been agreed upon, the Diversion Officer or his/her designate shall meet with the person diverted to review the Diversion Agreement and the person's obligations.

3.8 The Justice Panel may award to the victim costs associated with travelling and being in attendance at the Hearing, and may specify the amount. The amount specified may be included in the Diversion Agreement, to be paid by the person diverted to the Band and processed in the manner specified in Part 4 of these Procedures. The costs awarded to the victim shall be paid to the

victim by the Band from monies collected under clause 4.1.

4. FEES, COSTS, PAYMENTS TO BAND

4.1 The Chief and Council may set a schedule of fees or costs that may be collected by a Diversion Officer or levied by a Justice Panel, and may set any guidelines deemed appropriate in respect of the payments to the Band. In the absence of fee and cost guidelines approved by the Chief and Council, a Justice Panel may not charge or impose the same. If the Chief and Council decide to impose a fee(s) or empower a Panel to charge a fee(s), the fee(s) may not exceed \$25.00. Such a fee(s) may be waived by the Panel in individual cases. Such a fee(s) is intended to defray some of the administrative costs of the Program. If the Chief and Council decide that Justice Panels should be able to obtain costs from the persons diverted, the maximum costs that may be proposed and agreed to by the person diverted is \$250.00. Such costs are intended to recover expenses associated with that person's hearing, such as the travel expenses and per diems of the Justice Panel members and the expenses of the victim to attend the hearing. In the absence of guidelines from the Chief and Council concerning payments to the Band, a Justice Panel may not require, and a person diverted may not be requested to make, a payment to the Band in excess of \$1,000.00. Such a payment to the Band is intended to offset some of the expenses of administering and operating the Diversion Program.

4.2 All fees, costs and payments made to the Band by persons diverted shall be deposited to a separate bank account maintained by the Band in the name of the Band at a Canadian chartered bank for the purpose of the Diversion Program, and only for this purpose [the "Diversion Account"]. This may be the same account maintained by the Band in respect of funding for the Program received from Canada and Nova Scotia. All monies deposited to the Diversion Account and all interest earned on the Diversion Account shall be expended by the Band for the purposes of the diversion program, and only for those purposes. Such purposes are the payment of per diems and travelling costs to Justice Panel members, costs to the victim when specified by the Justice Panel, the salary and travel expensesⁿ (in the course of her duties, within Nova Scotia) of the Diversion Officer, the training within Nova Scotia of Justice Panel members and the Diversion Officer, the reasonable advertisement and production, publication, printing and distribution of informational material on the Program, book and record keeping and audits, bank charges, postage, stationary and supplies and such other items as are included in the approved Budget for the Program. In the event the diversion program is suspended or wound up, any remaining monies shall be distributed and disposed of by the Band as is directed and instructed by the Tripartite Forum. Proper accounting records shall be kept of all monies so received and expended, including a record of the date, amount and purpose of all receipts and expenditures of funds into and out of the Diversion Account. Canada and Nova Scotia shall have unrestricted access to the records related to the operation of the Diversion Account for

auditing purposes. The Band undertakes to reimburse to the Diversion Account any monies expended from the Diversion Account for purposes other than the Diversion Program.

5. FAILURE TO COMPLY WITH DIVERSION AGREEMENT

5.1 When a Diversion Officer is of the opinion that a person is not complying with the terms of a Diversion Agreement, the Diversion Officer shall attempt to meet with the person, discuss the situation and, if still of the opinion that the person has not been complying with the Agreement, provide the person with both a written and verbal warning and direction to comply. Such a meeting and warning should be the normal process but is not a prerequisite to the Diversion Officer bringing a case directly to a Justice Panel; a Diversion Officer may proceed directly to a Justice Panel if in the Officer's opinion circumstances warrant.

5.2 If, after issuing one warning or making reasonable efforts to meet with and warn the person, the Diversion Officer remains of the opinion that the person is not complying and is not likely to comply with the Agreement, the Diversion Officer shall

(i) inform the Justice Panel which made the original disposition, or such other Panel as the Chief directs; and

(ii) convene, or attempt to convene, a meeting of the Panel with the person diverted.

5.3 The Justice Panel shall review the situation with person diverted, but may act without the person diverted being present if securing attendance is not feasible. The Justice Panel may receive information from the Diversion Officer, the person or persons supervising work or service and others having relevant information. In the event that the Panel finds the person has not complied with the Agreement and compliance to the original or a modified Agreement is not likely, the Panel shall inform the responsible Crown Attorney, who may then take such action as is deemed appropriate.

6. ADJUSTMENTS AND AMENDMENTS TO PROCEDURES

6.1 Justice Panels may, within the spirit and intent of these Procedures, adjust or modify the letter of the procedures in Part 3 as they deem appropriate in order to dispense justice fairly or to accommodate unusual circumstances.

6.2 The Chief and Council may, within the spirit and intent of these Procedures and subject to clause 6.4, amend the provisions contained in Parts 1, 2, 3 and 5 of these Procedures.

6.3 The Chief and Council may not amend or change the provisions contained in Part 4 of these Procedures without the express written approval of the Attorney General.

6.4 In the event the Chief and Council consider it advisable to amend the provisions contained in Parts 1, 2 or 5 of these Procedures, they shall consult with the Attorney General and consider the views, if any, expressed by the Attorney General on the amendment being considered. The Chief and Council agree that if they cannot reach a consensus with the Attorney General on appropriate amendments they will not amend Parts 1, 2 or 5.



**SHUBENACADIE BAND
DIVERSION OFFICE**

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Shubenacadie Band Diversion Program

Justice Panel Selection Process

1. Community orientation of the Shubenacadie Band Diversion Program (SBDP) Clause 4, sub-section(s) 1 and 4.
2. Seek input and nominations from the community to recommend individuals from the community to be recruited and recommended for Justice Panel consideration.
3. Actively recruit individuals for Justice Panel consideration.
4. Develop a criterion of eligibility for individuals actively seeking Justice Panel candidacy.
5. Develop an interview guideline for Justice Panel candidates.
6. Interview and recommend individuals for Justice Panel appointment.
7. Seek consensus from Chief and Council for Justice Panel appointment.
8. Train/orient Justice Panel appointees with the SBDP and Procedures Document Pursuant to Clause 4.17 of the SBDP and other related materials.
9. Develop short and long term training/orientation packages appropriate for delivery to Justice Panel Members.
10. Gather input and reflection on direction of Justice Panel and diversion process.
11. Actively recruit alternate Justice Panel candidates through network of Justice Panel appointees, community and Chief and Council.
12. Provide continuity in training/orientation/education/awareness/policy etc..



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**Shubenacadie Band
Diversion Program**

**(S.B.D.P)
June '92**

Program Overview

The Project is currently in its fourth month of operation and has to date successfully completed and or established;

- * Procedures Document Pursuant to Clause 4.17 of the S.B.D.P. Finalized
- * Diversion Hearing Training Package (short-term) - in co-operation with the Department of Solicitor General
- * Establishment of a (12) twelve person Justice Panel with 2 two alternate members
- * Program evaluator and evaluation recognized
- * Selection and hiring of Part-time assistant
- * Office / files / accounts set-up
- * Justice Panel Training / Orientation delivered
- * Solicitor General and Attorney General personnel (Marc Chisolm, Fred Honsberger), orientation to Police Forces and Crown's re: S.B.D.P.
- * Orientation with Attorney General / Solicitor General / R.C.M.P. / Indian Brook Residence at Indian Brook Reserve
- * Mediation and Arbitration Training for Diversion Officer
- * Program Overview and Discussion, Indian Brook Reserve
- * Briefing with Tri - Partite Policing Sub-Committee

Further program developments too numerous to mention, which are of equal importance include: documentation, budget preparation, networking, presentations, resource access, community sensitization, service providers information, referral etc.....



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Justice Panel and Conflict of Interest Guidelines

Please be advised that all members are required to adhere to all of the guidelines, in regards to Diversion hearings, training/workshops and meetings.

As well as the "representation" on behalf of the Shubenacadie Band Diversion Program. Should these guidelines not be met, suspension or dismissal shall result.

They are as follows:

1. No member of the Panel shall attend hearings, training or meetings, under the influence of alcohol or drugs. Nor be under the influence while in the capacity/role of representation of the Program.
2. No member shall accept bribes, regardless of what the bribe may entail, from the offender, offenders family and friends or victim, as well as anyone directly connected to any of the hearing procedures.
3. No members shall breach the confidentiality of any of the hearings and/or any information in relation to the Diversion Program.
4. Any member that has criminal charges pending, will have to discuss the issue with both the Diversion Officer and Panel, to determine a fair course of action.
5. No member shall without adequate prior notice, be absent from more than (3) hearings, training/workshops or meetings consecutively.
6. Profanity and/or insults will not be tolerated from any member, against the Program, Diversion Officer, other panel members, offender and family, victim or any person(s) in connection to the Hearing process.

7. Resignations of panel members have to be in writing and a notice of (2) weeks given to the Diversion Officer.
8. Any other conflicts that may arise, will be discussed between the Diversion Officer or designate and the individual. To ensure resolution.
9. In regards to Subsection 4.4 of the Diversion Program Outline; "no member of the Panel, can be related by blood or marriage." to the person being diverted or victim.
10. All members should be willing to do their job, without hesitation and/or conflict. All concerns should be brought to the Diversion Officer or designate, as soon as possible. Any and all concerns should be writing or it shall not be considered a legitimate concern.

In closing, note that as a member of the Panel, you are not above or immune to the law. Therefore strict adherence to the function of your role is of the utmost importance. Any item or concern not mentioned herein will be brought to the attention of the Diversion Officer and Panel for resolution.

PRELIMINARY TRAINING SCHEDULE

Cross -Cultural Training (Delivered to CSC Staff)

- 1) Program developed by the committee (or members of the committee)
- 2) One day long

Correctional Service of Canada Training (Delivered to Community Committee)

- 1) History of the Project:
- linking with the Mission, Corporate Objectives and Correctional Strategy.
- 2) Objectives of the Project (the Federal Corrections Viewpoint):
- 3) Overview of the Criminal Justice System:
 - a) Police
 - b) Courts
 - c) Corrections
 - juvenile/adult probation
 - parole etc.
- 4) Overview of Process from Sentence to Warrant Expiry Date (W.E.D.)

Examine the 3 stages

- a) Pre-incarceration /sentencing
 - b) Incarceration
 - c) Release
- 5) Community Assessment (CA):
 - a) What is a CA?
 - b) Who does the CA?
 - c) Why are CA's done?
 - d) Where are CA's done?
 - e) When are Ca's completed?
 - 6) Case Management:
 - a) Case Preparation
 - b) Case Supervision
 - i) Conditions of Parole
 - ii) Warrants & Suspensions
 - iii) Reasons for Suspensions
 - iv) Revocation
 - v) Effects of Revocation & Suspension
 - vi) The National Paole Board

7) Community Resources and Programming:

8) Special Programs and Offenders:

- a) Sex Offenders
- b) Female Offenders
- c) Mentally Ill Offenders
- d) Addictions

CROSS - CULTURAL TRAINING DRAFT

The Justice Advisory Committee Director in consultation with various Native persons and organizations and Corrections will develop a cross - cultural sensitization package. The package will be modelled appropriately for delivery to correctional personnel and generic in principle for adaptation.

1. Mi'Kmaq Historical Background

- Mi'Kmaq Nation, Pre/Post European contact
- Overview of Mi'Kmaq agencies etc.
- Political Structure ie. Grand Council
- Demographics/Population
- National Native Structure

2. NATIVE COMMUNITY NORMS OF SOCIALIZATION

- children and elders
- blood
- parenting
- social skills
- discipline techniques

3. CULTURAL UNDERSTANDING

- Catholic Church
- Residential School
- Centralization
- Natives understanding Natives
- Value System
- Language
- Spirituality

4. RACISM AND PREJUDICES

- Native vs Native
- assimilation
- Non-Native attitudes
- Marshall Inquiry
- Marshall Recommendations

5. SOCIO-ECONOMIC PROFILE

- education
- language
- housing
- gambling
- alcohol/drug abuse
- family violence
- sexual abuse
- sexual attitudes and AIDS
- marriage, common-law and single parenting
- suicide
- self-esteem, worth and respect
- teenage pregnancy
- extended family
- crime, birth and death rate

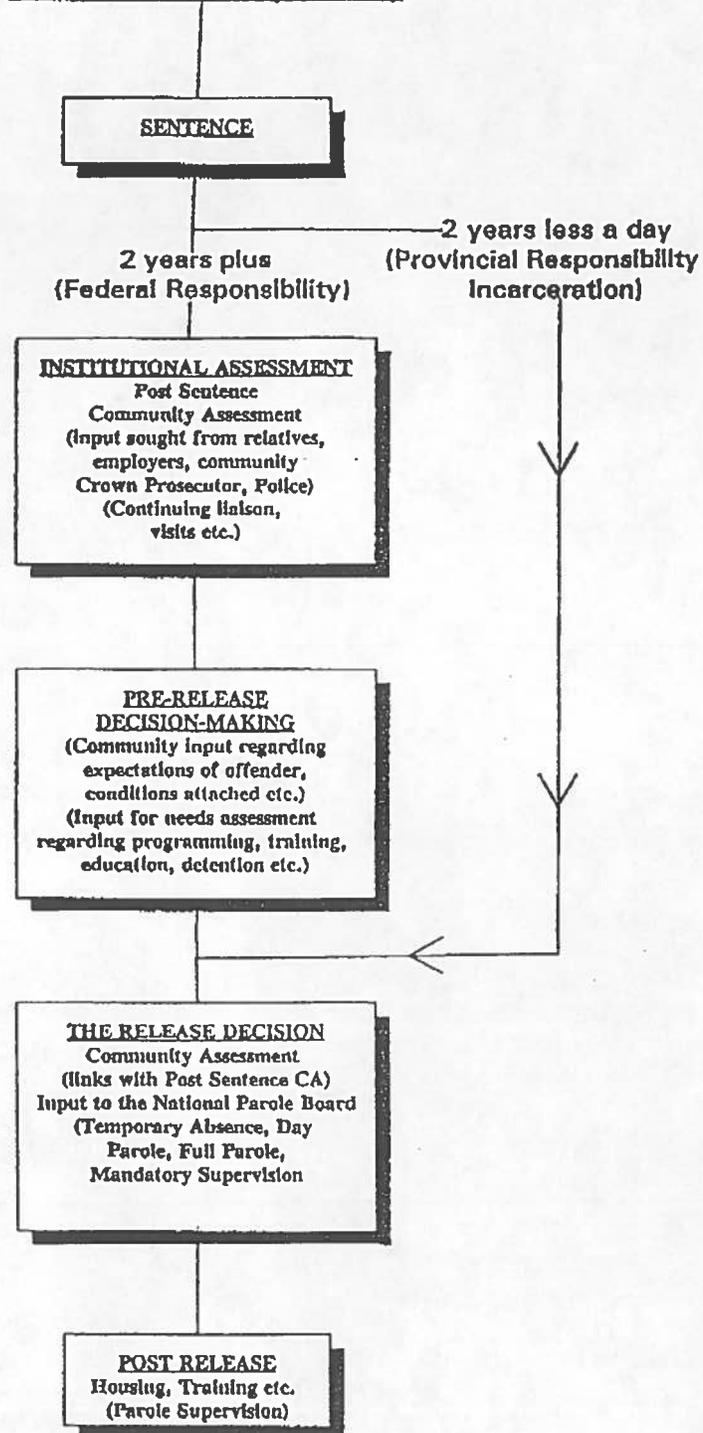
6. BAND INFRA-STRUCTURE

- Chief and Council
- Band By-laws
- Indian Act
- Constitution
- Jurisdiction
- Federal responsibility
- Welfare
- Band Membership
- Band support and resources

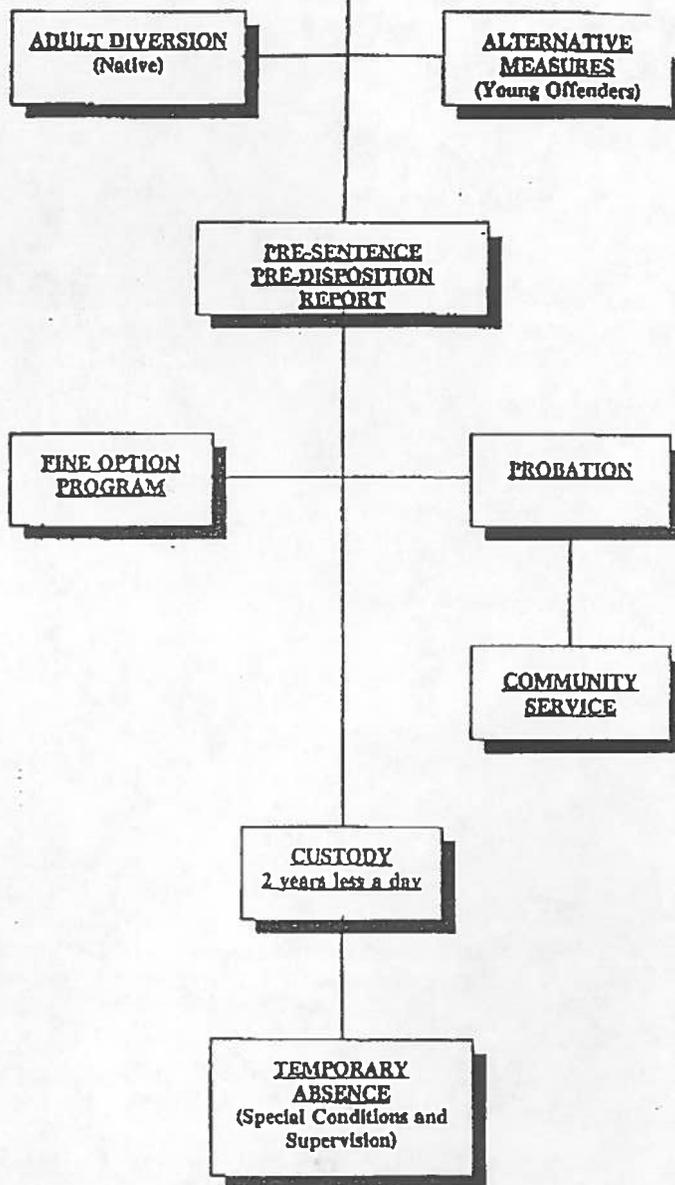
DISCUSSION PAPER

POTENTIAL POINTS FOR COMMUNITY INPUT/DIRECTION

Areas of Federal Responsibility



Areas of Provincial Responsibility



(Parole is a Federal Responsibility)

AREAS FOR POTENTIAL INPUT BY
THE COMMUNITY DECISION-MAKING COMMITTEE

Areas of Federal Responsibility

After receiving a sentence of more than 2 years an offender falls within the scope of federal responsibility. Following is list of the potential areas where a community decision-making committee could provide assistance and direction within the federal correctional process.

1. Post Sentence Community Assessment:

- * Provide input for community assessment.
- * Assist in needs assessment and identification of criminogenic factors.
- * Liaise with relatives of offenders for information exchange purposes.

2. Pre-Release Decision-Making:

- * Providing community expectations and special conditions attached to release.
- * Providing input for programming, training, educational programs for the offender.
- * Providing input for decisions on detention.

→ is this mandatory supervision?

3. The Release Decision:

- * Provide input for Community Assessment (builds on Post-Sentence Community Assessment).
- * Input to the National Parole Board on the decision to release to the community. This includes decisions on Temporary Leave Absences, Day Parole, Full Parole and Mandatory Supervision (Detention).

4. Post Release Decision:

- * Providing community liaison services between offender and available community support. Provide input as to what training and programming services are required.
- * Conducting Parole Supervision.

Areas of Provincial Responsibility

1. Alternative Measures:

- * Serve as volunteer co-chairperson of Alternative Measures Hearing.
- * Assist in developing Alternative Measures placements where CSO is appropriate.
- * Assist in identifying other Alternative Measures as may be appropriate to the Shubenacadie Band Reserve

2. Community Service Work Order Program:

- * Develop network of placements on Reserves.
- * Assist Probation Officer by Providing information regarding suitability of potential probationers for Community Service Worker Orders
- * Assist in the supervision of Community Service Work.
- * Inform Probation Officer/Court of success or failure of offender in complying with conditions of Community Service Order.

3. Fine Option Programs:

- * Sign contract with Province to serve as a Work Resource Centre, thereby obtaining \$40.00 per fine option placement on Indian Brook Reserve consistent with terms in Fine Option Contract (Identify work placements, assign offender to work placement, supervise offender, respond to Probation Officer regarding successful/unsuccessful completion).

4. Service to Incarcerated Offenders:

- * Liaise with relatives of offenders for information exchange purposes.
- * Visit offender at correctional institution following initial incarceration and provide support services to individual offender thereafter as required.
- * Serve as resource to institution Classification Committee regarding programming for individual offender.

5. Native Program Services:

- * Serve advisory role capacity to Superintendent regarding overall development of programs for native offenders.
- * Assist in program delivery for native offenders.
- * Assist in sensitizing staffs to the needs of native offenders.

6. Temporary Absence Program:

- * Assist Classification Committee in identifying appropriate release program for specific native offenders.
- * Provide information for the community investigation portion of the Temporary Absence Investigation.
- * Identify potential Community Inmate Volunteer Work Projects on Reserve and the supervision of inmates at such work projects.
- * Supervise inmates on Temporary Absence.
- * Work with Institution/community Liaison Officer (Probation Officer).

Although the above list is incomplete, it should provide sufficient scope for further discussion and the development of a networking process.