

## **POLICY SUMMARY**

### **Fair Treatment of Indigenous Peoples in Criminal Prosecutions in Nova Scotia**

#### **Decision to Prosecute**

When a Crown Attorney becomes aware an accused person is Indigenous, he/she must review the evidence to identify any possible issues of racism and discrimination by law enforcement or any government agencies involved in the matter. The Crown must consult with his/her Chief Crown Attorney if any issues of racism or discrimination are suspected.

#### **Restorative Justice**

The Crown Attorney must consider whether Restorative Justice – either pre or post conviction -- is an option because it's an important means of reducing the number of Indigenous persons in custody and is consistent with Indigenous justice principles emphasizing community healing and community-based penalties.

#### **Arraignment**

The Crown will confirm the accused's Indigenous status and advise the Court. The Crown will also confirm whether the accused wish to have their case heard in Gladue Court or, if Gladue Court is not available, will ensure the accused has the option to be represented by the Mi'kmaw Legal Support Network.

#### **Bail**

The Crown must apply the general principles set out in the Criminal Code and consider the background and unique circumstances of the accused and their connections to the Indigenous community. Seeking detention will be an exceptional measure unless releasing the accused jeopardizes the safety of the community or the victim. The Crown will consider the option of having a Gladue report prepared or Gladue factors considered. The Crown will assess the accused's ability to produce a release plan by considering whether the accused is affected by substance abuse; poverty; overt or systemic racism; family breakdown; unemployment; or dislocation. If such factors are present, the Crown will consider bail options which will safely release an accused into the community.

#### **Trial**

The Crown should inquire as to whether the Indigenous victim and/or Indigenous accused is interested in support from the Mi'kmaw Legal Support Network; whether either accused or victim require interpretation services at trial; and whether either wish to use an eagle feather when promising to tell the truth before testifying. During trial the Crown must be mindful of the cultural differences in the manner of speech of an Indigenous witness and in demeanor, such as direct eye contact being considered a mark of disrespect.

#### **Sentencing**

Indigenous persons are entitled to have a Gladue Report prepared and, unless the Indigenous person waives that right, the Crown will request a Gladue Report prior to sentencing. The Crown will accommodate the Indigenous person's request for a sentencing circle and attend. The Crown will ask the Court to take notice of the systemic and background factors affecting Indigenous peoples. The Crown must explore all non-custodial options when making a sentencing recommendation and should consider secure custody as a sentence of last resort.

#### **Languages**

The Crown will recognize that some Indigenous persons speak French as a first language and an accused has a right to French or bilingual criminal court proceedings. The Crown also recognizes that Mi'kmaw is the main language spoken in certain Indigenous communities and translation services may be needed for both simple and complex court proceedings.