



# **The Development of a Community Based Participatory Mediation Approach to Justice**



CREE NATION OF  
W E M I N D J I

**Cree Nation of Wemindji  
Presented by  
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- **During the past year, the Cree Nation of Wemindji Police Services have implemented an intense drug, alcohol and organized crime task force that has created a number of open files and subsequent arrests. These activities are considered major crimes and will require court attention.**
- **With increased transience in the community and the real possibility of additional sources of money being available for crime, these policing actions will continue for the unforeseen future.**
- **The result of this change in community activity is the reality that petty crimes are not being addressed by the courts in a manner that is consistent with the wishes of the community. With the circuit court schedule, petty crimes are often 'put over' to future dates and then they may be discharged due to the poor response time for the nature of the crime.**

- **Research and local knowledge has confirmed that if small crimes are not addressed in a timely and effective manner, the perpetrator understands that his/her behavior is accepted by the community and considers it condoned. Many of the crimes are being committed by youth who are not seeing the consequences of their behavior and may interpret this as permission to move onto serious and dangerous crimes.**



## **The Cree Nation of Wemindji – Local Mediation Council**

- **Objectives:**
- To enable the Wemindji community to re-assert their traditional practices with respect to the conduct of their people;
- To facilitate greater involvement of the Wemindji community in the administration of justice;
- To restore a greater degree of responsibility to the Wemindji community for the conduct of its people who come in conflict with the justice system;
- To provide an alternative to the mainstream court process which will encourage offenders to accept responsibility for their conduct, to be accountable for their conduct by becoming active in rectifying the wrong which they have caused and to address the underlying problems which may have contributed to their conflict with the justice system;

- **To give an opportunity to the victims to present their point of view and to participate, if so desired, in a process which aims to achieve reparation and reconciliation; and**
- **To ensure that the parties to the proposed protocol understand their respective roles and responsibilities in the diversion process which will be followed.**



- **An adult who is a member of the Wemindji community and who is alleged to have committed an offense in his or her community is eligible for diversion instead of judicial proceedings in accordance with this proposal;**
- **The following criteria will apply to all cases referred to the Mediation Council:**

**This program will not apply unless the prosecutor is of the opinion that the person is not eligible to the non judicial treatment program\* of certain offenses committed by adults;**

**The person has been charged with an eligible offence set out in the following section and must been required to appear in court;**



## **Eligibility and criteria for reference of cases to Mediation Council**

**The alleged offence(s) for which the accused person has been charged must have been committed in Wemindji;**

**The Prosecutor has the responsibility to assess the case and decide if the charge(s) will be diverted to the Justice Council for disposition. The Prosecutor should take into consideration a number of factors, including but not limited to the following:**

- The type of offence;**
- The circumstances of the offence and the fact that there is sufficient evidence to proceed with the prosecution of the offence;**
- The criminal record of the applicant's history with the police and the court;**



- **The safety, needs and views of the victim;**
- **The views of the police officers; and**
- **The recommendation of the Responsible person**



- **After being referred to the Mediation Council by the Prosecutor, the accused person must, after being given the opportunity to obtain legal advice, admit in writing his or her responsibility for the act or omission given rise to the offence that he or she is alleged to have committed and must freely consent to participate in the Program. He or she must undertake to attend and fully participate at the hearing of the Justice Council and to comply with all the conditions of the Disposition Agreement, he or she will be brought back to court to have the charge(s) dealt with in the regular court system. However, upon successful completion of the program, the prosecutor shall send a copy for inclusion in the Court record so that the Court may arrive at a decision regarding proceedings against the person under the terms of section 717 (4) of the Criminal Code.**



- **The responsible person (Mediation Co-ordinator) has the responsibility, in collaboration with other (parties such as the Justice Council, to evaluate with the accused person, his or her interest in participating in a diversion process and, if applicable, the disposition that could be agreed upon.**
- **Program applicable to certain adult offenders who are not criminalized for certain criminal offences whereby no charges are laid for certain crimes. The person is notified by letter about the application of the program and of the fact that further offences will be prosecuted.**

- ***Class I***

- All summary conviction offences and all offences that were hybrid at the time that the agreement came into force are eligible for diversion.

- ***Class II***

- Class II offences include all Criminal Code of Canada offences that are not included in either Class I or Class III. Class II offences are not normally eligible for diversion; however, Class II offences embrace a wide range of conduct and the Prosecutor will therefore carefully consider all of the circumstances of the offence, those of the accused person and the needs of the victim and the community before deciding whether the charge will be diverted to the Program.

**Offences Eligible for diversion of cases to Mediation Council**

- In cases where a person is charged with multiple counts on a single information, the request for diversion will be evaluated on the basis of the most serious offence on which the prosecutor has a reasonable prospect of conviction and intends to proceed. The prosecutor may choose to serve a more serious and non-divertible charge from the charge(s) that is divertible.



- ***Class III (not eligible for diversion)***
- Except for offences specified at sections 250 and 335 of the Criminal Code of Canada, all offences involving the operation of a motor vehicle;
- Offences involving abuse of children;
- Any sexual offence whether against adults or children;
- Any offence committed in a spousal or dating context;
- Any offence involving the abduction of a person under fourteen;
- Offences involving child pornography;
- Any offence involving the abduction of a person under fourteen;
- Offences involving child pornography;
- Any offence implying organized crime or gang;
- Any offence concerning drugs or other controlled substances.

- All firearms and all offences where a firearm was used;
  - All offences concerning prostitution, disorderly houses, gaming and betting (part VII of the Criminal Code of Canada);
  - Offences against the administration of Law & Justice (Part IV of the Criminal Code of Canada);
  - Offences involving the death of a person;
  - Offences that have a minimum penalty.
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- All hybrid offences against the person that are punishable by ten years of imprisonment will be Class 3 offences unless no important damage or loss has been caused.

**The Prosecutor decides if the accused person is suitable for the program and refers the case to the Local Mediation Co-ordinator (LMC) to evaluate for suitability.**

**The decision to refer the case shall be made within a maximum delay of days to be established with the Prosecutor.**

**If the Mediation Council agrees to accept the case, it shall provide the individual with a preliminary explanation of the Program. If the person wishes to participate in the program, the Co-ordinator shall have the individual complete the agreement form.**



## **Procedures for the Mediation Council**

**The Co-ordinator may also make inquiries as to whether there are extended family members and friends of the individual or the victim who may wish to participate in the hearing of the Mediation Council or eventually provide support for the individual or the victim.**

**Unless it is inappropriate and unfeasible, the Co-ordinator must contact the victim of the offence to ascertain if he or she would be interested in participating in the process. Victim participation in the Program is vital and will be encouraged. However, the Co-ordinator will respect the wishes of the victim and the case will proceed with or without their input. Diversion of charge(s) does not prevent the victim from initiating civil proceedings.**

- **In certain cases, the Co-ordinator may be asked to provide additional information to the Prosecutor to assist in the decision for possible diversion.**
- **The Co-ordinator will research, design and reserve possible alternative community service sentences as well as traditional or historic alternative measures to deal with the offences that are diverted to the Council. This information will be shared with the sitting members of the Council for consideration at the time of sentencing.**
- **Once the accused person agrees to participate, the Co-ordinator will begin the process of arranging a date for the individual to meet with the Mediation Council.**

- **An accused person may at any time terminate the diversion process and exercise his or her option to have the charge(s) heard by the court.**
- **Once the accused has agreed to diversion, the prosecutor shall ask the Court, if necessary, to adjourn the case in order for the individual to appear before the Mediation Council and to complete the terms of the Disposition Agreement between the individual and the Mediation Council.**



- **Where the person attends meetings of the Mediation Council and satisfies the requirements set forth in the Agreement, the Co-ordinator shall provide the Prosecutor with a report of this. If the Court requires the author of this report to be present in court to discuss the Agreement, then the Co-ordinator shall be present and prepared.**
- **If, in the opinion of the Medication Council, the diverted individual does not attend the hearing with the Medication Council ,does not fully complete the Disposition Agreement or does not fully comply with the terms of the Disposition Agreement, the Mediation Council shall immediately inform the Prosecutor of these facts in writing, and the charge(s) in court will proceed on its normal course.**

- **Disposition Agreements**
- **A Disposition Agreement between the diverted individual and the Justice Council may include the following provisions:**
- **Community Service**
- **Restitution to the victim**
- **A letter of apology to the victim**
- **Treatment**
- **Counseling and**
- **Any other disposition which the Council considers appropriate, except that it may impose incarceration.**

- **The Council will be composed of seven members of the community who are in good standing. The term for the appointed positions is five (5) years. This will allow adequate time for training and skill development. Following that initial period, should a member wish to be replaced on the Council, this will be done on a rotation basis – thus ensuring that a minimum of five (5) members will always be trained and prepared to sit at duly called hearings.**
- **Members will be required to attend appropriate training and ongoing workshops for local justice groups.**
- **Members will be required to submit annual CPIC reports and such reports will be free from criminal activity.**

- **Members will be required to provide counsel and direction for diversionary discipline in cases that are referred to the Council for administration and monitoring.**
- **Any three members shall sit on cases. Members will be required to state any conflict of interest prior to sitting on any such hearings. They will then be replaced by a member who does not have a conflict.**
- **Members may be required to confer with legal counsel or the judiciary from time to time.**



- **This is a full time permanent position that reports to the Local Mediation Council. For personnel standards, the position will be administered by the Cree Nation of Wemindji and will receive supervision from the Wellness Supervisor.**
- **Duties:**
- **Will attend appropriate training when required;**
- **Will attend all court hearings and will provide resourcing to legal counsel and the court as required;**
- **Will review all referred cases with the court;**
- **Will interview the perpetrator and ensure that he or she understands the process of the Local Mediation Council;**



- *Position Description of Local Mediation Co-ordinator*

- Shall support the victim and encourage their participation in the Local Mediation Council process;
- Shall arrange for all appropriate presenters to attend the Local Mediation Council hearing.
- Shall provide information concerning alternative approaches to the members of the Local Mediation Council as requested.
- Shall ensure all documentation required by the court is completed in a timely manner;
- Shall research and maintain a list of possible community service projects for consideration by the Local Mediation Council.

## ***Qualifications***

- **Must have good communication skills in English, French and Cree;**
- **Must have a clear CPIC and be willing to live a role model positive lifestyle (without alcohol or drugs)**



## **Accomplishments to Date**



- **Community presentation and consultation of community issues and concerns (2007)**
- **Community presentation of research alternative approaches – Mediation supported by Community Resolution (2008)**
- **Discussions with the Circuit Court Officers (2006, 2007 & 2008)**
- **Intensification of police action in respect to local illegal activity**
- **Police presence in school**
- **Policing strategies for drug and alcohol surveillance intensified**
- **Presentation of plan to the Cree Regional Justice Committee (2008)**
- **Appointment of Deputy Chief Dennis Georgekish to the Justice file**
- **Hiring of Lyn St. Louis (Taiga Vision) to present community training and specialized training for the Mediation Council**
- **Posting of position of Mediation Co-ordinator**
- **Advertisement of program and the need for community people to be trained.**