

AN ABORIGINAL COURT IN ELSIPOGTOG FIRST NATION

PRESENTATION TO NEW BRUNSWICK JUSTICE OFFICIALS, JANUARY 2010

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PRESENTATION OVERVIEW

- Citizenship, Democracy and Justice
- Trends in Justice: Youth, Restorative Justice, Problem-Solving Courts, Aboriginal Initiatives
- Problem-Solving / Wellness Courts
- Recent Developments Re Aboriginal Justice Initiatives
- Elsipogtog Crime –Related Issues
- Experiences Elsewhere Researched
- Implications and Possible Directions for Elsipogtog

CITIZENSHIP, DEMOCRACY AND JUSTICE

- Marshall and Parsons on Citizenship and Liberal Democracy
 - Post WW2 Citizenship, Social Development and the Evolution of the Modern Welfare Nation-State
 - Phases: Civil (Legal) / Political / Social Rights
 - Progressive Evolutionary Process Provides Societal Stability and Integration

CITIZENSHIP, DEMOCRACY AND JUSTICE

- Sen (Idea of Justice); ‘Democracy is to be judged not only in terms of its formal institutions but also by the extent to which different voices from diverse sections can actively be heard’

SOCIAL RIGHTS

- Responding to Social Rights (Actively Hearing Diversity, Considering Conditions)
- In the Justice Field “Expansive Justice Mechanisms to Respond to Interrelated Problems and Others’ Perspectives” (The Third Wave of Access to Justice)
- Kindred Social Movements (Youth, Problem-Solving Courts, Restorative Justice, Aboriginal Justice)

ROOTS OF THE DRUG TREATMENT COURT

The general concept of the
problem solving court (PSC)

Criminal Justice System (CJS) and the
problem of substance abuse

The Drug Court philosophy emphasizes
abstinence not harm reduction

PSC's KEY FEATURES

- Considerable Variety in Implementation
- Eligibility Criteria (Addiction plus other)
- Team approach (collaboration of justice/treatment, court roles)
- Centrality of the judge
- Processes and Court Dynamics
- Rehab and Monitoring (Intensive, Extended)

KEY FEATURES OF PSC COURTS

VARIETY OF TYPES AND IN IMPLEMENTATION

ELIGIBILITY CRITERIA

- ADDICTION
- OFFENCE TYPE
- PERSON TYPE

VOLUNTARY

- LEGAL ADVICE
- WAIVERS

THE TEAM

- COMPOSITION
(JUSTICE & HEALTH)
- THE JUDGE
- PROSECUTION & DEFENCE
- TEAM MEETINGS

THE PROCESS

- PRE AND POST – ‘CONVICTION’
- TREATMENT PROGRAM
 - PHASES
(EVALUATION TO GRADUATION)
- PROGRAM
- LENGTH
- COURT DYNAMICS
 - JUDGE AND OFFENDER
 - REWARDS & PUNISHMENTS
 - CLOSE MONITORING

EVOLUTION

1. NUMBERS OVERALL

- MIAMI 1989: THE START
- 1994/95: SPIKE in USA
- 2007: 1700 DTCs in USA
1900 DTCs in WORLD

2. NUMBERS CANADA 6 to 9 DTCs

- TORONTO 1998 THE START
- 2003 SPIKE in CANADA
- 2007: TORONTO, VANCOUVER, REGINA,
EDMONTON, WINNIPEG, OTTAWA
- OTHER: OSHAWA, ST. JOHN, CALGARY

3. VARIETY

- ADULT & YOUTH DTCs
- PRE AND POST CORRECTION OPTIONS
- TREATMENT/JUSTICE LINKAGE
- TYPE OF SUBSTANCE ABUSE CONSIDERED

DTC FUNDING ARRANGEMENTS

THE AMERICAN MODEL

1. FEDERAL FUNDS

- FEASIBILITY FACTORS
- START UP FUNDING
- PROJECT FUNDING (3 YEAR)

2. STATE FUNDS

- SUSTAINABILITY

THE CANADIAN APPROACH

1. FROM JUSTICE (NCPC) TO HEALTH (\$1.4m) AND JUSTICE (\$2.4m) ANNUALLY

2. FEDERAL FUNDS PER 6 DTCs

- PROJECTS: \$400 K ~ \$700+K each, per year
- PROVINCIAL: IN – KIND CONTRIBUTION

3. FUTURE POLICY

CENTRAL ISSUES

ROLE CONFLICTS? PROSECUTION AND DEFENCE

ROLES OF DEFENCE COUNSEL AND TREATMENT PROVIDER MOST IMPACTED?

COERCIVE TREATMENT ?

OUT-PATIENT EMPHASIS

CHOICE OF FUNDING

- ALTERNATIVE DRUG PROGRAMS
- DRUG ADDICTS VS OTHER OFFENDERS

THE DTC RECORD

POSITIVE, OPTIMISTIC BUT NO SLAM-DUNK

COSTS - \$4K VS \$47K PER YEAR PER PERSON

- THE CRIME/SUBSTANCE ABUSE
LINKAGE AND COST SAVING

RECIDIVISM FINDINGS

- POSITIVE FOR THE GRADUATES
- SOMEWHAT POSITIVE FOR PARTICIPANTS
- SOCIO-DEMOGRAPHIC
 - ETHNIC AND GENDER VARIATION

WHAT THE SUCCESSFUL PARTICIPANTS SAY

EVOLUTION TWO

- DTCs NOW MORE INCLUSIVE re CRIMES & CONDITIONS FOR ELIGIBILITY
 - DRUG OFFENCES, CRIMINAL CODE, FASD
- MORE ‘HARM REDUCTION’
 - TOLERATING METHADONE USE
- FLUID BOUNDARIES re OTHER COURTS
 - COMMUNITY COURTS
 - WHITEHORSE Court, ALEXIS First Nation Court

THE HEALING TO WELLNESS COURT IN ABORIGINAL JUSTICE

1997: USA THE BEGINNING

2007: 75 COURTS (5 TRIBAL MENTOR
COURTS)

KEY COMPONENTS

SPECIAL FEATURES

TEAM COMPOSITION

TREATMENT INCLUSIVENESS

ALCOHOL & DRUGS FOCUS

RECENT DEVELOPMENTS CONCERNING ABORIGINAL JUSTICE INITIATIVES

- THE CONSTITUTIONAL ACT 1982
 - “The existing Aboriginal and treaty rights of the Aboriginal Peoples of Canada are hereby recognized and affirmed”
- FROM THE Nova Scotia MARSHALL INQUIRY 1990 (Fairness & Integration)
- TO RCAP 1996 (Autonomy & Difference)
- BUILDING ABORIGINAL JUSTICE CAPACITY

MARSHALL INQUIRY RECOMMENDATIONS

MI'KMAQ JUSTICE IN NOVA SCOTIA

- Criminal Court (Sit on Reserve, Court workers, Interpreters)
- Native Input into Cases and Sentencing (Justice Committees, RJ / ADR, Customs and Cultural Concerns)
- A Mi'kmaq Justice Institute (Research, Training, Liaison with Judiciary, Crown, Legal Aid, Barristers Society)
- More Native Presence among Police, Court-related Officialdom, Probation and After-care
- A Tripartite Forum on Native Issues (Cornerstone for the 3 Parties addressing all the Justice Issues and a model for going beyond the Justice area)

WHAT AGENDA IS TO BE FOLLOWED?

1. THE MARSHALL INQUIRY'S "FAIRNESS AND INTEGRATION" APPROACH 1990

- The Fate of the Inquiry's Recommendations
- The 1996 Meeting Of Nova Scotian Chiefs

2. RCAP'S "AUTONOMY AND DIFFERENCE" APPROACH 1996

- The Eight Key Points
(e.g., Core and Peripheral Cultural Salience)
- The Issue of Criminal vs. Family and Regulatory Justice (Recent Trends)

ROYAL COMMISSION ON ABORIGINAL PEOPLES (RCAP): PREMISES FOR THE NEW AGENDA FOR FN JUSTICE

1. Mainstream criminal justice system: Imposed, Alien, Does a poor job.
2. Treaty rights to develop alternatives exist
3. There are profound cultural differences between the Canadian (CJS) and the Aboriginal (AJS) approaches

CJS: Punishment vs. Restoration and balance

AJS: Noninterference and individual autonomy

4. Community control are appropriate given treaties, cultural differences, and pragmatic imperatives (e.g., Identifying with justice, effectiveness of ‘shaming’)
5. Core and peripheral foci (FN autonomy if a core focus and especially for the criminal law).

“Core” if: of vital concern to FN culture/identity and no major impact on adjacent jurisdictions. And if not otherwise the object of transcendent federal or provincial concern

6. Aboriginal society can act unilaterally with respect to core foci but if a matter is peripheral, it needs the agreement of other relevant orders of government before jurisdiction can be exercised.

7. Posits wide autonomy, but actually expects minor differences between Mainstream and Aboriginal views on the whole in the criminal justice field.

8. Standards of efficiency, effectiveness and equity may require a stronger cohesion of FN identity that transcends band affiliation.

FEDERAL ABORIGINAL JUSTICE FUNDING

- Funding Trends, Building Capacity for more Self-Government
- Taking Responsibility – Chief Denny’s Comments
- Criminal, Family and Regulatory Areas of Justice

ABORIGINAL COMMUNITIES & SPECIFIC JUSTICE CONTEXTS

- Policing
- Corrections
- Courts

ABORIGINAL COMMUNITIES AND POLICING CONTEXT

- Pre-FNPP (1991): Minimal involvement; leaving Ontario; Ass't Commissioner Head 1989
- FNPP Policy Tripartite Thrust
- “Would you say Canada’s approach to policing supports the federal government’s inherent right policy and the negotiation of self-government agreements”
- Auditor-General 2006 Critique: Accountability and Transparency

ABORIGINAL COMMUNITIES AND THE CORRECTIONAL CONTEXT

- Continued Over-representation, Late Parole and High Recidivism
- Flipside of Asian Inmates' Experience (Length of Sentence, Early Parole, Isolation and Revocation / Recidivism)
- CSC and NPB Initiatives but CSC Investigator / Ombudsman
- Some Progress in CSC (e.g. Pathways), Concern in NPB re Aboriginal Os and Vs
- Offenders and Victims Alienated
- What 's Missing- Community Engagement? Cultural Factor? Section 84 (Citizenship plus and Prevalence)?

ABORIGINAL COMMUNITIES AND THE CRIMINAL COURT

- Criminal Code and Sentencing Guides, SCC rulings and then
- Gladue 1999 (Ontario vs ROC)
- Court Workers / Aboriginal Duty Counsel
- Sentencing Circles
 - Variety, Symbolic Significance
 - Rarity, Restricted to Aboriginals (Judges' Views re Aboriginal Rights)

RELEVANCE FOR AN ABORIGINAL COURT AT ELSIPOGTOG

- Need for and Current Use of Provincial Court
- Capacity and Take-Off Stage for Development
- The Pragmatic Case (Efficiency and Effectiveness)
- Constitutional Rights and Government of Canada's Policies re Self-Government

A HEALING TO WELLNESS COURT IN ELSIPOGTOG?

THE EQUITY ISSUE REQUIRES IT

THE SUBSTANCE ABUSE LEGACY

- CURRENT CRIME / MENTAL HEALTH PATTERNS
- COMMUNITY VIEWS
- OFFENDER RECIDIVISM AND CORRECTIONS
- FASD ISSUES

THE COMMUNITY'S READINESS

- THE 2006 STRATEGIC ACTION PLAN (SAP)
- THE INFRASTRUCTURE CAPACITY

CHALLENGES

- NUMBERS AND SERVICE DELIVERY CAPACITY

ELSIPOGTOG JUSTICE CHALLENGES

- High Levels of Interpersonal Assault (Sexual and Other)
- High Levels of Domestic Violence
- High Levels of Property Offending
- High Levels of Substance Abuse
- High levels of Mental Health Act Interventions
- High Levels of FASD
- No Indication of Decline in Recent Years But Positives re Capacity, RCMP and Band Resolve

TABLE 1
A COMPARISON OF RCMP STATISTICS FOR ELSIPOGTOG AND
NEIGHBOURING COMMUNITIES
2003-2004

Year	Elsipogtog (pop. 2200)		Richibucto (pop. 1400)		St. Louis (pop. 1000)	
	2003	2004	2003	2004	2003	2004
Sexual Assault	18	14	2	3	2	2
Assault Level I	265	159	46	22	13	12
Assault Level II	60	42	6	2	3	0
Damage to Property	162	173	31	45	32	31
Suicides	0	1	0	1	0	0
Attempted Suicides	5	27	2	0	0	1
Spousal Assault (Male offender)	10	22	0	1	1	0
Spousal Assault (Female offender)	2	0	0	1	0	0
Mental Health Act	152	112	19	29	9	9

TABLE 2-1
ELSIPOGTOG AND NEIGHBOURING COMMUNITIES: A
COMPARISON OF POLICE STATISTICS 2005

VIOLATION (2005)	Elsipogtog (pop 2400)	Bouctouche MUN (pop 2500)	Richibucto MUN (pop 1400)
Intoxicated Persons Detention Act - Offences Only	3	0	1
Intoxicated Persons Detention Act - Other Activities	26	1	9
Mental Health Act - Offences Only	0	0	0
Mental Health Act - Other Activities	30	1	8
Fail to comply w/ condition of undertaking or recog...	1	0	1
Disturbing the peace	36	4	6
Resists/obstructs peace officer	3	0	0
Fail to comply probation order	3	1	2
Harassing phone calls	5	1	0
Uttering Threats Against Property or an Animal	3	0	0

TABLE 2-2**ELSIPOGTOG AND NEIGHBOURING COMMUNITIES: A COMPARISON OF
POLICE STATISTICS 2005**

VIOLATION (2005)	Elsipogtog (pop 2400)	Bouctouche MUN (pop 2500)	Richibucto MUN (pop 1400)
Breach of Peace	34	4	3
Public Mischief	2	0	0
Drug Offences – Trafficking	0	0	1
Total Sexual Offences	5	0	1
Robb./Extortion/Harassment/Threats	19	3	6
Assault on Police Officer	1	0	1
Agg. Assault/Asslt w/ Weapon or Causing Bodily Harm	18	0	1
Total Asslts (Excl. sex. asslt, Incl. Agg.Asslt, Asslt w/ Weap, Asslt Polic)	66	2	1
Total theft under \$5000.00	27	9	10
Break and Enter	32	3	5
False Alarms	31	0	9
Crime against property - Mischief (exclu. Offences related to death)	52	2	21

TABLE 3-1

ELSIPOGTOG AND NEIGHBOURING COMMUNITIES: A COMPARISON OF POLICE STATISTICS 2006

VIOLATION (2006)	Elsipogtog (pop 2400)	Bouctouche MUN (pop 2500)	Richibucto MUN (pop 1400)
Intoxicated Persons Detention Act - Offences Only	2	1	2
Intox. Persons Detention Act – Other	45	1	13
Mental Health Act - Offences Only	1	1	1
Mental Health Act - Other Activities	75	6	7
Fail to comply w/ condition of undertaking or recog...	8	1	1
Disturbing the peace	56	3	24
Resists/obstructs peace officer	12	1	3
Fail to comply probation order (3520)	8	3	0
Harassing phone calls	12	2	4
Uttering Threats - Property or an Animal	9	1	0
Breach of Peace	111	6	13
Public Mischief	6	0	2

TABLE 3-2

**ELSIPOGTOG AND NEIGHBOURING COMMUNITIES: A COMPARISON OF
POLICE STATISTICS 2006**

VIOLATION (2006)	Elsipogtog (pop 2400)	Bouctouche MUN (pop 2500)	Richibucto MUN (pop 1400)
Drug Offences – Trafficking	8	1	0
Total Sexual Offences	6	1	0
Robbery/Extortion/Harassment/Threats	52	8	15
Assault on Police Officer	6	1	2
Agg. Assault/Assault with Weapon or Causing Bodily Harm	21	0	4
Total Assaults (Excl. sexual assaults, Incl. Aggravated Assault, Assault with Weapon, Assault Police)	147	11	21
Total theft under \$5000.00	52	40	15
Break and Enter	71	6	5
False Alarms	51	38	14
Crime against property - Mischief (exclu. Offences related to death)	102	14	32

**TABLE 4-1
ELSIPOGTOG 2005 THRU 2008**

VIOLATION	2005	2006	2007	2008
Intoxicated Persons Detention Act - Offences Only	3	2	2	2
Intoxicated Persons Detention Act - Other Activities	26	45	44	31
Mental Health Act - Offences Only	0	1	3	0
Mental Health Act - Other Activities	30	75	125	111
Fail to comply w/ condition of undertaking or recog...	1	8	22	21
Disturbing the peace	36	56	131	152
Resists/obstructs peace officer	3	12	7	17
Fail to comply probation order	3	8	17	30
Harassing phone calls	5	12	15	13
Uttering Threats Against Property or an Animal	3	9	4	6
Breach of Peace	34	111	158	55
Public Mischief	2	6	9	2

**TABLE 4-2
ELSIPOGTOG 2005 THRU 2008**

VIOLATION	2005	2006	2007	2008
Drug Offences – Trafficking	0	8	13	18
Total Sexual Offences	5	6	33	22
Robb./Extort./Harass/Threats	19	52	64	56
Assault on Police Officer	1	6	12	7
Agg. Asslt/Asslt with Weapon or Causing Bodily Harm	18	21	55	65
Total Assaults (Excl. sexual assaults, Incl. Aggravated Assault, Assault with Weapon, Assault Police)	66	147	225	246
Total theft under \$5000.00	27	52	73	74
Break and Enter	32	71	68	81
False Alarms	31	51	89	103
Crime against property - Mischief (exclu. Offences related to death)	52	102	136	172

PERTINENT FN EXPERIENCE ELSEWHERE EXAMINED

- THE THREE ALBERTA FIRST NATIONS
- AKWESASNE MOHAWK FN
- HOLLOW WATER AND BIIDAABAN
- GLADUE COURTS TORONTO
- NOVA SCOTIA MAINSTREAM, MLSN AND
ESKASONI
- PS COURTS: SAINT JOHN AND MONCTON
- WHITEHORSE WELLNESS COURT

THE ALBERTA FN_s VISITED

- TSUU T'INA, 1500pop, EDGE OF CALGARY, ECONOMIC WELL-BEING HIGH
- SIKSIKA, 3000+pop on Reserve, HOUR FROM CALGARY, SIGNIFICANT ASSETS
- ALEXIS, 1200pop, 90 MINUTES FROM EDMONTON, ECONOMIC CHALLENGES
- ALL HAVE COURTS THAT SIT ON RESERVE
- CIRCLES BUT NO SENTENCING CIRCLES

ALEXIS FIRST NATION OF THE YELLOWHEAD TRIBAL COUNCIL

- **Provincial Court and Related Court Services Sit in an Old Former Wooden School house**
- **All Court Officials Save Probation Are Non-Native But the Response to Offenders is Largely Community-Based**
- **The Well-Recognized Alexis Community-Based Alternative Response Program Began in the 1990s to Deal More Effectively with Substance Abuse and Violence Issues**
- **Process = Guilty Plea / Probation / Community Rehab Plan / Close Monitoring / Regular Court Reports / Public Court Acknowledgement of Successful Completion of Plan**
- **Cultural Ambience (Smudging, Community Staff, Elders)**

ALEXIS FN

- Embedded in Larger Yellowhead Council (Several Different Tribal and Language Groups)
- Staff = Justice Coord, Director, CW, Probation
- Elders Significantly Involved (Modest Compen)
- Significant Impact on Recidivism According to Community and Court Officials
- Issue = a DTC But Without DTC Funding?
- Future Directions = Domestic Violence, Dealing with (Banishing) Drug Dealers
- Key = Community Efficacy via Probation, a Willing Court & Good Community Support

TSUU T'INA AND THE PEACEMAKER COURT

- PEACEMAKER COURT BEGAN IN 2000
- IT IS A PROVINCIAL COURT ON RESERVE PLUS A PEACEMAKER CIRCLES OPTION
- INITIALLY THE COURT JUDGE = NATIVE, CIRCLE SITTING ARRANGEMENT, SMUDGING AND ELDERS HAD A ROLE IN COURT
- THE PEACEMAKER PROGRAM (PMP) – ITS REFERRALS, REQUISITES, AND DYNAMICS
- FOCUS ON CRIMINAL JUSTICE MATTERS BUT OPEN TO ALL TYPES OF DISPUTES
- CRUCIAL RELATIONSHIP = PEACEMAKER AND CROWN PROSECUTOR

TSUU T'INA AND THE PEACEMAKER COURT

- **AIMS = REDUCE OVERREP IN COURT BY A CULTURALLY RELEVANT INTERVENTION, IMPROVE ADM OF JUSTICE VIA PARTNERSHIPS AND EFFECTIVE PROGRAMS**
- **COLLABORATION IN TT/STONEY CORRECTIONS**
- **NO ELIGIBILITY re SEXUAL ASSAULT, MURDER, MVA OFFENCES AND POSSIBLY RE-OFFENDERS**
- **SUCCESS: THE PMP DEALS WITH ABOUT 50% OF ALL CASES WHERE A TT PERSON IS OFFENDER, 50% COMPLETE THE PMP, 50% RE-OFFENDED**
- **ACCOUNTABILITY IS STRESSED IN THE PMP**

SIKSIKA FIRST NATION

- **The Aiskapimohkiiks System: Traditional Dispute Resolution started in 2003**
 - 5 Years after an enabling BCR in 1998
 - Aiskapimohkiiks Principle: To Advise and To Have Discipline and Balance & To Follow the Right Path to Justice
 - Approach: Work with Opposing Sides to Resolve as a Dispute or as a Settlement (Aipohsiniimsta)

SIKSIKA FIRST NATION

- 414 CASES RESOLVED SINCE 2003
 - FAMILY (CHILD CUSTODY OR VISITATION, MARITAL DISPUTES): 147 CASES
 - OTHER DISPUTES (HOUSING, LAND, EMPLOYEE): 35 CASES
 - ASSAULT, THEFT: 185 CASES
 - RESOLVED WHILE INVESTIGATING: 45 CASES

SIKSIKA FIRST NATION

- **FUNDING FROM THE BAND COUNCIL IS SIGNIFICANT**
- **STRONG JUSTICE TEAM EXISTS**
- **BROAD JUSTICE ROLE: FAMILY, REGULATORY AND CRIMINAL CASES AND SCOPE IS EVOLVING**
- **FAMILY AND PROVINCIAL COURT ON RESERVE (NO NATIVE ROLE PLAYERS NOW BUT WERE IN PREVIOUS YEARS)**

AKWESASNE MOHAWK JUSTICE SYSTEM

- **MOST POPULOUS FN IN CANADA, STRADDLING 2 MOHAWK, 2 FEDERAL AND 3 PROVINCIAL AND STATE JURISDICTIONS**
- **EMPHASIZE THEIR RELATIVE AUTONOMY**
- **HAS A LEGISLATIVE FOCUS**
- **HAS HAD OWN MOHAWK COURT RUN BY MOHAWK JPs NOW PAID BY THE BAND FOR 26 YEARS (ALSO HAVE OWN POLICE SERVICE)**
- **HAS A DEPARTMENT OF JUSTICE AND STAFF (FULL TIME LAWYER, COORDINATOR etc)**
- **DEVELOPED LAWS, OUTSIDE BAND BYLAWS, TO COUNTER DRUG DEALING, & FOR MATRIMONIAL AND LAND ISSUES**

AKWESASNE MOHAWK JUSTICE SYSTEM

- **MOHAWK COURT DEALS WITH TRAFFIC, COMMUNITY LAWS AND MINOR CC OFFENSES**
- **RECENT SUPPORTIVE POLICIES BY BAND COUNCIL (A MCR) A BOOST TO COURT'S AUTHORITY AND RESPECT IN COMMUNITY**
- **HAS COURTWORKER, RJ PROGRAM, ADR SERVICE, YOUTH PROJECT**

MI'KMAQ JUSTICE IN NOVA SCOTIA

- **MAINSTREAM JUSTICE SITUATION**
 - PS Courts (Mental Health, Drug Addiction and Possibly Domestic Violence)
 - Safe Communities Act and Enforcement Unit vs. Drug Houses etc (Links to FNs and New Brunswick)
 - Limited Mi'kmaq Presence in Justice Officialdom
 - Tripartite Forum Working Committee on Justice
 - Gladue and Probation Link
 - Provincial Court on Eskasoni Reserve
 - FN Funding Support from Province and Federal Gov'ts

MI'KMAQ JUSTICE IN NOVA SCOTIA

- **Mi'kmak Legal Support Network (MLSN)**
 - Oversight by CMM and Tripartite + Advisory Grp
 - Province-wide Service by 11 full-time staff
 - Customary Law Program (3 Types of Circles)
 - Court Workers Program (3 Courtworkers)
 - Cultural Awareness & Liaison re Custody Cases
 - Evolution at Strengthening Community Roots & into Family / Regulatory Justice Matters

ESKASONI COURT IN NOVA SCOTIA

- Eskasoni = Most Populous Mi'kmak Community in the World at 3000+ on Reserve, 50k from Sydney
- Provincial Court sitting there for more than a decade
- Typical Provincial Court, Key Role Players all Non-native, Little Mi'kmaq Flavour (CW & Interpreter Available)
- Justice Officials and Local Leaders + MLSN Positive on It
- Advantages = Convenience and Fewer No-Show Charges plus Intangibles such as Respect
- Major Eskasoni Issues = Substance Abuse, Drug Dealing, and Violence Require Much More Engagement
- Shubie FN Striving for Court on Reserve for 15 Years
Elsipogtog-Richibuctou Analogy for Lack of Success⁴⁹

THE GLADUE COURTS

1. THE GLADUE EXPERIENCE IN ONTARIO AND ABORIGINAL LEGAL SERVICES

- GLADUE COURT (3) BAIL & SENTENCING
- AN HOLISTIC PLAN AS KEY TO AVOIDING CUSTODY
- CIRCLES AND RESTORATIVE JUSTICE

2. THE GLADUE SITUATION ELSEWHERE

- NOVA SCOTIA (PROBATION REPORT) AND MLSN DIFFERENT INTERPRETATION OF GLADUE ELSEWHERE (eg, Alexis FN)

HOLLOW WATER AND BIIDAABAN: ALTERNATIVE PROGRAMS FOR SEXUAL ASSAULT AND DOMESTIC VIOLENCE

1. Hollow Water (HW) is a FN with 1021 registered On-Reserve and a Total of 1621, Average FN Wellbeing, 20% Know Local Language
2. HW a Storied Example of a Community Taking Ownership of a Major Problem (Sexual Assault, Incest) Began in 1983
3. The Community Holistic Circle Healing (CHCH) Model Integrates Traditional and Mainstream Knowledge and Services, Has a Detailed Protocol and a Multiple Stage Healing Program

HOLLOW WATER

- Fed/Prov Funding at \$200k Per Year “for 20 years”
- Now do Circles for the Whole Gamut of Offenses From Property Crimes to Any Interpersonal Violence
- Emphasized Collaboration: “We Want To be Partners” with Mainstream Systems

HOLLOW WATER AND BIIDAABAN: ALTERNATIVE PROGRAMS FOR SEXUAL ASSAULT AND DOMESTIC VIOLENCE

1. Mnjikaning is a Small Prosperous FN Now Famous for Its Huge Rama Casino
2. The Biidaaban Healing Model Was a Community Response to Child Sexual Abuse and Explicitly Followed Closely the Hollow Water Approach
3. The Biidaaban Circle Began in 1996 with 16 Trained (13 days + Manual) Persons and Funding from the Council
4. Healing and Support Aimed at All Parties Involved
5. Structure = Coordinator, Disclosure and Validation Teams Involving CJS Officials and Circle Members + Support Teams

MNJIKANING BIIDAABAN

- Biidaaban Organization Now Does Restorative Justice, Court support and Healing
- Sexual Assault and Incest Cases are Rare
- Involved in Whole Gamut of Offenses + Family Disputes
- Healing and Circle Format Still Define the Biidaaban Approach
- In 1995-2001, None of the 44 Clients Re-Offended, 400 Hrs Spent Reintegrating One Offender Over 2 years

SAINT JOHN MENTAL HEALTH COURT

- Established Without Any New Provincial or Federal Resources by Judge Brien and Crown in 2001
- Dynamic: typical PS Court: Eligible Plead Guilty, Go into Treatment Plan, Regular Monitoring, Return for Sentence (e.g., Probation usually)
- Team Approach, Designated Role Players
- Treatment Provided by Government Psychological Services Aided by Nurse and Salvation Army (Housing)

SAINT JOHN MENTAL HEALTH COURT

- Some Clients from Other Areas of Province
- Added a DTC Dimension But Resources Issues Led to Dropping It, Hope to do Take it Up Again
- Active Caseload = 15 persons
- Report Much Success with Clients, Few Repeaters
- Getting a Judge on side Considered Crucial
- Officials Positive re an Aboriginal Court

MONCTON DOMESTIC VIOLENCE COURT

- 3-Year Pilot Project in Second Year, Focused on Intimate Partner Violence
- It's Regular Provincial Court and All Criminal Code Cases Involving Intimate Partner Violence Go There – Not a Voluntary Option
- Large Caseload for the Specialty Court (Greater Moncton area)
- Treatment Program Follows Sentencing, is Provided by Private Sector & NGOs (2 Treatment Categories, one more intensive than the other)
- Close Monitoring and Regular Reports to Court are provided by Probation Officers+ Offender Must Attend; 15% of the 400 Cases are Repeaters

MONCTON DOMESTIC VIOLENCE COURT

- Tougher Sentences Given than by Previous Court (Usually Probation or Incarceration Not Conditional Discharge)
- Officials Include Judge, Designated Crown / Defense /RCMP / Probation and full-time Project Coordinator
- An Emphasis Given to Community Culture (eg, an Elsipogtog male sent to Richibucto Court)

WHITEHORSE WELLNESS COURT

- Whitehorse = 22,000 and 16% are FN but 74% of Correctional Clients are FN
- Wellness Court Partnered by Justice and Council of Yukon FNs and Implements a SAP Approved by Chiefs and Yukon Cabinet in 2006
- Aim = Reduce Over-rep via PS Court with Broad Eligibility (any addiction, FASD etc)
- Eligible: Adults on CC or CDSA Charges
- Operates like Typical PS /HW Court and has an Holistic Approach (housing, treatment etc)

WHITEHORSE WELLNESS COURT

- Treatment Plan = Year or More so Given Program Start with Minor CCs & Only Addicted Offenders, Offender's Commitment to Change is Important
- 1st Case mid-2007 and 13 'Clients' After One Year
- 5 New Staff Positions, Treatment by NGOs, \$600k Budget (33% from Federal Govt)
- Preceded by DV Court in 2002 (70% Clients = FN and FNs have Higher Re-Assaulting Rate)
- Spousal Abuse Treatment Accessed by Court Option, by Sentence, or by Self-Referral

CENTRAL OBSERVATIONS FROM OTHER FN PROGRAMS

- Common Issues (Substance Abuse, Interpersonal Violence, Seeking More Effective and Community-Based Interventions, Resources)
- Significant Change across the Canada – RCAP Agenda and a PS-Wellness Approach Common
- Court On Reserve Led to Positive Change
- Coordinator, Courtworker and Probation Officer are Crucial Roles for Community Ownership and Program Effectiveness

CENTRAL OBSERVATIONS FROM OTHER FN PROGRAMS

- Good Relations with Judge and Crown Prosecutor are Crucial to Success
- So is Active Support of Chief and Council
- Collaboration with Other FNs is Important for Cost Effectiveness and Other Reasons
- Some Centralization of PS or Wellness Court Activity has been seen as Necessary
- Elsipogtog Justice Lags in Many Respects

POSSIBLE FUTURE DIRECTIONS & STRATEGIES

- **MORE ATTENTION TO JUSTICE TEAM BUILDING TO CREATE AND/OR TAKE ADVANTAGE OF OPPORTUNITIES**
- **STRATEGIC COLLABORATION WITH OTHER FNs AND ELSIPOGTOG'S LEADERSHIP ARE APPROPRIATE AND NECESSARY**
- **COURT ON RESERVE AND COMMUNITY JUSTICE ROLES (COORDINATOR, COURTWORKER, and PROBATION SEEN AS PRIORITIES**

POSSIBLE FUTURE DIRECTIONS & STRATEGIES

- **ADVANCE A BROADLY CONCEIVED WELLNESS COURT MODEL (eg WHITEHORSE) AS LONG-RUN GOAL**
- **IMPLEMENT THE APIGSIGTOAGEN APPROACH TO SELECTED FAMILY AND REGULATORY DISPUTES**
- **THE TIME TO ACT IS NOW FOR MANY STRATEGIC AND SUBSTANTIVE REASONS**
- **IT'S BUILDING ON THE APPROVED STRATEGIC ACTION PLAN**

ALTERNATIVE MODELS FOR COURT AT ELSIPOGTOG

- 1. THE CASE FOR CHANGE**
- 2. WELLNESS COURT AS LONG-TERM OBJECTIVE?**
- 3. THE CASE FOR A CONVENTIONAL PROVINCIAL CRIMINAL COURT ON RESERVE**
- 4. THE CASE FOR A SPECIALIZED COURT (GLADUE, ADDICTIONS / FASD FOCUSED COURT)**
- 5. REQUIREMENTS FOR AN EFFECTIVE COURT, SPECIALIZED OR BASIC**
- 6. EFFICIENCY AND EFFECTIVENESS IN JUSTICE PROGRAMS APART FROM COURT TYPE**

THE CASE FOR CHANGE

- 1. THE CHALLENGES AT ELSIPOGTOG**
- 2. THE CAPACITY AT ELSIPOGTOG COMPARED TO ELSEWHERE**
- 3. THE FN EXPERIENCES ELSEWHERE**
- 4. THE TIMING (PROVINCIAL / COMMUNITY READINESS)**
- 5. THE CASE FOR A FIRST NATION CENTRE OF EXCELLENCE IN NEW BRUNSWICK (AS PER THE PS COURT IN ST.JOHN)**

WELLNESS COURT AS LONG-TERM OBJECTIVE?

1. WHAT A WELLNESS COURT WOULD LOOK LIKE
2. COMPATIBILITY WITH ELSIPOGTOG'S PLAN, CHALLENGES AND RESOURCES AND CULTURAL PERSPECTIVES
3. SOME ISSUES WITH WELLNESS COURTS – RESOURCES, NUMBERS, JUSTICE, BAND COUNCIL AND COMMUNITY SUPPORT
4. TRIBAL COURTS IN USA, WHITEHORSE, ALEXIS FN, FULFILLING THE GLADUE IMPERATIVE
5. THE MOHAWK (AKWESASNE) ALTERNATIVE TO A WELLNESS COURT

THE CASE FOR A CONVENTIONAL PROVINCIAL CRIMINAL COURT ON RESERVE

- 1. COMMON AMONG FN_s VISITED**
- 2. BASICALLY A CONVENTIONAL
PROVINCIAL CRIMINAL COURT WITH
SOME CULTURAL AMBIENCE – LIMITED
IN ESKASONI, AMPLE IN ALEXIS**
- 3. CONSIDERED AS POSITIVE BY
RESIDENTS WHEREVER IT EXISTS**
- 4. BENEFITS AND LIMITATIONS**
- 5. KEY ISSUE: IS IT A STARTER OR A CAP?**

THE CASE FOR A SPECIALIZED COURT (GLADUE, ADDICTIONS / FASD FOCUSED COURT)

1. THE OFFENDING PATTERNS TARGETED
2. COMPATIBILITY WITH COMMUNITY PREFERENCES, REQUISITES FOR EFFECTIVE REINTEGRATION, LARGER SOCIETAL TRENDS (THE “THIRD WAVE’ OF ACCESS TO JUSTICE)
3. THE CASE FOR GLADUE COURTS (ONTARIO)AND PROBLEM-SOLVING COURTS – HOW DIFFERENT ARE THEY, DOES IT MATTER?
4. RESOURCE NEEDS: COURT WORKER, PROBATION OFFICER, PROGRAM COORDINATOR

REQUIREMENTS FOR AN EFFECTIVE COURT, SPECIALIZED OR BASIC

- 1. SUPPORT OF COURT OFFICIALS, JUDGE AND CROWN**
- 2. WORKING IN A COLLABORATIVE WAY BETWEEN THE JUSTICE SYSTEM AND THE COMMUNITY (FROM A FACILITY UP)**
- 3. ENGAGED COURT WORKER AND PROBATION OFFICIAL PLUS A COMMUNITY DIVERSION PROGRAM**
- 4. CONTACT AND LEARNING FROM THE EXPERIENCE OF OTHER FN PROGRAMS**

JUSTICE EFFICIENCY AND EFFECTIVENESS ASIDE FROM COURT TYPE

- 1. SIKSIKA AND MNJIKANING (BIIDAABAN APPROACH) FNs' ACCOMPLISHMENTS**
- 2. STRONG COMMUNITY JUSTICE TEAM AND STRONG BAND COUNCIL SUPPORT**
- 3. CONFLICT AND DISPUTE RESOLUTION REACHING INTO ALL JUSTICE AREAS – FAMILY, CRIMINAL, REGULATORY**
- 4. WHERE IS ELSIPOGTOG ON THESE REQUISITES?**