

OELIELMIEMGEOEI (GOING HOME IN A GOOD WAY)

**THE ELSIPOGTOG OFFENDER RE-INTEGRATION PROJECT:
FINAL ASSESSMENT**

PREPARED FOR THE ELSIPOGTOG JUSTICE
ADVISORY COMMITTEE

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EXECUTIVE SUMMARY

This assessment of the EORP began with a discussion of the community capacity in the field of justice services that has emerged in Elsipogtog in recent years and is perhaps best exemplified in the Strategic Action Plan (SAP) developed by the EJAC in 2005-2006. There was also a detailed discussion of the challenges facing the community as reflected in very high levels of crime, a pervasive drug abuse problem and a stubborn high rate of underemployment. The combination of CSC-acknowledged disparities in outcomes for Aboriginal inmates and the community's concern for the safe re-integration of Elsipogtog offenders, as highlighted in the SAP, led to the development of the EORP project funded by CSC, Ottawa. The basic EORP objectives and their rationales were then discussed, along with the three fundamental pivots of the EORP approach, namely pre-release work with inmates in collaboration with CSC and NPB officials, the centrality of the Aboriginal Pathways programs in Westmoreland ("cascading" inmates to Pathways and on to appropriate, safe, early release), and the development of community-based release plans and case management, again in collaboration with CSC and NPB.

A major thrust of this assessment has been to properly contextualize or place the EORP. To this end there was first an analysis of recent trends in Aboriginal Justice in Canada. This established the considerable growth in Aboriginal justice initiatives throughout Canada and in the Atlantic region. Three major stimulants were highlighted, namely the Marshall Inquiry in 1986-1989, RCAP in 1996, and the SCC's Gladue decision in 1999. The Gladue decision in particular has considerable implications for early release and parole hearings as well as necessitating significant community input into decision-making about release. The bottom line of these developments has been to emphasize a partnership and co-management of justice programming and service. Another important context concerns what is known about effective offender reintegration and that literature was examined in detail. The main theme that emerged was the need for a culturally appropriate, community support linkage that begins when the Aboriginal person is incarcerated – that appears to be the missing link in the current situation with respect to producing more equitable outcomes for Aboriginals within the system and reducing revocation and recidivism when they are released. Other contextual considerations discussed dealt with demographic, educational and political economy factors.

There was a detailed discussion of policing data in Elsipogtog as well as provincial and federal patterns of incarceration. These analyses underlined the need for, and the challenges facing, a project such as the EORP. There is a serious problem of offending in Elsipogtog and it should not be surprising that in the recent Elsipogtog community survey and focus groups, the respondents called attention to the high level of offending and expressed much fear and worry about being victimized. Provincial and federal incarceration statistics indicated the stable pattern of over-representation of Aboriginal inmates in both types of custody (for adults, four to five times the expected level based on population) and suggested high rates of re-incarceration. Interviews with key officials and treatment providers at both levels underlined the alienation of the inmates from their community, how poorly they fared in the prison milieu, the

recidivism, the need for stronger linkages to the community, and for release plans and re-integration approaches that can be meaningful to the inmate, tailored to the needs and opportunities of specific inmates, and allay legitimate community concerns for safety.

There followed a more detailed discussion of the EORP, its goals, distinctive features, organizational structure and preferred process stages. The issues of access and partnership were seen as crucial especially, in light of the short time frame of the funding, since they are prerequisites to the development of relationships with inmates and the formation of meaningful release and post-release planning. The EORP staff considered that they had made significant progress on the established goals in the time available to them. In the view of this evaluator, there is a sound basis for such claims. The structure and process model laid out by the EORP staff represented an approach based on previous experience but adjusted for the new experiences encountered. Its emphasis on pre-release work, the Pathways trajectory, and community case management of community developed release plans conceived and implemented in collaboration with CSC officials, seems spot on given the literature review, the shortcomings of the extensive CSC Aboriginal initiatives as self-acknowledged, and the assessments of EORP provided by a range of informed respondents. An EORP type initiative does appear to be the missing link in responding effectively to the disparity of outcomes for Aboriginal inmates and also represents an appropriate evolution in the constitutionally enshrined partnership of mainstream and Aboriginal social systems.

The assessments of EORP staff, elders, the offender-clients, a wide variety of stakeholders (police, treatment providers, local service agencies) and CSC and NPB were canvassed in one-on-one interviews with the evaluator. They were quite positive of the initiative and highlighted its holistic character – spirituality, assessments for specific clients, case conferencing – and its work within the prisons and in the community. There was a widespread consensus that the EORP should become a permanent mechanism for Aboriginal – CSC / NPB partnership. The evaluator shares that position. At the same time, the EORP initiative has identified some key issues that have to be addressed in the future implementation of the program or similar ones. These are discussed in the report and only two are cited here, namely

1. If Aboriginal communities are to partner with CSC and the NPB in pre-release and post-release activities, as appears valuable and necessary, resources have to be made available to them. Currently, there is precious little and it is ad hoc (e.g., there appear to be no resources for sustaining the community role in section 84 releases).
2. There has to be some greater attention paid to the issue of building on success in a single community such as Elsipogtog while considering how such a strategy can benefit other Aboriginal communities. There is a need to transcend the “lowest common denominator” approach, holding back support for successful initiative on the grounds that other communities have received less funding support. The key solution here would appear to be emphasis on a mentorship / linkage role on the part of the leading innovator. This does appear to be a strategy in New Brunswick with respect to mental health and

drug treatment court in Saint John and is characteristic in “Indian Territory” in the USA.

INTRODUCTION

COLLECTIVE EFFICACY IN ELSIPOGTOG

The Elsipogtog First Nation is the largest First Nation in New Brunswick and the second largest Mi’kmaq community in Canada. It is a community on the move in that there have been impressive economic developments in recent years (e.g., fisheries, forestry), continued significant growth in the human capital of its residents (e.g., involvement in higher education, training programs), and over the past decade a basic infrastructure for health and related treatment programming has been put in place. On the justice side, several programs have complemented initiatives in probation services and RCMP policing, such as the Elsipogtog restorative justice (ERJP) and victim assistance programs. In addition, the community’s long-standing oversight committee, the Elsipogtog Justice Advisory Committee (EJAC), has created coordinating committees such as the Violence and Abuse Committee and the Youth Strategy to focus community efforts and foster inter-agency problem solving in relation to specific issues.

The capacity of the community to undertake significant initiatives in the justice field can be seen in several key initiatives. The ERJP remains quite singular in New Brunswick not only among the First Nations but also in comparison to the mainstream society where the more restricted mandated Alternative Measures remains the typical extra-judicial program. No other community, rural or urban, utilizes restorative justice as expansively as in Elsipogtog. It is clearly the leader in the province in alternative justice or extra judicial sanctions. The ERJP has been a stimulant to community capacity, as discussion, centered on its future mandate, led to a major justice planning undertaking by the Elsipogtog Justice Advisory Committee between 2004 and 2006 which issued in a strategic action plan for justice initiatives in Elsipogtog. The ERJP continues to incorporate and expand upon the place of Mi’kmaq tradition and symbolism in the restorative justice processes and the specific healing techniques (e.g., sweats, one-on-one with elders and offenders).

Easily the most significant recent initiative that speaks to Elsipogtog’s collective efficacy has been the development, over the years 2005 and 2006 under the guidance of the EJAC, of **a strategic action plan (SAP) for justice in Elsipogtog**. The SAP was the result of an assessment / discussion process that included in-depth interviews with ERJP and EJAC members, Justice officials, a large in-depth representative survey of one adult in every three households, and focus groups with elders, youth and neighbourhoods, then with local service providers. A document was prepared incorporating description and analysis of these various approaches and advancing a strategic action plan for the next ten

years with respect to justice initiatives. The SAP was vetted through chief and council (securing a supportive band council resolution) and public gatherings, and there were presentations to and discussions with New Brunswick Justice Officials. The SAP is appended to this brief interim report and the full 2006 report is available upon request. Clearly, Elsipogtog as a community has invested heavily in developing a thoroughly considered, consensus and evidence-based blueprint for its justice future.

There been other developments in the intervening years that reinforce and strengthen community capacity to successfully manage needed justice-related initiatives. These include most notably perhaps the Apigsitogan program cited above which among other things trains participants to problem-solve and mediate civil and other disputes (neighbour disputes, elder-elder disputes) drawing upon Mi'kmaw traditional approaches as well as certain contemporary mainstream approaches (a train the trainers model has been the guiding goal). About a dozen community service providers have gone through the program and are moving now to use those skills in complement to the restorative justice focus on the criminal justice matters. The cross-fertilization among such programs should be considerable. In addition, the EJAC has developed a Youth Justice Strategy which also complements the ERJP.

The community capacity to responsibly and effectively assume a greater role in justice matters, has grown considerably. In addition to the SAP process and the new programs just cited, the community has become the leader in Atlantic Canada in diagnosing and treating FASD; its Eastern Door program for FASD brings together skilled medical professionals and dedicated and very knowledgeable community practitioners and builds on much experience developed at the local school with its well-known Nogemag FASD project. In addition to the Apigsitogan program and the Eastern Door, the community's professional psychologists and traditional healing experts provide depth to conventional programs such as Alcohol and Drug counsel.

Unfortunately, there are many serious underlying problems too. A major push for community-based, justice initiatives began in response to a spate of suicides in the Elsipogtog in the early 1990s. Still, in the period 2000 to 2008 there have been reportedly fifteen suicides, mostly among older teens and young adults. There is still much unemployment and welfare-dependency. There is still a very high level of crime and substance abuse. While neighbouring communities have seen their crime rates decline over the past several years, those of Elsipogtog have remained high. Of particular concern, the offenses have been more likely than in neighbouring communities to involve inter-personal violence. There also appears to be a strong pattern of repeat offending among the young adults who account for the large majority of the crime. Serious drug abuse has become quite widespread in recent years. These facts, plus the extremely large number of persons arrested under the Mental Health Act (again most common among young adults), point to major problems in interpersonal relations and also in the re-integration of offenders back into their families, positive social networks and the community at large. The Elsipogtog First Nation has explored possible initiatives in the recent past with respect to half-way houses and community-based, parole supervision,

and, while these initiatives did not get implemented, they indicate the concern and interest that the community has in dealing with the above problems.

THE OFFENDER RE-INTEGRATION CHALLENGE

CSC has written that it has five strategic priorities for 2006-07, of which the first is “Safe transition to offenders into the community” and the third is “Enhanced capacities to provide effective interventions for First Nations, Métis and Inuit offenders” (CSC website 2006.07.10) The Offender Re-integration project (EORP) discussed here would seem to fit well with these strategic priorities. It has been engaged in developing a framework of structures and processes, and possible protocols as well as for the province as a whole, trying to establish a community-based, culturally-salient initiative, authorized by band council and with the support of the community at large, which can provide significant community input thereby both facilitating re-integration of ex-inmates and protecting the community. Clearly, as is true nationally among Aboriginal communities, the high level of violence, incarceration and recidivism in Elsipogtog has underlined the inadequacy of the current justice system response to offender re-integration. Perhaps community opinion leaders may have been less welcoming of ex-inmates in the past in part because they did not participate in the release process enough and help set conditions that they could feel protected the residents. And perhaps inmates may not have initiated a section 84 process for early parole because they did not think there would be any community support. In any event, the Elsipogtog offender re-integration project’s launching has been timely. The Elsipogtog Justice Advisory Committee, as noted, had just yet completed a long and in-depth examination of its justice concerns and had crafted a strategic action plan which was endorsed by the band council and the public. Responding to the issues of prevention and healing, as well as to the objective of greater Mi’kmaq direction of local justice matters, the strategic action plan called for an offender re-integration approach that would be Mi’kmaq and effective. Thus the EJAC, encouraged by the availability of well-respected experienced Mi’kmaq specialists in relating to the situation of federal inmates, was quick to respond to a CSC funding opportunity to develop a creative, new way of dealing with the seemingly intractable problem of offender re-integration.

The Offender Re-integration project has been a complex, multi-dimensional, multi-year (two years plus) project. The ambition of the project leaders is evident in the three major outcomes anticipated, namely

1. a cultural model to promote a safer re-integration of Aboriginal offenders to their communities, for both the offender and the community
2. a structured network of helping agencies to assist with offender re-integration
3. general policy changes on the part of CSC and NPB policies and protocols in partnering with First Nations concerning offender re-integration and related issues

The project has aimed at nothing short of a new framework of structures and processes which, clothed in a culturally appropriate approach, would yield the above outcomes. The organizational structure as set out in project documents has embedded the project coordinator and the case worker, the two part-time positions that constitute the EORP staff, in a structure consisting of a project advisory team under the oversight of the EJAC, itself a body authorized by the band council, and featuring several operating committees including an ex-offenders' circle, an elders' circle and a helping agencies' circle. A community working group drawn partly from all three circles or committees helps guide implementation with respect to each client. The processes have included case plan supervision by the case worker following a medicine wheel approach and drawing on community resources for psychological assessment, alcohol and drug counseling, spiritual guidance, housing needs and so forth. The external processes too have been considered crucial and these have entailed networking and bridging new relationships and understanding with CSC, NPB as well as with other First Nations in the region. It has been envisaged that the project also would connect up with inmates while they were in custody to prepare them better for subsequent re-integration into the community and perhaps accelerate their parole.

There have been three central thrusts in the offender re-integration project. First, the focus has been on adult inmates, especially of course those who are Elsipogtog band members, incarcerated in any of the five Atlantic Canada federal institutions; secondly, there has been a focus on facilitating the movement of Elsipogtog inmates along the trajectory or path: Springhill Reception – Westmoreland – Aboriginal Pathways – Release, and thirdly the approach or principle in case management has been the medicine wheel approach. These central thrusts did not exhaust the project staff's efforts as they have been responsive to other First Nations inmates and have dealt with inmates at other federal institutions (e.g., Dorchester, Nova). The Medicine Wheel approach reflects perhaps the underlying emphasis of the project on doing things in an holistic, Mi'kmaw way. The highlighted path from Reception to Release is clearly crucial since Springhill Reception is where assessment, placement and the inmate correctional plan is determined while Westmoreland is the only minimum federal institution in New Brunswick and Pathways is crucial since as noted below the participants in that program could be expected to be especially appropriate for successful re-integration from both the inmate and the community's perspectives. As indicated in the review below of the pertinent incarceration and re-integration literature, the areas where Aboriginal inmates suffer the greatest disparity vis-à-vis their mainstream counterparts are precisely the same, namely at assessment and placement, placement in medium and maximum rather than minimum security which impacts on programming and early release, and the lack of culturally-oriented programming, something which Pathways program provides.

Finally, the Offender Re-integration project has been planned in terms of stages or phases – these latter have included (a) Networking with Correctional role players (structures and protocols); (b) Gathering relevant data on offenders' numbers, needs, current programming;(c) Community mobilization and consensus generation (elders, ex-offenders and other groupings; discussion and intervener circles); (d) Networking with helping agencies in Elsipogtog (identifying partners and services, promotion of the

initiative); (e) Organizational and program development (committees, case managing and diverse roles; mentoring, family group conferencing, exit circles, the First Nation Way); (e) Program implementation (initial targeting, selection, in and outside prison activity). Much of the project's initial activity would focus on networking and "negotiating arrangements" with CSC, NPB, New Brunswick Corrections since that is clearly a requisite for accessing inmates and developing appropriate community-based case management strategies.

THE EVALUATION APPROACH

The evaluation for this project has been defined as a formative evaluation, that is, one where the evaluation is an integral part of the project and thus able to possibly impact on the project as it advances. The collaboration and feedback has been effected in part through participation on the management committee, reporting regularly to the steering committee for the project, and having frequent discussions with the EORP staff. The main tasks of the evaluation have been (1) to develop baseline accounts for assessing the new structures and processes that may be put in place and determining the value-added of the project; (2) to document and describe/analyze what is done; that is, how the project has been developed and implemented; (3) to assess its impact for offenders and other participants; this would ideally mean developing indicators and measures to assess the impact for the participating ex-inmates, families and others, as well as the gains in collective efficacy (i.e., community capacity) (4) to examine the initiative from the multiple perspectives involved, namely project staff, Justice and Treatment personnel, offenders and families, CSC / NPB officials and others; (5) to consider the lessons learned, the sustainability of the initiative, and the generalizability of the project's initiatives to other FNs in New Brunswick.

As the Offender Re-integration project unfolded, it was clear that there were two chief phases, one where considerable effort was expended by the EORP staff negotiating access and new relationships with prison officials, and the other working with clients especially at the community level. While the phases overlapped and were both always in play, the distinct emphasis in time periods was evident. The evaluation activity followed the same evolution, first focusing largely on the external milieu or context, and in the last year switching more to the community activity and interviewing elders, ex-inmates and stakeholders. A major dimension of the evaluation has been to examine the EORP in its contexts, namely developments in Elsipogtog, the federal and provincial custody systems, and the pertinent Aboriginal justice activity in Atlantic Canada and beyond.

In terms of specific evaluation strategies, there has been a review of pertinent literature, an examination of secondary data drawn from the appropriate sources (i.e., police statistics, provincial incarceration, federal incarceration), site visits to three correctional institutions, roughly twenty –one interviews of external role players (thirteen

of which were of some depth and usually followed by e-mail exchanges), and fourteen of the community-based stakeholders, keeping apprised of developments in the Offender Re-integration project through regular meetings and document review, responding to any requests from project coordinators (e.g., analyses of data on incarceration patterns), and developing instruments (interviews guide which are appended to this report) for interviews with community participants and stakeholders.

GENERAL DIRECTIONS IN ABORIGINAL JUSTICE

There have been many interesting developments in Aboriginal justice initiatives over the past decade and the reader is referred for detail to Future Directions in Mi'kmaq Justice (Clairmont and McMillan, 2006). For example, there are now a number of more or less conventional provincial criminal courts sitting in several First Nations in Canada. Two interesting ones are the T'suu T'ina's Peacemaker Court and the Akwesasne Mohawk Community Court operated by the Akwesasne Department of Justice. Both these courts go beyond the concept of a provincial criminal sitting on reserve as for example is found in Eskasoni, Nova Scotia, but they do so in different ways. The Akwesasne Department of Justice's court is engaged in all justice areas, namely criminal, family/civil, and regulatory, while the Akwesasne Department of Justice itself has also been engaged in law making, outside the band bylaw format. The Akwesasne court and its Department of Justice in practice have limited scope thus far but a wide potential reach. The T'suu T'ina Peacemaker Court is a provincial court on reserve which attempts to incorporate a role for elders, and encourages both restorative justice for criminal matters and alternative dispute resolution approaches for civil ones.

Arguably the most dramatic new courts are the several Gladue courts now operating in Ontario and in some Western Provinces, where the emphasis is on conducting conventional court business informed by the adherence to the principles of Supreme Court of Canada's 1999 Gladue decision. Central principles of Gladue include greater appreciation for sentencing of the unique legacy and situation of Aboriginal people and the Aboriginal offender, and an emphasis on avoiding or reducing incarceration where feasible. In its decision the SCC wrote "If an Aboriginal community has a program or tradition of alternative sanctions, and support and supervision are available to the offender, it may be easier to find and impose an alternative sentence" (National Parole Board, Gladue Decision, 2008). The SCC's Gladue argument strongly reinforces the view that Aboriginal restorative justice programs are indeed important and should extend to serious offending. The SCC's Gladue decision and accompanying document make it an obligation on the part of the criminal court to inquire as to the Aboriginal status of the defendant and to seek the requisite information as to background and systemic factors (being an Aboriginal in light of colonialism, cultural assimilation etc) that may help account for why the person is before the court. In Ontario the Gladue imperative has been defined by the court as pertinent whenever there is a possibility of

incarceration whether that be at bail hearing, at sentencing or at parole hearing. It would seem then that in order to discharge its arguably legal obligation, parole hearings would have to be much more informed about the Aboriginal's circumstances and rehabilitative opportunities, a requirement which make the networking and partnership advanced by a project such as EORP very salient.

There are other interesting Aboriginal justice initiatives that could impact on future developments in justice. In the Canadian North there is the one-stop, legal support centre concept, a full service centre featuring legal aid lawyers, court workers and related services. In Toronto the well-known Aboriginal Legal Services (ALS) has pioneered a number of arrangements with justice officials (e.g. established a protocol with the coroner's office whereby ALS is contacted by the coroner and privy to all pertinent information in the event of certain Aboriginal deaths) and has a central role in the operation of the Gladue courts there and in offender reintegration initiatives. Elsewhere in Ontario, the Friendship Centres have been active in establishing justice programs (e.g., Three Fires Program in the Niagara area, Thunderbird program in the Greenstone Region and the N'Amerind program in the London area). These programs are similar in depending much on volunteers, receiving pre and post charge referrals for youth and adults, developing healing plans by consensus from the circles held, and incorporating Aboriginal cultural features in the restorative justice processes. They report considerable success in involving the local Aboriginal community, identifying the underlying problems for the offenders, re-connecting the offender with his / her Aboriginal identity, and having a high rate of compliance with the agreed-upon healing plan.

There are some interesting developments as well among FNs in the Atlantic Provinces. Mi'kmaq people in Elsipogtog N.B., as noted, have that province's most far-reaching alternative justice program. In practice it does not have the depth of the Mi'kmaq Legal Support Network's Customary Law Program in Nova Scotia (i.e., it deals primarily with minor offences and has not carried out any sentencing circles) but it is engaging the RCMP as an advocate in its attempts to obtain referrals at the post-charge levels, and, in cooperation with Children and Family Services and the RCMP, does obtain referrals and utilize restorative justice processes for youth under twelve years of age. The EORP (referred to by a Mi'kmaq term which means "coming home in a good way") entails not only 'section 84' parole release agreements generated by the "circles" but also treatment programs and healing circles for offenders, victims and families. In PEI the Mi'kmaq Confederacy has launched a restorative justice initiative using as facilitators "circle keepers" who have received significant training and certificates from the university; in November 2007 a full-fledged sentencing circle was held in the Summerside area. The sentencing circle, despite controversy (especially by some Inuit spokespersons) has come to be defined as quintessentially Aboriginal and has considerable symbolic value for many Aboriginal communities seeking a greater direction over justice services. The sentencing circle – a post-conviction restorative justice intervention – is very demanding of resources and planning especially if it is of the full-fledged type where CJS officials, offenders, victims, their supporters, key local agency personnel and others are involved. Accordingly, it is not a restorative justice tool that would be frequently utilized (even in Nova Scotia where MLSN has pioneered the

sentencing circle, there have been less than ten in the past five years) but its symbolic importance should not be underestimated.

Related to the symbolic importance of sentencing circles, has been a major issue for Aboriginal restorative justice, namely how penetrating the programs may be with respect to the serious offending issues in the various FNs. The famous Hollow Water approach has been to avoid minor offending and its associated possible marginalization of the service vis-à-vis the issues of grave concern to the community. It deals only with offending that is serious and perceived to lie at the heart of the community's serious social problems (e.g., incest, sexual assault etc). This issue is certainly seen by many Elsipogtog residents as crucial and there are differences of opinion here, and among FNs elsewhere, on the best way to develop restorative justice so that the service avoids marginalization.

As is true throughout Canada, and perhaps is a function of the increasing expansion of Aboriginal ownership over justice and related matters in Aboriginal communities, there appears to have been a spontaneous development of Mi'kmaw conflict / dispute resolution initiatives in all three Maritime Provinces. This development is testimony perhaps to the demand experienced for some Mi'kmaw response to family / civil justice problems which are not being satisfactorily dealt with by conventional court and also to the need for FNs to respond to violations of FN agreements (i.e., regulations spawned by agreements) on the part of band members. In P.E.I., Mi'kmaq "circle keepers" have been trained through a university-based program in dispute resolution and are now available to be utilized in cases of violation of resource policies (e.g., selling lobsters in the food-fishery period) as well as in criminal cases typically referred to restorative justice. In Nova Scotia, outside MLSN, some Eskasoni residents have received conflict resolution training, and some developments have occurred involving the use of elder circles where violations of moose harvesting regulations have occurred. Perhaps the most elaborate and long-term such program has been that engaged in by four Mi'kmaw communities, Elsipogtog and three in Quebec since 2004. Here over fifty well-qualified persons employed in local service agencies have been involved in a three-year training program. It is called the Apigsitogan project. Apigsitogan, the core term, is described as

"A Mi'kmaq word used to describe a ceremony that in past decades was a very powerful ritual engaged in by individuals wherein they would ask for another's forgiveness for a transgression, offence or omission. Thereafter, according to Mi'gmaq custom and tradition, once a person once a person engaged in this ceremony and sincerely asked for forgiveness from another person or the community, the person or the community was obliged by the social mores governing society within the Mi'gmaq Nation to comply by granting forgiveness to the perpetrator"(The Apigsitogan Project 2006-2007).

At present all of the above conflict resolution initiatives have basically been readied but not implemented to any significant degree. It is not clear why there is this hiatus between training and utilization but there is an indication perhaps of some

ambivalence and ambiguity with respect to self-government and the appropriateness of reconstructed traditions. Walker (“Decolonizing Conflict Resolution”, *American Indian Quarterly*, Vol 28 #3, 2004) has argued that indigenous forms of conflict resolution are quite different from modern western ones but are given short shrift. They differ she claims in that modern western one is individualistic and atomic and focused on technique while the other is holistic, focused on process and relationships, and is spiritual. It remains unclear if Aboriginal forms of conflict resolution will be substantially different in implementation and how effective they may be at the local community level. But at the very least these programs have contributed to a significant increase in collective efficacy to deal with conflict and justice issues in FNs such as Elsipogtog.

There are other justice initiatives in Atlantic Canada as well that merit attention. In Nova Scotia MLSN has recently (2008) added a victim services dimension to its programming. In New Brunswick only one community (Elsipogtog) has a victim services employee, advising and supporting residents who have been victims of crime. Interestingly, though, several other FNs in that province have been funded by the province for “para-legals” who work with victims and liaise with New Brunswick’s Victim Services; apparently the “para-legals” receive a very modest monthly honorarium of several hundred dollars but it may be a feasible and acceptable way of responding to small scattered populations. Recently, too, under the sponsorship of the federal Aboriginal Justice Strategy, persons involved in directing justice initiatives from across the region have been meeting and discussing future directions. A report of the E.A.S.T. (Eastern AJS Steering Team) 2006 based on these deliberations highlighted the need for (and value of) more cross-cultural training for non-Aboriginal justice staff, more Aboriginal staff in all areas of the justice system, and more attention to victim services (to achieve a “natural law based balance”). The draft report went on to call for extension of the circle approach to regulatory offenses. These emphases were reiterated in the E.A.S.T. Action Plan, September 2006 where also emphasized is ‘more community involvement in planning, decision-making and service delivery’ and ‘more Aboriginal advisory groups’. Another point that might be underscored is the imperative noted there “to constantly scan the horizon for opportunities to advance the Aboriginal justice agenda through win-win relationships” – these exists in the criminal justice areas (e.g., offender re-integration, wellness courts) and also in the family and regulatory justice areas.

MAJOR TURNING POINTS: MARSHALL, RCAP & GLADUE

With respect to Aboriginal justice in Atlantic Canada, the three major turning points in the last 25 years for greater FN involvement in and ownership of justice administration and process in their communities appear to be the Marshall Inquiry in Nova Scotia (1986-1989), the report, *Bridging the Gap*, of the Royal Commission on Aboriginal Peoples (RCAP, 1996), and the SCC’s Gladue Decision (1999). The Marshall Inquiry emphasized fairness and integration and advanced a number of recommendations – native court workers, interpretative services, provincial court sitting on reserves, Aboriginal restorative justice programs, liaison positions with Legal Aid, a Mi’kmaw

Institute for research on traditional justice, and, most importantly, an on-going tripartite forum committee on justice (federal, provincial and FN representatives) to meet regularly and to explore other justice initiatives – which transformed the justice landscape for Aboriginal people in Nova Scotia. The tripartite forum has continued to meet regularly since 1991 and has provided funding for sustainable programs and created opportunities for Mi’kmaq leaders to consider future directions as well. By 2000 most of the Marshall Inquiry’s recommendations on justice had been implemented at least to some significant degree.

The Marshall recommendations as noted were focused on securing fairness and integration for Aboriginals / FNs within the existing justice system. RCAP in 1996 pointed to a further evolution, namely emphasizing autonomy and difference, in advocating that Aboriginal peoples had the constitutional right to carve out to some degree their own justice system parallel to the mainstream stream system. RCAP’s position (see appendix C) was that there are different underlying premises and features between the Aboriginal and mainstream approaches to justice and these should be respected and incorporated into a new partnership. A distinction is drawn between ‘core’ and ‘periphery’ justice concerns and it is argued that in the core sphere - a limited sphere by their criteria – Aboriginal society should be able to act unilaterally. Interestingly, the RCAP commissioners expected that whatever the level of parallelism across institutional areas, there would only be minor differences in the criminal justice field were the RCAP position to be accepted by Government and Aboriginal peoples. It was anticipated by RCAP that the differences in the justice sphere could well co-exist in a fruitful partnership that enhances the effectiveness and efficiency of justice responses. To a large degree, this has been the guiding ethos of the EORP initiative in Elsipogtog.

The significance of the 1999 Gladue decision has been noted above. It has significant potential - given its “must do” provision – to diminish the high levels of Aboriginal incarceration, the length of Aboriginals’ incarceration, and to direct greater attention to rehabilitative and re-integration programs in the Aboriginal communities. Some judges, interviewed by the writer, consider that Gladue will have more beneficial implications for FNs than the problem solving courts (mental health or drug courts) would have. At the present time the broad implementation of the Gladue decision is however confined largely to Ontario.

ISSUES IN OFFENDER RE-INTEGRATION

There is a huge literature on the issues that the Offender Re-integration project raises, ranging from the general “rights” imperative of Aboriginal control over justice issues in their communities to specific concerns such as the factors associated with successful offender re-integration. Appendix C provides the Royal Commission on

Aboriginal Peoples (RCAP) perspective on the Aboriginal control issue, a perspective which would strongly support the general policy objective of the Offender Re-integration project to effect much greater administrative decision-making over dealing with offenders and re-integrating them in the context of a Mi'kmaw approach. At this level of generality there is also a growing literature on the implications of the Supreme Court of Canada's Gladue decision (1999) which emphasized the requirement to take a convicted Aboriginal person's social history into account at bail, sentencing and parole hearings. The intent is to reduce incarceration and to emphasize rehabilitation if a case can be made for special circumstances not normally experienced by a mainstream defendant. There are several special Gladue Courts in Ontario and there have been several Gladue assessments requested by the courts in Nova Scotia in the past year and a half. Pervasive implementation of the Gladue ruling could well result in more Aboriginal inmates being placed in minimum security facilities and more CSC resources being allocated to special Aboriginal programming, both of which link up well with the objectives of the Offender Re-integration project.

Review of literature and documents specific to incarceration, parole and successful re-integration has yielded six major and well-known themes namely, (a) that Aboriginal persons are well-overrepresented in federal and provincial / territorial custodial institutions; (b) that Aboriginal inmates are less likely to be assessed for minimum security placement; (c) that Aboriginal inmates are less likely to access CSC programs and to successfully position themselves for day parole and subsequently full parole; (d) that Aboriginals are more likely to re-incarcerated upon statutory release; (e) that factors such as having a substance abuse problem and a problematic pre-custody lifestyle are major determinants of recidivism and re-incarceration, and Aboriginal inmates are more likely to be associated with both these factors; (f) that minimal resources are available for post-release rehabilitative programs.

The CSC-produced Corrections and Conditional Release Statistical Overview, Annual Report, 2006 draws the following conclusions concerning Aboriginal inmates:

1. Aboriginal offenders are younger than their mainstream counterparts (52% are under 30 years of age whereas among the latter, only 40% are)
2. Aboriginal offenders make up almost 19% of federally incarcerated population and roughly 14% of the offenders under community supervision but the Aboriginal population is no more than 3% of the Canadian population
3. Aboriginal offenders under federal jurisdiction are 9% more likely than non-Aboriginal offenders to be incarcerated
4. The number of Aboriginal offenders under federal jurisdiction has increased by almost 26% since 1996-97
5. The "full parole grant" rate for Aboriginal offenders decreased in 2005-2006 and was 12% lower than for non-Aboriginal offenders.
6. Aboriginal offenders serve a higher proportion of their sentence before being released on parole. (43% compared to 39% non-Aboriginals)
7. Over 80% of federal day paroles are successfully completed (83.5% in 2005-2006) while roughly 70% of the full paroles and approximately 59% of the

statutory releases are successfully completed. Since Aboriginal offenders are more likely to receive statutory releases, it is not surprising that they also have a higher rate of re-incarceration.

8. Federal parole hearings involving an Aboriginal cultural advisor are increasing and in 2005-2006, cultural advisors were present in 48% of all hearings for Aboriginal offenders.

The 2007 CSC Report re-iterated most of the above points, noting the following facts:

1. The annual costs for males in prison is \$86,000 and for females \$171,000.
2. The Aboriginal offenders at admission are younger, 50% between 18 and 29, compared to 38% for non-Aboriginal offenders.
3. Aboriginal women represent 31% of all incarcerated women and 19% of all incarcerated. Overall, Aboriginals accounted for 17% of the total federal offender population while Aboriginal adults represent 2.7% of the Canadian adult population.
4. The number of incarcerated Aboriginal women increased steadily from 59 in 1997-98 to 148 in 2006-07, an increase of 151% in the last ten years. For Aboriginal men, the respective numbers were 2,049 and 2,432, an increase for the same period of 19%.
5. The grant rate for federal parole for Aboriginals has fluctuated over the past decade reaching a high of 76.4 in 2003-2004 and a low of 67.9 in 2006-07. For non-Aboriginals, over the same period, the grant rank was highest in 1998-09 at 75% and lowest in 2006-07 at 70.5.
6. 45.6% of all hearings for Aboriginal offenders were held with an Aboriginal Cultural Advisor, up from 28.9% in 1997-98.
7. Aboriginal offenders served 42.3% of their time until full parole while for non-Aboriginal inmates it was 39.2%.
8. Of inmates released on a first federal day parole in 2006-07, 29.8% of the Aboriginals were released on accelerated day parole supervision compared to 50.3% of the non-Aboriginals.

It is well-known that Aboriginal inmates are less likely to apply for early release and more likely to have their conditional releases or parole releases revoked. The Aboriginal Justice Implementation Commission in 1999 cited data showing that in the Prairie region the approval rate for Aboriginal inmates applying for parole was 15% to 18% lower than for non-Aboriginals. As well, 27% of Aboriginal inmates, as compared to 11% of non-Aboriginals, had their conditional releases revoked and 44% of Aboriginal inmates on full parole had their paroles revoked compared to 25% among non-Aboriginals.

Data published by Juristat (2005) indicated that “as compared to their representation in the adult and youth populations, Aboriginal adults and youth were highly represented in admissions to all types of correctional services. Furthermore, trends in both adult and youth corrections have shown that the proportional representation of Aboriginal people among females admitted to correctional services has been greater than for males”. These unacceptable patterns and trends were highlighted in the 2006 report by CSC’s own ombudsman / investigator. For Aboriginal offenders it was noted that the situation “has not measurably improved in recent years”. Taking federal and provincial custody into account, the overall incarceration rate for Aboriginal people in Canada was 1,024 per 100,000 adults whereas the comparable figure for non-Aboriginal Canadians was 117 per 100,000 adults so Aboriginals were 9 times as likely to be incarcerated. While praising the fact that culturally sensitive programs have been established and Aboriginal issues have become a priority for CSC, the CSC investigator observed that Aboriginals are less likely to be granted temporary absences and parole, get parole later in their sentence, are more likely to have their parole suspended or revoked and more likely to be classified as high risk. Among his key recommendations are (1) use a security classification that ends the over-classification of Aboriginal offenders; (2) give them access to programs and services which reduce time in medium and maximum security and significantly increase their numbers in minimum security institutions; (3) give them more temporary unescorted leaves of absence; (4) get more Aboriginal inmates in front of the NPB at earlier eligibility times; (5) build capacity for an increased use of more section 84 and 81 agreements with Aboriginal communities. These recommendations are completely in congruence with the objectives and strategies of the Offender Re-integration project.

The literature on successful re-integration has strongly underlined the importance of the ex-inmate having dealt with his/her substance issues. The impact of re-awakened cultural identity and spirituality has also been found to be significant, especially in studies that have been based on individual success stories rather than general statistical analyses of secondary data. Heckbert (2001), for example, in a study of 85 Edmonton-based Aboriginal ex-inmates who reportedly have turned their lives around, pointed to the significance of identity (Aboriginal spirituality and cultural activities) in effecting change but controlling substance abuse was always cited by the participants as a key factor (i.e., the proximate cause of their turn-around). Heckbert cites other literature (quite a few in the 1990s) which establishes the same points and which generally follow the same methodology. Sioui et al (2002) analyzing data on over 500 cases reported that (a) participation in cultural activities was strongly correlated with a decrease in recidivism but had a less clear impact on re-integration since participants generally had lower risks and needs to begin with; (b) the same conclusion was drawn concerning participation in spiritual activities and receiving Elders’ advice; (c) given the low number of Aboriginal inmates participating in Aboriginal-specific programs and the positive results that are associated with such participation, they concluded there should be greater access provided to the Aboriginal inmates.

Several large studies have attempted to determine whether the risk factors for recidivism, parole revocation, etc are different for Aboriginal inmates than for non-

Aboriginal inmates. A recent study (Rugge, 2006) found that the best predictors of recidivism were the so-called “Big Four”, namely adult criminal history, antisocial personality, type of companions and criminogenic needs (e.g., antisocial cognitions or values), and that they were of equal applicability to Aboriginal offenders.. Still, her main point was that risk factors seem similar but perhaps Aboriginal offenders may have additional risk factors or needs. Here she refers to Australian / NewZealand research which points to such risk factors as lack of cultural identity, sense of group membership (seek belonging through gang membership) and negative self-image, and the yet untested argument that the inclusion of a cultural identity risk factor could add predictive power to risk assessment instructions. If additional risk factors can be demonstrated then a strong case might be made for appropriate treatment strategies to be developed.

Studies (both statistical and also interviews with community parole officers) have also generally found that in order to succeed (not be re-arrested and revoked) in the first 90 days after release several factors are especially crucial. These are (a) food, clothing and housing needs being satisfactorily met; (b) life skills including budgeting skills have to have been gained; (c) employment and educational assistance has to be in place; (d) the offenders need to have some insight into their problem areas.

There appears to have been few accessible studies done on how community-based programs such as EORP might impact on improvements within the prison setting, namely Aboriginal inmates getting involved in prison programs that can effect cascading (getting re-classified and reassigned to lower security custody), seeking early release, and being successful at parole hearings. Despite the plethora of Aboriginal initiatives over the past decade there still seems to be a missing factor as regards changing Aboriginal penal patterns and perhaps that factor could well be projects like the EORP which emphasize pre-release activity as well as community plans along the lines of CSC’s section 84. A Nova Scotia position paper (Mi’kmaq Friendship Center, 2008) has contended, for example, that

“Many Aboriginal inmates would rather serve out their full sentence than take the risk of “messaging up” while on parole. Without the reasonable hope of finding supportive programs that they can attach to upon release, they feel at risk to “fall into old habits”, and ultimately re-offend ... With partnerships ... “in-reach”, can apprise and educate inmates facing a possible parole date to the opportunity for support that exists within the community; and where the parole officers and associated staff can refer and co-case manage those who elect to avail themselves of those community supports”.

CONTEXT FOR OFFENDER RE-INTEGRATION IN ELSIPOGTOG

POPULATION AND EDUCATION

As indicated in the table below, the total registered population of Elsipogtog has grown by over 2% per year since 1995. The growing population – a sharp contrast to the surrounding communities in the region – has a high proportion of youth, estimated to be about 40% aged 17 or under, twice the provincial percentage. The total numbers of males and females in the total registered population (on and off reserve) were quite similar, namely 1406 and 1420. It does appear that females emigrate more; in 1995 off-reserve, there were 222 females and only 166 males, and in 2000 it was 252 to 184 respectively. The 2006 data were not available but reportedly the pattern of gender difference in migration has continued, presumably fuelled by pursuit of higher education and marriage.

The number of Elsipogtog residents funded in post-secondary academic institutions (there could be an occasional trade program participant funded under the band’s discretion) in the past two fiscal years is provided in Table B. The figures for the two First Nations in PEI are also provided for comparison purposes. The number of post-secondary enrollments has increased in Elsipogtog (over 60 in fiscal 2006-2007) but more improvement can be expected as can be deduced from the percentages in post-secondary education in the other First Nations illustrated in the table.

Table A

Elsipogtog Population

1995	2000	2006
1700 On-reserve (Own Band)	1924 On-reserve (Own Band)	2131 On-reserve (Own Band)
51 On-reserve (Other Bands)	59 On-reserve (Other Bands)	38 On-reserve (Other Bands)
1751 Total On-reserve	1974 Total On-reserve	2169 Total On-reserve
388 (18%) Off-reserve	436 (18%) Off-reserve	657 (24%) Off-reserve
2139 Total	2410 Total	2826 Total

*INAC’s Indian registration system, July 2007

Table B

Post-Secondary Enrollments: Student Counts, Lennox Island, Abegweit and Elsipogtog

First Nation*	2005 ~ 2006	2006 ~ 2007
Lennox Island (362 to 805)	20	25
Abegweit (176 to 312)	9	10
Elsipogtog (2131 to 2826)	50	63

*Population counts on reserve and total band membership are bracketed.

*Source: INAC - Atlantic

POLITICAL ECONOMY

It is clear that significant economic development has taken place in many FNs over the past decade and newspaper accounts have celebrated major economic growth in FNs such as Akwesasne, Six Nations of the Grand River, Membertou and Millbrook. Much entrepreneurial activity has occurred in a variety of sectors including resource development, tourism / hospitality, and light manufacturing (Clairmont and Potts, 2006). Fisheries has been particularly highlighted in British Columbia, Ontario and Atlantic Canada (Coyle, 2005, DFO 2005). While Aboriginal fisheries activities through Department of Fisheries and Oceans (DFO) programs may have preceded the Supreme Court of Canada (SCC) Marshall decision, there is little doubt that a qualitative change occurred as a result of it, especially in Atlantic Canada. Recently (Mail Star, February 27, 2006), a DFO official reported, “that [since 2000] more than 1000 FN people are employed in an orderly fishery and hundred more fisheries-related jobs have been created. Unemployment has dropped 4% (in absolute terms) from 2000 and fishing licenses held by FN people have generated economic return of roughly \$41 million in 2004 or \$4000 per household, an increase of more than 300% from the return generated from licenses held in 2000”. A spokesperson for the Atlantic Policy Congress of FN Chiefs (APC), interviewed on the same news item, noted that, despite inefficiencies in the way DFO paid out monies after the SCC decisions, “the money has had a positive effect on Aboriginal communities. Our communities have a new sense of hope. It is not a money thing. It’s a whole mindset. And it has fundamentally changed our communities forever and that is really good”.

While the fisheries agreements signed with DFO did not live up to expectations in many FN communities and certainly did not readily yield the “moderate livelihood” that the SCC decision sanctioned, it has apparently often produced the changed mindset referred to by the APC spokesperson. Indeed, even in one of the FN which refused to sign a DFO agreement, it is manifested – for example, a Paq’tnekek interviewee commented, “Right now we have 4 boats with 8 people on each and they fish for the band. We have communal licenses. The band creates employment, the profits from the catch go right back to the community and it creates programs, recreation. We have a councilor in charge

of the fishing portfolio”. Several FNs also have organized their fisheries in such a way as to distribute the work opportunities to fish, thereby spreading the benefits and E.I. eligibility. In Elsipogtog the developments in fisheries have been a source of much employment and pride; recently (2007) the monthly community newspaper pointed with enthusiasm to the fact that many of the captains of the Elsipogtog-designated fishing boats were community residents and that the boats yielding the highest value of catch were captained by band members.

The developments in the fishery have reinforced other economic development in some FNs. Additional, important initiatives aimed at diversifying Mi’kmaq economies have come with INAC’s Marshall Phase 11 Development program (INAC Report, NEDG, November, 2005). The objectives of this program were fourfold, namely increase access to economic development and capacity building opportunities, enhance Mi’kmaq and Maliseet expertise and capacity to carry on negotiations, increase the land base of FNs (the Mi’kmaq and Maliseet FNs were cited as having among the highest on-reserve social assistance and smallest reserve land per capita in the country), and, fourthly, create co-management opportunities. The program has apparently been quite well-received and considered beneficial by FN leaders. The report’s recommendations call for more attention to the “aggregate” (the program funds had been competitive among FNs) and to facilitating inter-band economic relationships; also emphasized was “moving the program delivery to a more partnership approach consistent with greater self-government and with a view to reducing dependency”. A Marshall Phase 111 Program is anticipated by Mi’kmaq leaders, reportedly having similar objectives and aimed at diversification of FN economies, “given the tenuous state of the Atlantic fishery and the political reluctance to allocate more quota to the Mi’kmaq”.

The implications for Mi’kmaq justice are interesting. Improved economic well-being and an optimistic mindset about the future are usually associated with less crime and social disorder. At the same time, to the extent that the economic improvement and perceived future prospects are not well distributed, socio-economic disparities may set in which may marginalize offenders (i.e., offenders may be increasingly drawn from a decreasing pool of the socio-economic disadvantaged). Some have argued, in the case of Elsipogtog, that the greater flow of cash in the community can be mis-directed into more drug use. Growing socio-economic differentiation coupled with a decline of communitarian sentiments (a strong correlate of modernization) could generate social problems and conflict, especially where there is no formal mechanism such as a taxation policy to attenuate the inequalities. Protests on behalf of the less advantaged could take many forms, including that of challenges in terms of individual versus collective Aboriginal rights, a matter which federal and provincial governments may presume has been settled (Ontario Native Secretariat, 2005) but which, in the absence of treaty agreements and other FN-level consensus building may be quite controversial (the divergent views on this issue were articulated by prominent Mi’kmaq leaders prior to the anticipated 2006 SCC decision on logging).

Overall, the economic developments have reinforced the considerable expansion of FN government. Not only has there been devolution of budgeting and regulation

making from INAC to the FNs, but, also, many FNs have entered into numerous agreements with other governmental agencies (DFO, MNR) as well as with private businesses. Here, too, a significant acceleration in the pace and the scope of FN regulatory governance can be noted (Avio, 1994; Coyle, 2005). There appears to be as well, much “downloading” (better, perhaps, co-management) by federal and provincial agencies to the FNs with respect to monitoring and enforcement in areas such as fisheries, forestry, parklands, and moose (and other game) hunting. This major social evolution in governance places the elected FN governments front and center in occupations and protests and, seen in the context of increasing social differentiation within FNs, would appear to bring to the fore issues such as the capacity at the band level to deal with disputes, and challenges to band policies from a variety of standpoints (e.g., native rights, equity). Co-partnering, whether with government agencies or increasingly with other FNs in economic development (as recommended by Mi’kmaq interviewees in the assessment of Marshall Phase 11 program) may require developing a Mi’kmaq approach to these conflict resolution issues. Programs such as restorative justice and conflict resolution, such as have developed significantly in Elsipogtog in recent years, seem likely to become more important in these areas.

Since the 1960s, when the role of the Indian Agent was eliminated by Indian Affairs, there has been an irreversible trend towards band self-administration in Canada. The major political development over the next decade will likely have to do with tripartite (federal, provincial and FNs) treaty negotiations which are in progress in Nova Scotia and which are emerging in New Brunswick and PEI. Approximately twenty six years after their proposal for discussions on Aboriginal title was rejected by government, the realities of court decisions (especially the SCC Marshall decision it appears) and other factors, spawned a new milieu and led to an umbrella agreement between Mi’kmaq leaders in Nova Scotia (the 13 chiefs) and federal and provincial officials (ministers of INAC and Aboriginal Affairs respectively) in 2002 to begin to address the larger Mi’kmaq concerns. The umbrella agreement commits all parties to “good faith negotiations” and has three central foci, namely Aboriginal title, treaty rights and consultation. It was decided to take this entire process out of the on-going Nova Scotia tripartite forum process established as a result of the Marshall Inquiry in 1991. A subsequent three-stage process has been envisaged, namely agreeing on the negotiations framework (a framework agreement), substantive negotiations / negotiating a draft agreement, and a final formal sign-off / execution phase. This process is on-going and currently both the federal and provincial governments have agreed to the tentative framework agreement while Mi’kmaq leadership is working through community consultation, seeking consensus among the thirteen bands, explaining the framework agreement, and getting the input from communities before any framework agreement is signed. Since the format of this negotiation process differs from the treaty negotiations format followed by the federal government elsewhere, it has been dubbed the “Made in Nova Scotia” process.

Perhaps influenced by these developments in Nova Scotia, a similar tripartite treaty negotiation process appears to be emerging in both New Brunswick and PEI. The new provincial government in the former has proposed a series of meeting between the

premier and cabinet ministers and the thirteen FNs there (“bilateral talks”). In PEI, there has been a similar development. In 2006 the MCPEI in its annual report referred to an emerging tripartite process. In 2007 the newly formed provincial government, following up on spade work done by the previous administration, announced the creation of a new post, Aboriginal Affairs Officer, and an Aboriginal Affairs Secretariat under the Office of the Attorney General (long the designated government department for Aboriginal affairs). The news release stated that this new structure would make it easier for Aboriginal individuals and communities to deal with the provincial government. The FN chiefs hailed the announcement and one was quoted as saying, “It is our hope this will lay the groundwork for greater cooperation between all levels of government – provincial, federal and Mi’kmaq – in areas of common interests” (The Province, October 18, 2007). While there is as yet no full-blown treaty process as in Nova Scotia, the announcement is promising. Similarly in New Brunswick, significant development in areas of economic development and justice (such as community partnering with CSC and NPB) require both bilateral negotiations and tripartite agreements as will be discussed below. Of course, all this political development underlines the importance of the views of Aboriginal leaders that it is crucial to exercise legitimate authority in areas where they will be negotiating agreements and that in turn makes it imperative, in the long run, that community-based ways to resolve conflict and deal with violators of band rules and commitments, such as through circle justice, can be effective.

CRIME AND CORRECTIONS

THE ELSIPOGTOG CONTEXT

There is a serious problem of offending in Elsipogtog and in the 2005 community survey and focus groups, undertaken in the process of developing a strategic action plan for Elsipogtog justice initiatives, the respondents called attention to the high level of offending and expressed much fear and worry about being victimized. At a subsequent meeting held by the Elsipogtog Justice Advisory Committee with the band council, there was much talk about the need for “consequences for offending” and about the need to more effectively tackle the increasing violence and theft in Elsipogtog. In the tables 1 to 7 presented below the patterns of offending and community concerns are briefly described. The first five tables present a detailed overview of the offending problem from the perspective of police statistics over the period 1998 to 2006 inclusive. It can be noted that there has been some fluctuation with reported incidents increasing from 1998 to 2004 and then tailing off in the 2005 / 2006 period. While the RCMP report that crime stats are down in 2007, the incidence of violent offenses continues to very high, especially in comparison to other communities in the area, and the drug problems have grown.

Tables 6 and 7, taken from the 2005 study noted above, capture the community's perceptions. It can be seen in table 6 that residents identified many types of offenses as "big problems in Elsipogtog". The greatest consensus however concerned drug and alcohol abuse, identified by over 90% of the adult residents as a big problem. The connection of substance abuse to inmate status and to unsuccessful inmate re-integration has been highlighted in the literature on incarceration and offender recidivism. Justice officials and engaged psychologists interviewed in this assessment project contended that almost all native inmates in the provincial and federal correctional institutions have a major substance abuse problem. Moreover, dealing with one's substance abuse problem has been identified by them as the most important determinant of successful offender re-integration. Table 7 depicts the Elsipogtog adults' priorities for changes in how the justice system and community may respond to the perceived problems. It can be seen that in the 2005 survey the respondents' top three priorities were more legal advice and services such as court workers, more concern for victims' needs and safety, and community-based programs and services for convicted persons. Clearly the Elsipogtog adults desired a balance in responding to the needs of the victims and the problems of the offenders. The majority of both female and male respondents (61% and 71% respectively) accorded high priority to community-based initiatives for offenders. Elders shared that perspective. There was a deep concern among them that re-integration and healing be emphasized, as reflected in articulated views such as "we need to find balance between men and women; the spouse loves the abuser; they just want the abuse stopped". "Can't RJ do more preventive work" one elder wondered? The suggestion was that maybe there could be better mentoring such as having ex-offenders work with youth to steer them away from crime. It was also noted that perhaps one reason for little community involvement is that "people don't want the responsibility if the intervention does not work and the person hurts or kills again". Of course, given the high level of serious offending and victimization, residents properly expressed concern about the effectiveness of community-based initiatives. For example, the emphasis, the elder focus groups advanced, has to be on prevention rather than reaction but when reaction occurs it needs to be more effective; one participant emphasized that in his victimization, "healing did not help ... it didn't fix the problem and the person still wants to beat me up".

The priority accorded to effective offender re-integration was indicated in the strategic action plan for justice as approved in 2005/2006 by a band council BCR and at a public community meeting. Goal #6 of the plan is referred to as "Working towards a First Nations Approach to Safety and Re-integration". Here the rationale is that **the offender re-integration project**, as being planned, will merge mainstream policy (CSC policies section 84 and to some degree section 81) with Mi'kmaw perspectives and practices. Secondly, it will increase community capacity to deal with Elsipogtog offenders, building up resources and expertise. Thirdly, it will increase confidence among community members that Elsipogtog can handle serious offending in a preventative, re-integrative fashion. Of course there could be issues about community capacity. While more resources are required, it is clear that there has been significant community development, both economically and in terms of social services and treatment infrastructure in recent years at Elsipogtog (conventional and traditional treatment providers, alcohol and drug counseling, a methadone clinic, the Eastern Door professional team to diagnose and treat

FASD-affected persons, cultural revitalization etc). The community is ready to move to a take-off stage in terms of creatively and effectively dealing with its social problems, a key one of which is responding to issues of offending and offender re-integration.

ELSIPOGTOG POLICE STATISTICS: 1998 to 2006

In examining crime, violence and public safety patterns in Elsipogtog over the past decade through police statistics it is important to bear in mind three considerations, namely

1. Police-recorded incidents do not always entail the formal laying of charges. Police engagement under the Mental Health Act, for example, may require arrests but seldom result in formal charges being laid.
2. Not all offenses and threats to public safety are reported to the Police so police statistics always have to be supplemented by victimization surveys and other types of community surveys in order to provide an accurate and comprehensive picture. For example, family violence and drug abuse are usually much under-reported.
3. For a variety of reasons (e.g., the short-term effects of arrests and incarceration) it is usually desirable to take multi-year averages in order to detect trends. In the case of Elsipogtog the strategy for analyses here is to adopt two year averages in part because Elsipogtog was policed by a band constable service acting as special constables in tandem with the RCMP until 2002. In late 2002 the federal government (Aboriginal Policing Directorate), the provincial government, and the Elsipogtog band council signed a tripartite agreement (i.e., a CTA) whereby the RCMP became the sole police service in the community.

1998 to 2002

Tables 1 and 2 present data for the years 1998 through 2002 when Elsipogtog had the special constable (band constables) arrangement with the RCMP. There was some variation between 1998 / 1999 and 2000 / 2001 but overall the level of incidents in the reporting categories was quite similar. Assaults, whether common assault, aggravated assault or spousal assault, declined appreciably in the latter period while property damage and response under the Mental Act Health – usually involving a person threatening to harm himself or herself – increased. The high level of offenses in Elsipogtog throughout this period is evident in comparison to the combined totals of Richibucto and St. Louis, which together constituted a slightly larger though older population than Elsipogtog. In both two year periods Elsipogtog had at least seven times as many arrests under the Mental Health Act, six times as many spousal assaults, ten times as many attempted

suicides, four times as many reported incidents of property damage, eight times as many aggravated assaults, and four times as many common assaults.

As noted, 2002 was a transition year to full RCMP policing so it is considered separately here. There was a significant increase in reported offenses that year in Elsipogtog. Common and aggravated assaults showed a sharp rise from an average of 162 and 41 respectively in 2000 and 2001 to 250 and 49 in 2002. Arrests under the Mental Health Act increased from 144 to 172 and incidents of recorded property damage increased from 125 to 149. Reported spousal assaults and attempted suicides declined, the latter appreciably falling to 32 from an average of 76 in the earlier years. The 2002 comparisons with the combined total of Richibucto and St. Louis were even more striking than in previous years with assaults of all kinds being between eight and over forty times as great while incidents of property damage were eighteen times as great and arrests under the Mental Health Act eighty times as frequent.

Table 1

RCMP Crime Statistics Richibucto Detachment

RCMP Estimated Population	Elsipogtog		Richibucto		St. Louis	
	2200		1400		1000	
Year	1998	1999	1998	1999	1998	1999
Sexual Assault	19	14	3	4	3	1
Assault Level I	183	179	31	40	10	15
Assault Level II	54	41	1	0	1	5
Damage to Property	117	117	9	10	12	19
Suicides	2	2	0	1	0	0
Attempted Suicides	54	98	5	2	3	3
Spousal Assault (Male Offender)	16	32	2	4	3	0
Spousal Assault (Female Offender)	2	8	0	1	0	0
Total Mental Health Act	110	107	9	5	9	3

Table 1 (cont'd)

	Elsipogtog			Richibucto			St. Louis		
	YTD			YTD			YTD		
Year	2000	2001	2002	2000	2001	2002	2000	2001	2002
Sexual Assault	10	14	16	11	2	0	3	2	0
Assault Level I	148	177	250	41	29	0	13	10	14Est
Assault Level II	44	37	49	2	2	0	3	3	0
Damage to Property	109	141	149	32	29	1	14	20	16Est
Suicides	2	4	4Est	0	0	0	0	0	0
Attempted Suicides*	54	101	32Est	4	7	1	2	2	0
Spousal Assault (Male Offender)*	21	7	8	2	1	0	0	1	0
Spousal Assault (Female Offender)*	2	0	2	0	0	0	0	0	0
Mental Health Act	134	153	172	16	13	1	7	8	4Est

Table 2

Selected RCMP Statistics Elsipogtog: 2000 to 2002

	2000	2001	2002
Total Person Offences	230	255	332
Break and Enter Residential	45	48	52
Theft Under	69	118	103
Total Property	182	221	181
Peace Bonds*	10	33	32
Breach of Peace*	53	178	220
Total Drugs	7	20	31
Child Welfare	17	27	29
Liquor Offences	128	167	155
Impaired Driving	32	44	54
False/Abandoned 911s	123	114	123
False Alarms	95	124	140
Young Offenders	53	45	33

- Peace bonds and breach of peace are recorded as non-offences in the RCMP mayor's report.

Table 2 presents data for specific offenses over the years 2000, 2001 and 2002. An upward trend can be noted for crimes against the person (e.g., assaults), for breaches and for drug offenses. Property offenses and liquor violations (except impaired driving) merely fluctuated while the number of young offenders declined in each year. Some of the variation in the number of reported offenses in 2002 compared with previous years may well be attributed to the greater presence of the RCMP on reserve beginning in that year.

2003 and 2004

These years represent the first two years of complete, exclusive RCMP policing of Elsipogtog. The two year averages for the different offense are quite similar to the high levels of 2002 with a few offenses declining in number such as common assault (i.e., from 250 to 212) and arrests under the Mental Act (i.e., from 172 to 132) while property damage and reported spousal assaults increased. The differences vis-à-vis the comparison combination of Richibucto and St. Louis were less dramatic than in 2002 but still

substantial for virtually all offenses especially aggravated assault (ten times as many in Elsipogtog) and spousal assault (sixteen times as many).

Overall, then, the RCMP data on offenses for the five year period from 1998 to 2004 inclusive show **three central points**, namely (a) the very high level of serious offenses in Elsipogtog; (b) while crime was generally decreasing across the country, it remained very high still in Elsipogtog; (c) that the rates were especially high in comparison to neighbouring communities.

Table 3

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

2005 to 2006

It is with caution that comparisons may be drawn between these two years and earlier police reports since there were significant changes in the RCMP reporting system beginning in 2005. **Nevertheless, it would appear that there has been a significant reduction in reported offences as depicted in tables 4 and 5.** Assaults declined significantly from well over 250 in previous years to but sixty-six in 2005 and 147 in 2006. Sexual assaults declined by 50% and arrests under the Mental Health Act went from 172 in 2002 and 132 over 2003 and 2004 to only 30 in 2005 and 76 in 2006. Thefts under \$5000 also declined sharply. In these respects Elsipogtog was following the national trends though more dramatically; the level of decline in Elsipogtog may also reflect the greater effectiveness of the larger and more settled-in RCMP presence.

The data do show however that was **a significant increase in recorded occurrences in 2006 as compared with 2005**, almost a doubling or more of incidents with respect to “Intoxicated Persons Detention Act” (from 26 to 48), the “Mental Health Act” (from 30 to 75), “disturbing the peace” (from 36 to 56), “resisting arrest or

obstruction” (from 3 to 12), “harassing phone calls” (from 5 to 9), “breach of peace” (from 34 to 111), “robbery/extortion/threats” (from 19 to 52), “total assaults excluding sexual assaults” (from 66 to 147), “theft under \$5000” (from 27 to 52), “break and enter” (from 32 to 71), and “crime against property” (from 52 to 102). It is not clear why the large jump in incidents took place but generally the increase occurred at the low end of the offence category, that is, common assault not aggravated assault, uttering threats not robbery, and theft of property under \$5000 not other theft categories. This suggests greater police activity was a crucial factor, whether by design (e.g., a crackdown) or greater police presence (e.g., more officers available) or both. It will be necessary to examine the data for 2007 and 2008 to determine whether there is a trend towards the level of offenses that characterized the period 2000 to 2004 inclusive.

The tables for 2005 and 2006 also indicate the sharp difference in violations and incidents between Elsipogtog and its neighbouring communities. Elsipogtog is roughly the same population size as Bouctouche (Elsipogtog is slightly smaller but has a younger population thus balancing out the primary causal considerations) but recorded 45 times as many cases under the Intoxicated Person Detention Act, 12 times as many under the Mental Health Act, 19 times as many in disturbing the peace, 19 times as many in breaching the peace, 7 times as many for robbery and threats, 13 times as many in total assaults, and 12 times as many in break and enter. Similar large percentage differences were indicated in virtually all other offence categories.

Overview

Overall, then, the police statistics indicate that the incidence of most offenses has fallen from the high levels of 2002 to 2004 and that young offenders in particular seem to have become much less common. It is not clear how stable the downward trend for adults will be but the RCMP have reported that recorded offenses have declined in 2007 from the high levels in 2006. It is clear that Elsipogtog continues to have much higher levels of violations and serious offenses than its neighbouring communities do. There is then a serious problem of offending in Elsipogtog and it should not be surprising that in the Elsipogtog community survey and focus groups, the respondents called attention to the high level of offending and expressed much fear and worry about being victimized. At the meeting with the band council in late 2006, where the survey and focus group results were discussed, there was much talk about “the increasing violence and theft in Elsipogtog and the need for consequences”. Since 2006 these problems of offending have remained significant in the community discourse. The level of drug abuse has reportedly grown, and according to RCMP officers “drug use is very bad”. In the early summer of 2008, 43 persons were receiving daily doses of methadone at the community health clinic (a priority being pregnant women with an opiate addiction), a very high number for a community of only roughly 2200 people. Another community issue has been how to respond to a small number of youth under twelve years of age (i.e., not subject to criminal prosecution) who have engaged in significant property damage and arson. The Elsipogtog restorative justice program (i.e., healing circles) has received far more referrals for youth and adult accuseds from the police and the crown in the eighteen

months since 2006 than in the three preceding years, indicating that the criminal justice authorities are open to alternative ways of responding to offenders and the crime problem in Elsipogtog.

Table 4

**Elsipogtog and Neighbouring Communities:
A Comparison of Police Statistics for 2005 and 2006**

VIOLATION (2006)	Elsipogtog (pop 2400)	Bouctouche MUN (pop 2500)	Richibucto MUN (pop 1400)
Intoxicated Persons Detention Act - Offences Only	2	1	2
Intoxicated Persons Detention Act - Other Activities	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 Against Property or an Animal	9	1	0
Breach of Peace	111	6	13
Public Mischief	6	0	2
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
Aggravated 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 5

Elsipogtog and Neighbouring Communities:
A Comparison of Police Statistics for 2005 and 2006

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
Breach of Peace	34	4	3
Public Mischief	2	0	0
Drug Offences – Trafficking	0	0	1
Total Sexual Offences	5	0	1
Robbery/Extortion/Harassment/Threats	19	3	6
Assault on Police Officer	1	0	1
Aggravated Assault/Assault with Weapon or Causing Bodily Harm	18	0	1
Total Assaults (Excl. sexual assaults, Incl. Aggravated Assault, Assault with Weapon, Assault Police)	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 6

I am going to read a short list of things that are sometimes problems in communities. Please tell me if you think they are a big problem, somewhat of a problem, or not a problem at all here in Elsipogtog:

	Big Problem	Somewhat Problem	No Problem	Don't Know
Homes or other places being broken into	74%	17%	2%	3%
Wife battering	38%	30%	7%	25%
Child abuse	57%	27%	3%	11%
Vandalism or property destruction	79%	15%	2%	3%
Poor maintenance of property, broken windows, etc.	76%	15%	4%	5%
Feuding among different families or groups	54%	30%	6%	10%
Noisy parties, quarrels, loud music	45%	25%	23%	8%
Drug/alcohol abuse	90%	8%	2%	1%
Sexual or other harassment	51%	22%	8%	19%

This table is taken from Elsipogtog Justice: Future Directions. 2005

Table 7

Do you think the following possible changes should have high, medium or low priority?

	High	Medium	Low	Don't Know
More legal advice and services for natives (such as court workers for example)	83%	9%	2%	5%
More Community % Involvement in how sentences are decided	60%	12%	13%	13%
More Community Programs and services for convicted persons (e.g., open custody places, half-way houses)	63%	15%	13%	8%
Regular court sessions held in Elsipogtog as well as Richibucto	64%	16%	9%	10%
More services for victims of crime/abuse (such as a safe house)	79%	7%	7%	6%
A community justice system for almost all minor crimes	71%	11%	7%	10%

This table is taken from Elsipogtog Justice: Future Directions. 2005

PROVINCIAL PATTERNS OF INCARCERATION

Data, presented in the following four tables, were obtained for youths and adults admissions in the provincial correctional system over the three fiscal years, 2003-2004, 2004-2005, and 2005-2006. There are several key points:

1. The frequencies of persons in the four correctional statuses, namely sentenced to custody, remanded, placed on probation and given conditional sentences, involving Aboriginal adults, and also for Elsipogtog adults, have remained quite stable over these past three years.
2. According to INAC there are approximately 13,000 band members living on and off reserve and that total figure accounts for 1.8% of the New Brunswick population of 730,000. In the case of all Aboriginals in New Brunswick, the percentage Aboriginal of the total population sentenced to custody has remained steady at 7%, as has the percentage Aboriginal of the total population placed on probation. The corresponding figures for remand have averaged 9%, fluctuating between 8% and 10%, while Aboriginals accounted for 8% of the conditional sentences handed down by the provincial courts. The actual frequencies varied slightly from year to year averaging 95 sentenced to custody, 138 remanded, 125 placed on probation and 53 receiving conditional sentences.
3. In the case of Elsipogtog residents, there was modest fluctuation (predictable given the modest frequencies) as the number of cases in each category of the new admissions over the three years averaged 11, 18, 14 and 13 for sentenced to custody, remand, probation and conditional sentence respectively. There was no discernible trend over the three year period.
4. Overall, Aboriginal males accounted for more cases than Aboriginal females and that was especially true for remand and sentenced to custody (roughly a six to one ratio). The same pattern generally held for Elsipogtog residents though in the earlier two years equal numbers of males and females received probation (i.e., seven).
5. These data were for “new admissions” not new persons so repeat offenders could be recorded several times. No data were available on repeat offenders though informed provincial correctional authorities did report that such recidivism was common.
6. Very few Elsipogtog youth were involved in the provincial correctional system over the three fiscal years. Indeed, there were no youths receiving a custody sentence (whether secure or open) and only an average of two or three a year receiving probation or deferred custody (the latter is the equivalent of the conditional sentence for adults). Among Aboriginal youths throughout the province, there was a steady increase in the number receiving a custody

sentence, the frequency rising from 5 in 2003-2004 to 12 in 2004-2005 and 20 in 2005-2006.

Although there is variation and evidence of significant decline in incarceration of Aboriginal youth from Elsipogtog, the main pattern has been the over-representation of Aboriginal youths. This over-representation was especially evident in the fiscal year 2005-2006. Based on the premise that the Aboriginal population on and off reserve is about 2% of the NB population (taking into account the larger percentage of youth among the Aboriginal population) one can calculate the expected number of Aboriginal youth out of the total number sentenced to custody, placed on probation and given deferred custody. For example, out of say 400 probation cases in New Brunswick, the Aboriginal expected total should be 2% or 8 cases. **By that measure, there were usually three times as many Aboriginal youths on probation each year as would be expected.** Similarly, Aboriginal youths were **two to three times as likely as would be expected to have been sentenced to custody and three to four times more than expected to account for the remand cases.** Over-representation could be a function of the employment of different standards by Justice officials or, more likely, the types and the different level of offending between Aboriginal and non-Aboriginal youths.

Turning to adults it is clear that the patterns of percentage adult Aboriginal in each correctional option have also remained remarkably constant over the years. There is significant over-representation of Aboriginal adults in all the categories, whether sentenced custody, remand, probation or conditional sentences. **Generally the over-representation is about 4 to 5 times what would be expected** based simply on population numbers. Elsipogtog adults are also over-represented in each category though less so; it is difficult to be confident about the level of over-representation here in that the Elsipogtog numbers are few which makes estimation problematic.

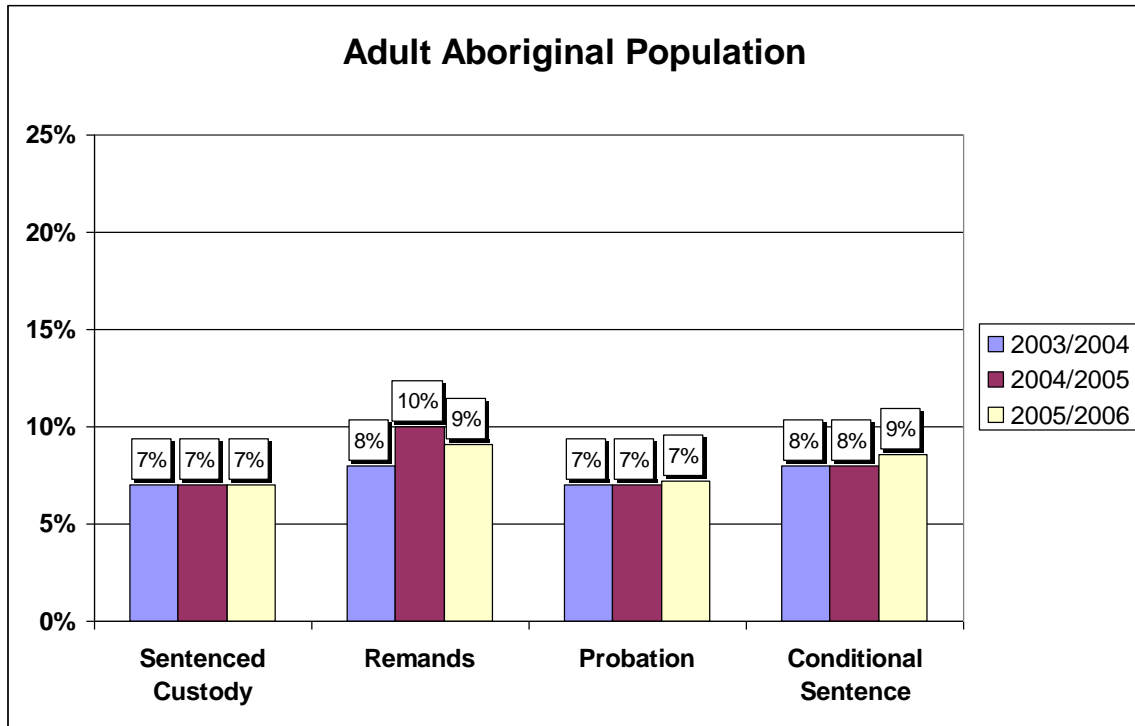
The following tables slightly re-work the tabular data provided by the New Brunswick Department of Justice. The charts are reproduced exactly.

2003-2006 Adult Aboriginal Admissions

2005-2006 Adult Aboriginal Admissions				
		Number	Out of	Percentage
Sentenced Custody	Abor. / (All) PBN	97	1389	7%
	Abor. Elsipogtog / (All) PBN	13	1389	1%
Remands	Abor. / (All) PBN	143	1572	9%
	Abor. Elsipogtog / (All) PBN	19	1572	1%
Probation	Abor. / (All) PBN	118	1631	7%
	Abor. Elsipogtog / (All) PBN	13	1631	1%
Conditional Sentence	Abor. / (All) PBN	57	666	9%
	Abor. Elsipogtog / (All) PBN	13	666	2%

2004-2005 Adult Aboriginal Admissions				
		Number	Out of	Percentage
Sentenced Custody	Abor. / (All) PBN	84	1291	7%
	Abor. Elsipogtog / (All) PBN	7	1291	1%
Remands	Abor. / (All) PBN	148	1540	10%
	Abor. Elsipogtog / (All) PBN	18	1540	1%
Probation	Abor. / (All) PBN	129	1792	7%
	Abor. Elsipogtog / (All) PBN	14	1792	1%
Conditional Sentence	Abor. / (All) PBN	51	634	8%
	Abor. Elsipogtog / (All) PBN	9	634	1%

2003-2004 Adult Aboriginal Admissions				
		Number	Out of	Percentage
Sentenced Custody	Abor. / (All) PBN	103	1432	7%
	Abor. Elsipogtog / (All) PBN	13	1432	1%
Remands	Abor. / (All) PBN	124	1467	8%
	Abor. Elsipogtog / (All) PBN	16	1467	1%
Probation	Abor. / (All) PBN	128	1764	7%
	Abor. Elsipogtog / (All) PBN	14	1764	1%
Conditional Sentence	Abor. / (All) PBN	51	616	8%
	Abor. Elsipogtog / (All) PBN	18	616	3%

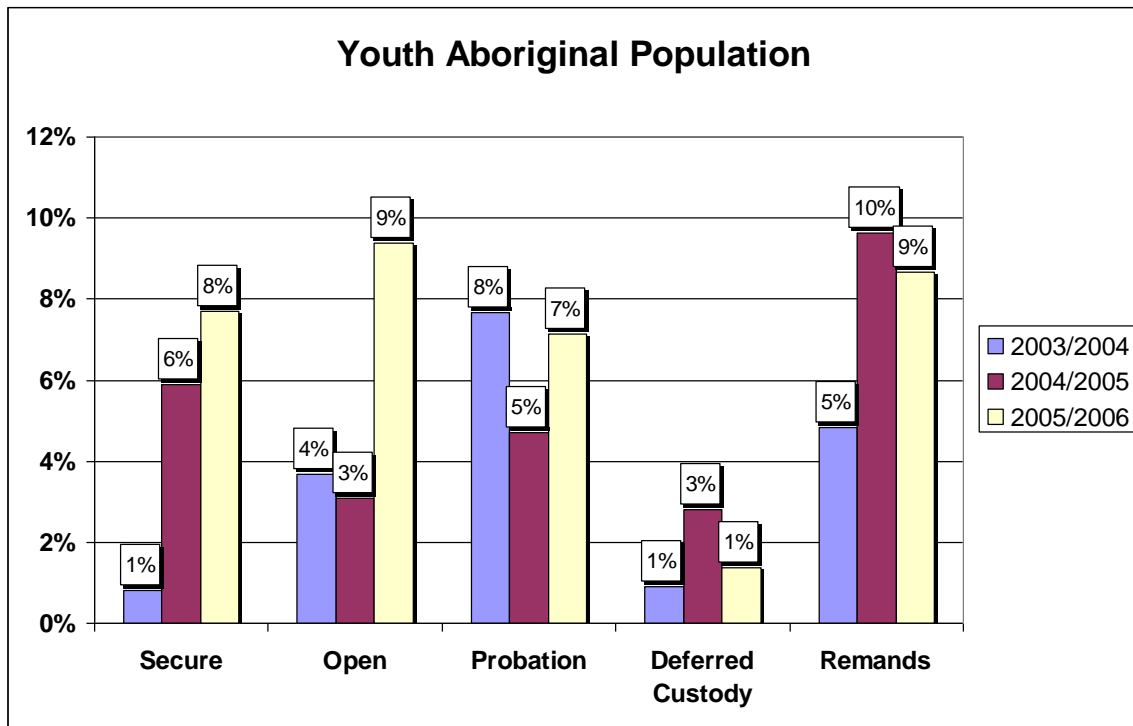


2003-2006 Youth Aboriginal Admissions

2005-2006 Youth Aboriginal Admissions				
		Number	Out of	Percentage
Secure	Abor. / (All) PBN	11	143	8%
	Abor. Elsipogtog / (All) PBN	0	143	0%
Open	Abor. / (All) PBN	9	96	9%
	Abor. Elsipogtog / (All) PBN	0	96	0%
Probation	Abor. / (All) PBN	35	490	7%
	Abor. Elsipogtog / (All) PBN	2	490	0%
Deferred	Abor. / (All) PBN	2	145	1%
Custody	Abor. Elsipogtog / (All) PBN	2	145	1%
Remands	Abor. / (All) PBN	26	300	9%
	Abor. Elsipogtog / (All) PBN	0	300	0%

2004-2005 Youth Aboriginal Admissions				
		Number	Out of	Percentage
Secure	Abor. / (All) PBN	8	136	6%
	Abor. Elsipogtog / (All) PBN	0	136	0%
Open	Abor. / (All) PBN	4	130	3%
	Abor. Elsipogtog / (All) PBN	0	130	0%
Probation	Abor. / (All) PBN	21	447	5%
	Abor. Elsipogtog / (All) PBN	1	447	0%
Deferred	Abor. / (All) PBN	3	107	3%
Custody	Abor. Elsipogtog / (All) PBN	2	107	2%
Remands	Abor. / (All) PBN	26	270	10%
	Abor. Elsipogtog / (All) PBN	3	270	1%

2003-2004 Youth Aboriginal Admissions				
		Number	Out of	Percentage
Secure	Abor. / (All) PBN	1	122	1%
	Abor. Elsipogtog / (All) PBN	0	122	0%
Open	Abor. / (All) PBN	4	109	4%
	Abor. Elsipogtog / (All) PBN	0	109	0%
Probation	Abor. / (All) PBN	33	430	8%
	Abor. Elsipogtog / (All) PBN	2	430	0%
Deferred	Abor. / (All) PBN	1	111	1%
Custody	Abor. Elsipogtog / (All) PBN	0	111	0%
Remands	Abor. / (All) PBN	14	289	5%
	Abor. Elsipogtog / (All) PBN	0	289	0%



FEDERAL PATTERNS OF INCARCERATION

Reports from federal corrections officials indicate that in Atlantic Canada the overall number of Aboriginal offenders / inmates has remained quite stable in recent years but there have been some interesting changes in placement. The officials suggested that there are usually about 140 plus Aboriginal persons under the responsibility of Corrections (including community supervision) at any one point in time. The table below for February 5, 2007 indicates that there were 114 incarcerated and 33 under community supervision. As noted elsewhere in this report, any Aboriginal proportion beyond 2% of the total numbers in a given correctional status category could be considered an over-representation. By that measure, the fact that 8% of the correctional institutions' "beds" are occupied by Aboriginal inmates could be interpreted as a significant over-representation (i.e., **four times the expected level**). It is interesting too that, according to the table, the percentage Aboriginal of inmates under community supervision is only 6% while the corresponding **percentage of those inmates in institutional segregation is 14%**. These latter patterns suggest that Aboriginal inmates are less likely to obtain early parole and that they are more likely to request and/or be given 'segregation'.

Other CSC data indicate internal variation of a modest sort has occurred with respect to the placement of Aboriginal inmates. A comparison of the days, February 5 and May 14, 2007, shows that more Aboriginals were housed in maximum security (25 to 18) and fewer Aboriginals in intermediate security (35 to 43) in the latter period. More

salient for the Elsipogtog offender re-integration project, **the number in Westmoreland (minimum security) increased from 14 to 21.** This finding signals a longer trend, namely the sharp increase over recent years in the number of Aboriginal inmates in Westmoreland and thus more eligible for the Pathways program there; two and a half years ago there were only 4 Aboriginal inmates at Westmoreland.

The CSC data are for Atlantic Canada and, in the available format, make it difficult to confirm the patterns of over-representation for First Nations people in New Brunswick. CSC data indicate that generally in 2007, roughly 60% of the Aboriginal inmates were band members while 20% were Inuit and the remaining 20% were recorded as “non-status or self-declared”. It is unknown what were the home communities and provinces of the inmates, whether Aboriginal or otherwise, so at this point one can only speculate that given the high level of over-representation among Inuit offenders vis-à-vis the Newfoundland and Labrador federal inmate population, and given the 20% “non-status or self-declared”, **the over-representation of New Brunswick native inmates would be between two and three times as much as could be expected based solely on the demographic factor – still a significant over-representation.**

The data concerning recidivism and repeat offenders are quite limited at present but initial estimates point to a significant amount of recidivism. One report from CSC Atlantic indicated that 64 Aboriginal inmates had been released in 2006 and, as of March 2007, 16 had been revoked for breaching a condition and another 6 revoked due to a non-violent offence for a total of 34%. The positive side is that 42 Aboriginal inmates (i.e., 66%) completed their release without incident at least for a maximum of 15 months. Inuit inmates accounted for 10% of the successful releases and 18% of the revocations. Comparable data for all inmates released from CSC Atlantic Canada institutions in 2006 are unavailable but **CSC officials have suggested that the rate of such revocations could well be higher for Aboriginals than for non-Aboriginal inmates.**

Reducing the likelihood of revocation, and of recidivism more generally, are, along with public safety, major concerns of CSC. Interestingly, the Pathways program at Westmoreland, which essentially is an Aboriginal-oriented program, seems to have had such an effect. It was reported that only 1 of the 14 inmates who have gone through Pathways at Westmoreland during its three year history has thus far been incarcerated anew. CSC officials also noted that reducing parole violation by enhancing community and familial integration is a key strategy as “The more community and family involvement, the better the chances are for the offender to succeed”. These points – getting Aboriginal inmates into the Pathways program and facilitating community and familial integration – are at the heart of Elsipogtog’s offender re-integration project, namely Oelielmiemgeoei or “going home in a good way”. A related strategy is facilitating section 84 parole releases which can combine the objectives of early parole release with public safety and community / family involvement. CSC statistics in May 2007 showed that of the total of 116 Aboriginal offenders incarcerated in the five institutions in the Atlantic Provinces that house federal offenders, there were 8 inmates actively seeking a release to the community via section 84 plans, 3 of whom were from New Brunswick. Another 6 Aboriginal inmates had requested a section 84 plan but had

yet to complete the application process - the process is offender driven and the cases will not move forward until all steps are completed. While at first glance it would appear that only 10% or less of the Aboriginal inmates are interested in the section 84 option, it could well be argued that if the recent section 84 initiatives are successful and a protocol and satisfactory process is established from the perspectives of both the inmates and the communities, then many more inmates would exercise the section 84 option.

The number of Elsipogtog residents in the federal institutions, or on parole, has varied over the past five years. At the start of the EORP initiatives there were only 3 or 4 in prison and none under parole supervision. By 2008 there were several on parole and reportedly about a dozen in the federal prisons. The increase may be the consequence of the growth of a pervasive drug abuse problem in the community.

Regional Count Report by Site/Aboriginal and Aboriginal Percentages.

Extraction date: February 5, 2007

Site/Aboriginal and Abor. Percentages	#7 – Community Supervision		#27 – Inst – Total Occupied Beds		#33 – Inst - Segregation	
	Site	Abor.	Site	Abori.	Site	Abori.
Atlantic (Renous) Institution (23100)	0	0	200	18	75	10
	Abor. – 0 %		Abor. – 9 %		Abor. – 13 %	
Dorchester Penitentiary (22000)	0	0	431	43	43	7
	Abor. – 0 %		Abor. – 10 %		Abor. – 16 %	
Springhill Institution (21000)	0	0	423	32	23	2
	Abor. – 0 %		Abor. – 8 %		Abor. – 9 %	
Westmoreland Institution (22100)	0	0	216	14	0	0
	Abor. – 0 %		Abor. – 6 %		Abor. – 0 %	
Bathurst Area Office (28700)	59	5	0	0	0	0
	Abor. – 8%		Abor. – 0 %		Abor. – 0 %	
Carlton Centre – CCC (28700)	8	1	0	0	0	0
	Abor. – 13 %		Abor. – 0 %		Abor. – 0 %	
Carlton Centre – Annex (28600)	12	1	0	0	0	0
	Abor. – 8 %		Abor. – 0 %		Abor. – 0 %	
Dartmouth Parole Office (28600)	71	1	0	0	0	0
	Abor. – 1 %		Abor. – 0 %		Abor. – 0 %	
Fredericton Area Office (28700)	48	2	0	0	0	0
	Abor. – 4 %		Abor. – 0 %		Abor. – 0 %	
Halifax Area Parole Office (28600)	71	3	0	0	0	0
	Abor. – 4 %		Abor. – 0 %		Abor. – 0 %	
Kentville Area Office (28600)	48	3	0	0	0	0
	Abor. – 6 %		Abor. – 0 %		Abor. – 0 %	
Labrador R.P.O (28300)	7	4	0	0	0	0
	Abor. – 57 %		Abor. – 0 %		Abor. – 0 %	
Moncton Area Office (28700)	101	1	0	0	0	0
	Abor. – 1 %		Abor. – 0 %		Abor. – 0 %	
Newfoundland – CCC (28700)	17	2	0	0	0	0
	Abor. – 12 %		Abor. – 0 %		Abor. – 0 %	
Nova Institution for Women (25000)	0	0	54	6	5	1
	Abor. – 0 %		Abor. – 11 %		Abor. – 20 %	
Shepody Healing Centre (22500)	0	0	30	1	0	0
	Abor. – 0 %		Abor. – 3 %		Abor. – 0 %	
Sydney Area Office (28600)	44	6	0	0	0	0
	Abor. – 14 %		Abor. – 0 %		Abor. – 0 %	
Truro Area Office (28600)	57	4	0	0	0	0
	Abor. – 7 %		Abor. – 0 %		Abor. – 0 %	
TOTAL:	543	33	1354	114	146	20
	Abor. – 6 %		Abor. – 8 %		Abor. – 14 %	

PROVINCIAL INCARCERATION INTERVIEWS: KEY THEMES

There were three non-Aboriginal persons interviewed who were knowledgeable about the provincial incarceration of Elsipogtog residents, one employed directly by New Brunswick Corrections and two engaged on a contract basis. All these persons were contacted on several occasions and provided valuable information and insights. Several other Department of Justice officials provided information upon request via e-mail. The key themes that emerged were

1. There are five provincial custodial institutions in New Brunswick but the exclusive focus here is on one alone. Almost all Elsipogtog provincial inmates are housed in the Moncton Correctional Centre (MCC) which has some long-term inmates but which is primarily “a holding centre for remanded inmates and NBI inmates for processing”. All inmates there are adult males, with females and youth prisoners housed elsewhere.
2. The MCC, with a bed capacity of 58 maximum, in recent years has been quite crowded, holding on any given day roughly 60 to 65 prisoners, of whom about 10% are Aboriginal, at least 90% from Elsipogtog. On February 1, 2007 there were 66 prisoners and 8 were Aboriginal persons. One respondent suggested that the number of Aboriginal inmates was greater in the late 90s and early 2000s but this has not been confirmed.
3. While the average sentence at the MCC is less than 60 days, there is much variation and some inmates on remand, according to senior MCC officials, “can be here forever” (e.g., eighteen months); inmates on remand at the MCC when sentenced get double time credit for their length of stay at the MCC and, reportedly, some inmates prefer a long remand stay to obtain that trade-off. Indeed, one official commented that the average stay at the MCC has been extended largely because of this pattern.
4. Parole is a possibility in the provincial correctional system but Juristat data indicate that parole is granted in less than .05 of the cases (i.e., between 5 and 10 paroles a year). The low level of parole is congruent with the fact that a CSCA agreement with federal corrections has meant that for the past eight years provincial offenders facing long sentences can be and routinely have been transferred to the federal institutions; the criteria have been sex offenders sentenced to six months or more, and all other offenders sentenced to one year or more incarceration.
5. According to MCC staff, there is much recidivism (“repeat” inmates) among the prisoners and such recidivism is greater among the Aboriginal inmates. As one official stated, “The First Nation offenders are well-known to us and this is because of their recidivism rate”.

6. There is minimal programming available at MCC but Aboriginal inmates can access psychological counseling as well as Aboriginal spiritual services (i.e., the Elders Project which has been funded by New Brunswick Corrections for the past five years) provided by a native and non-native person respectively, both of whom have considerable experience with Elsipogtog. Both these persons have service contracts and are available on a regular weekly (half-day) basis. The attendance at these afternoon sessions was described as good though not 100%. The weekly session, where all native inmates who wish can get together for smudging, smoking and so forth, is usually well attended. Inmates reportedly “open up” to the counseling. Other programs such as Alcoholics Anonymous are carried out by volunteers. There is no NADACA (native drug and alcohol) presence.
7. The MCC has open visitation for all inmates not on remand. The Aboriginal inmates apparently receive few visitors, notably fewer, according to MCC staff, than do the mainstream inmates. The distance from Elsipogtog may be a factor here but officials indicated that “when one compares the Aboriginal population and the non- Aboriginal population from the same region, Rexton, Miramichi and beyond, the non-Aboriginal inmates receive far more visitors and on a more consistent basis. Distance [from the MCC] is a consideration for both groupings but there is still a difference”.
8. It was also reported that upon release the Aboriginal inmates are more likely to have to be provided bus transportation home since no family member or friend comes to pick them up. Inmates are released directly into the community not to half-way house as in the federal system.
9. While mindful of the lack of empirical data, a senior MCC official agreed that, in the MCC experience, the Aboriginal inmates have been more likely to attempt suicide and more likely to be on suicide-watch.
10. All the respondents indicated that in their view the Aboriginal inmates exhibited much fear and insecurity in their attitudes and behaviour. As one psychologist commented, “They [the inmates] are very afraid, insecure, adrift, and focused on basic survival either inside or outside the MCC. They are very alienated from their own community. When they are facing release I can sense the fear that they have”. This observation is congruent with the comment made by one Elsipogtog justice system practitioner, namely “people just go after them when they return”.
11. Interestingly, one provincial official, observing that under a federal-provincial agreement some provincially-sentenced persons get transferred to the federal institutions, noted that natives are less likely to get such access “because the feds won’t accept them as they are seen to be too needy”.

12. The psychologists emphasized that nearly all ex-inmates needed drug and alcohol counseling and held that rehabilitative strategies and counseling to be effective should be done early upon release and before the individual is caught up in a negative local situation and set of relationships. As one respondent commented, “If there is support a person can avoid alcohol and drugs and if the person takes the initiative then he/she is more likely to be successful”.
13. There were diverse views concerning the marginalization of the inmates vis-à-vis the larger Elsipogtog community. One respondent suggested that the inmates are basically drawn from the confused, uncertain grouping that is neither reasonably well-off and integrated (comfortable with the contemporary values and lifestyles) nor rooted traditionally and comfortable there. Another suggested that drug abuse has been a great leveler of such social distinctions.
14. The psychologists also emphasized the importance of native spirituality. One observed, “The spiritual dimension is important and the sweats are good for cleansing the body as well as for conveying a sense of inclusion and membership. In the phases of the sweats the focus switches from individual to family to community so the sweats help to establish a sense of responsibility too”. The other psychologist commented on native spirituality as follows, “They (the inmates) all respect it even if, for interpersonal reasons, they do not believe that they can participate or do not”.
15. The two psychologists emphasized the desirability of more collaboration among the traditional and conventional service providers, contending that each perspective by itself has limitations, the mainstream one lacking the spirituality dimension and the spirituality thrust sometimes not well utilized for social and interpersonal reasons.
16. It was also observed that the infrastructure for rehabilitative and counseling services at Elsipogtog has continued to progress and now there are traditional and conventional counseling and treatment services, a methadone clinic (methadone clients are also required to submit to regular urine screening tests and a bi-weekly half-hour consultation) and other capacity (e.g., the Eastern Door for FASD diagnosis and treatment).
17. As in Nova Scotia, the provincial correctional institutions in New Brunswick do not have a formal native liaison position. The MCC does, as noted, have individual counseling and Aboriginal spirituality (including sweats) while its Nova Scotia counterpart has Aboriginal spirituality ((an elder and sweat organizer) and periodic cultural gatherings but no one-on-one counseling. The Nova Scotian cultural gatherings have been described by a Mi’kmaq organizer there as follows: “When we have the gatherings at the [correctional] institutions, we have an all day gathering; it is for the guards, inmates and other staff at the institution. We organize the meal, dancers, drummers, and bring give-away gifts for everyone. Takes a bit of organizing as everyone

coming in needs to be cleared. All inmates are welcome, native or non native. We do a lot of dancing and there is a MC who explains the dances and some of the traditions”.

18. The respondents all indicated that even the limited services available to the native inmates at the MCC have had positive impact at least in the sense that they have reduced grievances and had a calming effect on the inmates (a similar conclusion about the gatherings and spirituality sessions was advanced by provincial correctional authorities in Nova Scotia). In their view the modest initiatives have benefited the MCC as much as they have the native inmates.
19. As noted above, there is a provincial parole program as in the federal corrections system with mandatory release after serving 2/3 of the sentence and there is the possibility of temporary releases. No data were available comparing native and non-native release patterns.
20. Suggestions for reducing recidivism included early release programming individually tailored, better community support programs, exit circles in anticipation of an inmate’s release, and more collaboration among the different service providers bringing to the table different perspectives and services. All of these suggestions, as well as the patterns of offending cited in earlier sections of this report, are congruent with the objectives and anticipated structures and processes outlined in the OELIELMIEMGEOEI (offender re-integration) project.

FEDERAL INCARCERATION INTERVIEWS: KEY THEMES

There were ten persons interviewed who were knowledgeable about the federal incarceration of Elsipogtog residents, all but one of whom was a CSC / NPB employee. Four of the ten were Aboriginal persons. Several of the respondents were frequently contacted as well by e-mail. Contact was also established and more limited interviewing carried out with several other officials and several elders engaged by CSC / NPB. The key themes that emerged from these interviews were

1. The interviewees typically considered that the number of Aboriginal inmates, and Elsipogtog persons in particular, as a total of the inmates in the five Atlantic-area federal institutions, has been fairly stable for many years. Generally the number has fluctuated between 100 and 150 under sentence either in the institutions or in the community. In 2006 there was no Elsipogtog resident on parole and reportedly only four Elsipogtog inmates across all five

federal correctional centres in Atlantic Canada. In mid-2007 these numbers had not changed though, reportedly, three or four Elsipogtog residents were expected to soon obtain parole. By 2008 there were at least three Elsipogtog residents on parole and another dozen in federal custodial institutions.

2. There appeared to be a consensus too that at least until quite recent years there was little change with respect to the adaptation of Aboriginal inmates in the prisons, their experience with early parole and their recidivism. In all three respects it was acknowledged that Aboriginal inmates, compared with mainstream inmates, appeared to fare poorly in prison, participated less in conventional prison programs that impact on parole and early release opportunities, and were more likely to recidivate. Most non-native respondents however expressed ambivalence on whether the situation was as negative in these respects for Aboriginals in the Atlantic region institutions compared with the overall patterns in Canada.
3. Generally the respondents were quick to point out that significant, recent changes had been initiated with promising potential for changing these patterns. On a general institutional level, there have been regular Aboriginal cultural orientation sessions for CSC and NPB staff and the refinement of the “Aboriginal parole hearing” where an elder and native culture specialist (i.e., cultural advisor) join the regular grouping and the meeting is conducted in a circle format. The first Aboriginal assisted hearing (AAH) for parole in Atlantic Canada took place at Westmoreland in 2000. The Pathways program at Westmoreland, now just over three years in existence, was seen by its staff and by the other respondents as impacting on all three critical dimensions (i.e., inmates faring better, involved in effective programs, less recidivism). The Unit 58 “small feeding group” experiment in a more collaborative residential living arrangement at Springhill, now approximately two and a half years in existence, was hailed by the associated staff and other respondents as having a positive impact on inmates’ life skills, social skills and ability to cope outside prison; reportedly, the violence level in Unit 58 has been well below expectations. There are also several “drug free” pods in the 12 pod Unit 58 where inmates wishing a drug-free milieu can go (regular urine tests monitor the drug-free rule). According to officials, “there have been many Aboriginals living in Unit 58”. Other recent initiatives were generally cited as well, such as the implementation of an Aboriginal, substance abuse program and the more extensive involvement of elders, and to a lesser extent, the native liaison, in most aspects of the correctional system including Reception (assessment and specification of the correctional plan for each inmate) and Parole. The recentness of these initiatives and the lack of available data on specifics such as re-incarceration limit any assessment.
4. Inmates sentenced to the federal correctional system initially go to Springhill Reception for assessment and determination of their security level. This process can take several months (the target for sentences under four years is

less than 70 days and for other sentences less than 90 days) during which time the inmates are housed apart from the general inmate population but may participate in some activities (there is also a system of incentives that come into play here, allowing the inmate more access to general services). Access to elders and the native liaison – the native liaison role is important in informing the inmate about prison roles and procedures and running interference for him with the prison administration - is reportedly almost immediate upon entering Reception. The tasks of assessment and determination of risk level are given to an institutional parole officer and a program manager. They use a 161 page operating procedures manual - and consult with elders in the case of Aboriginal inmates - to determine security level (minimum, medium and maximum) and the correctional plan (what problem areas the inmate should work on and take programs in to facilitate early release) for the inmate. In interviewing and giving tests to Aboriginal inmates, the team is obliged to consider a broader social history than used with mainstream inmates. The scores from standard procedures can be over-ridden, and reportedly have been on a few occasions by the team or by the warden, to effect a more appropriate placement – usually an assignment to a medium or minimum security institution. The staff respondents involved in this process held that the assessment is fair to the Aboriginal inmates and that they especially benefit from the over-ride.

5. Once the Reception phase is completed, the inmate is placed and assigned an institutional parole officer and a correctional officer. Their role is, among other things, to encourage the implementation of the correctional plan and to assist in the inmate's securing early release opportunities. Their caseload typically includes inmates of diverse racial and ethnic identity. The correctional officer prepares monthly reports on the inmates' progress vis-à-vis the correctional plan and the institutional parole officer (the average caseload is 25 inmates at Springhill) works on the issues of readiness for day parole (eligibility for most inmates is after 1/6 of the sentenced time), unescorted temporary absences (UTAs) for educational or employment purposes, and full parole (eligibility for most inmates is upon 1/3 of the sentenced time). Statutory (formerly called "mandatory") release generally occurs when the inmate has served 2/3 of the sentenced time. There are many elaborations of this basic format such as accelerated parole review (APR) which actually is the 1/6 time served standard while regular day parole is considered six months prior to full parole. Usually all inmates must serve a minimum of six months in the institution. Inmates released on UTAs, and on day parole in general, are assigned to half-way houses (risk level is taken into account in the specific placement). Inmates released on full parole are much less commonly placed in half-way houses and those released on statute even less so; the decision is made by the NPB. It is the general rule that successful completion of day parole (reportedly 1/4 of Springhill inmates get day parole) qualifies one for full parole and according to Springhill officials it is rare for a person to get full parole without first obtaining day parole; indeed, one veteran

institutional parole officer could recall only one such case in the last five years.

6. While the figures were unavailable, the respondents indicated that a good many inmates express little interest in their received correctional plan and basically just mind their business and wait for statutory release. The few respondents interviewed said that they were unaware of any Aboriginal – mainstream inmate differences in this regard. They also noted that most programs are standard for all inmates but that there was a special Aboriginal substance abuse program. There was a general sense among the Springhill staff that the programs were appropriate for both inmate groupings though one supervisor suggested a need to better accommodate to language differences and to incorporate a “spirituality focus” into the programs for Aboriginals. The Springhill non-native officials did not acknowledge or specify any unique challenges for Aboriginal as opposed to mainstream inmates, suggesting that the key factors were the type of offences committed, the substance abuse issues and so on. All the Springhill respondents interviewed, at some point remarked that inmates leaving on statutory release, rather than earlier through UTAs, day parole and ultimately full parole, could usually well be seen as cases where “we’ve failed”. No data were available on whether this ‘failure’ was greater for the Aboriginal inmates. Once an inmate is released on full parole, supervision is provided by the community parole officer who monitors the conditions of release and attempts to channel the ex-inmates into appropriate rehabilitative and social programs.
7. A few respondents echoed the views of their provincial counterparts in noting that the Aboriginal inmates appear to quite alienated from their communities and rarely get visitors. One native respondent for example recalled “a social day recently at Springhill where there were twenty inmates but not one family member came”. Other respondents did not emphasize this characterization. The comments cited earlier concerning the provincial inmates by an Elsipogtog justice system practitioner – “people just go after them [ex-inmates] when they return” – applied to federal as well as provincial ex-inmates. It is not clear how much solidarity occurs among Aboriginal inmates in prison nor whether Aboriginal, Black or Caucasian inmates etc are more likely to share living space with members of their own grouping.
8. All respondents acknowledged the potentially significant initiatives of the section 84 community-based release plan and of the Pathways program at Westmoreland. With respect to the latter, the non-native interviewees echoed the views of one respondent who noted, “[Pathways] is especially good for those who want to go back to their community and get involved in their culture”.
9. Pathways has been a major new initiative for CSC. There are two Pathways programs, one at Dorchester and the other at Westmoreland Institution. The

former has been a very limited initiative until 2008 but, over the past three years, the latter has grown steadily and now involves some twenty Aboriginal inmates, a handful of whom are on the waiting list at Westmoreland. Pathways is basically for Aboriginal inmates but mainstream inmates could theoretically (none were there in 2007) go there if they were married to an Aboriginal person or lived on reserve or had some significant cultural affinity. Here the inmates live in several houses, take special workshops, do sweats, smudge and may eat special food (e.g., moose meat). They can also be escorted out of the institution for pow wows and other cultural activities. All the while, the inmate is expected to live in accordance with his correctional plan and failure to do so could result in expulsion. Not all Aboriginal inmates at Westmoreland are involved in Pathways. There is a waiting list to get in (usually the issue is the availability of a single bed cell, a CSC requirement for this program). Other Aboriginal inmates at Westmoreland simply express no interest in the program. Aboriginal inmates not involved in Pathways may nevertheless participate in some of the Pathways' sponsored activities such as sweats.

10. To get into Pathways an inmate has to be classified as minimum security risk and then make an application. There are six admission criteria to which the person must agree to adhere (i.e., positive motivation, willingness to learn techniques to help his healing, taking personal responsibility for his actions, being respectful to all, willingness to be evaluated by the Pathways team and being "fully compliant with your correctional plan"). The inmate signs an agreement to comply with all the Pathways rules and procedures including abiding by traditional / faith-based protocols. Both the case management team and the Pathways unit team have to approve the application. Once in the program the Pathway team provides strong support and has "gone to bat " for participants caught in violations of CSC rules (e.g., requesting administration officials give them a chance to work with a Pathways inmate caught with illicit drugs rather than expel the person). At the same time, the Pathways unit management team has suspended some participants in the past. According to the Pathways CSC staff and elders, it has been a great success and only one of the fourteen inmates who have gone through Pathways has been re-incarcerated, a statistic acclaimed by other respondents and by Aboriginal leaders with whom the program was discussed. In addition, the initiative reportedly has had a positive impact for parole prior to statutory release where the lower rates of parole for Aboriginal inmates has been a continuing challenge for CSC; asked "does becoming involved with Pathways make for earlier parole releases for the participant", a senior Pathways official replied, "Yes, it does help to be a participant in Pathways for early release for parole if the individual wants to help himself to a healing path".
11. At Springhill Reception an inmate can apply for Pathways at Westmoreland but some preliminary programming may be required. According to Pathways staff, many Aboriginals do not get into programs that could effect assessment as minimum risk while others do not follow their correctional plan or show up

for programs thereby forfeiting possible, favorable re-assessment. The transition of inmates, via behaviour and taking programs, to lower security status and on to conditional release is sometimes referred to in CSC as “cascading”. Several Aboriginal inmates transferred from provincial jurisdiction have been accepted into the program and reportedly have been successful ‘graduates’ of Pathways.

12. The Pathways staff and other respondents interviewed highlighted several ways to improve the Pathways success. These included having restorative justice programming within the institution to deal with certain violations, more after-care resources in the community, more culturally salient half-way houses, and replacement of the very limited Dorchester Pathways initiative by a transition-type program at Springhill (another native CSC role player not connected with Pathways recommended that a similar program be established at Reception in Springhill prior to the inmates being absorbed in and influenced by the prison subculture). They championed the idea of a CSC “healing lodge” for minimum security Aboriginal inmates; at present the closest healing lodge is in Quebec. They were also quite supportive of the Offender Re-integration project at Elsipogtog, thinking that it could increase community resources in after-care, facilitate section 84 releases and prevent recidivism. While of course an inmate in the federal correctional system could request a section 84 release plan without being in Pathways, community members might well be more confident of the inmate’s change (“i.e., “that they were no longer assholes” as one respondent put it) if the inmate was in the Pathways program. The Pathways respondents also stressed that the approval of chief and council is crucial for the section 84 plans “community acceptance reasons, for political reasons and for practical reasons such as housing”. There were no Elsipogtog inmates in the Westmoreland Pathways program in 2006 or as of June 2007 but reportedly a few in 2008.
13. Section 84 correctional policy is a partnership of the National Parole Board with CSC and the community whereby the terms of release and the engagement of the community are detailed. The section 84 plan option is available to all inmates in theory but in practice it is limited to Aboriginal persons, presumably because of the significance of the community in Aboriginal society. Several CSC and NPB officials considered that the section 84 option, like the Pathways program discussed above, could be salient for a non-native married to an Aboriginal person and living on reserve. It is offender-driven but requires significant commitment – but no legal responsibility - from the community participants. There is no explicit incentive with respect to release time and this, as well as fear of rejection by the community, not wanting to return to the community, and other factors, may account for the fact that few Aboriginal inmates have thus far applied for section 84 release. The first regional section 84 plan occurred just five years ago in Elsipogtog (CSC officials in 2007 declared it to be a success) and the first section 84 plan involving a female inmate took place in Halifax in 2006.

Several other section 84 releases have been negotiated (e.g., Papineau and Eskasoni) and, reportedly, another ten or so section 84 requests are currently being processed. The section 84 plan is an attractive option since, as one respondent observed, “It may facilitate the successful re-integration of the inmate into the community, a particularly significant issue in the case of Elsipogtog since virtually 100% of the federal inmates do return to the community”. One assumption behind the section 84 plan is that the community may be more accepting of the ex-inmate than in the past when the community participation was much less and thus community leaders had a minimal role in setting conditions that could help protect the residents.

14. CSC and NPB respondents expressed the hope that the Elsipogtog Offender Re-integration project might facilitate section 84 release plans; as one expressed it, “Hopefully a process gets established so it [section 84 release] becomes more routine”. Another NPB official, noting that “the offenders are generally in prison for some very serious crimes so the hesitancy of the community is understandable and is perceived by the parolee”, suggested that the benefit to the NPB might be if community is more accepting and, if there is a process and some effective rehabilitative programming, that might mean more inmates applying for release under section 84. He added, “There could be benefits too regarding more satisfactory re-integration and thus fewer breaches and better parole stats”. For the CSC and NPB respondents there was the common view that with respect to section 84 release plans, the legacy of the Offender Re-integration project might well be “a process and some residual community organization”.
15. While section 84 may not, as some respondents said, inherently imply earlier release, other CSC officials held that a section 84 plan would indeed have that effect. One such respondent held that “If the community were receptive and had a plan it would count in the inmate’s securing parole”, while another – a senior official in Reception - noted, “If the community is positive it would add credibility to the parole application. It may be the crucial card if the inmate is going for full parole but did not get, nor applied for, day parole”.
16. Parole officers are employees of CSC and, apparently, funding for community parole programming and monitoring, extra the parole officer, is unavailable from CSC on a sustained basis. Reportedly, there is some funding from CSC available for treatment in the case of day parole but in the case of full parole there is virtually nothing. In the case of a section 84 plan there could be funding possibly for private placement (comparable to a half-way house) but nothing for treatment and monitoring. Also, there are no half-way houses on reserve in Atlantic Canada and the five or so half-way houses that exist in New Brunswick are not seen by CSC staff as especially culturally sensitive (though there has been sporadic cultural awareness sessions).

17. Respondents associated with promising initiatives inside the correctional institutions, such as the Unit 58 living model at Springhill or the Pathways program at Westmoreland, usually emphasized that post-release resources were very limited. One CSC official attached to the innovative Unit 58 initiative at Springhill, where small groups or “pods” of inmates (of diverse racial and ethnic backgrounds) share responsibility for their everyday maintenance, including pooling their daily food allotment and collectively cooking their own meals, commented that resources are needed to sustain “the valuable living lessons” upon release. One CSC elder observed that post-release is a problem and quipped that “they [inmates] go from everything here to nothing on reserve”. An CSC official attached to the Pathways program at Westmoreland enthused about the initiative but noted that “the main shortfall is that there is no after-care”.
18. The CSC and NPB respondents were quite favourably disposed to the Elsipogtog Offender Re-integration project and its objectives. The potential benefits of less offender recidivism, more community engagement and stronger cases for parole were seen as congruent with their own objectives. The recentness of section 84 policy and the new ground being broken by the Elsipogtog Offender Re-integration project have raised some issues from the perspective of the community parole officers concerning implementation and responsibilities, release of information and so forth. Mandated legal responsibilities of the community parole officer have to be reconciled (negotiated?) with the new possibilities for the community’s representatives to take on a more active role in dealing with eligible inmates as well as with the ex-inmate and possibly his family / her family. Perhaps a formal protocol will be necessary (e.g., should the community parole officer deal with the family through the intermediary of the community representatives?). Certainly, as the Pathways staff commented above, the authority of chief and council has to underlay and authorize the community engagement in the eyes of the external officials.

THE ELSIPOGTOG OFFENDER RE-INTEGRATION PROJECT (EORP)

The EORP has operated for two years plus with a coordinator and a case worker, both part-time. They brought to their work considerable expertise about inmates in the correctional system as well as a strong commitment to a community-based, Mi’kmaw approach. They were experienced in relating to the federal inmates and the coordinator also had much experience with inmates in provincial custody and with the National Parole Board in Atlantic Canada. The objectives of the EORP have been set out above but perhaps it would be useful to note that the objective of effecting changes in CSC and

NPB policies and protocols in partnering with FNs made much sense since the expertise of the staff and the experiences of Aboriginal inmates pointed to the need to engage in much pre-release contact with potential clients and networking with officials. It has been observed in the review of the literature on offender reintegration that the marginalized Aboriginal inmate often has neither the will nor the incentive to actively pursue his or her ‘reclamation’ in prison by taking programs and so on to “cascade” to the point where there is eligibility for early release. CSC and NPB have developed a number of Aboriginal initiatives over the past decade but the overall changes in Aboriginal patterns, according to their own reports, have been modest, notwithstanding the recent success of the Pathways program. The involvement of a culturally appropriate, community-based “in-reach” may be a key missing link providing encouragement and community support to the inmates and working with officials in CSC and NPB. Establishing a significant partnership with officials presumably would go beyond simple access; partnership implies co-ownership and co-managing. Certainly, planning for re-integration has to begin where the person is, in the prison.

The central features of the EORP strategy revolved around three major pivots, namely the importance of **pre-release work with inmates** (secure adequate access, “connect” with the inmate and assist in channeling their efforts to ready themselves for early release), the centrality of **the Aboriginal Pathways trajectory** (inmates getting there have indicated their determination to change and are provided there with significant counsel rooted in Mi’kmaw culture and pride in identity, can make pre-release community visits, are more likely to receive early release, and not recidivate and be re-incarcerated) and **community case management** (mobilizing community resources to work with the inmates and achieve a successful reintegration). The community pivot is crucial not only to harness the Mi’kmaw-oriented resources there but also given the need to deal with the alienation and negative social relationships that frequently characterized the inmates’ previous community experience, the legitimate concerns of victims and the community in general for safety, and the importance of the community demonstrating its contribution to the partnership with CSC and NPB officials. Of course in the CSC section 84 early release policy, community approval in a FN for a specific release has to be garnered from the band council or its delegated authority.

ORGANIZATIONAL STRUCTURE OF EORP

EORP staff was embedded in an oversight **structure** that starts with Chief and Council through to the Elsipogtog Wellness Committee to the Elsipogtog Justice Advisory Committee to the Project Steering Team (which included representatives from CSC and NPB, and their provincial counterparts in Public Safety plus EJAC members). There was also a **community work team** which included representatives from the local service agencies, the elders, and the ex-inmates. The EORP case worker arranged inmate assessments from the local services (e.g., Alcohol and Drugs, Employment, Psychological Services, Children and family Services) and supplemented these with case conferencing in some instances. The EORP preferred **process or the path to community integration** was mapped out clearly and in detail over seven phases from the initial

referral (anticipated to be from the institutional elder or native liaison role players in CSC) once admitted to prison to the release plan coordinated by EORP and on to successful reintegration. As mentioned, the ideal trajectory was seen to be via the Aboriginal Pathways in Westmoreland (the 2007-2008 build-up of the Aboriginal Pathways program in Dorchester would presumably make Dorchester crucial too in any future EORP activity). This is evident in the EORP statement, “Once the client has been admitted into Pathways program in Westmoreland or Dorchester, the case worker will begin the process of introducing the program to the potential client”. Exit circles were envisaged, presumably off prison grounds, to discuss issues of community entry and mark the forthcoming transition in an appropriate way. It should be underlined that this process model was the ideal preferred model. In the first half of the EORP life-span there were no Elsipogtog inmates in Pathways and in any event EORP staff were always willing to work with any Elsipogtog inmate or ex-inmate whether or not they had had pre-release contact or were involved in Pathways (also, an inmate could be involved in a section 84 release without having gone through Pathways). The EORP staff reportedly was flexible too in adjusting to CSC and NPB concerns; as the EORP coordinator commented, “We already know what they want and think so we are adjusting our program (e.g., we have elders lined up for private home placement)”.

GOALS, ACHIEVEMENTS AND ISSUES

The specific goals of the EORP as set out by its coordinator were

1. provide on-going services to offenders and families before and after release from incarceration
2. provide awareness to community leadership, service providers and families about the challenges and opportunities tied to offender reintegration
3. network and collaborate with community helping agencies that support offender reintegration
4. network with CSC and NBP officials
5. address the current gaps in services delivery to Aboriginal offenders within the CSC and NB Justice systems
6. network and collaborate with various Aboriginal programs and other relevant agencies

The EORP staff persons believed that significant progress had been achieved on all these goals when federal CSC funding came to its scheduled end (see below for the assessments of all parties) and indeed the evidence is that the program, despite having to spend considerable effort at the front end, networking and negotiating broad access issues with CSC, had evolved appropriately. Significant collaboration had been achieved with CSC and NPB officials and the community service providers. The EORP was able to get well-respected elders on board, local service providers to provide assessments of the offenders, and to locate the EORP firmly in the community’s formal authority structure. Clearly, there was because of EORP both an enhancement of Elsipogtog’s collective

efficacy and some progress on filling the gaps in the institutional response to Aboriginal inmates (e.g., NPB's decision to encourage community-assisted parole hearings). There were also discussions between EORP staff and representatives of other FNs in the area concerning a more inclusive Aboriginal offender reintegration programming. The EORP staff persons believed that they had set the stage for further progress in collaboration, community capacity, policy development, developing a data bank and success indicators, and the diffusion of the program to other FNs. They were confident that the fundamental objective of "safe re-integration" with attendant lower levels of revocation and recidivism could be expected in the future.

In the view of this evaluator, there is a sound basis for such claims. The structure and process model laid out by the EORP staff represented an approach based on previous experience but adjusted for the new experiences encountered. Its emphasis on pre-release work, the Pathways trajectory, and community case management of community developed release plans conceived and implemented in collaboration with CSC officials, seems spot on given the literature review, the shortcomings of the extensive CSC Aboriginal initiatives as self-acknowledged, and the assessments of EORP discussed below. The EORP type initiative does appear to be the missing link in responding effectively to the disparity of outcomes for Aboriginal inmates and also represents an appropriate evolution in the constitutionally enshrined partnership of mainstream and Aboriginal social systems.

The EORP initiative identified some key issues that have to be addressed in the future implementation of the program or similar ones. These include

1. The need for quicker resolution of access issues in projects such as this. This is an issue that wreaks havoc in many projects with limited funded life spans. One solution may be more upfront intervention by the funding agents with the institutional authorities controlling access, usually in the same ministry.
2. There needs to be some imaginative ways to deal with sustainability where the project has demonstrated value; otherwise, the build-up of trust and networks, developed in a well-conceived and implemented project and usually rooted in one-on-contacts may be largely wasted.
3. If Aboriginal communities are to partner with CSC and the NPB in pre-release and post-release activities, as appears valuable and necessary, resources have to be made available to them. Currently there is precious little and it is ad hoc (e.g., there appear to be no resources for sustaining the community role in section 84 releases).
4. There needs to be some resolution of the issue of the absence of any half-way housing on reserves. Elders and others seem quite prepared to use their homes for limited private placement and such placement may be very beneficial for safe reintegration in some cases. Perhaps some explicit arrangements can be made between the band council or one of its delegated authorities and CSC to deal with the legitimate CSC concerns about supervision and liability.
5. Given the serious safety concerns of residents and the importance of community buy-in, the organizational structure of initiatives such as EORP

have to be more formalized in an operational sense; there needs to be a clear and widespread appreciation that the decision-making about eligibility, the treatment program and networking with institutional officials are community positions.

6. There has to some greater attention paid to the issue of building on success in a single community such as Elsipogtog while considering how such a strategy can benefit other Aboriginal communities. There is a need to transcend the “lowest common denominator” approach, holding back support for successful leadership on the grounds that other communities have received less funding support. The key solution here would appear to be emphasis on a mentorship / linkage role on the part of the leading innovator. This does appear to be a strategy in New Brunswick with respect to mental health and drug treatment court in Saint John and is characteristic in “Indian Territory” in the USA.

ASSESSMENTS OF THE EORP

THE EORP STAFF

The EORP, as noted, has been managed by two part-time staff persons, both with considerable experience in dealing with inmates in federal institutions. The coordinator of the EORP in particular has had lengthy experience working with Aboriginal inmates with CSC, NPB and also with the provincial facility in Moncton. Both staff persons in addition have a strong ‘traditionalist’ orientation, emphasizing the spirituality – Mi’kmaq culture factor as requisite in the successful reintegration of Elsipogtog inmates. Associated with this is an emphasis on community engagement and empowerment with respect to the reintegration process, where the community services and other resources are mobilized to effect a safe reintegration, balancing the ex-inmate needs and the community concerns. Their experience also has led them to stress the importance of pre-release linkages, working with inmates while they are in prisons which can not only assist in the preparation for exit (e.g., bring attention to possible gaps or shortcomings in prison programming, encourage inmates’ taking programs to deal with their issues and which can accelerate parole, perhaps arranging exit circles) but also encourage the Aboriginal inmates to apply for parole, knowing that there would be at least some community support for them. Given the shunning and negativity that may characterize many inmates’ community social milieu (and perhaps the prison one as well), building a trusting relationship with EORP staff may be just as crucial for successful reintegration of inmates as the offender-judge relationship has been found to be in the drug treatment and the mental health courts. As in these problem-solving courts, many offenders are significantly impacted by finding someone who provides empathy, conveys positive alternatives, and can also activate assistance, a combination that many times is unusual and consequently appreciated and deeply felt. As a consequence, they are more likely to

get on and stay on a positive social trajectory because, as several inmates / ex-inmates reportedly told the EORP caseworker, “I don’t want to let you down”.

The EORP staff persons continue to hold that their interventionist approach, featuring pre-release contact with inmates, encouraging the inmates’ “cascading” to Pathways to parole, working through a reintegration plan with the inmate / ex-inmates and a wide range of community service providers, elders and on, and all this within a spirituality –Mi’kmaw cultural ethos, is the best way to achieve safe reintegration. In their view, despite the short time frame of the project, they have made significant headway. In the final year of project – the implementation stage – the community and spirituality dimensions were significant. Elders were meeting with the ex-inmates regularly, and the local service providers were consulted and providing assessments (e.g., Alcohol and Drug, Children and Family Services, Economic Development for career counseling, and Psychological Services). Specific plans for specific ex-inmates were being developed and case conferencing was initiated on a modest scale. Clearly, the EORP was contributing to the enhancement of collective efficacy and ownership in Elsipogtog.

The EORP staff also considered that their efforts at networking and partnering with CSC and NPB were productive. Here, for example, they called attention to the NPB’s decision in 2008 to adopt community-assisted parole hearings where the EORP staff brought to the Board’s attention considerably more salient information about the possibilities for successful parole in hearings for Elsipogtog inmates. Clearly, too, the EORP experience identified crucial issues that need to be addressed in a sustainable partnership with CSC, especially the need for resources for the community partner to effectively carry out its role, and the need for further discussions regarding the most effective way to partner with the CPOs who have a mandate and legal responsibility with respect to conditions in the inmates’ release plans. The EORP staff persons were also acutely aware of the senior governments’ preference for broad-based programming that would include other, if not all, FNs in New Brunswick. Here they envisaged – as did the Elsipogtog strategic action plan – a mentor, training role for Elsipogtog. Much was accomplished in networking, implementation and identification of key issues; as the EORP coordinator remarked, “it is a shame to stop the process now”.

THE OFFENDER-CLIENTS

The EORP has clearly been an offender-oriented project centered on the safe reintegration of ex-inmates in the community. To that extent, it is appropriate to use the word “client” even though the project’s focus clearly encompasses the family of the person and the community. The number of Elsipogtog inmates in the five Atlantic federal institutions varied during the course of the last two and half years, from four in 2006 to about a dozen in 2008, according to Corrections officials and EORP staff. Over the previous decade a relatively few Elsipogtog inmates had been released on day parole to any of the five halfway houses in New Brunswick (all reportedly had been unsuccessful and returned to prison) and there were no federal parolees at all from Elsipogtog in 2006.

As noted earlier, there were more provincial inmates and parolees from Elsipogtog. EORP staff indicated that virtually 100% of the inmates from Elsipogtog, whether federal or provincial, ultimately returned to the community. The EORP, as it evolved and put into place a solid infrastructure, organizationally and programmatically, began to take on more clients. In the spring of 2007 there was one client in the community and several inmates in the federal institutions with whom the project coordinator had established contact and obtained their formal, signed permission for EORP staff to access their CSC files. These latter persons had yet to be incorporated into the EORP as clients since the EORP caseworker's access authorization had still to be approved by CSC; this access to paper files and regular visits with Elsipogtog inmates were in place by the fall of 2007 for the Springhill, Westmoreland and Saint John facilities, enabling the caseworker to consider possible community plans for their case management. At its height, a year later in 2008, the EORP dealt with seven Elsipogtog clients, split between inmates and ex-inmates. In addition, the project's part-time staff had service-related contact with several Aboriginal inmates who were not Elsipogtog band members.

For project assessment purposes, contact was made with three ex-inmates from Elsipogtog (a fourth Elsipogtog client, a female, was unavailable). All three were males, two in their twenties/early thirties and one in his forties. The latter had been out of prison for two years and appeared to be doing well though he continued to find employment a problem. The lack of secure employment was noted by the other clients as well. All the clients had children but it was unclear how satisfactory their family relations were at the time of interview; two of three did indicate that access to children remained an issue. Two of the three men participated very much in traditional cultural activities such as sweats, maintained contacts with elders, and attributed much importance to the spirituality dimension for their successful reintegration to date. The older client had not participated in the Pathways project at Westmoreland (it was established only as his prison term was coming to an end) but he attributed his successful reintegration to his involvement in cultural activities and helpful counsel from a well-known, highly regarded community elder. Another client, released for a year, had participated in the Pathways program as a transfer from provincial custody. He praised that program but pointed out that it would have even more successful if inmates upon release went directly back into the community, as he did as a provincial prisoner, rather than into the current halfway houses in Moncton and elsewhere. In his view, not only would being domiciled with willing elders improve reintegration but it would also keep money in the community (the elders would be paid so much per day by CSC to house the ex-inmate). Further, he added that most native ex-inmates he knew who were released to the halfway houses ended up back in prison for violations or new offenses. The clients were very appreciative of the services provided them by the EORP staff.

Of the seven ex-inmates assisted by the EORP staff, as of June 2008, two of the four who were released were returned to prison. A female, imprisoned for drug-related offenses and released into the community under the EORP as a section 84 case, was re-institutionalized for breaching terms of release after several months. Her case was particularly interesting as the EORP intervention had initially occasioned significant resistance from the band council and other community residents (over concerns of the

extensive drug dealing and related social problems, including several deaths by overdose) and the final approval had required significant persuasive advocacy on the part of the EORP and its oversight committee, the EJAC; as well, the woman appeared in front of the band council and apologized for her drug activity. The second person, a male, was re-incarcerated pending an investigation for assault. In this case the person was not seen by EORP staff people prior to his return to Elsipogtog but they (especially the caseworker) worked with him, though with some reservations in that in their mind the pre-release engagement was an important dimension of the EORP and crucial to the success of its efforts to achieve a “safe reintegration. The EORP, as funded, had ended just after the end of fiscal year 2007-2008 but the caseworker was retained, on Elsipogtog funding alone, to continue services to the Elsipogtog persons who were clients of the program. Clearly, it is unrealistic to think that any short-lived program no matter how well carried out can be likened to a magic wand; it takes a significant time to put the new system in place and the challenges posed by the offenders’ circumstances are complex. Nevertheless, as will be seen below in the comments of elders and stakeholders, the EORP made a difference and set the stage for a more comprehensive and long-term community and Mi’kmaq-based role in dealing with serious offenders.

THE ELDERS

The two main elders associated with the EORP are well-known and appreciated in Elsipogtog for their sage counsel. They and their spouses, well-regarded in their own right, played a significant role in the EORP initiative. Both elders exude a friendly demeanor and a sense of peaceful grace. Both were in their sixties or early seventies and have long been identified as elders, participating in that role in community cultural events as well (e.g., smudging, prayers to open or close community – type events, workshops, youth projects). They both have had much experience working as elders with inmates in federal (Westmoreland, Nova) and provincial (Moncton) custody. The female elder acted as the coordinator for the elders’ engagement in EORP. The two main elders were interviewed.

Both elders convey an open, flexible, “what can I do for you” attitude. In their view, it is important to be non-judgmental, though the community is usually very judgmental in their opinion. Both elders appear to favour a harm reduction approach to the drug problem – they support the community’s methadone program - which often underlies the Elsipogtog offenders’ crimes. Both believe that a section 84 or 81 community halfway house arrangement would be more successful than the current situation where the offenders on day parole reside in Moncton or Saint John. Indeed, both elders have offered to have their own homes utilized as equivalent to halfway housing under the section 84 policy, though their offer was not accepted by CSC for reasons dealing with legal liability; generally, assignment to a halfway house is limited to those inmates receiving day parole not full parole so CSC / NPB retains ultimate legal responsibility and presumably has to have full confidence in the security of their placement.

In providing counsel, the elders' approach is generally to meet with a person one-on-one for a short period of time but typically, too, whenever the person requests a meeting. Generally a session begins with smudging and then the elder facilitates the offender-client's "opening up and getting their anger out". One elder observed that each session has its own dynamics and "while some last fifteen minutes, some go much longer". One elder takes a traditional story telling approach in her work with ex-inmates (e.g., referring to Turtle Island – a Mi'kmaw conception of the traditional settlement area - as a setting for stories). Both elders indicated that the relationship established with a particular ex-inmate is special and should be not be contaminated by other considerations (e.g., material benefits and concerns). Both elders also emphasized the importance of the spirituality and reported that the clients respect the rites (e.g., smudging, sweats), express much emotion, and claim to learn from the experience. To illustrate the impact, one elder related the story of an intoxicated person years ago who tried to enter a sweat but was rejected. He was allowed in another sweat that was taking place and proceeded to vomit much, such that "the sweat site smelled like a brewery". But, after the experience, the man totally turned his life around. Both elders, while stressing spirituality, also noted that dealing with family issues has usually been crucial to successful reintegration. Neither elder had spent a lot of time meeting with EORP clients, though elders in the aggregate spent as much as two or more days a week in the last half of the EORP existence (the implementation phase), according to the EORP coordinator. Interestingly, in the case of the woman involved in drugs who was re-incarcerated, the ex-inmate did not take advantage of the opportunity to meet with the elders or with the non-Aboriginal Elsipogtog psychologist. The elders indicated that they were ready to take on further challenges both in format (one elder was considering doing more group level rather than one-on-one interventions with family members) and substance (both appreciated that the elders' role in cases of sexual assaults, particularly ones that occurred some years past, would be demanding).

THE STAKEHOLDERS

These positive assessments of the elders were echoed by stakeholders at the community level, ranging from the police to staff members in Alcohol and Drugs and in Children and Family Services to a key member of EJAC oversight committee.

An Alcohol and Drug staff person, who described himself as "a young elder and traditionalist", was quite familiar with the EORP, though that familiarity did not translate into handing any EORP referrals or being involved in case management or consulting with respect to a community plan for ex-inmates under EORP leadership. He was informed on the EORP objectives and format and had a deep experience in assisting ex-inmates when they return to the community. His main task in dealing with any referral, aside from organizing referrals to "detox" and "rehab", reported is "to calm the person down as usually there is much emotion, anger and the like". Most ex-inmates have had multiple addictions he observed – "it is rare to find a person with a drug problem who does not also have an alcohol problem". He noted also that the wait for "rehab" has

usually not been too long but a prerequisite is having gone through “detox” and the waiting list for the latter is such that it usually takes a month or two to get in. He observed that the rehab programs require a minimum stay of fourteen days and most of the referrals he makes are a consequence of court orders where only roughly one in ten is successful (i.e., the person stays for the required period and is successful in dealing with addictions at least for a certain time). In his experience, voluntary referrals are almost always successful, and, to the extent that EORP staff develop community plans for reintegration that entail “rehab” and are voluntarily agreed to by the ex-inmates, they can be very successful too. He noted that the EORP implies more collaboration and integration among the local service providers “so we’ll see how that works out”. Certainly in his view such collaboration is essential since family problems are very common, supervised housing virtually non-existent, and “of course the people are returning to the same environment”. The approach of EORP in emphasizing tradition is crucial, he held, as spirituality is a key component in successful reintegration, as is strengthening family ties.

Another Alcohol and Drug staff member reported not only familiarity with the objectives and format of EORP but also direct involvement in the program. Drawing on his deep experience with treatment and justice programs in Elsipogtog, he emphasized that “we are ready for it”, that is, a greater role in dealing with inmates and ex-inmates from the community. He pointed to the expanding restorative justice program and the Mi’kmaw alternative dispute resolution program as well as the traditional and mainstream healing capacity, the methadone program, and the Eastern Door initiative (i.e., FASD diagnosis and treatment) to illustrate this increasing collective efficacy. In regards to the EORP, he stressed that pre-release work with inmates in the custodial institutions is crucial for successful reintegration and, in his view, that has been a major contribution of the EORP part-time staff persons. He has participated in the EORP to the extent that he has contributed assessments for case plans for the inmates / ex-inmates. As yet, he has not participated in case conferences with other local service providers but he would anticipate such involvement, were the program to continue, and he looked forward to making such a contribution.

Another Mi’kmaw local service provider, a social worker / counselor with Children and Family Services also noted the increased community capacity identified above. He referred to his own participation as a volunteer with restorative justice and alternative dispute resolution to illustrate that voluntary supporters can be harnessed for interventions. He has found that children are usually at the center of family conflicts but that a mediation or conflict resolution milieu, carried on in a Mi’kmaw community context, can get people “to open up”. That kind of approach for ex-inmates may start with meetings with elders where the emotions and anger can be vented and channeled appropriately. The main impact of the EORP for him personally has been the greater involvement of services such as his own in parole hearings. He has done several assessments and collaborative case planning exercises for parole hearings since the EORP furthered the networks with CSC and NPB. Previous to that, “a parole officer might just check in to see if there were any issues we had’ but with the EORP there has been much more engagement.

In his view, ex-inmates are often motivated to get on a new life path trajectory for their children's sakes so the involvement of Children and Family Services can be crucial. Another, often related major problem, since it impacts on the possibility of access to children, has been housing, particularly timely housing – “two or three months down the road might be too late since the person may be back in the old milieu or a negative one”. Coordination at the community level is crucial as is the case conferencing EORP was attempting to implement for each client. He was a strong advocate for EORP and its continuance. He noted that the project was moderately successful in the two cases where he was involved. Clearly, he argued, a more stable, long-term implementation would be very helpful and definitely be an improvement on releasing the inmates to halfway houses outside the community. Like the other stakeholders, he thought the pre-release work of the EORP was important to a successful reintegration approach.

A full-time, long-term, Elsipogtog non-Aboriginal psychologist reported increasing collaboration with the EORP after it had established networks and understandings with the CSC and NPB officials and began to implement the work with clients in the community. She has participated in EORP case conferencing, developing case plans for the returning federal inmates, and provided assessments. Acknowledging the pattern of inmates receiving few visitors while in prison and often not being greeted or picked up upon release (see the earlier comments about releases from the Moncton provincial facility), she observed that “it is crucial to check the tendency for the ex-inmate to withdraw from the community's regular social life in the face of shame and constant nipping by some other residents”. She added that, if not checked, that experience leads the person to readily slide back into substance abuse. She observed that withdrawal into gambling via VLTs (extensive in Elsipogtog) and drugs (there are 43 regular recipients of daily methadone, a testimony to the pervasive drug problem) is a tempting accessible alternative. She emphasized that “there is trauma associated with being a serious offender and being away from the family for so long”. In her experience virtually all ex-inmates need alcohol and drug counseling and there is a small window of opportunity for effective reintegration when the person is released back into the community before they may get caught up in the vortex of negative social relationships and substance abuse.

In addition to her mainstream psychological professionalism, she also has become a strong believer in the importance of the spirituality factor so emphasized by traditionalists (more than just a believer she regularly has attended sweats and participated in cultural activities in the community). She observed that sweats, for example, “are good for cleansing the body as well as for conveying a sense of inclusion and membership ... in the phases of the sweat the focus switches from the individual to family to community, so the sweats help to establish a senses of responsibility too”. In her view, spirituality is a major ingredient in the community-based endeavor to achieve successful, safe reintegration of ex-inmates. She also observed that the EORP intervention typically generated a lot more information on the inmate / ex-inmate and his or her family and community relations, and in that regard can build these nuances into an effectively tailored program for the ex-inmate.

The stakeholder associated with the EJAC oversight committee was a strong advocate of a more community-driven offender-rehabilitation approach, and of a strong partnership between CSC / NPB and Aboriginal communities such as Elsipogtog. In his view, based on both professional knowledge and Elsipogtog experience, offender reintegration to be successful has to be rooted in such a partnership since the alternative pre-EORP conventional system has simply not worked; moreover, the partnership should reflect the constitutional rights of Aboriginal peoples to have a major say in matters of justice in their communities. Like some other stakeholders, he expressed some frustration at how long it took to establish the appropriate networks and agreements for access with CSC officials (the EORP clients however were usually quick to permit access to their files); however, as the fiscal year 2007-2008 was coming to a close, he observed that the EORP had evolved nicely – the EORP staff established good contacts with the CSC institutions and the NPB, visited regularly and discussed rehabilitative / reintegration plans and possibilities with the Elsipogtog inmates, developed the case management format and implementation, and, by the time the project funding for the two and a half years ended, was working with a respectable number of clients. He stressed, too, that the embeddedness of the EORP in the community, through the oversight of the EJAC and ultimately the band council, was crucial since it underscored the community thrust of the program and ensured that issues of reintegration and community safety would be taken into account in a balanced way. In his view, a long-run partnership with funding from senior levels of government is necessary to make the valued initiative sustainable, with attendant benefits for the ex-inmates and their families, the community and the CSC / NPB. He also envisaged a “building on strengths” approach wherein the Elsipogtog model would be diffused to other First Nations in the region throughout networks and regional groupings as envisaged in the Elsipogtog strategic action plan for justice initiatives (see appendices).

The RCMP detachment commander in Elsipogtog has been very active in the restorative justice program and other justice initiatives (e.g., the possibilities of an Aboriginal court) in the community. He has policed in several other Mi'kmaw communities in Atlantic Canada and displays a considerable awareness of and empathy with Mi'kmaw culture. The sergeant noted in a late 2007 interview (one of several informal discussions the writer has had with him in 2007 and 2008) that one of the three federal ex-inmates in Elsipogtog had recently been re-incarcerated and commented further that typically there has much re-offending or breaching terms of release among ex-inmates and most could have readily been sent back to prison, though more and more they have been given house arrest for breaches. Substance abuse, especially the drug problem which is so pervasive in Elsipogtog, has often tripped up the ex-inmates. He indicated that, as the EORP has evolved, there has been better communication and consultation between its staff and himself. In particular he cited the valuable role that the EORP staff (usually the caseworker) has played in ensuring that the ex-inmates understand the conditions of their release. The challenges posed by substance abuse and breaches/new offenses underline the importance of an effective community-based EORP program.

CSC AND NPB OFFICIALS

As noted earlier, both Pathways staff at Westmoreland and CSC native liaison staff were quite enthusiastic about the EORP initiative. Pathways officials observed that to be as successful as they would wish, more initiatives such as EORP have to be developed on the community side since, otherwise, much of the transformation that their program achieves with Aboriginal inmates is discounted when the inmate leaves the institution for either a halfway way house in the city which does not take into account in any way the parolee's Aboriginal identity or an unwelcoming community which has no strategy for balancing its legitimate concerns with the inmate's needs. A native liaison official basically echoed these comments, highlighting the marginality and "social leper" status of many Aboriginal inmates, and noting that the EORP could create a quite different, more positive state of mind for the inmate, encouraging him or her to get into programs and apply for parole. A senior NPB official opined that the EORP could benefit the work of the NPB since if the community is more accepting, and, if there is an adequate process and some effective rehabilitative programming organized, then that could translate into more people applying for parole (especially under section 84) since the inmates would perceive some community support, certainly more than it seems that they perceive now. In addition, a more satisfactory reintegration could result and that would mean fewer breaches and better parole stats.

This modest evaluation could not undertake detailed one-on-one interviews with CSC and NPB officials at the end of the implementation stage of the EORP, but on the basis of frequent contact in a variety of milieus, especially meetings of the EORP steering committee, some patterns emerged concerning their views on what the EORP had achieved in its limited lifespan. The officials reported (e.g., the February 2008 meeting of the Steering Committee) that they found the EORP quite beneficial for the Elsipogtog inmates both at parole hearings / release and before and after. There was only one formal section 84 release managed by EORP but there were several other cases where inmates were released other than by statute which were considered de facto section 84s by EORP staff, though not by CSC / NPB. Some issues did arise concerning the mandate and responsibilities of the CPO and the role of the EORP staff (e.g., should CPO community contact be carried out in consultation with the EORP? How would conditions of release be set and enforced?) but none appeared to be irresolvable if the program were to continue. The major obstacle to a long-term, in-depth partnership was the lack of resources that CSC has committed to the section 84 release program; the community contribution to the partnership was essentially seen to be that of a volunteer.

As for the NPB view, the contribution of the EORP staff at parole hearings was particularly deemed useful according to officials and that perception was shared by the EORP staff. Indeed, given the relevance of the Gladue imperative discussed earlier, having input from the EORP staff at the parole hearing would seem to represent a very appropriate way for the NPB to meet that arguably legal requirement. In 2008, as noted above, the NPB adopt community-assisted parole hearings where the EORP staff brought to the Board's attention considerably more salient information about the possibilities for

successful parole in hearings for Elsipogtog inmates and this additional, more in-depth information could be seen as meeting the Gladue imperative as well as informing the NPB better about the inmate and perhaps achieving a higher rate of early parole release for Elsipogtog inmates. Unfortunately, the same resource issue applicable to CSC's involvement with the Aboriginal community is also relevant to the NPB's engagement with Elsipogtog and there is a very limited sustainability. Changing that situation will require considerable leadership and vision as a major blockage is the widespread view of government and institutions that, since Elsipogtog is just one of thirteen FNs in New Brunswick and has a modest population to boot, scale factors limit what can be allocated to the community's initiatives. More sophisticated models that encourage building on strengths and incorporate mentorship and diffusion roles on the part of the innovative FN appear to be required to move beyond this blockage.

CONCLUSIONS AND FUTURE DIRECTIONS

This assessment of the EORP began with a discussion of the community capacity in the field of justice services that has emerged in Elsipogtog in recent years and is perhaps best exemplified in the Strategic Action Plan (SAP) developed by the EJAC in 2005-2006. There was also a detailed discussion of the challenges facing the community as reflected in very high levels of crime, a pervasive drug abuse problem and a stubborn high rate of underemployment. The combination of CSC-acknowledged disparities in outcomes for Aboriginal inmates and the community's concern for the safe re-integration of Elsipogtog offenders, as highlighted in the SAP, led to the development of the EORP project funded by CSC, Ottawa. The basic EORP objectives and their rationales were then discussed, along with the three fundamental pivots of EORP approach, namely pre-release work with inmates in collaboration with CSC and NPB officials, the centrality of the Aboriginal Pathways programs in Westmoreland ("cascading" inmates to Pathways and on to appropriate, safe, early release), and the development of community-based release plans and case management, again in collaboration with CSC and NPB.

A major thrust of this assessment has been to properly contextualize or place the EORP. To this end there was first an analysis of recent trends in Aboriginal Justice in Canada. This established the considerable growth in Aboriginal justice initiatives throughout Canada and in the Atlantic region. Three major stimulants were discussed, namely the Marshall Inquiry in 1986-1989, RCAP in 1996, and the SCC's Gladue decision in 1999. The Gladue decision in particular has considerable implications for early release and parole hearings as well as necessitating significant community input into decision-making about release. The bottom line of these developments has been to emphasize a partnership and co-management of justice programming and service. Another important context concerns what is known about effective offender reintegration so that literature was examined in detail. The main theme that emerged was the need for a

culturally appropriate, community support linkage that begins when the Aboriginal person is incarcerated – that appears to be the missing link in the current situation with respect to producing more equitable outcomes for Aboriginals within the system and reducing revocation and recidivism when they are released. Other contextual considerations discussed dealt with demographic, educational and political economy factors.

There was a detailed discussion of policing data in Elsipogtog as well as provincial and federal patterns of incarceration. These analyses underlined both the need for, and the challenges facing, a project such as the EORP. There is a serious problem of offending in Elsipogtog and it should not be surprising that in the recent Elsipogtog community survey and focus groups, the respondents called attention to the high level of offending and expressed much fear and worry about being victimized. Provincial and federal incarceration statistics indicated the stable pattern of over-representation of Aboriginal inmates in both types of custody (for adults, four to five times the expected level based on population) and suggested high rates of re-incarceration. Interviews with key officials and treatment providers at both levels underlined the alienation of the inmates from their community, how poorly they fared in the prison milieu, the recidivism, the need for stronger linkages to the community, and for release plans and re-integration approaches that can be meaningful to the inmate, tailored to the needs and opportunities of specific inmates and allay legitimate community concerns for safety.

There followed a more detailed discussion of the EORP, its goals, distinctive features, organizational structure and preferred process stages. The issues of access and partnership were seen as crucial especially, in light of the short time frame of the funding, since they were prerequisites to the development of relationships with inmates and the formation of meaningful release and post-release planning. The EORP staff considered that they had made significant progress on the established goals in the time available to them. In the view of this evaluator, there is a sound basis for such claims. The structure and process model laid out by the EORP staff represented an approach based on previous experience but adjusted for the new experiences encountered. Its emphasis on pre-release work, the Pathways trajectory, and community case management of community developed release plans conceived and implemented in collaboration with CSC officials, seems spot on given the literature review, the shortcomings of the extensive CSC Aboriginal initiatives as self-acknowledged, and the assessments of EORP provided by a range of informed respondents. An EORP type initiative does appear to be the missing link in responding effectively to the disparity of outcomes for Aboriginal inmates and also represents an appropriate evolution in the constitutionally enshrined partnership of mainstream and Aboriginal social systems.

The assessments of EORP staff, elders, the offender-clients, a wide variety of stakeholders (police, treatment providers, local service agencies) and CSC and NPB officials were canvassed in one-on-one interviews with the evaluator. They were quite positive of the initiative and highlighted its holistic character – spirituality, assessments for specific clients, case conferencing – and its work within the prisons and in the community. There was a widespread consensus that the EORP should become a

permanent mechanism for Aboriginal – CSC / NPB partnership. The evaluator shares that position. At the same time, the EORP initiative has identified some key issues that have to be addressed in the future implementation of the program or similar ones. These include

1. The need for quicker resolution of access issues in projects such as this. This is an issue that wreaks havoc in many projects with limited funded life spans. One solution may be more upfront intervention by the funding agents with the institutional authorities controlling access, usually in the same ministry.
2. There needs to be some imaginative ways to deal with sustainability where the project has demonstrated value; otherwise, the build-up of trust and networks, developed in a well-conceived and implemented project and usually rooted in one-on-contacts may be largely wasted.
3. If Aboriginal communities are to partner with CSC and the NPB in pre-release and post-release activities, as appears valuable and necessary, resources have to be made available to them. Currently there is precious little and it is ad hoc (e.g., there appear to be no resources for sustaining the community role in section 84 releases).
4. There needs to be some resolution of the issue of the absence of any half-way housing on reserves. Elders and others seem quite prepared to use their homes for limited private placement and such placement may be very beneficial for safe reintegration in some cases. Perhaps some explicit arrangements can be made between the band council or one of its delegated authorities and CSC to deal with the legitimate CSC concerns about supervision and liability.
5. Given the serious safety concerns of residents and the importance of community buy-in, the organizational structure of initiatives such as EORP have to be more formalized in an operational sense; there needs to be a clear and widespread appreciation that the decision-making about eligibility, the treatment program and networking with institutional officials are community positions.
6. There has to some greater attention paid to the issue of building on success in a single community such as Elsipogtog while considering how such a strategy can benefit other Aboriginal communities. There is a need to transcend the “lowest common denominator” approach, holding back support for successful initiative on the grounds that other communities have received less funding support. The key solution here would appear to be emphasis on a mentorship / linkage role on the part of the leading innovator. This does appear to be a strategy in New Brunswick with respect to mental health and drug treatment court in Saint John and is characteristic in “Indian Territory” in the USA.

APPENDIX A: ELSIPOGTOG STRATEGIC ACTION PLAN

BACKGROUND TO THE ELSIPOGTOG STRATEGIC ACTION PLAN

This strategic plan has emerged out of several years of exploring justice initiatives in Elsipogtog in the light of community needs, collective efficacy, perceptions and priorities. The details of this extensive examination are set out in the report that is appended to this brief strategic plan and the reader is encouraged to consult that document.

A strategic plan has to be rooted in a vision and a set of principles. As the biblical admonition asserts, without a vision we are lost. The vision advanced here is one that is congruent with the agenda recommended by the Royal Commission on Aboriginal Peoples, namely that aboriginal societies, by dint of constitutional rights and cultural tradition, should be encouraged to develop justice systems in which they exercise substantial autonomy and where their cultural perspectives and preferences are meaningfully incorporated. Like other Canadians, native persons should expect fair and culturally sensitive treatment within the mainstream justice system, but unlike other Canadians, constitutionally they can legitimately “move outside the box” whether in an administrative or a policy sense. While the contours of the “outside the box” path are always impossible to fully specify or grasp since social circumstances and cultural styles are inherently dynamic and subject to evolution and occasionally dramatic change, such a vision sets the agenda for many First Nations people in justice matters today. The vision suggests a continuum where one end is basic ‘integration and fairness’ within the mainstream justice system and the other end is a parallel First Nations justice system. Different First Nations may have different views on where they want to position themselves on this continuum regarding justice considerations now and in the future. What is feasible certainly will affect that positioning too, and feasibility is also subject to change. The Elsipogtog Justice Advisory Committee (EJAC) has been examining issues of vision and feasibility for several years and in considerable depth as indicated in the accompanying report. EJAC holds that the above vision is common among band members and that the community is developing a significant capacity to advance and direct new justice initiatives, to move more along the continuum as it were. It accepts the challenge explicit in the introductory quotations (e.g., “We need to do things our way and on our turf”) and proposes a strategic plan in justice for the immediate future.

Another major component of a strategic plan is the identification of the **principles** or philosophy that are associated with the vision. There appear to be at least three central principles that the research has identified as reflecting the Elsipogtog justice perspective. First, there is the view, common to the First Nations’ approach, that emphasis should be placed as much as possible on prevention and on restorative justice. By restorative justice is meant the concern to encourage healing and

reconciliation among offenders and victims and at the community level. A second major principle is that, as much as possible, justice programming and initiatives should be community-driven in administration and policy development. The concept, community, may be interpreted at either the band or the “tribal” levels depending upon a variety of concerns (e.g., feasibility, impartiality etc). The third principle that EJAC has identified is that justice initiatives launched by Elsipogtog should respond to the major issues and needs that exist. Justice ownership and direction should not be confined to minor criminality matters referred by mainstream justice officials.

The EJAC-directed research and evaluation, upon which this draft strategic plan is based, began several years ago (2002) with an evaluation of the Nogemag (directed at FASD issues) and Restorative Justice Circles projects. The basic conclusion drawn then was that while both projects were well managed and beneficial to the clients, community leaders, local service providers and the programs’ clients themselves typically wanted to see the community become more engaged in justice initiatives that moved the First Nation more along the continuum noted above. As a result, the EJAC sponsored more in-depth research into the feasibility and desirability of new justice initiatives. This research effort has taken almost two years and has explicitly followed the strategy of **root, assess and engage**. Root referred to the strategy of determining in a thorough, representative way what the community residents, service personnel and leadership identified as the major social and crime problems, their views on whether these were being addressed by the criminal justice system or informally in the community, their criticisms of and suggested priorities for changes in the justice system, their preferences and priorities regarding alternative justice initiatives, and the major obstacles they saw to putting in place their justices preferences. Assess referred to both assuring the high quality of the data gathered and analyzing the data thoroughly in order to appreciate as fully as possible their meaning and significance. Engage meant collecting, analyzing and reporting the research results in a manner that emphasized participation with and feedback to community residents and stakeholders. The EJAC wanted this justice project to be as transparent as possible and to facilitate consensus generation and community mobilization.

As indicated in the attached report, the justice project called for a six-stage model of implementation. **First**, there were special, in-depth, face- to- face interviews with a score of key Elsipogtog justice and other social agency role players and political leaders. This research was intended to ensure that the mandate of the research exercise was appropriate and to vet the proposed research strategies with knowledgeable local persons. The **second step** was an extensive, one-on-one community survey of adults (dealing with all the matters referred to above in the discussion of roots). A community survey questionnaire was developed, vetted by the EJAC and personnel from other local agencies, and pre-tested to ensure its clarity and appropriateness. A random sample of 210 households was selected and two mature, well-educated, bilingual and enthusiastic Elsipogtog women were hired and trained to do face-to-face interview with one adult from each of the selected households. The **third step** involved focus groups with youths (those at risk and those still in senior high school),

neighbours, and elders. Information packages were prepared for the focus groups from data secured through the community survey and these formed the basis for discussion. The focus groups were seen as an essential part of the effort to engage the community in the process of generating consensus and mobilizing for change. The **fourth step** involved a series of focus groups among front-line agency staff, managers of the service agencies, local and external justice officials, and other stakeholders. For these focus groups the information package was elaborated to include the results of the earlier round of focus group meetings. The **fifth step**, represented by this draft strategic plan, involved the preparation of a strategic plan for discussion by EJAC members. The sixth and final implementation step entailed presenting the EJAC-approved strategic plan to band council and/or a general community meeting.

The results from each of the completed steps are contained in the attached report. Perhaps it suffices here to note that this research has found that community members and agency personnel believe that crime and social disorder are widespread and cause extensive and unacceptable levels of victimization, fear and worry among residents. This position is especially pronounced among women but common in all social groupings. These views dovetail well with official statistics even while the latter are deemed to under-report the justice problems. Residents and knowledgeable service providers are sharply critical of the mainstream justice system from a variety of vantage points (e.g., ineffective, not reflecting community values); as well, they do not believe that there are in place any effective informal responses to these problems. They readily identify changes they would like to see in the mainstream justice system (e.g., duty counsel or court workers, more communication and awareness between court officials and community residents) and, as well, are cautiously in favour of new justice initiatives that deal with issues from a Mi'kmaw perspective (e.g., a wellness court, community or First Nation-based dispute resolution in certain civil and family conflicts). They value the existing community justice programs because they are community-based (e.g., restorative justice) and are strongly in favour of more such justice initiatives. At the same time they readily identify obstacles (both internal to Elsipogtog and external) in launching justice initiatives that would be more subject to community administration and policy development, and in general they have a pragmatic, incremental approach to change. Moving further along the continuum towards a Mi'kmaw-influenced justice system will require much sensitivity, consensus building and community mobilization. It will have to be well-thought out and implemented with much community input and feedback.

The EJAC believes that the community capacity to realize new and, in some cases, alternative justice initiatives has increased appreciably in recent years as a result of the trends in post-secondary education attainment, the economic and symbolic implications of the Supreme Court of Canada's Marshall decision and so forth. There has been more governmental acknowledgement of Mi'kmaw rights and more buy-in. There is much that can and should be done. To that end, the following draft strategic plan is offered, identifying, in tabular form, seven major goals that have emerged from the two-year research effort. It may be noted that some initiatives would entail

collaboration with other New Brunswick First Nations and others would require the establishment of a tripartite forum justice committee as exists in Nova Scotia.

In an appendix to this report three specific prevention / rehabilitation initiatives are described. These are congruent with the strategic plan and have been discussed in the Elsipogtog Justice Advisory Committee; they are advanced here to illustrate how specific initiatives link up with the strategic plan. The three are (1) an offender reintegration project which has been recently funded for three years; (2) a proposal to focus directly on problems related to young adult males, and (3) some thoughts about policing that have emerged from the interviews, surveys and focus groups carried out in the past two years under the sponsorship of the EJAC committee.

THE STRATEGIC ACTION PLAN

GOAL # 1 EXPANDING THE RJ PROGRAM (CRIMINAL JUSTICE SYSTEM)

OBJECTIVES	ACTION REQUIRED	LEAD PERSONS/ROLES	TIMING	OUTCOMES REQUIRED
1. OBTAIN JUDICIAL CROWN AND CORRECTION REFERRALS 2. HAVING SENTENCING CIRCLES IN ELSIPOGTOG 3 ASSISTING IN RESPONDING TO THE UNDER 12	A. GETTING SUPPORT OF JUSTICE OFFICIALS.	EJAC RJ COORDINATOR	FALL 2006 FOR #1	A NEW PROTOCOL FOR RJ REFERRALS
	B. EXPANDING AND TRAINING STAFF/VOLUNTEERS.	JUSTICE OFFICIALS AND EJAC'S GOVERNMENT CONTACT GROUP	APRIL 2007 FOR #2	ANOTHER RJ STAFF POSITION IN 2007-08
	C. COLLABORATING WITH OTHER COMMUNITY AGENCIES	INTERAGENCY, ELSIPOGTOG	APRIL 2007 FOR #3	A 50% RJ ADMIN SUPPORT POSITION BY FISCAL 2007-08
	D. BUILDING THE BASE FOR JUSTICE INITIATIVES, WITH THE COLLABORATION OF FEDERAL AND PROVINCIAL GOVERNMENTS)	CHIEF AND COUNCIL		

*EJAC is the Elsipogtog Justice Advisory Committee.

GOAL # 2 PROVIDING FOR A MORE MI'KMAW-SENSITIVE COURT PROCESS (CRIMINAL AND FAMILY)

OBJECTIVES	ACTION REQUIRED	LEAD PERSONS	TIMING	OUTCOMES REQUIRED
OBTAINING AN ABORIGINAL DUTY COUNSEL AND/OR A COURT WORKER	ON-GOING EJAC ACTIVITY IN SECURING AN ABORIGINAL DUTY COUNSEL NEGOTIATING WITH FEDERAL AND PROVINCIAL AUTHORITIES RE NEW	EJAC AND JUSTICE COORDINATOR NB DEPARTMENT OF JUSTICE ABORIGINAL JUSTICE DIRECTORATE	FALL 2006 FOR DUTY COUNSEL AND FISCAL 2007-08 IF COURT WORKER INITIATIVE	FUNDING FOR COORDINATOR ROLE MULTI-FNS' CASELOAD FOR DUTY COUNSEL AND/OR COURT WORKER
2. EXCHANGE AND AWARENESS (PARTNERSHIP DAYS) CRIMINAL AND FAMILY MATTERS	PARTNERSHIP DAY PLANNING FOR TWO SESSIONS COSTING AND FUNDING	CRIMINAL AND FAMILY COURT OFFICIALS PLUS LOCAL AGENCY REPS EJAC AND JUSTICE COORDINATOR	PARTNERSHIP DAY, WINTER 2006/2007	AGENDA SET AND SESSION REPORT DONE FOR PARTNERSHIP DAYS
3. INFORMATION CENTRE, CRIMINAL AND CIVIL / FAMILY MATTERS	FINDING THE COMMUNITY LOCATION AND ARRANGING FOR ACCESS FOR PAMPHLETS VIDEOS, FORMS AND DIRECTIONS re LEGAL / FAMILY AID	EJAC AND JUSTICE COORDINATOR PROVINCIAL AND FEDERAL INFO AND SELF-HELP CENTERS	WINTER 2007 FOR CENTRE	A CENTRE OPENED AT CERTAIN TIMES DURING THE WEEK

GOAL # 3 FACILITATING MORE MI'KMAW OWNERSHIP IN THE JUSTICE SYSTEM (CRIMINAL)

OBJECTIVES	ACTION REQUIRED	LEAD PERSONS	TIMING	OUTCOMES REQUIRED
1. CRIMINAL COURT SITTING ON RESERVE ONCE A WEEK	CONSULT WITH JUSTICE OFFICIALS SELECT AND PREPARE SITE COUNCIL DECISION	EJAC JUDGE AND OTHER CJS CHIEF AND COUNCIL	JANUARY 2007	COUNCIL RESOLUTION SUPPORT OF THE JUDGE
2. PREPARE CASE FOR A WELLNESS COURT (A 'PROBLEM-SOLVING COURT') FOR FNS IN NB CENTERED IN ELSIPOGTOG	SECURE INFO FROM JUSTICE AND HEALTH CANADA SECURE PROVINCIAL SUPPORT GATHER DATA CONSULT WITH LOCAL AGENCIES RE TREATMENT NEEDS CONSULT WITH OTHER NB FN _s COSTING AND FUNDS SEEKING	EJAC PROJECT LEADER FEDERAL AND PROVINCIAL HEALTH AND JUSTICE TREATMENT TEAM	ENGAGE A PROJECT LEADER BY 2007 PROPOSAL PREPARED BY FALL 2007 FOR A STARTING DATE IN FALL 2008	1.PROJECT LEADER HIRED 2. GAINED SUPPORT OF LOCAL TREATMENT PEOPLE 3.PROVINCIAL JUSTICE SUPPORT 4.DETAILED PROPOSAL DEVELOPED 5.DESIGNATE THE JUDGE (FN JUDGE IF POSSIBLE)

**GOAL # 4 WORKING TOWARD A FN MODEL OF JUSTICE PROCESSING
(CRIMINAL AREA)**

OBJECTIVES	ACTION REQUIRED	LEAD PERSONS	TIMING	OUTCOMES REQUIRED
WELLNESS COURT FOR SERIOUS OFFENDERS WITH SUBSTANCE ABUSE AND MENTAL ILLNESS	<p>SUCCESSFUL PROPOSAL</p> <p>LEARNING FROM DTC* PROGRAMS ELSEWHERE AND FROM BIG COVE OFFENDER REINTEGRATION PROJECT</p> <p>COMMUNITY AND COUNCIL SUPPORT</p> <p>OTHER FN BUY-IN</p>	<p>PROJECT LEADER AND WELLNESS COURT TEAM</p> <p>DESIGNATED JUDGE (FN IF POSSIBLE)</p> <p>OTHER CJS OFFICIALS</p> <p>OFFENDER BUY-IN</p>	FALL 2008	<p>A MULTI-FN PROGRAM CENTERED IN ELSIPOGTOG</p> <p>HEALTH AND JUSTICE COLLABORATION AND PROBLEM-SOLVING</p> <p>'USUAL FEDERAL FUNDING FOR DTC' PLUS</p>
FN VICTIM SERVICES (VS)	<p>BUILD UPON CURRENT VS AT ELSIPOGTOG</p> <p>OTHER FNs BUY-IN</p>	<p>VICTIM SERVICES COOR'D'R</p> <p>EJAC LIAISON</p> <p>FEDERAL AND PROVINCIAL</p>	FALL 2008	A MULTI-FN VS PROGRAM

* DTC refers to Drug treatment Court

GOAL # 5: WORKING TOWARDS A FN JUSTICE APPROACH (CIVIL AND FAMILY MATTERS)

OBJECTIVES	ACTION REQUIRED	LEAD PERSONS	TIMING	OUTCOMES REQUIRED
DEALING WITH CERTAIN CIVIL AND FAMILY ISSUES	<p>IDENTIFY KEY ISSUES AND STAKE HOLDERS</p> <p>CONSULT WITH SMALL CLAIMS AND FAMILY DIVISION COURT OFFICIALS</p> <p>BUILD ON THE APIGSITOGAN MI'KMAW ADR PROJECT</p> <p>LIAISE WITH KEY LOCAL AGENCIES</p>	<p>PROJECT COOR'D (RJ COORDINATOR)</p> <p>APIGSITOGAN GROUP (ADR)</p> <p>INTERAGENCY WORKING GROUP</p> <p>CIVIL AND FAMILY DIVISION JUSTICE OFFICIALS</p>	<p>BEGIN PROCESS IN WINTER 2006/2007</p> <p>START-UP IN 2007/2008</p>	<p>A PART-TIME COORD'ER ENGAGED</p> <p>PROPOSALS DEVELOPED</p> <p>FOCUS GROUPS FOLLOWED BY A GENERAL MEETING</p> <p>A PROTOCOL DEVELOPED FOR ADR UTILIZATION</p>
DEALING WITH INTRA-BAND DISPUTES OVER BAND POLICIES, ESPECIALLY IN AREAS OF FORESTRY, FISHING AND RESOURCE UTILIZATION	<p>IDENTIFY KEY ISSUES AND STAKE HOLDERS AS ABOVE</p> <p>FORM A WORKING GROUP WITH RESOURCES' STAFF REPRESENTATIVES</p> <p>LIAISE WITH BAND COUNCIL</p>	<p>JUSTICE COOR'D AND EJAC LIAISON</p> <p>APIGSITOGAN GROUP (ADR)</p> <p>RESOURCES' SECURITY STAFF</p>	<p>BEGIN PROCESS ISSUES IN FALL 2006</p> <p>START-UP IN FISCAL 2007-2008</p>	<p>ACTION PLAN COSTED AND FUNDED</p> <p>PROTOCOL DEVELOPED FOR ADR</p>

GOAL # 6 WORKING TOWARDS AN FN JUSTICE APPROACH (SAFETY AND REINTEGRATION)

OBJECTIVES	ACTION REQUIRED	LEAD PERSONS	TIMING	OUTCOMES REQUIRED
OFFENDER REINTEGRATION PROJECT	<p>FUNDS SECURED FOR 2.5 YEARS</p> <p>PROGRAM AND PROTOCOLS TO BE DEVELOPED</p>	<p>EJAC</p> <p>PROJECT COOR'D</p> <p>SELECTION AND REHAB TEAMS</p> <p>FEDERAL AND PROVINCIAL FUNDERS</p>	<p>STARTING FISCAL 2006- 2007</p>	<p>STAFF HIRED SPRING 2006</p> <p>SELECTION AND REHAB TEAMS IN PLACE</p> <p>PROGRAM ELABORATION AND EVALUATION</p>
TEMPORARY SHELTER FOR VICTIMS (e.g., TRANSITION HOUSE)	<p>IDENTIFYING THE ISSUES, SCOPE OF THE PROBLEM, AND KEY STAKEHOLDERS</p> <p>EXAMINING THE POSSIBILITIES OF COLLABORATION WITH NEARBY FNs</p> <p>PREPARATION OF PROJECT PROPOSAL</p> <p>COSTING AND SEEKING FUNDS</p>	<p>EJAC</p> <p>JUSTICE COOR'D</p> <p>VIOLENCE COMMITTEE</p> <p>CHILDREN AND FAMILY SERVICES</p> <p>FEDERAL AND PROVINCIAL AGENCIES</p>	<p>STARTING IN FISCAL 2007-2008</p>	<p>WORKING PROPOSAL</p> <p>FOCUS GROUPS AND GENERAL MEETING</p>

GOAL # 7: ESTABLISHING THE BROADER CONTEXT FOR A FN JUSTICE APPROACH

OBJECTIVES	ACTION REQUIRED	LEAD PERSONS	TIMING	OUTCOMES REQUIRED
COLLABORATING WITH OTHER FNs TO DEVELOP A STRATEGIC PLAN FOR MAJOR JUSTICE INITIATIVES	DISCUSSIONS WITH OTHER FNS' JUSTICE PEOPLE. SPECIFIC PROPOSALS SUCH AS WELLNESS COURT DEVELOPED. DRAWING ON FN EXPERIENCE ELSEWHERE ESPECIALLY NOVA SCOTIA	EJAC COMMITTEE JUSTICE COORD'ER AND FN WORKING GROUP COUNCIL LIAISON MAWI AND UNION LIAISON*	BEGIN PROCESS IN 2007	COMMUNITY MOBILIZATION FUNDING AND JUSTICE COORD'R HIRED DISCUSSION PAPERS PREPARED FN WORKING GROUP FORMED SYMPOSIUM IN MONCTON FALL 2007 AGENDA FOR AN ACTION PLAN
ESTABLISHING A TRIPARTITE FORUM COMMITTEE ON JUSTICE IN NEW BRUNSWICK	WORKING GROUPS FORMED AT FN AND AT FN/FEDERAL AND PROVINCIAL LEVELS	EJAC COMMITTEE LIAISING WITH FN WORKING GROUP FN LIAISON GRP AND BAND COUNCIL LIAISON GROUP GOV'T REPS	BEGIN THE PROCESS IN 2007 TRIPARTITE FORUM IN PLACE IN 2008	DEVELOPMENT OF AN ORGANIZATIONAL MODEL A MANDATE SET FORTH REGULAR MEETINGS SCHEDULED

* Mawi and Union refers to the two major political organizations for FNs in New Brunswick.

APPENDIX B: INTERVIEW GUIDES FOR COMMUNITY SERVICE PROVIDERS, EX-INMATES AND ELDERS

Themes or questions for local service providers:

What are the services you provide in Elsipogtog?

How long have you been providing your service in Elsipogtog?

How are people referred to you? By whom? For what?

What are the special challenges you encounter in servicing Elsipogtog people who come to you?

Have you had much contact with people who are ex-inmates or who have had trouble with the criminal justice system?

How have they been referred to you? By whom? For what?

What services have you provided to them?

Have these services been effective from your perspective? Examples?

What special challenges have you encountered in servicing the ex-inmates and other offenders?

Have there been significant differences in dealing with those who are Male? Female? Young? Older?

What other services and programs do you think would help the well-being and the integration of the ex-offenders into the family and the community?

What recommendations would you suggest for the offender reintegration project?

Themes or questions for the ex-offenders currently living in Elsipogtog:

If you were incarcerated (refer to the last time if multiple incarcerations) what programs and services – educational, substance abuse, anger management, employment-related training etc - did you participate in while in custody?

Did you participate in any native, culturally specific activities? (Sweats, elder counsel etc)?

Did you find these various programs and services helpful? Which ones? How?

Have any of them proved to be helpful to your reintegration into Elsipogtog? Why? How?

Were there programs and services available at the institution that you wished to participate in but couldn't? Which? Why?

What were the main challenges you encountered upon returning to Elsipogtog?

What about reestablishing good relations with family members?

What about getting along well with other community members?

What about avoiding the situations or people associated with your previous troubles?

What local services and programs did you participate in to deal with personal issues or family/community issues?

How helpful were they for you? Why?

What can be done to make these programs and services more helpful to yourself and/or other ex-inmates?

What other sorts of programs and services would be helpful?

Do you believe that you have successfully reestablished yourself in your family and in the Elsipogtog community? Why or Why not?

What is your most pressing problem nowadays in getting or keeping a happy healthy life style?

What recommendations would you make that could help with this problem?

Themes or questions for the elders:

Have you ever visited inmates at prison or jail? Social visit? As an elder?

Have you had any significant experience in dealing with Elsipogtog persons who have been incarcerated? What? When?

What experiences have you had with ex-inmates returning to Elsipogtog?

What do you think are the major problems that ex-inmates have upon returning to Elsipogtog?

Are there adequate programs and services in place to assist those who want to change? Which? Why?

What programs and services do you think might be helpful?

What about family members of the ex-inmates and the Elsipogtog community – what are their concerns? How can they be taken into account in responding to the ex-inmates?

What can the elders in the community do that could help ex-inmates? Family members, the community in general?

Would you be willing to be active in the offender reintegration project? Give counsel? Attend meetings? Other?

What recommendations would you suggest for the Offender reintegration Project?

APPENDIX C: THE ROYAL COMMISSION ON ABORIGINAL PEOPLES (RCAP)

The underlying ethos of the Marshall Inquiry in Nova Scotia (1986-1990) and its recommendations might well be captured by describing it as focused on “fairness and integration”. The vision and the accompanying agenda were to eliminate racism and secure the more satisfactory inclusion of Mi’kmaq people in mainstream society. The RCAP report, in 1996, while also dealing with the criminal justice system, set in train a somewhat different agenda. Having an ethos of “difference and autonomy”, here the focus appeared to be more on considering areas where constitutional rights, cultural differences and circumstances could lead to aboriginal administration and jurisdiction in justice matters. The enclosed brief overview of RCAP premises on aboriginal justice underlines this position. A distinction is drawn between ‘core’ and ‘periphery’ justice concerns and it is argued that in the core sphere -a limited sphere as can be seen – aboriginal society should be able to act unilaterally. Is the justice field such a core area? Interestingly, the RCAP commissioners expected that whatever the level of parallelism, there would only be minor differences in the criminal justice field were the RCAP position to be accepted by Government and aboriginal peoples. There is a suggestion here that in other justice spheres, especially the family, cultural and other factors would make a greater difference. It can be observed too that RCAP acknowledged that standards of effectiveness, efficiency and equity may require a stronger cohesion of FN identity that transcends band affiliation; in projects such as the Offender Reintegration initiative the wisdom of that argument is apparent as the number of clients in one band or First Nation may be smaller than desirable for an efficient and effective aboriginal-based program.

Royal Commission on Aboriginal Peoples (RCAP): PREMISES FOR THE NEW AGENDA FOR FN JUSTICE, 1996

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 and the Aboriginal 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, shaming effectiveness)
5. Core and Peripheral foci (qualifications for and especially for the criminal law).

Core if: Of vital concern to 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 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.