ABORIGINAL JUSTICE IN PEI

NOTES ON THE ASSESSMENT OF THE MCPEI'S ABORIGINAL JUSTICE PROGRAM

PRESENTED TO THE MI'KMAQ CONFEDERACY OF PEI

AND

THE ABORIGINAL JUSTICE DIRECTORATE, DEPARTMENT OF JUSTICE, OTTAWA

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INTRODUCTION

THE TASK OF THE ASSESSMENT

The MCPEI, AJP has launched interesting initiatives to advance Aboriginal justice concerns in PEI and to become an active partner in justice as it is perceived and experienced by Aboriginal people there. These initiatives have been established to operate within both the criminal (i.e., RCMP referrals to the "circle keepers" alternative process) and regulatory justice (e.g., fishing policy violations) areas and also to impact on the priorities noted below by E.A.S.T., namely orientation and cross-cultural training in the mainstream justice systems and community networking and linkages in the Aboriginal communities. MCPEI, AJP is both singular and a microcosm for Aboriginal justice in Canada. With respect to the former, it is province-wide, involves a small population distributed over three principal locales (Lennox Island FN, Abegweit FN, and Charlottetown) and from the onset has emphasized a more generic, Mi'kmaq-influenced conflict resolution approach which can be applicable across justice sectors. It is a microcosm in that a fundamental issue in realizing more Aboriginal-controlled justice in Canada remains the development of efficient, effective and equitable service delivery systems for small, scattered Aboriginal communities. In the areas of small, multi-locale Aboriginal groupings it would seem especially important for the programming to be centered on priorities that relate well to the demands and needs of the FNs involved, and also for extensive partnering to be developed with mainstream justice officials and services if possible. Given the geo-demographics of the typical FN community or cluster of communities, not to speak of the funding parameters for the federal Aboriginal Justice Strategy which is itself up for renewal every five years, it is the appropriate time to examine what has been put into place by the MCPEI, AJP, how it is evolving, how it relates to the justice needs of Mi'kmaq (and other Aboriginal) people, and how it is seen by the organization (board, staff, volunteers) and other stakeholders, and their views concerning the future directions. Overall, it would appear that there are four central features to the MCPEI AJP that must be taken into consideration in any assessment, namely

A. There are opportunities and a general mandate in the justice field as a consequence of established constitutional rights, federal and provincial government policy, and available, at least short term, funding, so the crucial questions focus on what Aboriginal leaders and communities want to achieve in the justice area and what their priorities are.
B. Given the geo-demographics and socio-political policy factors, how can efficiency and effectiveness be achieved in the context of a 'silo-oriented' mainstream system? How can the advantages of small scale and latent Aboriginal perspectives (e.g., holism) be realized in sustainable justice initiatives?
C. The opportunities in conjunction with the geo-demographic factors would suggest the importance of partnering in justice initiatives not only with mainstream justice institutions but also with other

Aboriginal justice programs and services elsewhere in Atlantic Canada.

D. It is important to underline the recency of the MCPEI AJP initiative, The initiative formally came into effect in 2003 when a Tripartite Contribution Agreement was reached and the organization received its first referral for its alternative measures / restorative circle keepers' process only last year.

THE CENTRAL THRUSTS

In advancing the thrusts of this assessment, it is important to note that the centerpiece is the MCPEI, AJP, its vision, its general objectives and specific goals, its capacity (organizationally and resource-wise), its effectiveness and efficiency and its evolution as the principal vehicle for developing and coordinating Mi'kmaq Justice programming in Prince Edward Island. The three official, central MCPEI, AJP objectives for 2006-2007 structured the assessment; these are (a) judicial and legal system engagement; (b) building community capacity; (c) launching Aboriginal justice programming. There will be only modest reference to the actual programming (e.g., the circle process) since the number of circles to date have been few as the emphasis has been on training circle keepers and working with the communities on the one hand, and networking with judges, police and DFO officials on the other – in other words putting the infrastructure in place. The assessment then always considers the evolution and formal objectives in relation to several themes, namely

1. The mandate of the MCPEI, AJP – documenting the original objectives, determining the extent to which the mandate has well guided strategies and activities, operating procedures and various programs being developed, describing the changes that may have occurred over time, assessing the continued salience of the mandate's specifics, and exploring potential changes emerging from the mandate's operationalization and from stakeholders' viewpoints.
2. The organizational structure of MCPEI, AJP, its work plan and specific services or programs for the Mi'kmaq people in PEI – assessing whether these have been well-operationalized and well-managed, determining how well they effect the mandate, and exploring possible desired or needed changes and new programming.
3. The governance structure of MCPEI, AJP – how has the advisory board worked out? What liaison linkages with other bodies, government and otherwise, have been established, to what effect for governance and partnership?
4. The resource situation – what resources, financial and otherwise, are available to the project? Are the resources available adequate and appropriate to its achievement of objectives? Are the resources administered in appropriate and effective fashion and with sufficient accountability? How might the resource picture be changing as the

MCPEI, AJP evolves and becomes engaged in other programs and services appropriate to its mandate and stakeholders' viewpoints.

5. What have been the major successes and accrued value of MCPEI, AJP and its constituent programs/services for Mi'kmaq Justice experience and for the Justice system more generally? What problems and issues have emerged, again from the various standpoints of the various stakeholders? What solutions and suggested trajectories have been and can be advanced?
6. What developments, in terms of First Nation Justice possibilities, substantively (new initiatives) and organizationally, as well as in terms of resources, have occurred in recent years that may have valuable salience for MCPEI, AJP?
7. Future Directions – based on the data examined, the viewpoints of staff and the stakeholders, and the contextual information, the assessment concludes with a discussion of future directions and a suggested strategic plan and their associated requisites for the MCPEI, AJP**.**

PREMISES OF THE EVALUATION

All evaluations are guided by certain premises which may be more or less explicit. The major premises that have guided this evaluation have been the following:

1. Greater direction by Mi'kmaq people over justice issues and programs in their communities is a desired objective of any justice initiative.

2. For a variety of reasons (e.g., efficiency, equity, effectiveness) and in keeping with recent national policy deliberation (e.g., ROYAL COMMISSION ABORIGINAL PEOPLES), multi-band First Nation justice structures should be encouraged.

3. Transparent stewardship and accountability to the several constituencies served are valued objectives for such inclusive, integrative organizations.

4. Justice has four major segments, namely criminal justice, family and civil justice, regulatory justice, and law making. All four should be considered in assessing progress in Mi'kmaq justice.

5. Evaluations, of the type discussed here, should be formative evaluations, that is, they should be conducted in full collaboration with the stakeholders and there should be continuous feedback to assist in the realization of objectives.

6. The evaluation should be respectful of the community (the people, their traditions, world views etc) and of individual persons as well. To these ends, there should be

an emphasis on hiring persons living in the communities to assist in the evaluation, and there should be respect for anonymity and confidentiality in treating individual views and opinions.

7. Identifying and engaging a salient cross-section of role players in exploring the justice issues is important, both in the Mi'kmaq community and among mainstream justice officials.

WHAT WAS DONE

A variety of research strategies and tactics were employed in this evaluation, implementing the strategic plan outlined above. Here these methods will be identified and assessed.

(a) Review of literature: An examination was completed of academic and policy materials dealing with Aboriginal justice issues and/or of relevance to the justice programs delivered by MCPEI AJP. Much of the review material was drawn from the 2006 monograph, Future Directions in Mi'kmaq Justice (Clairmont in collaboration with McMillan). In particular, justice developments in New Brunswick and Nova Scotia were examined.

(b) Examination of appropriate secondary materials: Secondary data were obtained from several sources, such as INAC (population and educational data), RCMP (violations data), Corrections New Brunswick, PEI Justice (background chronological information), Statistics Canada (PEI census data and the Aboriginal Peoples Survey) and the Nova Scotia Restorative Justice Program. Examination of salient brochures and other publications and websites concerning Aboriginal people and communities in PEI was also undertaken.

(c) Selected comparisons were made with recent studies carried out by the researcher in Elsipogtog and Nova Scotia.

(d) One-on-one interviews: These 37 interviews were conducted by the researcher (with two exceptions) and ranged from in duration from twenty minutes to two hours. In several cases there were multiple interviews with the same person and in other cases an in-person interview was followed up by e-mail exchanges. Twelve mainstream justice officials were interviewed including six police officers, two judges, a crown prosecutor, a Legal Aid lawyer, a Corrections official and a senior official in PEI Justice. Eight interviews were carried out with staff of the MCPEI including the persons coordinating the AJP. Two interviews were conducted with each of the NCPEI and AWA leaders. Thirteen interviews were conducted with other persons engaged in the provision of services (e.g., alcohol and drug counsel, family services, band constable) whether in Charlottetown Lennox Island or Scotchfort (for the Abegweit FN). Ten of the nineteen circle keepers (graduates from the UPEI certificate program in conflict resolution) were among the

persons interviewed. An interview guide, advancing themes rather than detailed, specific questions, was developed for all these interviews (see appendix).

(e) In September / October 2007 focus groups were held in Lennox Island, Scotchfort and Charlottetown. These focus groups brought together informed persons (usually seven persons excluding the facilitator and this researcher) in these local areas and were ably facilitated by community leaders in each venue. The format and themes for the focus group sessions, which were of two hours duration, is provided in the appendix.

(f) While not originally proposed, a modest community survey was also undertaken. All told, there were seventy completed survey questionnaires, well distributed among Lennox Island, Abegweit and Charlottetown areas. The survey instrument is also appended to this text. While the quality of the survey data left something to be desired the data adds value to the assessment especially in facilitating comparison with Elsipogtog.

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REVIEW OF THE ABORIGINAL JUSTICE LITERATURE

TWO MAJOR INQUIRIES FOR ABORIGINAL JUSTICE IN ATLANTIC CANADA

There are two major benchmark documents on the basis of which Aboriginal justice initiatives in Atlantic Canada usually are and should be assessed. These are (a) the report of the Royal Commission on the Donald Marshall Jr. Prosecution, (a report filed in 1989 and promulgated in 1990), and (b) the Royal Commission on Aboriginal Peoples, Bridging the Cultural Divide; a Report on Aboriginal People and Criminal Justice in Canada, (1996); these documents are referred to hereafter as the Marshall Commission and RCAP respectively. Looking first at the Marshall Report, aside from recommendations concerning Donald Marshall Jr. and his family, it produced 11 recommendations specific and exclusive to Mi'kmaq people in Nova Scotia plus others of relevance (e.g., #18 calling for the federal government to enact legislation for diversion programs for Native and Black communities and #19 urging that Correctional programs take backgrounds and needs into account and emphasize educational, cultural and religious needs of Native and Black offenders). A specification of the 11 recommendations and the progress achieved with respect to their implementation is provided in Clairmont and McMillan 2006.

The Union of Nova Scotia Indians' (UNSI) response to the Royal Commission's recommendations on February 21, 1990, welcomed the recommendations and especially highlighted #18 (diversion), #20 (native criminal court), #29 (native community justice committees) and #30 (probation and aftercare) which speak to "the Mi'kmaq community's capacity to administer justice". The UNSI report went on, "We agree with the principle that change must be community-based and, in implementing a justice system on Mi'kmaq communities, it will require the active involvement of community members. A broad base of community acceptance and community support are essential for any initiative to succeed". It was added that to have fruitful discussions on new initiatives, time to consult and the financial resources to determine what is acceptable to the community are required. The UNSI document went on to support the establishment of a Native Justice Institute and looked forward to research regarding customary law. It also noted that no reference was made to policing on reserves and called for the development of a native regional police force in Cape Breton.

The Marshall Inquiry report was generally seen as progressive by FNs and the mainstream media and a good number of its recommendations were adopted by the NS Government and subsequently implemented – ultimately - as noted by Clairmont (2006). The two areas of notable shortfall were (a) the native criminal court, and (b) the community justice committees, both of which were identified by UNSI as pivotal with respect to Mi'kmaq capacity and to its community-based justice approach. The native criminal court was advanced as something other than a provincial court sitting on reserve. Presumably, a native criminal court would focus on central issues of crime and disorder in Mi'kmaq communities and be informed by a Mi'kmaq approach to dealing with them. The modern day concept in Aboriginal society of a "healing to wellness" court would

seem to be a valuable way to conceive of such a court. As the Marshall Inquiry Commisioners suggested, and as the UNSI report highlights, community justice committees are crucial if Mi'kmaq justice capacity is to develop and justice initiatives advance beyond current levels of Mi'kmaq ownership and administration. Another area of shortfall from the Marshall recommendations, but one that appears to be now being addressed in Nova Scotia, concerns probation, incarceration programs and aftercare. It can also be observed that the Marshall inquiry recommendations focus on the criminal justice sector which is perfectly congruent with its mandate but there are aspects of its recommendations that refer to family justice issues and general use of alternative dispute resolution – ADR – in civil and regulatory (band bylaws) matters; clearly these justice issues have become more salient in Aboriginal society over the past fifteen years.

The underlying ethos of the Marshall Inquiry 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 second major document noted above, 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 defined by RCAP as can be seen – Aboriginal society should be able to act unilaterally. 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; many times below, that position will be regurgitated in discussing the value of the province-wide MCPEI AJP and the potential of a wider regional Aboriginal partnership.

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

1. Mainstream Criminal Justice System: Imposed, Alien, Does a Poor Job.

2. Treaty rights to develop alternatives exist

3. There are profound cultural differences between the Canadian (CJS) and the Aboriginal (AJS) approaches

   CJS: Punishment vs. restoration and balance

   AJS: Noninterference and individual autonomy.

4. Community control are appropriate given treaties, cultural differences, and pragmatic imperatives (e.g., identifying with justice, 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.

AN OVERVIEW OF ACADEMIC-BASED POLICY LITERATURE ON ABORIGINAL JUSTICE*

Social scientists have a long history of examining Indigenous ways of law. Ideas about customary law, conflict, origins of rules, social order structures, crime and punishment were often studied from the perspective of colonial superiority which reflected Eurocentric, paternalistic and elitist mindsets of the day. Generalizations derived from legal, positivistic approaches led to misinterpretations and misrepresentations of Indigenous legal structures as homogenous, bounded and static and rarely considered the impact of colonization on individual and collective agency or local diversity within Aboriginal communities. Instead, portrayals created binary understandings of justice, reifying us/them dichotomies in which Aboriginal justice was seen as universal, primitive, traditional, irrational, unchanging and stereotypically inferior due to a lack of codification and precedent, in contrast to a legal system where law is compartmentalized, codified, and made remote by specialized practitioners, elitist access and a complex language with a focus on individual wrongdoing instead of socioeconomic determinants of conflict within a community.

Fortunately ahistoric analyses of custom and generic models of Aboriginal justice, that focused on primordial traditions and homogenizing pan-Indianism to highlight basic differences between Aboriginal and non-Aboriginal justice, are less common today. Instead, a critical eye is cast upon categorical distinctiveness and the concentration has shifted to understanding the social consequences of imposed justice systems and the various responses those impositions generate. Efforts to avoid the naïve primordialism that reifies and romanticizes Indigenous cultures as static and harmonious are made by engaging in analyses of colonization, conflicts and contradictions within rapidly changing communities (Miller, 2001, Monture 2000, Sider 1993, Warry 1998).

Current legal studies examine the significant pragmatic developments in First Nations as Indigenous rights issues, land claims, sovereignty and membership are challenged within political, economic, social and legal spheres (Asch 1997, Culhane 1998, Riordan 1994, Miller 2001). Debates around legal pluralism are questioning universal ideas of liberty, equality and impartiality of law as products of European modernity, colonial law and processes of capitalism (Abel 1981, Depew 1996, Jackson 1991, Nader 2002). Law is looked to as a site of contest and resistance, and in terms of asymmetrical relations in the every day lived experiences of members of a given society, particularly where there are uneven fields of power, such as in Aboriginal communities vis-à-vis the state. Important questions about symbolic manifestations of power, authority and legitimacy are interspersed with conceptions of continuity, persistence and their ruptures, as counter-colonial strategies shift to understanding legal discourses and ideologies as manifested in the relationships between individuals, families, communities, natural resources and global networks (Merry 2000, Conley and O'Barr 1998). These questions are explored in native communities as they participate in juridical reform emanating from the Marshall Inquiry, RCAP and the Aboriginal Justice Strategy and as they respond to Supreme Court Decisions and the subsequent treaty implementation and land claims processes to develop strategies to improve sociocultural health.

While mainstream and Aboriginal communities are looking for ways to address justice issues raised in RCAP and other inquiries, government is often content with minimizing criticism of its system by appearing responsive to the needs of Aboriginal people and thus far reform is often constructed on the conservative notion that Aboriginal people are poised to assume control over a Western system of justice rather than assume a holistic, self determining view of justice that would shift legal responsibility for all matters, including family, criminal, civil and regulatory from external experts to the community. Warry argues that there is a real need for legal change, like changes in education and health care that could potentially serve as a focus for community development through reintegrating conflict resolution into the life of the community (1998:195). Many Aboriginal communities share this view, but what happens when Aboriginal communities resist Western legal adjudicative culture in favour of conflict resolution traditions? How can Aboriginal concepts of justice be translated into discourses that the dominant society understands without becoming entrenched in the dynamics of the dominant culture? (Kahane 2004, MacFarlane 2004). Walker, in "Decolonizing Conflict Resolution", (American Indian Quarterly, 28 #3, 2004) argues that indigenous forms of conflict resolution are quite different from modern western ones but are given short shrift. They differ she claims in that one – the mainstream one - is individualistic and atomic and focused on technique while the other – the native one - is holistic, focused on process and relationships, and spiritual.

In the last twenty years, and especially since RCAP, a significant increase in theoretical and analytical interest in alternative dispute management and pluralistic justice systems has received attention in research addressing key issues such as the debates over adversarial and reconciliatory justice processes, formal and informal social control, threats to impartiality, power inequalities and so on. Alternative dispute resolutions are often touted as more culturally appropriate processes that are informed by Indigenous knowledge, approaches and concepts, but there are concerns over the intersection between community-based process and state mechanisms.

The essays in *Intercultural Dispute Resolution in Aboriginal Communities* edited by Catherine Bell and David Kahane (2004) examine the challenges and limits, and the opportunities and effectiveness, of alternative dispute resolution in Aboriginal communities. Some authors raise the issue of whether Aboriginal communities can design and implement mechanisms "with sufficient delegated substantive and procedural authority given the limits imposed by Canadian law" (Kahane and Bell 2004). Research has found that the complexities of conflict resolution within cultures are magnified many times when different cultures meet or collide and, in the case of Aboriginal peoples, these complexities are compounded by a dominant legal culture in which law is thought of as rational, predictive and epitomized in game theory, and by their historical experiences as subjugated peoples (MacFarlane 2004).

It is clear that all cultures have moral orders and cultures of communication particular to them and these can produce different, culturally based ideas about power and empowerment and criteria of fairness and hence influence conflict management

strategies. When cultures are in conflict there is less likely to be commonly shared values and expectations over the processes. MacFarlane suggests when cultures conflict over conflict management we should aspire to a transcendent dialogue where there is an "explicit acknowledgement of differences and a commitment to dialogue as a means of understanding and coordinating those differences." Transcendent dialogue facilitates coexistence and parallel justice systems where we appreciate the complexity of different norms and moral orders and are better able to anticipate some of the problems and problem solving that occurs when blending different cultural approaches or perspectives.

Other authors such as Yazzie, Behrendt and Love (2004) are interested in the ways culture and power are negotiated in the setting up of dispute resolution mechanisms and ask how, in colonial contexts, should Indigenous processes fit with non-Indigenous systems of law, and what are the dangers of appropriation and cooptation by mainstream institutions? To answer these questions they explore the embeddedness of disputing practices within particular communities. There is considerable range of experimentation as mechanisms are tried, adjusted, retained or rejected. As in Canada, the Navaho are exploring the consequences of non-punitive strategies for dealing with family violence cases, which raise questions of whether some cases are better suited to community based management than others, and the challenges of victim protection in community based processes, particularly where victims may be more vulnerable to community power structures. All authors point to the importance of flexible justice modules where a wide variety of issues and contexts can be accommodated. Webber (2004) notes that in order for an indigenous justice system to be effective it is critical that active Indigenous involvement in the design and operation be maintained to ensure cultural responsiveness and ownership over decision making, particularly as community dynamics shift in periods of rapid change. This is also the case with Mi'kmaq and other Aboriginal justice in Canada.

Dale Dewhurst provides a useful critique of the T'suu T'ina First Nation Court in Alberta. While recognizing the court as a clear step forward he argues it does not go far enough because there are a large number of indictable or hybrid offences where provincial court judges cannot have jurisdiction or the accused chooses a superior court, thus removing the case from the First Nation Court. Indeed the First Nation Court as a provincial court is bound by all decisions of the superior courts. He calls for an expansion of Aboriginal judicial authority to include superior courts and to include all geographic areas (off-reserve) where Aboriginal accused are charged. Dewhurst further notes that the court does not really alter the central processes of the adversarial system; peacemakers may intervene to avoid the system and the accused may be better informed, but the adversarial system remains stable because convictions are based on offences promulgated according to non-Aboriginal value systems... Dewhurst does concede that peacemakers have a wider range of authority and are more able to incorporate Aboriginal values into the administration of justice than any comparable position in mainstream justice, but it is the prosecutor that has the final say if the case is sent to the peacemakers. Additionally, he points to the problem of too few Aboriginal judges, a problem that plagues Atlantic Canada as well. Without additional powers and the removal of the court from the discretionary powers of people who lack awareness of Aboriginal cultural, spiritual

values and laws, the T'suu T'ina court is at risk of failing or at least not truly meeting the needs of the communities it serves.

Catherine Bell examines traditional values and contemporary justice initiatives in four programs, namely the Alberta Métis Settlements employed community consultation and consensus, the Nisga'a Youth Justice Initiative uses a consensus based approach of an Elders Advisory Council, the T'suu T'ina Nation, and Justice in Nunavut which embeds Inuit values in the decision making processes and structures of the government. She concludes that effective justice initiatives must be anchored in the values of the communities they are to serve. She argues that while many view the right to administer justice as an inherent right, an important strategy in selling Aboriginal initiatives to non-Aboriginal public has been to emphasize how similar they are to existing non-Indigenous initiatives. It may be recalled that RCAP took the same approach in suggesting that there would likely be little difference in practice were Aboriginals to have a parallel criminal justice system.

The T'suu T'ina Court for example is a specialty court where the significant change from mainstream court is Aboriginal control over discretionary decisions and an increased use in alternative processes to address conflicts with the law rather than changes in the content of the laws themselves. The Nisga'a have gone further by negotiating constitutional protection of their court and its ability to enforce Nisga'a law under their treaty, which includes statutory offences and penalties, and responsibility for their prosecution. Furthermore in the case of provincial and federal conflict, Nisga'a law is paramount in areas such as elections, culture, language, operation of local businesses, health services, child and family services, and education. Currently under development and negotiation within Nisga'a are laws to be enforced by the Nisga'a court with respect to natural resource, wildlife, migratory birds and environment. Bell also emphasizes the interconnection between control over justice strategies and community health. Bell cautions against gradual and pragmatic reform as well as the dominant role of non-Indigenous law in approving change. She suggests indigenization generates a false dichotomy and fruitless distinction because of a perception by non-Aboriginals that procedural reform is sufficient to make the system more accountable to Aboriginal people, thereby bringing progress on independent, self determining justice systems to a standstill.

Craig Proulx's book *Reclaiming Aboriginal Justice, Identity and Community* (2003) discusses the merits of legal pluralism, particularly in response to the failings of mainstream justice for Aboriginal peoples. He explores the interconnection of healing and tradition and the role of community in the delivery of justice. Rather than merely describing the Community Council Project of Aboriginal Legal Services of Toronto, Proulx historicizes the development of Aboriginal justice programs and provides innovative theoretical justification for such processes. He foregrounds the role of culture in justice practices and deconstructs the problems of mainstream justice by taking into account colonialism, cultural difference and economic and social structural discrimination. He argues that, while the government is involved in legal legitimation, it is the community that does the real work. The chapters on the case study and the ideal

hearing highlight the goals of diversion while revealing the challenges of reaching those goals in ways that do not dismiss the merits of Aboriginally-controlled justice programs. His portrayal of Aboriginal justice issues is sophisticated, thorough, and tackles the fluid nature of cultural change against the false dichotomies of justice as static and equal.

Dickson-Gilmore and La Prairie explore restorative justice in Aboriginal communities in their book *Will the Circle Be Unbroken?* (2005). These authors cast a critical eye on the concepts of community, healing and tradition in restorative justice processes to reveal the risks Aboriginal communities take when they endeavour to create alternative justice programs. They caution against the uncritical use of the emerging discourse of responsibility that is shaping Aboriginal justice strategies. 'Taking responsibility' they argue is seen as a magic bullet that will empower communities and solve their problems, but the reality is that Aboriginal communities are being driven by the state and local elite to articulate their 'responsibleness' through the adoption of largely externally defined and developed restorative processes, whether or not these are relevant to their specific needs and capacities. The authors point out that despite efforts to make courts, police and corrections more culturally aware and their policies more appropriate through cross-cultural training, indigenization, criminal code amendments (e.g., cc 718.2e stating "all available sanctions other than imprisonment that are reasonable should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders"), and culturally focused programs, such as healing lodges instead of prisons, over-representation and recidivism rates have not declined. They suggest that an emphasis on culture as both the cause and cure of over-representation is inadequate, and, developing the construct, "community efficacy", highlight issues of community capacity to meaningfully engage in alternatives such as restorative justice. In sentencing reform they raise important concerns over the protection of victims by noting that, in some cases, greater harm can come to an Aboriginal community when Aboriginal offenders are allowed to remain there. In order to address this problem community justice processes should look to victim-focused reintegration. Simply assuming victims have community support and are free to speak in justice programs is an error that must be corrected if community based justice processes are to be safe, fair, meaningful, and not cases of re-victimization.

Dickson-Gilmore and La Prairie conclude that there are fundamental challenges to the success of restorative justice in Aboriginal communities. One challenge requires that the definition of community expand beyond the confines of restorative justice to include a larger social justice project that takes into account the requirement of meaningful employment, the construction of positive lived environments, support of families, social services and education as necessary for healthy capacity building. It is the absence of social justice that causes over-representation in prisons and programs that focus too much on culture rather than on the costs of colonialism cannot address the problems. Overcoming these challenges requires a paradigm shift in government where constraints are often imposed by funding agencies in a manner that prioritizes projects that involve the least threat to current arrangements.

In reviewing the current literature it is clear that community controlled justice processes for Aboriginal peoples are a necessary part of social justice and self-determination, although the intersection between 'tribal" and "community" remain ambiguous as indicated in the RCAP recommendations. Recent scholarship addresses the thorny issues of power, culture, assimilation, accommodation and tradition in community healing. These insights are particularly useful as community-based justice programs in Aboriginal communities provide relevant programs in sentencing, mediation, family, civil and increasingly in regulatory matters across Canada. While progress is evident, political will is required to increase capacity for social justice. Aboriginal communities require greater consultation, respect and trust in their relations with the state, but as the state recognizes, affirms and supports efforts of self-determination and social justice, Aboriginal communities will become healthier, productive and just places.

There is other literature of course focused on conventional considerations such as offender reintegration, racism and discrimination in the criminal justice system and the like. Perhaps two strands should be highlighted here since they may be salient for MCPEI AJP initiatives. Recent studies of Aboriginal reintegration (see Rugge, 2006 for an extensive bibliography) have emphasized the importance of cultural identity as a factor in successful offender reintegration into society, While the quantitative evidence is limited, testimonials and success stories strongly suggest that the three key factors are (a) successfully dealing with alcohol and drug abuse, (b) realizing a deep sense of one's cultural identity and (c) family support. The importance of coming to grips with one's addiction as a requisite for the other factors to effectively come into play certainly points to the importance of the Aboriginal "healing to wellness court" movement, which specifically focuses on the addicted offender, in the USA and Canada. The recent publication of the CSC investigator's report (CSC, 2006) comparing Aboriginal and other inmates in terms of parole and other prison experiences illustrates again that not only are Aboriginal persons in many parts of Canada over-represented in prisons but also they serve more time and do the poorest while imprisoned in terms of accessing programs and other policy benefits. Such studies point up the need to respond better to Aboriginal inmates and also to further explore alternatives to incarceration.

According to the federal Department of Justice, there were approximately 89 community based agreements with a reach of 451 communities as of 2005. The Department of Justice is working with Indian Affairs and through the Aboriginal Justice Directorate (Aboriginal Justice Strategy) to develop projects and resources to support self-government capacity building in the local administration and enforcement of Aboriginal laws separate to the implementation phase of self-government negotiations. For example, the Union of Ontario Indians received funding for developing capacity for appeal and redress mechanisms and the necessary training for the effective adjudication of their regulatory and civil laws when their self-government agreements comes into force. In British Columbia agreements respecting First Nations knowledge are used to frame the management of lands and resource development according to their laws and values in ways that are preserving and sustainable. The Esketemc, also known as Alkali Lake, Alternative Measures program, has a protocol for fish and wildlife offences that provides the delivery of coordinated enforcement strategy. Offences are dealt with in a

dispute management process using traditional healing circles, family group conferencing, mediation or victim/offender reconciliation with an interagency justice committee monitoring a community living contract. In addition to the expansion of regulatory justice processes, there are also more family, civil, reintegration and Gladue court programs being implemented across the country. Furthermore, many communities are employing strategies to expand capacity for alternative referral sources, particularly community referrals, such as the Vancouver Aboriginal Transformative Justice Service. In most community programs an emphasis on community panels or advisory committees to facilitate programs is evident. These are exciting times in Aboriginal justice across Canada as First Nations and other Aboriginal groupings seek to realize the promise of their constitutional rights, and the new federal and provincial policies, in developing justice programs that respond to their own needs and wishes as their societies evolve in terms of self-government.

THE CONTEXT FOR ABORIGINAL JUSTICE IN PEI

CONTEXT A: ALTERNATIVE JUSTICE DEVELOPMENTS

Over the past decade and a half alternative justice developments have occurred in both mainstream and Aboriginal societies especially in the guise of restorative justice philosophy and there many common issues arise in both these societal segments (e.g., the proper balance between being offender-oriented and victim-oriented). Looking first at the restorative justice and kindred problem-solving courts developments, it can be noted that in its current modern guise – there was an earlier phase in the 1960s and 1970s – restorative justice (RJ), community-based justice, has become more entrenched in Canada and other societies. It has stronger roots now in governmental policies, and is reinforced by kindred social movements in the justice field such as 'the problem-solving court" not to mention developments in Aboriginal society. As Rugge (2006) and others have commented, restorative justice has gained considerable momentum in the past decade and, while not yet a standard option in the criminal justice system, especially not for adults, the legislative and related groundwork is in place. Theoretically, the pioneering work of Braithwaite – the perspective of reintegrative shaming – remains dominant with its central tenet of "shame is more effective [than punishment or simple tolerance] when it is felt in the presence of loved ones and in the eyes of those we respect and trust". Crucial operational considerations now focus on (1) the institutionalization question (i.e., how best should restorative justice philosophy and programming be rooted and what should be the appropriate connection to the conventional processing of offenders and victims), (2) the service delivery mode that should be adopted (e.g., what is the desirable and feasible mix of paid staff, volunteers and community representatives in RJ and what RJ formats can have value in addressing harm under what circumstances), and (3) how might RJ best respond to serious offending (cases of serious harm, chronic offenders) and to special constituencies (e.g., age groups, the socio-economically disadvantaged, youths with behavioural problems, immigrant subcultures etc). There appears to be a broad consensus that the extra-judicial sanctions approach to low level offenses among first and second time offenders having caring supporters and reasonably adequate socio-economic backgrounds, has become widely accepted, and so the central question becomes "how far can we take this approach?"

A review of the literature and short site visits to other Canadian urban centers where interesting RJ initiatives are taking place has provided some insights. The vast majority of RJ or alternative measures (AM) programs and projects in Canada pertain to minor offences committed by young offenders who are not chronic offenders to say the least. There are RJ projects afoot that are indeed directed at serious offending, 'experimenting' with strategies for developing governmental – community partnerships, and utilizing innovative service delivery models (Clairmont, 2006). While interesting, there are some major limitations concerning their contribution to further appreciating the issues or challenges cited above. First, most of the projects appear to be struggling with their funding and their securing of referrals from the conventional justice system. Secondly, with one exception, the projects are indeed projects, operating on a short-term basis and not well-established (not institutionalized) vis-à-vis the justice system. There is

no RJ programming in the Atlantic region or elsewhere in Canada that has anywhere near the funding, vision and scope, and organizational structure that characterizes the Nova Scotia Restorative Justice (NSRJ) approach, with which the Mi'kmaw Legal Support Network (MLSN) through its Customary Law Program (CLP) is closely affiliated.

The literature on RJ is growing rapidly and the three issues identified earlier have been increasingly highlighted but the literature does not present as yet a coherent, evidence-based accounting of the three issues. For example, there is ambiguity with respect to the implications of the level of RJ implementation. The widely held expectation, based on RJ theory, would be that the fully restorative implementation involving most if not all parties (offender, victim, supporter, community representative) would yield better outcomes (e.g., more satisfaction, improved physical or psychological well-being) than less restorative ones (i.e., accountability sessions where no victim is present, 'shuttle' RJ where the facilitator only meets with the parties separately). The evidence is however ambiguous and a recent well-design study has found no significance differences related to level of RJ implementation (Rugge, 2006). Another example would be the impact for and of RJ in cases of serious offending, whether cases involved serious harm or merely chronic offenders. One could well expect that RJ intervention in cases of serious offending would require much more preparation before bringing the offender and the victim together (the programming based on experience of the famous Hollow Water First Nation's decade-old initiative illustrates this point well) and, relatedly, one would expect that victim satisfaction would be more problematic assuming the offence has generated a more severe reaction on the victim's part. The results of some recent studies conflict on the issue of seriousness of the offence and victim satisfaction with the RJ intervention.

Overall, there is among some of the leading RJ experts in Canada a sense that the RJ movement has now stalled and requires fresh input of terms of theory and policy, and new applications. The same judgment might be rendered with respect to justice circles and sentencing circles where there remains significant activity in the North and in Saskatchewan and Alberta but little evidence of development. Perhaps the most promising initiatives have been in Nova Scotia where risk assessment is being employed to improve case management and the effectiveness of RJ processing for serious, repeat offenders, and where the MLSN's CLP has been increasingly utilized for serious and adult offenders.

To some extent, too, the emphasis in justice innovation has shifted to another movement that represents an alternative response to conventional court processing of offenders, namely therapeutic jurisprudence or the problem-solving, specialty court. The problem-solving court may take several guises, namely domestic violence court, mental treatment court (dealing with persons who have mental health issues but are not considered to be criminally insane), and drug and alcohol treatment courts dealing with offenders whose offending is a product of their addictions. The first drug treatment court (DTC) was established in Florida around 1990 and now there are approximately 2000 in the USA (see Appendix for a description of these courts). In Canada the first DTC was established in Toronto in the late 1990s and has spread to other jurisdictions such as

Vancouver and Ottawa. These courts usually deal with serious offending where the adult offender pleads guilty and opts for a treatment program which is very demanding (e.g., regular individual and group counseling, urine tests for drug use, bi-weekly appearances in court etc) and of significant length (seven months to well over a year). There are variants of this DTC model where youth are involved and also where the offending is of a less serious nature and the program parameters accordingly are different (e.g., pre-charge, taking responsibility not pleading guilty, shorter program duration etc). Participation in the program enables the offender to avoid incarceration (or a record in the minor version) and to receive considerable and focused rehabilitative attention. The problem-solving court in the USA is popular as well in "Indian Territory" where it is called a "healing to wellness court" and more open to cultural and community input. In Canada there are two embryonic drug and alcohol initiatives among Aboriginal people (see appendix). The healing to wellness court appears to have had a positive impact on dealing with addiction-related offending and on reintegrating the offenders. In Canada the DTCs are funded through the federal ministries of Health and Justice.

As noted in the review of literature there are also more conventional courts in several First Nations in Canada. Two that have been referred to above are the T'suu T'ina Peacemaker Court in Alberta 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, 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.

The alternative justice developments in Aboriginal societies have objectives and developmental potential that go well beyond even a broad definition of restorative justice / alternative measures to include matters of management, ownership and possibly a different underlying ethos. Here there is a brief overview of such developments especially in Atlantic Canada, interesting Aboriginal justice initiatives that could impact on MCPEI AJP's future developments in justice. In the Canadian North there is the one-stop, legal support centre concept, "full service" centres featuring legal aid lawyers, court workers and related services. In Toronto the well-known Aboriginal Legal Services has pioneered restorative justice programming as well as a number of arrangements with justice officials (e.g. a protocol with the coroner's office) and has a central role in the operation of the Gladue court there.

There are some interesting developments as well among FNs in the other Atlantic Provinces. Mi'kmaq people in Elsipogtog N.B. have that province's most far-reaching alternative justice program. In practice it does not have the depth of Nova Scotia's MLSN's Customary Law Program (i.e., it deals solely 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 program is also branching out to do work with Children and Family Services doing facilitation with adults in separation issues where access and custody matters loom. There is no separate funding for this but the restorative justice program's small caseload permits it. In New Brunswick only one FN 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 "paralegals" who work with victims and liaise with New Brunswick's Victim Services; apparently the "paralegals" 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. Elsipogtog also has recently begun an intensive offender reintegration program (referred to by a Mi'kmaw term, Oelielmiemgeoei, which means "coming home in a good way") which entails not only 'section 84'parole release agreements among parolees, community representatives and others, generated by the "circles", but also treatment programs and healing circles for offenders, victims and families. Other major Elsipogtog justice-related initiatives include the nationally recognized program for diagnosis and treatment of FASD. This endeavor, called the Eastern Door, has been a remarkably achievement for a small community and has impacted on other FNs in Atlantic Canada (see below for its impact on PEI's FNs) as well as throughout New Brunswick, PEI and Newfoundland and Labrador. Underlying much of the Elsipogtog thrust in the justice areas has been a comprehensive strategic action plan that emerged from two years of research and community consultation (see Clairmont, 2006) and has received both widespread community support and a band council resolution of approval. The strategic action is appended to this report.

As noted the MLSN program in Nova Scotia has experienced very impressive development and would be among the most sophisticated FN justice services in Canada (See Clairmont and McMillan, 2001 and 2006). It administers well-managed, province-wide programs such as courtworkers, customary law justice and sentencing circles, cultural gatherings in prisons and other institutions, section 84 prison releases, and regularly meets and collaborates with NSRJ, Corrections Nova Scotia and the Tripartite Forum on Native Justice in Nova Scotia. MLSN currently is also establishing community justice committees, becoming involved with circles for regulatory offenses, and engaged in a family violence project, an objective of which is to consider a policy for using the circles format in cases of domestic violence. The Marshall Inquiry recommendations (1989-90) and the ensuing tripartite arrangements for federal, provincial and FN partnership, on a regular basis, in a variety of areas such as justice, economic development and more recently treaty negotiations have fuelled the MLSN developments, abetted of course by strong political leadership and favorable geo-demographic factors (i.e., the size and distribution of the Aboriginal population). The recently approved strategic action plan for MLSN is appended to this assessment.

In congruence with the academic-based policy literature cited above, there appears to have been a spontaneous development of Mi'kmaq conflict / dispute resolution

initiatives in all three Maritime provinces, testimony perhaps to the demand experienced for some Mi'kmaq 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) on the part of band members. In P.E.I., Mi'kmaw "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 violations of moose harvesting regulations and elder circles. Perhaps the most extensive training program has been that engaged in by four Mi'kmaq communities, Elsipogtog and three in Quebec. Here over fifty well-qualified persons engaged in local service agencies have been involved in a three-year training program. It is called the Apigsitogan project. Apigsigtoagen, 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'gmag 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'gmag Nation to comply by granting forgiveness to the perpetrator"(The Apigsitogan Project 20006-2007).

At present all of the above conflict resolution initiatives have basically been readied but not implemented. 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.

Recently, too, under the sponsorship of the federal Aboriginal Justice Strategy, persons involved in directing justice initiatives from across the Atlantic 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 highlights 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 goes on to call for extension of the circle approach to regulatory offenses. These emphases are 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'. E.A.S.T. reports generally emphasize the importance of partnerships with the mainstream justice system and the importance of effective cross-cultural training and respect for both Aboriginal and mainstream perspectives. 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 reintegration, healing to wellness courts) and also in the family and regulatory justice areas.

CONTEXT B: THE SOCIO-DEMOGRAPHIC PATTERNS

The total registered population for the Abegweit FN has not grown much since 1995, overall less than 1% per year. Table 1 reports a puzzling sharp decrease in Abegweit on-reserve population from 1995 to 2000. Interestingly, the sharp jump in the registered off-reserve population offsets the decline in the on-reserve members. The high proportion of Abegweit band members living off-reserve is striking. There is only a small proportion of population accounted for by other bands' members living on reserve. As for male / female proportions, the overall figures in each of the three time periods favour females (155 to 139 in 1995, 158 to 134 in 2000 and 162 to 150 in 2006). The population data for Abegweit indicate there is only a slight difference in favour of the female population on reserve. The gender difference has been largely among the off-reserve registered population. Females may be the more likely to migrate since in the off-reserve in 1995 they outnumbered the males 49 to 29 and in 2000 the corresponding numbers were 77 to 46. These figures suggest that while there may be an historical effect (i.e., females regaining status but not a reserve residence) there may also be a pattern for females to marry non-band members and reside elsewhere. The Abegweit FN is spread over three locales, namely Rocky Point (some sixteen homes), Morell (about eight homes) and Scotchfort (about forty homes).

In Lennox Island, the total registered population has grown by about 2% per year since 1995 and in 2001 it had double the number of Abegweit band members living on reserve. The off-reserve population remains a very significant of the total registered population for Lennox Island; indeed the off-reserve members now significantly outnumber the band's reserve membership (i.e., 432 to 362). There is only a small proportion of population accounted for by other bands' members living there. As for male / female proportions, the overall figures in each of the three time periods favour females (330 to 300 in 1995, 372 to 329 in 2000 and 433 to 372 in 2006) but it appears that the difference on reserve is modest as the total registered difference is largely accounted for by the greater proportion of females living off-reserve; there in 1995 they outnumbered the males 185 to 136, and in 2000 it was 212 to 156 in favour of the females. The same two factors cited above for the Abegweit FN probably account as well for the off-reserve gender distribution. The reserve registered population for those years actually favoured the males 163 to 145 and 172 to 160. Lennox Island is growing faster than Abegweit but the on and off reserve ratios remain similar. Note too that, in 2000, of the 12 reserve residents registered in other bands, 10 were females, suggesting marriage into the reserve, perhaps because of economic development.

The small populations of both the Abegweit and Lennox Island First Nations have many implications for the feasibility of justice programs and services such as separate courts, courtworkers and so forth. The so-called "silo" model in mainstream society, whereby funded programs such as courtworker services are rigidly defined, works against small communities where efficiency might require more flexible and multidimensional

roles. The increasing integration in mainstream PEI society as a result of post secondary education and economic collaboration also has demographic implications both for natural population growth rates (likely to decline) and intermarriage (likely to increase). Under federal eligibility legislation, fewer and fewer children will qualify for status because of intermarriage and that has significant implications for certain tax exemptions and other rights such as post-secondary educational funding. Recently a Winnipeg demographer (CBC, October 4, 2007) has been argued that, within six generations, given current population numbers and intermarriage rates, many FNs will find themselves with few status members if current laws defining who qualifies are not changed.

Table 2 highlights the socio-demographic comparisons among Aboriginals in Charlottetown, PEI Aboriginals as a total, and the PEI population as a total. In reading the table it is important to note that the Lennox Island and Abegweit First Nations account for most of the Aboriginal population outside the Charlottetown area and that the reference to total Aboriginal PEI population essentially includes these two FNs plus Charlottetown. Thus, comparisons drawn between Charlottetown and all PEI Aboriginals have to be carefully crafted to take into account that Charlottetown Aboriginals are also included in the total PEI Aboriginal grouping.

Just as PEI is a small province in terms of population and acreage so too are the First Nation communities. Slightly more than half the Aboriginal people – and the Registered Indian population - in PEI reside in the Charlottetown area, as noted in Census Canada's Aboriginal Identity Census for 2001. The Aboriginal population, both on and off reserve, is much younger than the PEI population as a whole. The average age is 23.4 years for Charlottetown Aboriginals and 24.6 years for the total PEI Aboriginals but 30.8 for the province as a whole; in all groupings the female median age is roughly two years more than for the males. The difference between Aboriginals and mainstream PEI age structures is basically accounted for by the much smaller proportion of Aboriginals aged 15 years or more. There is a whopping 14 to 18 percent differential; clearly, the native population in PEI is a growing one – albeit likely at reduced rate of growth over the past fifteen years if the same patterns of natural growth found in other Atlantic area Aboriginal communities hold for PEI which we expect they would. Such demographic growth underlines the need for more services, including justice services, over the next decade.

The data in table 2 also shed light on the familial and inter-personal relations among Aboriginal people in PEI. Among the population 15 years of age or more, the Aboriginal grouping, especially the reserve-based population, has a higher proportion of single persons – and conversely a lower proportion of married persons – than is found among the overall PEI counterpart. These differences, between reserves and Charlottetown within the Aboriginal population, and between the Aboriginal population and the overall PEI population, are largely accounted for by differences in the proportion of persons under conventional marriageable age in the three comparison groupings. It is noteworthy though that common-law relationships in the native population are about double the level found in PEI as a whole. Divorce and separation levels follow the same pattern while the level of being widowed is similar for all groupings. The table also

indicates that almost one-fifth of the Aboriginal families in the Charlottetown area are lone parent families while, in the total PEI Aboriginal grouping, the proportion of census families that are lone parent is similar for both Aboriginal and Mainstream census families (i.e., 16% or 17%), suggesting that lone parent families on reserve likely constitute about 11% of the family types. The lone parent in the lone parent families, as indicated in table 2, is usually female. The differentials for common law relationships, separation and divorce, in conjunction with differences in natural growth, suggest that justice services in the family justice area will be an increasing concern in the Aboriginal communities and a concern that MCPEI AJP might well take into account in its strategic action planning.

Only a quite small percentage of the population in the Aboriginal Identity Census for PEI – the latter focuses on persons who are either registered band members or consider their Aboriginal identity to be their paramount or central ethnic/cultural identity – speak an Aboriginal language at home (i.e., 5.9%). Surprisingly enough, the percentage is even smaller outside Charlottetown - basically the Lennox Island and Abegweit First Nations. Less surprising perhaps, males, in both the Charlottetown area and beyond, are somewhat more likely than females to report use of an Aboriginal language at home. More than double that proportion of Aboriginals in PEI (as high as 27% among Charlottetown males but only half that proportion for reserve-based males) do claim however that they still understand the Aboriginal language first learned. The traditional language use is apparently fading fast and there is evidence in table 2 of both more geographical mobility and greater educational attainment among Aboriginal people in PEI, factors which correlate with disuse of traditional language. For example, the proportion of "movers" over the five year period itemized in the Census is basically the same for Aboriginals as for mainstream Islanders, and proportionately more Aboriginals have lived in a different province or country in that time period.

In terms of educational attainment, the table indicates two major patterns, namely (a) that Aboriginals 25 years and older in both Charlottetown and elsewhere in PEI have substantially less formal educational attainment than their mainstream counterparts in PEI as a whole, and (b) that Aboriginals 25 years or older outside the Charlottetown area are especially likely not to have attained a high school graduation certificate (i.e., well over half the males and near half the females) .The difference is partly a gender effect; among males almost twice the proportion have not graduated from high school but among females, the proportion is only modestly less than that for the PEI province as a whole. Similarly, the large gap (i.e., less than half) between Aboriginals and other Islanders in terms of the proportion 25 years or older with at least one university degree is largely accounted for by Aboriginal males; Aboriginal females are much closer to the provincial average (i.e., 9.6 to 12.6). Both the gap between Aboriginals and other Islanders and the gap between Aboriginal males and Aboriginal females appear to be significantly diminishing. Looking at the proportion of the population aged 15 to 24 attending school full time, the Aboriginal proportions for PEI as a whole match the provincial average and it would appear that the native population outside Charlottetown, that is the reserve-based native population in PEI, would be as least as high (perhaps 57%). The implications of these language, geographical mobility and educational trends may be

quite diverse but at the minimum they point to an increasing capacity among the Aboriginal people in PEI to mount new justice initiatives and to a possibly major gender differential with respect to that capacity. These same factors raise issues of whether cultural differences would be expected in more Mi'kmaq-oriented justice programs. That is a complex question but it is important to appreciate, for example, that while language is crucial it is not the only determinant of cultural identity and the drive to generate culturally different programs.

Table 2 shows that the employment participation rate among Aboriginal people varies between Charlottetown and the rest of the province, being significantly higher in the latter, basically reserve, context (i.e., 63.5 to 53.8 even when the Charlottetown Aboriginals are included in the overall figures). Discounting for Charlottetown area Aboriginals, the participation rate for Aboriginals in the two First Nations of Lennox Island and Abegweit, compared with the PEI province-wide participation rate, would be greater for males and only slightly less for females; undoubtedly these patterns are significantly a function of the younger age distribution in the First Nations than in PEI as a whole. The employment rates are more complex to compare with the data at hand but again the reserve population, disaggregating it from the province-wide Aboriginal total, closely matches up to the provincial rates overall and is even higher for the FN males. Clearly though, the unemployment rate is greater among the Aboriginal population and especially high on the reserves; the rates are roughly twice as great for Aboriginal males either in the Charlottetown area or on reserve as for PEI residents as a whole. Discounting for the Charlottetown area population, it appears that unemployment rates on reserve reach over 30% for males and perhaps in the mid-20s range for females. A Census 2001 report indicated that for Lennox Island the overall unemployment rate was 29.2%. Aboriginals in PEI are less likely to be working full time for the full year than their fellow Islanders (i.e., 31% to 44%). The highest such full time employment among Aboriginals is among females on reserve where close to 40% of the females in the labour force are so engaged, typically in the service sector.

As might be anticipated, these unemployment and work schedule patterns impact on income and the quality of life. Extrapolating from table 2, it appears that the median private household is about $10,000 greater among mainstream PEI households than reserve households and the latter, in turn, have median incomes more than $10,000 higher than Aboriginal households in the Charlottetown area (after disaggregating the Aboriginal PEI total). It can also be seen that the housing stock among Aboriginal people is modestly older than for PEI residents as a whole and that Aboriginal housing in need of major repair is more than twice the proportion found in such condition in mainstream PEI (i.e., 23% - 25% compared to 9%). The economic situation of Aboriginals in PEI entailed in the above data, especially unemployment, income and housing, point to the need for supportive services in the Justice area and also suggest different needs among the reserve and off reserve populations as well as gender differences that the MCPEI AJP will have to take into account in responding to the service demands.

Table 2 also presents data on how the Aboriginal experienced labour force in PEI is distributed among different selected industrial sectors. About half of the Aboriginal

experienced labour pool in the Charlottetown area is in just three industries, namely health and education (23% overall and fully 37% of the females), manufacturing and construction (21% of the males), and agriculture-fisheries-resources (21% of the males). Looking at the data for the entire Aboriginal labour force in PEI, and disaggregating the Charlottetown component, it appears that well over 50% of the reserve-based male labour force is in agriculture-fisheries-resources sector while few females are (less than 2%). On the other hand, among this experienced labour pool, few males are engaged in the health and education sector (about 3%) while approximately 15% of the females are. Aboriginals, whether in Charlottetown or elsewhere, are not involved in the finance and real estate sector but perhaps as many as 7% or 8% of both males and females outside Charlottetown are engaged in the wholesale and retail trade (i.e., 14% minus the Charlottetown component). Generally, then, in these selected industries, gender and location differentiate the experienced Aboriginal labour force. Women are much more likely to be employed in sectors that operate on a full-time, full year work schedule. It can be seen that the same gender pattern largely also differentiates the province-wide PEI experienced labour force. The career implications of such industrial sector labour experience entail greater geographical mobility for the experienced female. There are also implications for criminal justice matters (e.g., court processing) and complex questions for issues of maintenance and so on in the family justice area.

In table 3 the patterns of secondary school enrollment are noted. These are the "student counts" at recognized Canadian university and community colleges receiving funding under the current INAC post-secondary education agreement with First Nations. The data may not represent a complete counting of all PEI Aboriginal students in such institutions but informants indicate there would be a close approximation. In recent years the monies available to the First Nations to allocate to student applicants have reportedly not kept pace with the growing demand for post-secondary education among band members and this has resulted in situations where the funds allotted to students have not been as generous as in previous years and sometimes no funds were available for some applicants. The data in table 3 present the patterns for the last two fiscal years for Lennox Island, Abegweit and, for comparison purposes, Elsipogtog in New Brunswick. It can be observed that Lennox Island has twice the "student counts" as Abegweit, but, given the greater population of the former (in the table a range for population is provided for each FN, the low end being the number of band members on reserve and the high end being the total number of registered band members), the rate of support is roughly the same since the former has twice as much population as the latter. It can also be seen that the FNs in PEI have done comparatively well for their students. Elsipogtog with between three and a half and five times as much population as Lennox Island, depending on whether the comparison is with low end or high end band membership, has only two and a half times as many INAC student counts. Data were not available on the programs and degree attainment of post-secondary students but do suggest modest growth in the raw numbers attending universities and colleges. It is also known that at least a few of the students – and a few other who have graduated in recent years – have studied fields related to MCPEI AJP activities (e.g., Law, Criminology) and one such student is currently at the articling stage in her legal studies. As will be noted in sections below, there are at present no Aboriginal judges, crown prosecutors, legal aid or private lawyers

in PEI, something that respondents frequently mentioned in their remarks that “there are no native faces” in the Justice system (apart from a few RCMP officers). This absence underlines the need for MCPEI AJP to continue its emphasis on bridging the gaps between Justice officials and FN Justice system participants in terms of understandings and cultural experiences, and to mount new initiatives such as a robust, multi-dimensional court worker program.

TABLE 1

PEI: ABEGWEIT AND LENNOX ISLAND POPULATION

ABEGWEIT		
1995	2000	2006
212 On-reserve (Own Band)	157 On-reserve (Own Band)	176 On-reserve (Own Band)
4 On-reserve (Other Bands)	12 On-reserve (Other Bands)	11 On-reserve (Other Bands)
216 Total On-reserve	169 Total On-reserve	187 Total On-reserve
78 (26 %) Off-reserve	123 (42%) Off-reserve	125 (40 %) Off-reserve
294 Total	292 Total	312 Total

*According to INAC's Indian registration system, July 2007

LENNOX ISLAND		
1995	2000	2006
293 On-reserve (Own Band) +1	320 On-reserve (Own Band) +1	362 On-reserve (Own Band)
15 On-reserve (Other Bands)	12 On-reserve (Other Bands)	11 On-reserve (Other Bands)
308 Total On-reserve +1	333 Total On-reserve +1	373 Total On-reserve
321 (51 %) Off-reserve	368 (52 %) Off-reserve	432 (53 %) Off-reserve
630 Total	701 Total	805 Total

*According to INAC's Indian registration system, July 2007

TABLE 2

SOCIO-DEMOGRAPHIC PATTERNS BY CHARLOTTETOWN ABORIGINAL POPULATION, TOTAL PEI ABORIGINAL POPULATION, AND TOTAL PEI POPULATION, 2001 CENSUS, AND ABORIGINAL IDENTITY CENSUS

	Charlottetown (Aboriginal)			PEI (Aboriginal)			PEI (All residents)		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Population	735	295	440	1,345	635	710	135,294	66,495	68,979
North American Indian	545	230	320	1,035	510	530	N/A	N/A	N/A
Metis	145	60	80	220	100	115	N/A	N/A	N/A
Inuit	0	0	10	25	10	15	N/A	N/A	N/A
Other	35	0	35	75	15	60	N/A	N/A	N/A
Registered Indian	490	195	295	845	385	460	N/A	N/A	N/A
Median age Pop	23.4	22.0	25.3	24.6	23.7	25.9	30.8	29.8	32.5
% Pop 15+ years	62.3	59.3	63.6	67.3	66.4	66.9	80.3	79.3	81.3
% Pop 15+ in a common law relationship	11%			11.5%			6.5%		
Legal Marital Status of the pop 15+ (total)	450	175	280	900	425	475	108,650	N/A	N/A
Single	38%	43%	36%	42%	48%	36%	31%		
Married	34%	34%	32%	35%	33%	37%	53%		
Separated	8%	6%	11%	7%	6%	7%	3%		
Divorced	13%	11%	12%	11%	9%	12%	6%		
Widowed	8%	6%	7%	6%	2%	8%	7%		
% of the Aboriginal identity population with Aboriginal language(s) first learned and still understood	21.2	27.1	18.2	15.6	17.3	14.1	N/A	N/A	N/A
% of the Aboriginal identity population with Aboriginal language(s) spoken at home	8.8	11.9	8.0	5.9	7.1	4.9	N/A	N/A	N/A
Total population 5 years and over	640	245	390	1,185	550	635			

	Charlottetown (Aboriginal)			PEI (Aboriginal)			PEI (All residents)		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Lived at the same address five years ago	65%	67%	65%	70%	70%	71%	68%		
Lived in a different prov./terr. or country five years ago	9%	16%	3%	8%	11%	5%	7%		
% population 15 -24 attending school full time	48%	50%	46%	53%	54%	53%	54%		
Total population 25 years and over	340	115	220	665	300	365	87,770	41,910	45,860
% of the population 25 years of age and over with less than a high school graduation certificate	29.4	43.5	22.7	36.8	50.0	27.4	*22.5%		
% population 25+ with BA or higher	5.9	0.0	9.1	5.3	3.3	9.6	*12.6%		
Employment Participation rate	53.8	68.6	45.5	63.5	77.6	50.5	69%	74.7	63.8
Employment rate	41.8	54.3	36.4	48.1	57.6	41.1	60%	64.5	55.7
Unemployment rate	20.4	25.0	16.0	24.3	28.8	18.8	13.2	13.7	12.6
% income earners working full time, full year	30%	33%	29%	31%	24%	34%	44%		
Median private household income	$20,931			$29,542			$40,512		

INDUSTRY CHARACTERISTICS FOR THE ABORIGINAL IDENTITY POPULATION									
	Charlottetown (Aboriginal)			PEI (Aboriginal)			PEI (All residents)		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Total - Experienced labour force	235	115	125	555	325	230			
Agriculture and other resource-based industries	11%	21%	8%	22%	35%	4%	13%	20%	6%
Manufacturing and construction industries	13%	21%	0%	14%	13%	13%	18%	25%	10%
Wholesale and retail trade	0	0	0	3%	3%	4%	14%	14%	14%
Finance and real estate	0	0	0	0	0	0	3%	2%	4%
Health and education	23%	8%	37%	15%	6%	24%	16%	7%	26%
CENSUS FAMILY STATUS FOR THE ABORIGINAL IDENTITY POPULATION									
Total - Census Family Status									
Spouses	60%	76%	51%	62%	67%	58%	75%		
Common-law partners	18%	24%	20%	21%	28%	15%	9%		
Lone parents	22%	0%	29%	17%	5%	27%	16%		
Children in census families	355	155	195	595	305	295			
Non-family persons	125	55	65	240	130	115			
SELECTED OCCUPIED PRIVATE DWELLING CHARACTERISTICS FOR THE ABORIGINAL IDENTITY POPULATION									
% of dwellings constructed before 1991	90%			89%			85%		
% of dwellings in need of major repairs	23%			25%			9.5%		

TABLE 3

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

*Source: INAC - Atlantic

CONTEXT C: THE POLITICAL ECONOMY

The most significant political economy contextual consideration for Mi'kmaq justice in Atlantic Canada would appear to be the immediate consequences of the Supreme Court of Canada's Marshall decision (and subsequent specification) in 1999. Just as the 1990 Marshall Inquiry into the wrongful prosecution of Donald Marshall led to the Tripartite Forum in Nova Scotia and a host of justice initiatives (See Clairmont and McMillan, 2006), the SCC's decision on the legality of Marshall's eel fishing has had profound ramifications for Mi'kmaq justice that have yet to be fully realized. The spike in economic development occasioned by programs and agreements in Marshall One (referring to agreements with the federal Department of Fisheries) and Marshall Two (more general economic programming spearheaded by INAC) appears to have significant implications for reducing crime and social disorder problems and also for altering the thrust of the Mi'kmaq justice focus, highlighting the area of regulatory justice and law-making where policies and protocols are negotiated along with responsibilities for enforcement. The political implications are linked to the kick-starting that the SCC decisions have provided for tripartite treaty negotiations throughout the region (e.g., the "Made in Nova Scotia" treaty process) Along with the greater focus on the regulatory justice area, a major implication appears to be the establishment of a template for community collaboration or, put otherwise, a definite "raising of the bar" for meaningful community consultation.

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 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, 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'tnkek 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.

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). 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 (see the divergent views on this issue 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 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. The Circle Keepers program of the MCPEI could be valuable in these regards given the expertise built-up in that field.

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In the case of PEI, the economy appears to have improved considerably even prior to the SCC's Marshall decision. Government reports indicate that the 1960s was a desperate period economically and elsewise for Mi'kmaq on PEI but there has been significant progress since that time. In the 1960s reports suggested that the quality of community life declined. Crossley has written that alcohol abuse, underemployment and dependence on government programs mitigated the gains associated with greater self-governance and modest improvements in community infrastructure. One 1969 Indian Affairs report painted a bleak picture for the PEI Mi'kmaq at that time

> "Children no longer spoke Indian and there was no desire to neither maintain the language nor identify with their Indian heritage. [The majority of Mi'kmaq were] locked into a poverty and welfare cycle and [it appears] that their children will continue in that cycle".

Ideas advanced to alter this bleak picture included relocating native people to a central location to break the isolation and another was the construction of a causeway to Lennox Island. A crucial date was 1972/1973 when the causeway was built connecting Lennox Island to the rest of PEI, a new FN, Abegweit, was hived off from Lennox island, bringing together the Mi'kmaq settlements of Rocky point, Morell and Scotchfort, and the Native Council of PEI was formed. These developments had economic implications since they led to increased economic opportunity for Lennox Island, a more efficient band administration system, and more Aboriginal voices for funding and a fair share of the economic pie. Related changes, as recommended in the 1969 report, and as were

happening throughout Canada, entailed increasing the bands' fiscal responsibilities and discretion similar to that of a municipality.

The new opportunities and enhanced band self-administration led to significant change in a variety of sectors including the economy. By 1981 an economic development organization Mahemigew Inc was created at Lennox Island to spearhead new strategic intervention to secure an economic base for the FN through enterprises in peat moss, blueberries, oysters and so on. In the 1990s DFO's Aboriginal Fishing Strategy program began buying up lobster licenses and turning them over to the FNs to facilitate the latter's involvement in the commercial fisheries; as of 1996 four commercial licenses were held by the Aboriginal community in PEI, communal licenses where the fishing was carried out on behalf of the community. Developments were also taking place in the Lennox Island area in Aboriginal eco-tourism. Outside informants, such as police officers stationed in the area, citing the developments in fishing and the peat moss harvesting, indicated that in the late 1990s Lennox Island at least could be characterized as a progressive community, economically and in other respects.

The SCC's Marshall decision provided a major economic spurt. Licensed boats were made available to Lennox Island, Abegweit and the Native Council. All the Abegweit licensed boats were communal, owned by the band where the net profit were utilized by the band. In the case of Lennox Island most of the 20-odd licensed boats (perhaps as many as 27 boats) engaged in 2006 in the commercial fisheries (the food fisheries is a distinct operation) were privately owned but the band itself had at least four and possibly seven boats. Native Council, which had become an incorporated independent organization in 1978, in 2006 had six lobster licenses, three crab licenses and two tuna licenses plus other commercial fisheries operations. In addition to the benefits of the new fishing policies, subsequent federal government programs, such as the Marshall 11 Phase noted above, were launched to diversify the economic opportunities for the Mi'kmaq communities and add to the land base of the FNs. Both Lennox Island and Abegweit FNs have secured funding for land acquisition in the competitive process for Marshall 11 funds. Lennox Island received multiyear funding for its Trail Head Centre which had an ATR component (i.e., land acquisition) and which built on its success (which is continuing) in eco-tourism. Abegweit received funding to acquire a sizeable agricultural property.

In order to better take advantage of new opportunities, and achieve the requisite economic success for greater self-government, the Lennox Island band has recently reorganized its band-operated economic activities such as the commercial fisheries, creating a Lennox Island Development Corporation which is arms-length from the band council, to manage these assets (a strategy that has transformed Membertou in Nova Scotia into a model for FN economic development). Native Council has the Wokwis Corporation guiding its economic development strategies. While Abegweit does not as yet have such an arms-length development strategy, both FNs are collaborating in some economic ventures (e.g., property acquisition and development) and those ventures come under the management of the Development Corporation. An RCMP document in 2004 cited the many developments in Lennox Island such as the ecotourism complex, hostel,

cultural centre, wharf, gravel pit and so on. Lennox Island is highly regarded by government and justice officials in mainstream society as progressive and fairly prosperous while Abegweit has a lesser reputation consistent with the significant internal strife that has characterized that FN in recent years and its less advantageous geography, being landlocked and divided into three subcommunities. Still, both FNs are collaborating in economic development and Abegweit under new leadership is poised for change. Lennox Island meanwhile is pursuing a variety of economic trajectories whether in property acquisitions in Charlottetown or aquaculture developments in partnership with non-native neighbours. It would be unwise to overstate the prosperity of Lennox Island as much work is seasonal (a recent unemployment rate was found to be about 30%) and economic diversification, beyond fisheries and band employment, is a challenge but there is little doubt that the leadership is focused on the economy as the top priority; as a prominent leader commented, "We need our own sources of revenue; that a condition for self-government". The latter comment also underlines the continued dependency of the FN on the two million dollars in funding it receives annually from the Government of Canada.

POLITICAL

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. For PEI Mi'kmaq people 1972-73 was a pivotal year as noted above for political and economic reasons. Henceforth there would be three political parties, the Lennox Island FN, the Abegweit FN and the Native Council. The political structure set in place then continued for thirty years until the creation of the Mi'kmaq Confederacy of PEI in April 2002. In the intervening thirty some years, the political evolution was seemingly incremental rather than a series of dramatic events. One dimension of the steady evolution has been the role of women in political leadership. The first chief of the newly created Abegweit band in 1972-73 was a woman, Margaret Bernard, but the first woman ever elected chief was Mary Bernard elected chief of the Lennox Island band in 1960 (and who resigned to follow her husband into the USA a short time after). In 2004 the Lennox Island FN made national headlines by electing an all-female band council which included D. Bernard as chief, E.Bernard and T.Thomas as on-reserve councilors, and MM Philips as off-reserve councilor. Increasing acknowledgement of Aboriginal political rights has been reflected in agreements such as the MOU signed in 1999 by Parks Canada with Abegweit, Lennox Island and Native Council leaders creating a Mi'kmaq Advisory Board. All leaders spoke in favour of the concept and the Lennox Island chief commented, "Establishing this formal mechanism for dialogue and participation whereby consensus is reached on strategic issues surrounding the delivery of Parks Canada programs on PEI and how it relates to the Mi'kmaq community is excellent". The MOU on fisheries signed in 2006 among DFO, MCPEI, Lennox Island and Abegweit took the partnership further in that it is an agreement concerning community-based enforcement, setting out the path of how violations are to be referred to community-handling and the

adjustments to various contingencies. It allows for discretion on the part of the Aboriginal parties and leaves the sanction reached in the justice circles and the attendees unspecified beyond a minimum of three plus the offender and the facilitator. Incrementally, too, has been the correlate activity of cultural renewal and identity, an important aspect of increased political independence. Annual cultural awareness programs at Lennox Island go back to the late 1990s (perhaps earlier) and the first pow wow took place in 2002. Now Lennox Island is established as an Aboriginal cultural centre and emphasizes that feature in its tourism.

In 2002 when the MCPEI was created, it was deemed to be "the common forum and the unified voice for the advancement of Treaty and Aboriginal rights for the Lennox Island and Abegweit First Nations". The board of directors includes the chiefs and all the councilors of the constituent FNs (seven persons in total). In just four years it has accomplishments in resource management and in justice initiatives. Also, it has evolved itself as a political structure. In 2004 the MCPEI received recognition from the Department of Indian and Affairs as a tribal council (TC) and provincial territorial organization (PTO), a recognition (not usually granted where there are fewer than five constituent bands) enabling it to receive funding to deliver five core TC programs, namely economic development, financial management, community planning, technical services and band governance. The creation of the MCPEI has clearly shifted the balance of power among the Aboriginal parties in PEI. As elsewhere in Canada, as major initiatives and treaty negotiations have been launched by the federal and provincial governments in response to a large variety of Supreme Court of Canada's and other courts' decisions, the bands or FNs have taken centre stage as governments negotiating with governments. This has meant some diminution in the status of Native Council (nationally the Congress of Aboriginal Peoples) and frequently conflict between the bands and Native Council over responsibilities and funds with respect to off reserve Aboriginal people. Interestingly, and perhaps illustrative of the change, while the Parks Canada agreement in 1999 included Native Council as a signatory, the MOU in 2006 with DFO involved only the MCPEI and the two FNs. As will be noted below, the conflict in PEI has created significant problems for the smooth and effective operation of the AJP's advisory committee.

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 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.

While the "Made in Nova Scotia" negotiation process is evolving, there are clearly many issues that need attention in the eyes of both governmental and Mi'kmaq officials, priority issues as it were. Working committees have been established to deal with these and interim agreements are envisaged with respect to these matters. The umbrella agreement allowed for such interim agreements without prejudice to the final agreements reached "at the main table". Working committees include land protection, fisheries (the Marshall One agreements with DFO, if not already are due to expire), forestry, and moose harvesting. The latter is particularly interesting since it is seen by many informed Mi'kmaq leaders as a possible template for process and outcome in the Mi'kmaq regulatory field at the provincial level, namely extensive consultation, a consensus regulation, and violations being dealt with through an "apiksetwan process" (forgiveness and reconciliation). Mi'kmaq justice initiatives remain embedded in the Tripartite Forum and, while justice could become a 'working group" under the "Made in Nova Scotia" umbrella, there is no movement in that direction anticipated by Mi'kmaq leaders. As one well-placed Mi'kmaq leader observed, "[expansion of justice initiatives] is on the back burner". Justice will of course be one of the substantive issues that will be negotiated.

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. 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. Of course, all this political development underlines the important of the views of Aboriginal leaders that it is important 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.

In sum, the political economy developments have been significant and have considerable relevance for Aboriginal justice initiatives and the role of the AJP. Economic development brings hope and opportunity and the consequent potential of reduced crime and addiction while political development makes it possible for Mi'kmaq communities in PEI to carve out or tailor institutions such as justice that are salient to their needs and wishes**.**

CONTEXT D: CRIME AND VIOLATIONS: OFFICIAL RCMP STATISTICS

The RCMP reports on crime in Lennox Island and Abegweit for 2005 and 2006 (see tables 4 and 5) indicate that there are a modest number of offenses. The two FNs, Lennox Island and Abegweit, have basically the same patterns of reported violations. Apart from traffic violations, the main crime issues are assaults, administration of justice issues (breach and "fail to comply") and mischief. Over the two years, and consistent with police interviews, the violations problem has remained quite stable in Lennox Island. In Abegweit, the data show a downward trend, though not for assaults. In the case of Abegweit, virtually all the RCMP-reported offenses occurred in the larger community of Scotchfort. In 2005, there were 70 charges laid by the RCMP in Abegweit and Scotchfort accounted for 59 of those. Of the 48 charges the RCMP laid in the Abegweit FN in 2006, 45 involved Scotchfort incidents. Abegweit, with half the reserve population of Lennox Island (187 to 362 in 2006), has roughly the same number of assaults and mischief cases as Lennox Island so its rate would clearly be higher. RCMP officials have indicated that the relatively high level of assaults in the Abegweit FN (especially Scotchfort) have to do with the political strife there during 2005 and 2006 and does not reflect a widespread pattern of spousal assault.

It is interesting to compare the level of reported offenses in the PEI FNs to the Millbrook FN in Nova Scotia (see table 6) and the Elsipogtog FN in New Brunswick (see table 7), the former considered to have a low to modest crime problem and the latter a high level of crime. The two PEI FNs together have roughly 75% of the 729 reserve population of the Millbrook FN but the RCMP reported a similar number of assaults as in Millbrook for the years 2005 and 2006 (2006 is an estimate provided by the RCMP). In the analogous comparison with Elsipogtog, the combined PEI reserve population is roughly one quarter that of Elsipogtog and its level of assaults averaged over 2005 and 2006 has been roughly one fifth. Clearly then the level of assaults among PEI FNs is "in the middle" among Atlantic area First nation communities. Overall, then, the statistics indicate that, while the numbers are modest, the rate or level of reported offenses is quite significant. Such patterns help account for the paradox encountered in the field work. Respondents, whether community residents or CJS officials, noted little reported offending but the community members considered criminal acts to be significant and

increasing while the CJS officials were reluctant to characterize the small numbers as indicative of an absence of crime on reserve.

The police practice has been to proceed by charge basically in the assault cases, failure to comply or administration of justice matters, and traffic offenses whether criminal or statute. Other actual offenses are usually "cleared otherwise". If the circles initiative by the MCPEI AJP becomes more extensive, it would seem that it would have to tackle the assaults, tougher cases for restorative justice practice, or substitute for whatever extra-judicial processes the police are currently employing when they do not lay charges in an actual offense. On the regulatory sphere of justice, it can be noted that in Abegweit over the two years, 2005 and 2006, there was one violation and one charge laid with respect to a band bylaw and none regarding the fisheries. In the case of Lennox Island there were no charges laid or incidents reported with respect to either band bylaws or the fisheries act.

TABLE 4: ABEGWEIT RCMP VIOLATIONS STATISTICS BY YEAR

	2005		2006	
Offences	Actual	Cleared by Charge	Actual	Cleared by Charge
Impaired dangerous driving	6	5	2	1
Traffic Offence – Regular	39	25	10	9
Traffic Offence – Special	-	-	-	-
Liquor Act Offences	5	2	2	0
Mental Health Act Activities	19	0	7	0
Disturbing the peace	22	1	15	1
Breach	8	1	1	0
Fail to Comply	9	8	5	4
Sexual offences	1	0	1	0
Harassment/Threats	3	2	5	3
Assault (Non-sexual)	19	10	20	14
Theft under $5000	4	0	2	0
Break and enter	7	3	3	1
Mischief	17	4	12	5
Police Activities re false alarms, suspicions person / vehicle	14	0	7	0

TABLE 5: LENNOX ISLAND RCMP VIOLATIONS STATISTICS BY YEAR

	2005		2006	
Offences	Actual	Cleared by Charge	Actual	Cleared by Charge
Impaired driving	2	1	6	3
Traffic Offence – Regular	15	5	16	5
Traffic Offence – Special	12	0	-	-
Liquor Act Offences	7	3	6	4
Mental Health Act Activities	5	0	6	0
Disturbing the peace	8	0	7	1
Breach	7	0	5	2
Fail to Comply	6	4	12	11
Sexual offences	6	2	2	1
Harassment/Threats	6	4	3	2
Assault (Non-sexual)	27	17	21	15
Theft under $5000	7	0	1	0
Break and enter	4	0	4	2
Mischief	20	1	20	5
Police Activities re false alarms, suspicions person / vehicle	19	0	13	0

TABLE 6

RCMP Statistics: Millbrook Offenses, 2001-2005

Actual Offenses	**2001**	**2002**	**2003**	**2004**	**2005**
Common Assault	32	50	45	34	37
Total Assault	48	62	55	44	45
Total Person	49	64	62	45	49
Total 'Theft Under'	40	45	46	56	50
Total B&E	14	31	25	25	39
Total Property	66	88	87	99	Not Available
Total Weapons	9	7	8	6	12
Disturbing Peace	48	49	37	61	53
Bail Violation	44	35	5	11	Not Available
Total Other Criminal Code	234	263	203	205	Not Available
Total Criminal Code	371	435	352	349	Not Available
Total Drugs	29	18	4	20	16
Mental Health Act	22	28	19	19	4+20*
Total Liquor	19	37	11	26	16+20*
Young Offenders	13	25	5	2	Not Available

* A new reporting format uses two categories since 2005 and also accounts for the NAs.

Source: Millbrook RCMP 'Mayor's' Reports

ELSIPOGTOG VIOLATIONS 2005 TO 2006

Over the years Elsipogtog has been closely linked to the First Nations in PEI through marriage ties, the activities of the warrior society, and youth organizations (see Creating A Maritime Network To Support Aboriginal Youth, 2006) so it is useful to explore crime and violations in this larger Mi'kmaq community and then consider implications for PEI. It is with caution that comparisons may be drawn between the last two years – comparable to the PEI data - and earlier police reports for Elsipogtog 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 there 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.

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. It is clear that Elsipogtog continues to have much higher levels of violations and serious offenses than its neighbouring communities do. On a much more modest scale, reflecting the smaller, and apparently more employed population involved, the Elsipogtog trends seem applicable to Lennox Island and Abegweit. The downward trend in youth violations may well be expected to occur among PEI Aboriginal youth as youth experience greater educational achievement. Assaults have been and are likely to continue to be significant in both FNs and apparently occur at a higher rate than in neighbouring mainstream communities. How significant they will be would seem to depend on trends in substance abuse (especially drug abuse, a very major problem in Elsipogtog) and reductions in factionalism.

TABLE 7

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 7

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

CONTEXT E: OTHER ISSUES PERTINENT FOR JUSTICE

There are other social issues that usually have a direct relevance for justice problems such as gender differences, educational accomplishments, and employment opportunities. Generally, the greater the last two and the less the first, the more likely that justice issues such as crime and violence will decrease**.** There has indeed been an improvement in both educational accomplishments and economic opportunities for PEI Aboriginal people since 2000. According to local community leadership, employment opportunities are increasing and in the summer period it is possible to refer to almost full employment for those in the labour market. However, jobs associated with resources such as fishing are not year-round and the unemployment rate for males in particular frequently hovers around the 30% level. Educational achievements and expectations have also risen but still are well below provincial levels in terms of high school completion and university degrees, especially for males. There does appear to be significant gender equality in terms of political leadership and economic well being (e.g., females typically hold the full time, full year jobs) and females appear to more able to succeed employment–wise in the mainstream economy. Perhaps an underlying issue which should be examined is what impact the lesser education attainment and unstable employment of males has for crime, violations and violence. In other FN communities the impact has been increasing violence and addiction among the young adult males. Another social issue may well be increasing socio-economic differentiation in FN communities and the concentration of crime and other justice issues in pockets of families. Such descriptions – pockets of problem families – were frequently advanced by respondents during this assessment. More detailed research would be required to examine their validity but if valid, they raise issues about the effectiveness of justice circles and indicate a need for both early intervention and post-conviction programming by the AJP.

Fetal Alcohol problems (birth defects now commonly referred to as FASD) have been a significant problem in many FN communities, as for example in Elsipogtog (It is a problem in mainstream society too but has attracted less attention there). Caused by alcohol consumption in the first trimester of pregnancy, the effects on the fetus are presumably irreversible and manifested subsequently in behavioural disorders, poor school performance, dependency and often troubles with the justice system. Educational and health services in Elsipogtog have pioneered in meeting this challenge by highlighting FASD, and developing school programs for youth and services for others expelled from school, such as special teaching strategies, a facility (Nogemag) for outreach and community prevention programs. More recently, there has been the establishment of a diagnostic and treatment capacity in the community (i.e., the Eastern Door) which puts the small FN in the vanguard for FASD services in Canada. Additionally, the programs' leaders have developed a medicine wheel model for effective FASD prevention, networked with mainstream and FN communities elsewhere in Atlantic Canada, and prepared a booklet on FASD specifically for justice officials. Health providers and alcohol and drug counselors in PEI native communities have been influenced by these developments and are themselves now advancing models and strategies for diagnosis and treatment. There was a general acknowledgement among the

respondents interviewed for this assessment that FASD is a problem in FN communities in PEI, though the respondents were unsure how extensive a problem it is.

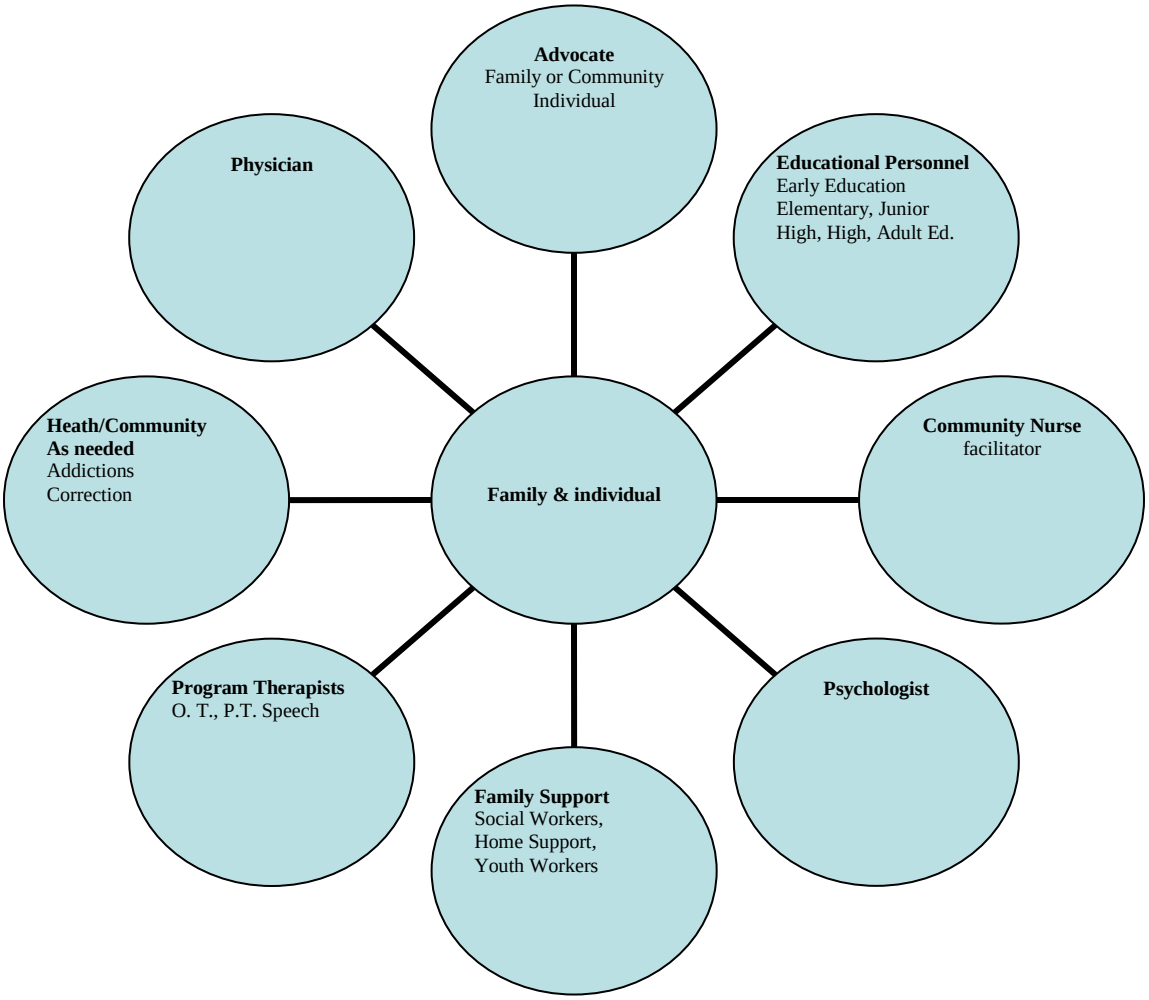
In Prince Edward Island, the driving force behind FASD awareness has been the Aboriginal Women Association. In interviews with two leaders from that organization and another person whose main work is Alcohol and Drug Counseling – all three women were active in Aboriginal justice issues as well – the contribution of the Nogemag Model and the pioneering work of Elsipogtog school-based FASD work was readily acknowledged. They reported that the AWA leaders were the major "movers" in drawing attention to the issue in PEI and getting some province-wide support. It was considered important that FASD issues were correctly seen as a general social problem and not something limited to Aboriginal people. Clearly, these respondents recognized that there were far more significant and sophisticated developments in Elsipogtog but they did cite the existence of a PEI province-wide advisory group, identified a doctor in each of Charlottetown and Summerside who were interested in FASD issues, even if not engaged in diagnosis, and have produced their own model for responding to FASD (see below). Most of the current momentum in PEI concerning FASD reportedly has been in the last two years and in that regard the influence of the Elsipogtog program and its initiator Dr. Cox who provided a workshop in PEI and the Elsipogtog work in general (all PEI respondents were aware of the Eastern Door program) has been important. It is a good example of the partnerships that the smaller Aboriginal community in PEI can establish with FNs in the other areas.

One respondent, coordinating the Aboriginal FASD activity in PEI, and reporting that "FASD is a major social problem in our area and the Island as a whole", addressed some of the above issues in greater detail. She noted that the AWA initiative began with basic community development work such as talking circles, focus groups and the like, especially on the subject of alcohol abuse and how to intervene effectively. At that time, there was an awareness of the Elsipogtog program "because of the great work done at the school and the Nogemag program" that out-of-school youths with FASD were involved in. "We were very impressed with those initiatives and the values were the same … everyone had gifts to contribute". A nationally known medical expert on FASD was brought in to address the PEI group on a diagnostic-intervention model for FASD and he recommended that they establish ties with Dr. Cox and the Elsipogtog program. A subsequent visit to New Brunswick to attend a training session for doctors on FASD, given by Dr. Cox and the medical expert, confirmed expectations – "After seeing the presentation and hearing about the intervention, I knew this program needed to be discussed in PEI. During the presentation, a young adult and a mother spoke and the diagnostic-intervention model focusing on the support and empowerment of the young adult and mother was explained. That is what we wanted in PEI and so called Dr.Cox". She added, "I believe that, because of the presentations in both FNs in PEI, the community is more involved in our FASD initiative. Both presentations were very powerful and empowering to the community and more and more the community and the Health teams are willing to talk about FASD. Both Health teams have created a "Child Development Model" to reach out to families and children. In addition each team is

traveling to Elsipogtog in the future to visit again with the FASD team to further develop their multidisciplinary teams and further develop their model".

The Medicine Wheel approach was especially appreciated as "the medicine wheel is the connector to First Nations people. "We have used this throughout the years when doing any Health, Education or Personal Development work … I am certain that it will be a greater part of our intervention on PEI". The Eastern Door approach in Elsipogtog was also cited enthusiastically for being multidisciplinary, professional and empowering for the individual and the family. "I would like to see it become a model site for FASD intervention in Canada, especially the rural areas. People could come and learn about the diagnostic-intervention process and especially the supportive, empowering work with individuals and families. Invite the Aboriginal women's groups from the Eastern provinces to learn from the Eastern Door program".

AWA PEI MODEL



Interdisciplinary Model re Child Development Issues

The above model represents the pathway to diagnosis and intervention re Child Development Issues, i.e. FASD. At the heart of this model is the role of the family as ultimate decision-makers. The model is designed to allow the family to go at their own pace in dealing with a particular issue. However, if the family wishes to go directly to diagnosis and has given written permission, a professional is

chosen to facilitate the team process (assessment and diagnosis). Ongoing support and follow-up are essential within this model and begin from the initial request for help. Key to the process is the family in the lead.

MCPEI'S ABORIGINAL JUSTICE PROGRAM

EVOLUTION OF THE MCPEI AJP

The table below provides a chronological overview of the MCPEI's AJP. It can be noted that the germ of the AJP was well in place prior to the formation of the MCPEI but no programming was effected until after the MCPEI assumed its role as director / board of the justice initiative. An MCPEI brochure describes the AJP as follows

> "The Aboriginal Justice Program on PEI, administered through the Mi'kmaq Confederacy of PEI, seeks to meet the needs of Aboriginal people engaged with the Canadian Justice System on PEI by providing support, raising awareness and developing community capacity".

It is also the case that there were earlier, similar Aboriginal justice initiatives prior to the AJP. A native court worker program, co-funded by the federal and provincial governments was in place in the 1970s, and the RCMP attempted to launch its well-known form of restorative justice circles, called the community justice forum (CJF), in Lennox Island in the mid-1990. Little is known about these endeavors. It appears that the court worker initiative faded out which is puzzling since the national court worker program under which it was established has continued in existence for almost forty years and is the only on-going Aboriginal justice program – as opposed to a project – offered by the federal Department of Justice. As for the RCMP's CJF, its failure to take hold is more understandable since, while facilitators may have received orientation – training facilitators has always been part of the RCMP initiative – no additional resources are typically allotted by the RCMP to the initiative so the community and volunteers must sustain any initiative.

The AJP from the get-go has had two three broad objectives, namely cultural orientation and liaison with mainstream justice officials, building community capacity, and impacting on the mainstream justice system especially but not only through the development and coordination of justice circles (sometimes called customary circles) in early intervention (e.g., pre-charge), sentencing, and conflict resolution. The goals of the first objective presumably are to enhance the understanding between Aboriginal people and mainstream justice officials, facilitate Aboriginal input in justice matters, and assist in the creation of a justice system more responsive to Aboriginal culture and everyday Aboriginal realities. The goals are to be achieved through networking and cross cultural orientation at conferences and workshops. Examining the AJP's objectives for 2006-2007 and the accompanying work plan schedule for the AJP coordinator, it can be seen that the basic activities subsumed under this broad objective have been five-fold, namely (1) developing and maintaining an AJP website; (2) encouraging the judiciary to refer cases to AJP sentencing circles; (3) disseminating information through pamphlets relating to justice issues; (4) informing "key people in the Justice system about the MCPEI AJP and the alternative measures available to Aboriginals through this program", and (5) consulting with the RCMP and Municipal police to track the system for Aboriginals.

The second objective, community capacity and training, builds upon unquestionably the most well-known and inventive initiative of the AJP, namely the circle keepers program. Here nineteen Aboriginal persons from several different Aboriginal communities in PEI program graduated (a handful of others did not complete the course) with certificates in conflict resolution from a full year program at UPEI. The circle keepers (the label applied to these graduates) represented a significant investment of the modest MCPEI available resources for justice issues. The circle keepers subsequent to their training have been available for receiving alternative measures / restorative justice referrals from mainstream justice (i.e., police, crown prosecutors and judges). The main activities in building on this community capacity were (1) holding sessions for the Circle Keepers to ensure skills are maintained; (2) consulting with the communities to determine how best to build capacity with each; (3) holding monthly information sessions on Aboriginal justice issues; (4) actively seeking funds to develop front end services for the MCPEI AJP, (5) developing an inventory of resources that are or can be provided through Aboriginal communities, and (6) developing a tool to effectively monitor the circle processes.

The third broad objective, impacting on the justice system, overlapped in activities emphasized with those of the second objective. Apart from overlapping activities such as seeking funds, expanding front-end resources, and monitoring justice circles, the stated work priorities included, (1) examining other areas of law impacting communities (e.g., family, regulatory especially fisheries), (2) developing a pre-charge consultation process and protocols with various stakeholders, (3) establishing a customary justice group for youth to deal with youth justice issues, and (4) expanding the types of offenses to be dealt with by community-based justice.

This ambitious program was to be carried out with but one staff member, the AJP justice coordinator on a limited budget of roughly $90,000, cost-shared by the federal and provincial governments. The management support structure basically consisted of the board (all board members are also members of the MCPEI board) and the advisory committee (representatives of the four founding parties namely the AWA, NCPEI, Lennox Island FN and Abegweit FN). These representatives were the chiefs / directors of the participating parties; in addition each party was encouraged to have a youth representative. This organizational structure, as noted at several points throughout this assessment, proved very difficult despite an earlier MOU among the parties. Disputes rained in the advisory committee over the authority and direction to be wielded within the advisory committee and between the advisory committee and the board. Essentially it was a disagreement over the authority to be exercised by the NCPEI and AWA representatives and the composition of the advisory group. There has also been a major dispute over “carrier responsibility” for the AJP funding; Native Council officials have gone to court over the matter since they were the party initially responsible for – the carrier for - the AJP funds. Not uncommon in many jurisdictions across Canada as the roles of band government and native councils vis-à-vis the federal government evolved over the past two decades, these disputes seriously interfered with the operation of the advisory group and limited its effective advising of the AJP. As one informed government official stated, “The AJP is at present the only program in PEI where all four

parties, plus the provincial government, are at the table and accordingly a lot of politics are played out there". It can be noted that during the later stages of this evaluation the evaluator was informed by some knowledgeable respondents that the advisory committee is being changed – "new blood and a more inclusive grouping" – such that the conflict may be less disruptive in the future.

The AJP coordinator is also supported by a community justice committee made up of volunteers, drawn from the four founding parties, which decides who among the willing circle keepers will facilitate a referral from the justice officials. This committee functions well apparently and appears to be an effective way to handle potential conflicts of interests and related issues of appropriately matching the facilitators to the case at hand. The facilitators for any early intervention (i.e., pre-charge or even pre-conviction) referral are the circle keepers and they are essentially volunteers, receiving an honorarium of $50 plus travel for their contribution. The AJP coordinator does all the case management and case monitoring (i.e., seeing that the circle agreement is complied with), a time-consuming task which, as found in other jurisdictions where restorative justice is implemented, is difficult for volunteers to manage.

MCPEI AJP: ACTIVITIES AND ASSESSMENT

It is difficult to assess the substantive outcomes of the AJP given that the program only became operational after 2003 and that over the four intervening years there has been much turnover in the coordinator role (i.e., four different occupants). There is evidence of progress in terms of the three broad objectives. Concerning the first objective – networking and partnering with justice officials – the stated coordinator activities all are unquestionably important. A web site was established though maintaining it (updating it) can be time-consuming and it can be noted that the web site has not been accessible for months. Networking vis-à-vis justice officials, a crucial task if the AJP is to obtain referrals, is difficult to track and its success difficult to measure. There have been few referrals, none which issued in a justice circle, whether early intervention or sentencing circle, outside of the Lennox Island – Summerside region, but in the latter at least the evaluator found positive views about and a willingness to collaborate with new thrusts by the AJP. There was also a very successful conference in February 2007, co-sponsored by the MCPEI and the provincial government, which drew almost 80 participants to a one day session featuring information and exchange about developing alternatives, cultural sensitivity orientation via prayers, singing and a mock circle (see Chronology below for details). Evaluation forms submitted by participants at the end of the session indicated a very high level of praise for the session and an appetite for more in the future. Of course, there is much unfinished work on this objective and indeed cultural sensitivity and networking requires a continuous programming. As elsewhere, in the case of sentencing circles, there have been – and presumably remain - some points of contention between crown prosecutors and judges and Aboriginal representatives concerning the necessity of the victim being present and the recording and public nature of the comments made in the sentencing circle. The tracking goal of AJP is also an important concern since not all native persons may self-identify or be recognized as native by police officers; it is not evident what progress has been made on this goal.

The progress made with respect to building community capacity is especially difficult to assess since contacts with the communities appears to have been largely informal and not recorded. The specifics goals have been well formulated and are all quite salient but the evaluator has little data – though pertinent data may exist somewhere - on which to assess their accomplishment. This is especially the case with respect to any inventory of local support services for offenders accessing the justice or sentencing circles, monitoring tools to assess the justice circles and the effectiveness of the facilitators, and any tapping into new sources of funding. It is known that upgrading sessions have been held for the circle keepers and these have been well-received though several circle keepers emphasized that they would much prefer actual cases to deal with. Community linkages have been identified as an area requiring more work by the AJP. The limited collaboration on the part of Abegweit band council leadership has been regarded by most Aboriginal respondents as a major factor in the underutilization of the circle keepers and the shortfall with respect to the community linkage goal.

The referrals themselves have been slow in coming and by the summer of 2007 apparently only two justice circles had been held, both in Lennox Island, and in November 2007 the first "full monty" sentencing circle was held, also in Lennox Island. . Other referrals had entered the referral stream but for one reason or another they did not lead to justice circles, even though they may have consumed much of the coordinator's scarce time. Perhaps as the justice circles become better known, referrals will increase but certainly the circle keepers at this point have been underutilized. The political issues noted above seem also to have reduced the pool of clients for the AJP circles. As they are resolved, and as new chief of the Abegweit FN, himself a circle keeper, settles in, expectations are that there will be referrals for Abegweit offenders. Securing referrals will undoubtedly always be an issue given the small Aboriginal population in PEI and the pattern for police everywhere in Canada, since the promulgation of the YCJA in 2003, to deal with minor offenses through cautions and informal warning (as encouraged by the YCJA). The absence of protocols and regular on-going discussions with police and crowns concerning the type of offenses and offenders most eligible for referral to the AJP program and the procedures to be followed by the AJP in the event of non-compliance by the offender may also have been a factor in the small numbers of referrals. It would appear that having a court worker program can also assist in securing referrals through liaison between the court worker and the court officials. Nevertheless, even in Nova Scotia, where the Aboriginal population is fifteen times as large as in PEI, the referrals to its justice circles are of modest number. And that is despite the fact the Aboriginal justice circles operating there have been in place for over a decade and have a strong supporting infrastructure including a province-wide court worker program. The reports of participating respondents in the few circles that have been held in PEI have been quite positive so there can be some confidence that, while few, the circles have been well carried out. For example, a senior justice role player in the recent sentencing circle at Lennox Island reported that the circle went well and he would be very willing to have another. At the same time he cited a common concern about sentencing circles, namely

> "It was well done and I think that it will be effective but only time will tell. I would certainly participate in another one. The only criticism I would have is that it appeared to take up a considerable amount of time and energy to pull off. This may be because it was the first one done here but even so they appear to be a great deal of work".

Sentencing circles do take much time and effort especially if of the "full monty" type where a wide range of participants are assembled, from judges with their clerks, prosecutors and defense counsel to offenders, victims and their supporters to community elders and service providers". The coordinator, here the AJP coordinator, generally has to put considerable effort into preparing the parties and arranging the schedule. Sentencing circles will likely never be more than one or two a year but symbolically for many Aboriginal people they are very important in realizing the promise of community-based Aboriginal justice.

Progress with respect to the distinct goals contained in the third broad objective for AJP, has been quite limited but there is much future potential. It is clear that extending justice circles to deal with more serious offenses will require much greater community and mainstream justice support than currently exists. Requisites appear to be a track record well communicated to these parties, in addition to greater community and justice linkages through programs such as the native court worker and perhaps part-time AJP staff in the three milieus of Lennox Island, Abegweit and Charlottetown. Extension to the family and regulatory spheres seem reasonable as well. When initiated, the circle keeper program was conceptualized as potentially dealing with Aboriginal violators of bands' fishing agreements. That has not developed for several reasons but it remains the intention of most Aboriginal leaders in PEI. An MCPEI staff member engaged in resource management reported that he was a believer in circles and expected the MOU signed with fisheries (se above) would become operative now that a new chief is in place in Abegweit. At the same time he cautioned that only a few cases would be likely to go to the circles, partly because there would be few violators (mainly of the food fisheries policy) and partly because there may be no way of compelling violators to go to the community circles and they may well opt for mainstream justice. With the recent appointment of an MCPEI liaison to Children and Family Services and her role duties of attending court and engaging in some programming, it may well be that using the circle keepers in family justice matters will receive more consideration. It is a field where Aboriginal values and perspectives may well differ from their mainstream counterparts and so warrant Aboriginal solutions. Similarly, the perceived pull-back of mainstream social services from the Aboriginal communities (see below) may create a need for Aboriginal intervention in family justice matters. While virtually all respondents were hesitant if not opposed to any justice circle intervention in domestic violence, some MCPEI staff persons and others saw a possible role for circle keepers with respect to custody disputes and child protection matters.

Overall, then the MCPEI AJP has struggled for a variety of reasons, mainly political conflict, turnover in the coordinator role, limited resources (i.e., one person with a limited budget) and perhaps a too large mandate, but it has established itself and is well

poised to take advantage of recent developments. Reaching out more effectively to the Aboriginal communities appears to be a major priority as is the securing of a more–resourced operational capacity, something that could be achieved with the addition of a court worker and low-cost, part-time assistants in the three major Aboriginal locations in PEI. While the number of justice circles will probably always be modest, they can be increased somewhat and in any event they are just one dimension of a robust AJP service for Aboriginals in PEI.

MCPEI AJP CHRONOLOGY*

1999 – A meeting among PEI government officials (especially in the Office of the Attorney General which is responsible for Aboriginal affairs) and representatives of key Aboriginal groups was held to discuss possibilities regarding an Aboriginal Community Justice Program (ACJP) proposal with the aim to "increase the capacity of Aboriginal people in PEI to participate in the criminal justice system and to develop community-based justice programs. Subsequently, in November 1999 representatives of Abegweit FN (AFN), Lennox Island FN (LIFN), Aboriginal Women's Association (AWA) and the NCPEI, Native Council of PEI (the four founding Aboriginal organizations) and the provincial government began to meet on a regular basis as the Aboriginal Community Justice Working Group (ACJP).

1999 – 2001 – Approximately 20 meetings of the Working Group (ACJP) were held between November 1999 and June 2001.

2000 – In February a formal cost-sharing proposal to begin the ACJP was sent to the federal Minister of Justice and the provincial government allocated funding to support the initiative on the expectation of obtaining matching federal funds.

2000 – In March the first workshop was held with Aboriginal people, Justice staff and other stakeholders to inform about the initiative and discuss priorities and issues. It was in Charlottetown and drew 80 attendees. The priorities identified were cultural awareness, support systems in the communities (e.g., talking circles, elders), and more communication among support services on and off reserve.

2000-2001 – There were delays in federal funding but the federal Department of Justice continued collaborative work on a memorandum of understanding and contributed funds for on-going development of the ACJP.

2001 – In June a workshop on sentencing circles, facilitated by Graydon Nicholas, Provincial Court Judge in New Brunswick, was held. There were some 60 attendees.

2001 - In October a development coordinator was hired for a six month term to assist the working group with research, education and development. Subsequently, this position was extended for an additional year.

2002 – In June a sentencing circle workshop was held, co-facilitated by Judge Barry Stuart, a leading innovator in the sentencing circle movement, and Mark Wedge.

2002 – In August the ACJP was incorporated.

2003 – On March 31, the developmental stage for the ACJP came to an end.

2003 – Aboriginal leaders associated with the ACJP announced their intention to work collaboratively with the MCPEI established a year earlier. The ACJP was organized under the MCPEI as a partnership among the four founding Aboriginal organizations.

2003 – A Tripartite Contribution Agreement was entered into by PEI, Canada and the MCPEI to support the development of Aboriginal justice programs and services. The initiative was named the MCPEI's AJP and the MOU covered the period April 1 2002 to the end of March 2007 (i.e., the funded time period for the federal Aboriginal Justice Strategy).

2004 – A complimentary tripartite agreement was agreed to by MCPEI, PEI and Justice Canada for the period 2004-2005.

2004 – Jennene Sark was appointed Aboriginal Justice Coordinator for MCPEI's AJP.

2005 – The tripartite agreement among PEI, Canada and MCPEI was renewed for the period 2005-2007, as was the MOU among NCPEI, AWA, LIFN and AFN.

2005 – Roseanne Sark was engaged as Acting Aboriginal Justice Coordinator for the MCPEI's AJP.

2005 – Nineteen Aboriginal adults (half from Lennox Island) graduated from a year-long certificate program at UPEI's Centre for Conflict Resolution Studies. These persons are named Circle Keepers and available for becoming engaged in extra-judicial sanctions (i.e., restorative justice) and conflict resolution matters. New Brunswick Judge Graydon Nicholas, featured speaker at the graduation ceremony in Charlottetown, described the Circle Keepers program as a breakthrough course likely to be adopted by the Aboriginal community elsewhere in Atlantic Canada.

2005 – Grace Voss was hired as Aboriginal Justice Coordinator for MCPEI's AJP.

2006 – Circle keepers become involved in restorative justice (extra-judicial sanctions) with case referrals to the MCPEI AJP from Justice officials.

2006 – An MOU between MCPEI , LIFN and AFN and federal DFO was signed setting out a protocol for referring violations of fisheries agreements to MCPEI's AJP.

2007 – In February there was a major workshop held on Alternative Measures and Aboriginal Justice. The workshop brought together PEI justice role players and government officials, Aboriginal justice and other service providers, circle keepers, and outside presenters and resource people. The objectives were to discuss current legislation about the Alternative Measures Program, increase cultural awareness and sensitivity, and provide an arena for discussion and networking. There were some 78 participants.

2007 – Lori St. Onge was hired as Aboriginal Justice Coordinator for MCPEI's AJP.

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*This chronology is taken in large part from documents provided by Justice Services, Office of the Attorney General, Prince Edward Island

STANDPOINTS

MI'KMAQ OPINION LEADERS AND SERVICE PROVIDERS

In this section the views of opinion leaders and service (usually Health or Alcohol and Drug Counselors) providers in the three milieus of Lennox Island, Abegweit and Charlottetown will be discussed in turn, by theme. Nine female leaders from Lennox Island were interviewed. They were an impressive grouping in terms of professional credentials and experience and two were elected officials. The six main Abegweit respondents, all but one of whom were female, were also experienced and respected service providers. The six respondents from the Charlottetown area, all female, constituted a diverse grouping of opinion leaders and one elected official.

CENTRAL JUSTICE ISSUES

The **Lennox Island interviewees** gave quite nuanced responses when asked about crime and violations in the community. On the one hand they were careful not to overstate the problem yet at the same time they clearly indicated a concern about current violations and a fear that the situation could be getting worse. Respondents familiar with the RCMP's community consultation group cited statistics indicating that crime incidents have increased over the past five years but argued that increasing charges reflected RCMP – community cooperation (e.g., people passing on information about incidents, bootlegging etc) in addressing and resolving community problems. A few senior respondents contended that social disorder type offenses (e.g., assaults, drunkenness) were more blatant in the 1970s and 1980s.

Virtually all Lennox Island persons reported that vandalism was a significant problem, largely but not exclusively on the part of older youth. One respondent referred to extensive vandalism of the health centre (e.g., the gutters were ripped out, the waiting benches stolen), of the well-publicized Trail of Our Forefathers (a recent Lennox Island cultural renewal project) and other public property; she added "There seems to be a lot of rage behind it; it is a very serious issue". Other respondents agreed about the seriousness of vandalism but considered that it was more a manifestation of boredom among the teens and of older youths (young adults) being "strung out on drugs or alcohol". The respondents were also largely in agreement that substance abuse is a significant and increasing problem. Smoking hash and abusing prescription drugs were usually identified as well as alcohol abuse. A service provider in the field of Alcohol and Drug counseling observed that "I know that addictions are a big problem here. There are quite a few young people who come my way because of assaults (also a problem in her view) while using or drinking … repeat offenders are usually males (seven or so) but there are a few women as well". A Health Services provider identified addiction as the big problem for the community and, like other respondents, observed that the more serious drug use is expensive so that leads to theft as well. Another respondent e-mailed, "The major problem is drugs. This filters down to all the other problems such as theft, family

violence, vandalism etc. I also see a growing problem with prescription drugs in the middle age group". It was also noted that the community's impressive economic development over the past several years may have a downside in that more money has become available to secure drugs and alcohol. A leading elected official expressed fear that the increasing abuse of prescription and heavy (i.e., not marijuana) drugs, largely by adults, "may create another Oromocto (A New Brunswick FN notorious for a drug epidemic) and is the biggest single threat to the community".

In response to a statement by the researcher that the recent police statistics do not show a high level of violations, several respondents suggested that much is still unreported ("there is some police presence but it is not 24/7") and one commented that "While the number of assaults or other crimes may be few, remember that Lennox Island has a small population and there are ripple effects from assaults and vandalism that extend throughout the population". There were various suggestions concerning underlying causal factors for the addiction problem, such as the legacy of oppression, but it was also noted by several persons that assaults and substance abuse are concentrated in pockets of problem families and multigenerational problem families. Health officials indicated that mental health problems are not widespread and "We are on the low side regarding suicides". On the victim side, several respondents, including one person who assisted with victim impact statements, mentioned that much more is needed.

There was much ambivalence concerning whether or not family justice issues constituted a major justice problem in Lennox Island. About half the respondents called for AJP initiatives here and in the regulatory field. It was noted that increasing private wealth, along with intermarriage and common-law relationships, create "issues" (e.g., custody, support, property distribution) when relationships are broken. Reportedly, unless there is a joint certificate of possession, problems readily arise and apparently it has not been the practice in the community to have such joint certificates. On the other hand, several service providers and elected officials considered that family justice issues were not critical, pointing out that the band does respond to support court orders (i.e., garnishee wages). Several respondents reported that there are some child protection cases and custody cases but "sometimes adoption or foster homes outside Lennox Island is preferable because there are not that many healthy families here"; the keys are the welfare of the children and regular reports to the band from Children and Family Services on placements. Also, there was some concern expressed about the capacity of and desirability for any AJP intervention (via the circle keeper facilitator role) at this point in time. Interestingly, there is a Women's Shelter in Lennox Island which had been opened just four months prior to an interview with staff. The interviewee reported just one client resident during that period and indicated that the aim is more to provide parenting education, and backup, short-term housing than on receiving battered women; she added that family justice issues are not a big problem and there are lots of programs available. The recent MCPEI hiring of a person to liaise with provincial Children and Family Services was also cited as a positive step for dealing with some family justice issues and making any AJP initiative in this field less necessary.

Regulatory justice issues typically were not highlighted by the Lennox Island respondents as immediate priorities for AJP but the majority at least saw potential thrusts in the mid or long term. A few suggested that, were the circle keepers to become involved in conflict resolution (or dealing with violations) in this area, they would need to have much more knowledge of band policies and protocols. On the other hand, one Health service provider captured the view of several others in her comment, "We have the trained individuals, the capacity, so let's use them". Three persons, all with major responsibility for band administration were keen advocates of an AJP / circle keeper role in this field. One senior female discussed with enthusiasm the circle keepers initiative in conflict resolution which she saw as having potential well beyond the criminal justice field. She anticipated, like the other advocates, a Mi'kmaw solution to a wide range of conflict, where a province-wide network of trained people could resolve issues in the FNs in ways that avoided conflicts of interest. All three respondents specifically referred to regulation of the fisheries where, hopefully, charges for violations of agreements and rules (e.g., selling food fishery catches) could be referred, with DFO approval, to the Mi'kmaw circles, thereby underlining in a culturally acceptable way the responsible partnership advocated by the Mi'kmaw leadership. As another leader commented, "If we are a government then of course we have to act like one". The respondents were disappointed that thus far, despite an MOU between the bands and DFO, there has been no referral processed. The obstacles to further development of Mi'kmaw regulatory justice activity were seen as three-fold, namely the absence of adequate implementation protocols, the reluctance of Abegweit leadership to collaborate, and possibly the preference of native violators to have their cases processed in the mainstream justice system. Concerning the latter obstacle, a major future issue in regulatory justice may well be whether violators of regulations should be allowed to exercise options in having their violation dealt with or be required to appear before a community panel.

There was much consensus among the handful of **Abegweit respondents.** A traditionalist-oriented male with good access to information about violations considered that there has been much crime and offending occurring in the reserves but it has not been reflected in RCMP statistics. In particular he referred to substance abuse (including drug dealing) and assaults. From his perspective, the central justice issue for native people in the area was the need for a court worker since people have "little or no education about the judicial system"; another important issue for him was the lack of support - aftercare in particular – for both offenders and victims. Both these views were echoed by virtually all Abegweit respondents; for example, a young female community college graduate elaborated

> "I'd have to say the main justice issue facing Mi'kmaq people is the high problem with drug and alcohol abuse mainly with our youth because we should always help our youth now so they have a chance at a better future before they get in too deep …. Assaults are the major crime problems and the offender problem would be lack of support in dealing with issues such as drug and alcohol abuse and social issues".

Several other Abegweit service providers, including, not surprisingly, those most involved in alcohol and drug counseling, also highlighted the issue of alcohol and drug abuse, one contending that the problem has increased over the past five years. Another well-informed female leader discussed the related problem of drinking and driving on the reserve and expressed concern that enforcement was quite inadequate – she added a typical comment, namely "we all know who the dealers and bootleggers are so why can't the police get them". There was little mention of vandalism and property crime even by those responsible for overseeing band properties.

Most Abegweit respondents did not directly report family/civil or regulatory violations or problems as central justice issues though several did indicate that domestic violence was an important criminal justice system issue. One woman however did think that, increasingly, family justice issues such as custody rights, maintenance support and property rights were becoming important. She noted that there is significant intermarriage with non-natives, that common law relationships abound, and that there are cultural gaps between the mainstream Child and Family Services (CFS) and the native community, all of which can lead to problems; concerning the latter she observed that the former (CFS) stresses individual rights in child protection and custody cases whereas the Mi'kmaq community would pay more attention to the interests of relatives and the larger family grouping. Like the respondents in Lennox Island, she noted the recent MCPEI hiring of a liaison person to represent the bands vis-à-vis the provincial agency and was optimistic about its consequences. Two respondents, both circle keepers, alluded indirectly to regulatory justice matters, one referring to community-based monitors for the fisheries who ("some at least") have the courage to confront local violators, and the other citing factional strife over band matters, but neither mentioned the use of circle keepers to deal with such conflict, hinting that community members may not be ready for such intervention.

The six **Charlottetown area interviewees** referred to the situation both on and off reserve in their responses. They highlighted the criminal justice issues and considered that crime and violence were increasingly spurred on by drug and alcohol abuse. As one respondent said, "The abundance of drug-related issues happening on and off reserve is increasing and looking to get only higher, without proper help such as treatment options and therapy for recovering users as well as treatment for criminal offenders". Another respondent emphasized assaults and property damage, adding "my sense is that it is increasing because of drug abuse". Several respondents did identify issues in family and regulatory justice. Respondents associated with Native Council considered that family justice should be a major area for Aboriginal justice initiatives. Apart from domestic violence, reference was made to problems in maintenance payments though it was unclear whether that was off reserve / on reserve specific or when the ex-partners lived in the different milieus. In the regulatory area, two of the interviewees complained about alleged violations of fisheries policies that disadvantaged the off reserve native people and severely reduced their opportunities to work on the bands' allotted boats. There was also some discussion of courts and governments' decisions regarding the rights of off-reserve Aboriginal people and the responsibilities of the MCPEI and the NCPEI in the various justice areas.

Overall, then, while there were diverse assessments advanced by the respondents in the three different milieus, there was strong consensus that the criminal justice area should be the central AJP priority and that drug and alcohol abuse was the central problem to deal with. The MCPEI AJP might well want to consider coordinating interagency meetings to develop strategies to deal with this matter. Justice issues in the family / civil and regulatory areas were identified by a few respondents as requiring attention and, possibly, AJP initiatives but, for the most, they were not highlighted as major concerns and there was much ambivalence expressed about both the current capacity for any AJP / circle keepers' intervention in these areas as well as its desirability.

PRIORITIES FOR THE MAINSTREAM JUSTICE SYSTEM

Lennox Island respondents generally espoused a partnership, not a parallel approach with respect to the mainstream justice institutions, primarily because they appreciated that the Aboriginal community in PEI is so small and widely-distributed that that is the practical, common sense strategy. They were also not particularly critical of the mainstream justice system as intrusive. The respondents considered that mainstream justice officials participate well in cultural awareness sessions, respect the MCPEI AJP initiatives such as the circle keepers, and will refer cases to the Mi'kmaw circles. They also noted that legal aid, albeit overloaded, is readily available. Indeed, several leaders suggested that criminal justice officials far from being intrusive were inappropriately backing off their responsibilities to the detriment of the Aboriginal community. One respondent, expressing a not uncommon view, noted

> "Sentencing is inadequate because there is a "go easy on natives" approach. That may have been a progressive and admirably equitable policy at some point but now it is counterproductive and leads offenders, youth and others, to think there are no negative consequences for deviant behaviour. They are not helping us".

Another respondent argued along the same vein holding that "probation is a joke" in that probationers' behaviour is not monitored and they are not sanctioned for violations. There was also some criticism of the services and approach provided by Victim Services – "publicizing victims' names and accounts re-victimize the victims and we need our own system".

The partnership relationship was for the most part depicted as working well across all justice areas. The RCMP police service was generally given "good marks" in that regard. The community consultative committee was seen to be functioning well and collaborated with RCMP officers in developing a community policing plan. Respondents considered that the RCMP was responsive to the community's needs and wishes, was culturally sensitive (it was noted that the RCMP participated in the annual two-day cultural awareness program involving elders, drumming and a feast) and provided a policing service at least as good if not better than would be found in the neighbouring mainstream communities. There were three policing issues raised, namely the selection of

the "right officer" as the designated member for Lennox Island, the level of police presence, and whether there could be an RCMP police detachment serving both FNs exclusively. Concerning police presence, the tripartite policing agreement (CTA) called for a designated RCMP member to spend 80% of his/her time on band policing matters but the Lennox Island respondents disputed whether they actually received the 80%. There was some support evidenced for the idea of a full-time community support officer hired, trained and supervised by the RCMP who would be fully engaged in liaison activities, visibility and crime prevention programming. The respondents associated with policing governance or with the band administration appeared to have accepted that the RCMP would not enforce band bylaws (according to the leaders there is at present only one band bylaw, dealing with dog control).

The Lennox Island administrative leaders also held that partnership was working in the regulatory field. The federal Departments, Environment Canada and Fisheries and Oceans, were seen as in regular collaboration and supportive of initiatives such as using the circle keepers to deal with violations. For example, band leaders noted that there is a monitor employed by DFO who regularly reports to the band council and that "DFO is counting on us to deal with violators [of the fishing agreements]". Several respondents suggested that if Mi'kmaq / Aboriginal alternatives to the mainstream justice institutions were to develop, partnerships might have to be elaborated also with other FNs in the Atlantic region to overcome the geo-demographic obstacles facing the Mi'kmaq population in PEI.

Given their emphasis on the partnership model, it is not surprising that the Lennox Island respondents considered that the main priority for the MCPEI AJP should be a court worker program where the court worker could liaise between the mainstream justice system and its officials and Mi'kmaq offenders and FN communities. Generally, the respondents cited this need in conjunction with young offenders but one respondent commented that older people may be even more intimidated by the mainstream court system. Respondents also were largely of the view that pursuing having provincial criminal court sit on reserve as in Eskasoni Nova Scotia was not practical – "We are too small a reserve to warrant that". Cross cultural orientation sessions for mainstream justice officials were deemed to be very important.

There were quite mixed views among the **Abegweit respondents** over how well the existing mainstream justice system, whether criminal or family/civil, served the Mi'kmaq population. The respondents generally considered that access to legal counsel (usually legal aid) was adequate, as was access to certain treatment services (e.g., detox) in the neighbouring provinces. A few simply stated that Mi'kmaq people are not well-served while the others gave more nuanced answers. One considered response by a young adult female was

> **"**The criminal justice system is in the process of serving Mi'kmaq people well. This is something that will take years … but now in the system you are hearing more of our cultural ways being introduced into the criminal justice system. The fact that our people are now having a say in the system is great, and a good start".

The main shortcoming identified in the mainstream criminal justice system for Mi'kmaq people was lack of knowledge about how the system works, where to go for assistance, and what the possible options are. One person commented, "We need someone more actively representing the Mi'kmaq people. There are so many things going on with our people but no changes will be made if the people don't know what is out there". The respondents were less inclined to criticize the service / treatment provided in the civil and family courts.

As mentioned above, the most frequently and strongly expressed priority for improved service in the justice system was for MCPEI AJP to secure a native court worker with a broad mandate (e.g., well beyond just providing in-court services to accused persons and being an information provider to the Mi'kmaq community). One veteran, prominent service provider commented that youth – defined by her as between 16 and 30 years of age – did not really understand what was going on when dealing with the police and the courts, and sign papers to get out of immediate stress (e.g., out of jail on bail or an undertaking) that they should not. Another respondent reiterated that point, noting "Youth do not speak up enough in their own defence".

Another priority usually noted was to have more cultural awareness orientation for mainstream justice officials. Such a position seemed to be based on two central points, namely that, currently and for the immediate future, the occupants of the justice roles will not be aboriginal people, and, secondly, that the justice matters might better be left to qualified, neutral outsiders at least until greater Mi'kmaq capacity and strong community support have been realized. Greater cultural awareness, said one respondent, would lead to more cultural sensitivity and that would generate Mi'kmaq trust in the justice system. There were reservations expressed about more direct Mi'kmaq control in justice matters, with respondents commenting "It opens up abuse of the program", "It would lead to segregation" but the central point was simply "We do not have the trained people to do it … funding and training are required". Partnering and sharing were seen as the desired path given the small scattered Aboriginal population and cultural awareness orientation was seen as pivotal to that objective.

The **respondents in the Charlottetown** area strongly supported the need for a native court worker who would serve both on and off reserve native people. They were of diverse opinion concerning whether the mainstream justice systems served the Mi'kmaq people well. There was consensus that in the criminal and family spheres legal aid is readily available (though virtually all respondents quickly added that legal aid lawyers are very busy usually and cannot provide the quality service of private lawyers) and there is not obvious racism or ill-will, but it was held that more services should be provided to enhance native understanding of how the justice system works. It was believed that aboriginal people frequently do not understand their rights and court procedures and so at least a court worker position should be established ("someone to talk to"). Cultural sensitivity for those working with and for Aboriginal people was also considered to be an on-going necessity. Victim Services for on reserve people was seen as an area of shortfall

in mainstream justice services for native people as was the absence of aboriginal healing approaches in the treatment programming for both on and off reserve persons.

Overall, then, there was strong consensus in all three areas for a native court worker program and for cross cultural training and exchange between mainstream justice officials and Mi'kmaq communities. More victim services were also emphasized. Generally the responded advocated a continuing strong partnership with the mainstream justice institutions.

FAMILIARITY WITH AND VIEWS ABOUT MCPEI AJP AND ITS PROGRAMS

All the **Lennox Island respondents** reported that they were very familiar with all aspects of the MCPEI AJP. Six of the nine received circle keeper training (and two others were instrumental in its development), three were on either the board or the advisory committee for the AJP, and three worked for the MCPEI. A few respondents recalled unsuccessful attempts to do restorative justice circle in the 1990s under the RCMP's community justice forum program. The current justice circles were virtually the only dimension of the AJP program that respondents spoke of. One respondent, the one most familiar with the AJP's development, commented that

> "The AJP has unfolded gradually but it is worth it because it is important to integrate the old and the new. The pace has been appropriate and we are ready now. We will need the support of both the justice system – it's there but takes times to realize - and the community – a way of life has to come back, balance and harmony as before colonialization".

The circle keepers were positive about that program, its link to Aboriginal culture and their experience in it. One respondent who facilitated a circle for a young offender reported that "It was quite successful. Even the mom of the youth, who typically never admits any wrong by her offsprings, did seem to have been impacted". A few were critical of what they perceived as a lack of action or progress in the AJP and the circle keepers program. One respondent, a circle keeper who had yet to do a circle but hoped to do one in the late fall of 2007, commented, "There have been few circles and we are not being used. Some referrals have come from the RCMP but nothing came of them. The mock circles do not cut it for me".

Surprisingly**,** most of the interviewed **Abegweit service providers** professed to have no significant knowledge about the MCPEI AJP's mandate or organizational structure and little knowledge about the activities of the AJP apart from the circle keepers initiative, Several of the Abegweit respondents were circle keepers in the MCPEI AJP and all were aware that such a program existed. Half the grouping had limited knowledge as exemplified in remarks such as "I knew that they offered a course and that's all" and "I know the circle keepers are still out there doing practice circles. That is the last I heard".

Those who were trained as circle keepers were well-informed of course about the AJP protocols (e.g., a special committee selects who among the circle keepers might facilitate a justice circle seeking among other things to avoid conflicts of interest) but only one had, by the fall of 2007, actually facilitated a justice circle and then just once. Both these respondents were quite positive about the concept and the training. One such respondent reported that she uses her circle keeper skills in her everyday work while the other indicated that she has not used her training and would prefer to participate in circles as a spiritual person, not as a facilitator.

All the Abegweit respondents believed that the AJP thrusts and programs were important for the Mi'kmaq community and need to become more available and well-known. There was some criticism that the initiatives were not more community-based and "hands-on". On the other hand, several respondents specifically praised the fact that the AJP is a province-wide body that could send disinterested facilitators to different sites and develop province-wide programs to serve all the Aboriginal population in PEI.

Among **the Charlottetown respondents** there was no clear consensus concerning capacity for and desirability of more aboriginal control and direction in justice matters. All persons believed that more aboriginal people should be hired in the justice systems ("more aboriginal input from the inside") and that there should be more Mi'kmaq input, as through the justice circles, into culturally appropriate sentencing. A few suggested that especially in the family and regulatory sphere, and on reserve, there should be more community input and involvement of the elders. There was hesitancy about significant aboriginal management on the grounds that much more financial support and educational development would be a prerequisite and that the Mi'kmaq community in PEI "is too small and tightly bound together for this to happen". The most common viewpoint then was the desirability of working more effectively and closer with the mainstream justice institutions, influencing the way Aboriginal people are dealt with, and overcoming the cultural divides.

Generally most of these off-reserve respondents reported that they knew very little about the MCPEI AJP work, apart from the existence of the circle keepers program. Four professed to have none or limited knowledge about the justice circles, the cultural sensitivity training for justice officials, or the organizational mandate of the AJP. Two persons, both engaged with the NCPEI, reported significant involvement with the AJP; they expressed some concerns, either that the subcommittee that they were on was inactive ("an orientation session and nothing since") or that "political infighting" among the four founding Aboriginal parties had reduced the effectiveness of the AJP advisory board and limited the development of the AJP. Every respondent, whether professing no knowledge of the workings of the AJP or critical of its workings for one reason or another, believed that the initiative was very valuable for Aboriginal people in PEI and had much untapped potential. There was consensus too that what the AJP should be doing is extending what it is reportedly doing with youth and justice circles throughout the province, for all community members, on and off reserve.

FUTURE DIRECTIONS

A variety of challenges and possible new directions were advanced by the **Lennox Island respondents**. One major challenging issue was to avoid the political disagreement that have made for much tension in the AJP advisory committee and limited its effective direction of the AJP. One respondent witnessed this strife first hand for about a year and described the advisory committee meetings as a "terrible, brutal" contesting of who (the MCPEI or the representatives of the NCPEI or AWA) controlled the funding and the key decision-making power. The Lennox Island respondents usually made the same point, namely that the bands that constitute the MCPEI are governments whereas the NCPEI and the AWA are service agencies and have to acknowledge and appreciate that difference. One band leader, while acknowledging that the AJP has roots in earlier NCPEI initiatives, commented that NCPEI and AWA representatives are not directors of the AJP, and that "There is a place to be recognized but it is not at this table". Another respondent said,

> "We are trying to say to the mainstream that we are government and these other organizations are weakening that legitimacy by their demands. It is important for them to be at the table if they are willing to assume an advisory role and if they can, then their contribution is important".

While adamant on that score, the Lennox Island respondents seemed open to the idea of a non-political advisory committee that would not have any elected band officials on it and might include others such as elders, service providers and even youth. A further suggestion was that the meetings should be conducted in a more "traditional" way with opening prayer, in a circle and so forth; the respondent added, "We need to practice what we preach". Another respondent indicated that steps have recently been taken to de-politicize the advisory committee.

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A second major challenge that was highlighted was the need for the small PEI Aboriginal communities to have strong partnerships with both mainstream systems and other FN communities throughout Atlantic Canada. The former necessitated on-going cross cultural orientation and respect of the parties for the other's culture and its valuable salience for effective and innovative justice initiatives. The collaboration with other FNs required building upon existing networks in exploring specific possibilities, such as treatment options or "a healing to wellness" court, which, for efficiency and effectiveness, might serve many FNs in the region. Concerning the partnerships with other regional FNs, the challenge was identified as how to do that in a fully participatory way and not just as an appendage to others' initiatives. One respondent noted that there would have to be real partnership "including involvement in the planning stage too". It was observed that at present aboriginal treatment centres for those with addictions can be accessed in New Brunswick and Nova Scotia as well as outside the region in places such as Thompson Manitoba but, while valuable, their policies and practices are not influenced by PEI service providers. More holistic initiatives involving health and justice might well be increasingly influenced by regional aboriginal bodies such as the MMAH which has

reorganized itself into the three committees of wellness, children and youth (in place of the former unwieldy seventeen committees) and is developing work plans in several areas of salience for justice and health programming directed at the root causes of crime and violence.

Other challenges identified by the Lennox Island respondents included the need for the AJP to do more information sharing and building up stronger community linkages. A few respondents suggested that establishing community justice committees might facilitate such outreach work by the AJP. An important dimension of that activity would be "more exposure for the circle process in the communities and not just in the criminal justice area". The respondents generally believed that the circle keepers and the circle process has been the major AJP initiative and that it is important to build on that achievement by strengthening the abilities of the currently trained circle keepers. Certainly there seemed to be strong support for the comment of one circle keeper, namely "The circle process and the criminal justice system, that's what we started to do so let's do that first. We've hardly done anything".

Concerning the future evolution of the MCPEI AJP, a number of challenges were highlighted by the **Abegweit respondents**. Several respondents suggested that, while there are many issues that could be pursued by the AJP, there should be a focus on effective cultural awareness / sensitivity for justice officials and developing more community awareness and support for the program. An informed middle-aged male observed that "Community support is a challenge; there is no community support because people lack the knowledge of programs offered to the Mi'kmaq people". One young, articulate female respondent commented on the adequacy of the AJP resources (which are in fact even less than she suggests) in this regard, as follows

> "I think they need more representation to the individual Mi'kmaq communities. It may be hard for let's say a few people to work with the AJP [do the AJP work] when it is province-wide. Maybe that's why some members haven't heard what is available for them".

Other challenges cited for future development of the AJP included dealing with generational and associated cultural change – "There is less respect now and less dialogue between youth and elders" – and, the AJP's need to respond to this challenge if it is to secure strong community support. Other respondents identified the current policing –community issues in Abegweit as having a negative impact on AJP possibilities in dealing with crime and social disorder issues.

The **respondents in the Charlottetown** area generally identified the chief issues that AJP initiatives should focus on as, first and foremost, cultural awareness training for justice officials and "Getting more people in the justice system open to learning more about cultural differences". More publicity about the AJP and its activities was also considered crucial; as one said, "The program should be known province-wide". Other suggestions included reintegration of offenders (one respondent observed, "[this needs] community monitoring since reintegration without monitoring is not safe"). All saw the

AJP as the vehicle or building block for future, needed justice initiatives for Mi'kmaq people in PEI. The concept of a province-wide service as offered by the AJP was deemed to be very important ("It covers everyone, from shore to shore and if you move from one place to another, you have the same access") but most of the respondents also had concerns about AJP not distinguishing the different needs of on and off reserve populations. Half the respondents were also concerned about the "political infighting" between the MCPEI and the NCPEI and held that the advisory committee had to become a non-political advisory committee (i.e., elected band leaders should not be on both the overseeing board and the advisory committee).

The respondents also considered that were the AJP to expand its justice activity, it would be necessary to have at least one more staff member and to develop a strategic plan laying out in phases the anticipated activities and what each initiative would mean for the Aboriginal population on and off reserve. Community meetings and information sessions with chief and council and other venues (e.g., interagency meetings) should then be held to discuss the proposed action plan. As one respondent stated, "Let the people see the progress, the changing. Having the circle keepers was a great big step and the community recognizes it; now what else can be done".

Overall, then, the respondents, looking to the future for the AJP, emphasized the need to get over the political infighting among the founding parties and to cast the advisory committee as one free from direct political involvement and more inclusive vis-a-vis other Mi'kmaq groupings. They also emphasized the importance of partnerships both with the mainstream systems (especially calling for more cross cultural orientation) and other FNs. On the substantive side, their priority was scanning future possibilities while building upon what had been achieved to date (especially the circle keeper's initiative) and strengthening the community linkages.

FOCUS GROUPS

The strategy of having focus groups rested on the five following ideas:

1. Bring together people with experience and expertise on Justice-related matters.
2. Have the focus groups informed by persons representative of diverse but interconnected interests and vantage points.
3. Learn more about the problems and issues and especially the community realities.
4. Learn what is working well and what has promise and could be done.
5. Appreciate what the community and the MCPEI AJP can do.

In the most general sense the focus groups involved a discussion of this project's objectives among informed persons and in a group context, facilitating perhaps greater awareness of problems, priorities and options and contributing to community awareness and mobilization. There were eight themes that could be addressed, namely

1. Crime in PEI FN communities- how significant is it and is it increasing or declining? why?
2. Are there significant family justice issues (custody, maintenance etc) among FN people in your area?
3. Are there significant issues about band bylaws and band policies / agreements that cause conflict in your community or area?
4. What has been the experience of FN adults in your area with respect to the justice system (criminal or family, offenders or victims)? what changes should be made in this system to improve its response to aboriginal people? First discuss the criminal justice system and then the family justice system.
5. What do you and your close friends think about the AJP justice programs that have been available in the community? (e.g., circle keepers, diversion circles).
6. What are the additional justice services or programs that adults in your area might want to consider? what are the obstacles that have to be overcome if we try to achieve these? how can these obstacles be overcome?
7. How much priority should be given to each of the following and why?

a) awareness and cultural sensitivity training for the justice officials in the area.
b) more information and awareness for aboriginal people about the justice system
c) more information and access with regard to the MCPEI AJP activities.
d) native court worker programs to assist people who go to court

e) use of AJP circle keepers to handle less serious crimes and other community conflict
f) other?

8. Currently MCPEI AJP services are delivered by the province-wide AJP under the direction of MCPEI and with an advisory committee consisting of representatives from the two bands, AWA, and Native Council.
a). are the FN people in your area satisfied with this arrangement?
b) are there any changes that might be considered? which? why?

The focus groups met during the period September 27 to October 18. There were three locales namely Charlottetown, Lennox Island and Scotchfort (Abegweit FN), the major centres of Mi'kmaq population in PEI. . There were seven or eight persons (including the facilitator) present on each occasion and, with a few exceptions, virtually all persons were well informed, representing the major agencies and programs (e.g., MCPEI, AWA, NCPEI, Health, Addiction Services, and the band councils (two councilors and one chief). This researcher attended all the sessions. The sessions, facilitated by excellent MCPEI staff, each lasted roughly two hours and there was a good discussion of the themes though typically the later themes on the agenda received less attention. Aside from the Scotchfort session where three males participated, the focus group members were all female. All participants were First Nation people and, with a few exceptions, all band members holding full-time positions whether on or off reserve.

There was some ambivalence expressed in the focus group groups concerning the crime problem. The most common position was that crime is an issue that needs to be addressed, especially youth vandalism and bullying, and that substance abuse (both alcohol and drugs) is a problem and could become even worse as use of hard drugs and "crystal meth" threaten to be more widely available. Several persons indicated that sexual assault is also significant on reserve and not accorded the sanctions that it deserves by the community. Still, a common view was that the crime problem may not be much different than elsewhere and has not increased but rather, the media attention to crime (especially highlighting native crime) and peoples' changing expectations (less tolerance concerning crime, higher expectation for behaviour) may make it appear so. These views concerning the level of crime and its severity were in line with RCMP interviews which indicated only a modest crime problem both on and off reserve. As one AWA participant observed, in the off-reserve, native crime was deemed harder to pin down since the police reports depend on self-identification. There was some significant variation among the focus groups on this issue of crime levels. The above position best captured the views of the Lennox Island and Charlottetown discussions while in the Scotchfort grouping (two attendees were from Morell) the view that crime is significant and increasing was more strongly articulated. Substance abuse and its correlates of underemployment, depression, and young people having "nothing to do" were cited in all three focus groups. Parenting shortfalls were also cited as a contributory causal factor along with the observation that there are known "pockets of crime" featuring repeat offenders, spousal abuse and youth crime that must be addressed through more support for young mothers, counseling, curfews, opportunities for youth to "hang out" in safe, supervised places (e.g.,

Scotchfort's use of its Wellness Centre) and other means. It was also contended, especially in the Scotchfort focus group, that police visibility and police response times were inadequate, "especially after dark"; indeed, a few participants suggested that one's "social power" seems to make a difference regarding police response time.

Family justice issues raised a number of issues though only a few respondents identified this area of justice as a priority concern. There was a broad consensus that appropriate legal information needs to be available on matters such as custody, maintenance support, divorce / separation, and that currently it is not. Certainly the consensus was that people have to be made aware of the options. There was little identification of any reluctance on the part of mainstream children and family service providers to be active with respect to native files on reserve; while sensitive to that possibility, recent developments were seen to have countered it. Several service providers pointed to the recent hiring of an MCPEI person to liaise with PEI Children and Family Services. And, at the same time, there was a pronounced cautiousness concerning this area of justice and a hesitancy with respect to the use of mediation and facilitation especially by local persons; as one very experienced veteran leader in this field noted in the group, "We have to be careful here since we are a small community remember and professionalism will be tough to achieve [if we were to do these interventions ourselves]. Otherwise, we can create mistrust of all our services". There was reference to the possible utilization of circles for family disputes where children are involved, as a result of the new MCPEI liaison role with PEI Children and Family Services; still, as one well-respected leader quickly added, "We have to avoid taking on something we cannot handle". In a statement that could be generalized to all three focus groups, one facilitator summed up her group's consensus on this area of justice as, "Yes more information and liaison is necessary but tred lightly". There was some discussion in the Charlottetown and Scotchfort focus groups of responsible parenting. The view was expressed that "the Justice system is too easy on aboriginal people in relation to child services … returning children to bad homes", that court-ordered support maintenance often goes unenforced, and that a child's Indian status (whether a 62 or a full status 61) can be determined by default of fathers not declaring their offsprings. Especially, but not only, among the Charlottetown participants, there was the view that some family justice issues such as maintenance, access to family service, safe shelters and so on were problematic for band members in the off-reserve. It was noted, for example, that "if you work for the band then maintenance orders are enforced" and "the band won't pay for family services accessed outside the reserve". It was unclear whether participants offering these views expected the situation to change as a result of the MCPEI liaison initiative noted above.

The regulatory field of justice was not highlighted in the focus group discussions. It was observed by many participants that there is much confusion and lack of knowledge about band bylaws and regulations as well as insignificant and inconsistent enforcement and sanctions. The issue of loose dogs on reserve was raised by several persons who expressed considerable fear over recent encounters with loose dogs. This area of justice was not especially perceived as one increasingly in need of attention and Mi'kmaq solutions though that may have partly been the result of how it was presented as an agenda item. Perhaps a more detailed context needed to be provided. Little attention was

given to the issue of fisheries and other resource regulations though, when raised by this researcher, there was an appreciation that off-loading or downloading by mainstream authorities such as Environment Canada, Department of Fisheries and Oceans, and Natural Resources could create a regulatory vacuum. In the Scotchfort focus group, several participants did raise the issue of fishers catching and selling undersized lobsters and the need for some effective community-based sanction. In any event, participants highlighted the need for better communication in the regulatory area of justice on the part of band elected and administrative leadership. Several persons wondered if anyone could identify any band bylaws but one senior participant observed, "We're not different. Most people in most communities don't know their bylaws either".

There were spirited discussions of how Mi'kmaq people currently fare in the mainstream justice system (basically the comments dealt with the criminal justice system). Overall the comments did not highlight racist views among officials (one reference was made to possible racism at local jails) or harsher sentences for natives. The most commonly expressed views were that mainstream justice officials, for a variety of reasons, may not feel comfortable in dealing with native persons, may be aware of their limited knowledge of native culture and reserve life, and, as part of their reluctance to deal with native persons, give inappropriate (usually insignificant) sentences. The participants recalled an allegedly earlier era when native defendants routinely and quickly pleaded guilty and received harsh sentences but tended to agree with one participant who commented, "The attitudes of Justice officials has always made a difference and of course it is not just for Aboriginals, but nowadays they are afraid to be tough and that can be dangerous; there is not enough balance now". This same type of reluctance was deemed to extend throughout the Justice system to policing and probation. For example, one knowledgeable service provider on reserve commented bluntly, "Probation is a crock of shit, completely ineffective. They don't seem to want to act on violations and so forth".

The lack of cultural / community sensitivity, good communication and liaison was seen to be even more problematic because of the reported downloading of mainstream responsibilities. This latter theme especially arose in connection with discussion of the treatment of offenders, a particularly thorny issue in a small reserve where offenders routinely return to the community and the same milieu in which they committed their offense. Courts were seen as wont to add conditions to sentences that compel local treatment / counseling which "do not work since it should be voluntary" and Corrections may sometimes inappropriately ask local service providers to monitor compliance (e.g., attendance at AA); as one participant stated, "We are getting the download and they are not doing their job". In one focus group there was particularly spirited discussion on the value and role of probation services and the need strongly expressed for more information, liaison and "give and take" between the Justice system (especially probation) and local services. Overall, then, the issues of cultural sensitivity, greater two-way communication between the Justice system officials and Mi'kmaq service providers, partnerships to close the gaps that have been widening in the new era of aboriginal – mainstream relationships with respect to responding to offenders, their families and victims would seem to have supplanted the earlier foci of blatant racism and harsher

treatment of offenders. Noting the absence of any "native faces" in the justice system, the focus group participants underlined the importance of this theme. A few respondents added that cultural sensitivity training of mainstream officials requires serious re-thinking in that it is important to determine whether it works, how the information communicated is incorporated into everyday practices and that "there is no one size fits all when it comes to learning about our culture".

Another dimension of the above issue focused on the issue of rights and inappropriate mainstream justice responses. Specific examples were discussed in both the Scotchfort and Charlottetown groups. In the former case there was concern that the police and courts may be over-stepping their jurisdiction by, without consulting the band council, issuing "undertakings" prohibiting accused native persons from returning to the reserve prior to trial. Beyond the jurisdictional aspect there were serious practical implications since reportedly such accused exiled persons have neither the financial resources nor social support to fare well under such circumstances. In the Charlottetown discussions there was concern expressed about the rights of aboriginal off-reserve people being communicated to the native person and being respected by the mainstream officials, police and judges alike (e.g., one participant suggested that even simple posters would help, adding "We are a visual people and need to see what help we can get if we self-declare"). In the case of Scotchfort, and the Abegweit FN more generally, there was much discussion too of the need for rebuilding trust and collaboration between the RCMP and the community members, something which reportedly nose-dived in recent years. The Abegweit FN is one of the few FNs in Canada that has not signed a tripartite policing agreement and, accordingly, has neither a self-administered police service nor a community tripartite agreement with the RCMP; consequently, there is no community consultation committee advising the RCMP police effort in the Abegweit FN, something most participants believe should be re-activated in order to facilitate a more proactive style of policing on reserve. A major continuing concern for aboriginal people, namely the complex legal language (i.e., "jargon") and court style (e.g., the implications of pleas), was mentioned in all three focus groups and, in that regard, there was a consensus call for an Aboriginal liaison to the court and /or a native courtworker. Other suggestions included more family support and "wrap-around" services for the "pockets of problems" cases and a group home for troubled native youth in an off-reserve area (presumably Charlottetown where other services are more available).

Discussion concerning the structure and processes of the MCPEI AJP generated several themes. A major theme was that "There is far too much politics". One councilor commented, "I was one of band council representatives and all I saw was political infighting not attention to the issues". Another senior figure, for both the focus groups and the MCPEI AJP agreed that the potential for the AJP has been frustrated by this [politics]. It was generally contended that once the MCPEI (i.e., the two band councils) became the specific carrier for the AJP funding, the other founding organizations – the AWA and NCPEI – felt that they had lost their importance. Another theme generated was that there is a need for more community ownership since the AJP was "a top-down initiative". There was only a limited discussion among focus group participants concerning specific solutions for these two themes. Concerning the former, the 'politics',

the most common view was that at the advisory committee level, not the board level, there should be a more inclusive membership (e.g., include elders, youths and circle keepers), less political involvement, and fostering a stronger sense of collaboration. There was a comment in two focus groups that the AJP advisory group's membership had been changed and is ostensibly less political but, focus group participants reported that as of the end of October 2007 no new meetings had been held. Concerning the second theme, community ownership, one idea that appeared to have widespread support was to have more community presence on the advisory rather than establishing community advisory committees in themselves; a veteran activist noted, "community advisory committees may be ineffective and rubber stamps anyways".

Participants at the focus groups commonly agreed that the MCPEI AJP had to do more to engage the attention of the communities. They were hopeful though uncertain about the benefits of the program to date. It was generally held that people do not see any results from the circles so do not know whether or not they are effective. The circle keepers attending the focus groups, with one exception, indicated that they had seen no action as yet as a circle keeper. One such person, in Lennox Island, commented that while she has participated in a mock circle and found it interesting and a good experience, she still wonders "whether in reality they would work as most offenders are not going to want to talk in a circle like that". Another focus group participant, from the Abegweit FN, modestly contested the view that circle keepers were underutilized, noting "We use our circle keepers' training in our everyday work". Still, at the least there was consensus that "People need to know that we have trained people on hand". The focus group participants usually considered that the MCPEI AJP staffing needed to be bulked up to coordinate liaison with the justice system and its officials and increase information exchange with the local communities.

Turning to the future, there was widespread agreement in the focus groups that all the items bearing on aboriginal justice mentioned in point 7 above should be done but the highest priority was for a native courtworker program, presumably with the MCPEI AJP as the organizational locus. Next highest priority was accorded to disseminating more information and awareness about the justice system (both criminal and family), and about the AJP programs among the native population on PEI. Not far behind were having the circle keepers handle minor crimes (there was more ambivalence about whether repeat offenders should be channeled through the circle keeper process) rather than processing them through the court system, and facilitating more cultural awareness and sensitivity training for mainstream justice officials.

MAINSTREAM POLICE AND JUSTICE OFFICIALS

As noted above, a dozen mainstream police and justice system persons were interviewed by the researcher, equally divided between police and justice officials. Two were Aboriginal persons, both members of the RCMP who had served in Lennox Island.

POLICE

For comparison purposes it is useful to note first the central themes that emerged from interviews with police officers engaged in First Nation policing in Elsipogtog in 2005 and Nova Scotia in 2006. In Nova Scotia there was much variation in the views of police officers. Generally they reported (Clairmont and McMillan, 2006) few violations in the smaller FNs such as Bear River, modest or declining levels of violations in economically advanced FNs such as Membertou and Millbrook, and continuing high levels of crime and violations in the largest FNs, Eskasoni and Indian Brook. Drug dealing and substance abuse were widely identified as key concerns along with assaults and largely unreported or "not followed through by victims" incidents of domestic violence, especially in the largest reserves. In the case of Elsipogtog (Clairmont, 2006), the themes expressed reiterated the concerns of police respondents in Indian Brook and Eskasoni and these can be summarized in terms of five points:

1. The major immediate policing issue is the alcohol and drug abuse / addiction (and trafficking) problem.
2. There has been a decline in youth crime and much of what remains is carried out by repeat offenders.
3. There is a very troublesome and seemingly intractable problem of offending among young adult males.
4. Police, with some exceptions have not had deep contact with the Aboriginal justice initiatives (e.g., court work, circles), and while positive in a general sense, do not see these initiatives as particularly salient for the problems they have identified.
5. Police could readily identify areas where more justice initiative could be directed such as improving community efficacy with respect to conflict and dispute resolution, focusing on more serious and adult offenders, exit circles for inmates and so on.

In the PEI FNs there are two different formats for the RCMP policing. Lennox Island for over a decade has been policed under a community tripartite agreement (a federal, provincial and FN agreement whose acronym is CTA) whereby there is a regular officer designated for the reserve and supervised by a staff-sergeant located in Summerside. The assigned officer, ideally an Aboriginal person but often not, is expected to spend roughly 80% of his or her working time on reserve. There is also a longstanding RCMP consultative committee with one member being the councilor with the Justice portfolio. The committee has been active in recent years (2002-2006), is a large grouping representative of the community's demographics, and meets every second month. There is also a community policing plan which was developed and signed off on by both police

and community representatives. The Abegweit FN, despite efforts by the RCMP and the senior levels of government, does not have a CTA so it is policed like other areas of the regional RCMP detachment located in Charlottetown. A community consultative committee has been dormant for several years and there is in place no specific community policing plan acknowledged by the FN. In both Abegweit and Lennox Island the policing is supplemented by a band hired and supervised security person; whether having a watchman (Lennox Island) or a band constable (Abegweit) designation, neither has the formal status of band constable and neither has received any formal training or is supervised by the RCMP.

The general view expressed by the police officers is that both the FNs have but a modest crime and social order problem. A senior officer responsible for the RCMP policing in Lennox Island reported that there are few crimes and in general not a lot of police work for the RCMP. In his view the FN is progressive, well-led and becoming increasingly economically developed (as proof as it were, he cited the fact that Lennox Island will have a role in co-hosting the 2010 Canada Games), so much so that the situation is almost one of resources and opportunities looking for problems rather than vice versa. At the same time he, and other officers, reported that the community has identified drug (especially prescription pills) and alcohol abuse as a central problem for police to focus upon. An officer engaged more in the day-to-day policing in Lennox Island essentially shared that perspective, suggesting that Lennox Island is a progressive place and "people seem satisfied with the mainstream way [of policing] and there is only a low level of crime and violations, basically vandalism among the young (we are trying to divert such cases), a few cases of sexually inappropriate touching, and of course some alcohol and drugs". Another officer, long familiar with Lennox Island, noted that "there is no more crime in Lennox Island than in comparable communities of that size" and there are few calls for service. In his view, there are modest youth issues and some domestic violence but basically the same few families or youths are involved. The widespread police viewpoint was that, while crime and violation levels were never very bad, it was worse ten years ago when economic opportunities were less and there were fewer organized community activities. Two officers who policed the community between five and ten years ago held that there was then , at modest levels, the whole spectrum of violations ranging from property crimes to sexual abuse. One, an Aboriginal officer, noted that on the whole "there was boredom and little action" but also a cultural challenge getting across to people that sex with a person less than 14 years of age was a wrongdoing. The other, also Aboriginal, considered that there had been "no big crime problem but some minor stuff, the most important of which were common assault and property theft". Both characterized the community in that period as "a well-off community with significant government funding and a rich lobster fishery and some crab fishery too". It was reported that there was some strife between natives and mainstream fishers seven years ago when the Supreme Court's Marshall decision came down but "now things seem to be okay". Meetings held among DFO, native and mainstream fishers have been helpful as has been the willingness of the Lennox Island political leadership to tailor their fishing to patterns in the local area (e.g., going out when mainstream fishers did and staying in when they did) and to take a tough stance against violations of the food fisheries protocol (e.g., not selling this particular catch). Other police echoed that

comment, adding that there is still some underlying tensions especially directed at the Native Council fishers and tensions can rise fast over alleged abuses in the food fisheries program.

In the case of Abegweit several RCMP respondents indicated that the violations and police problems that occurred there were also largely minor and related to factionalism (all commented on the modest fighting and threats associated with the band election of several years past). A senior RCMP official responsible for the area reported "not a lot of crime but it's people crime (fighting and disturbances)"; he added that the assaults that did get reported were largely related to factionalism and not to domestic violence. Typically, the police respondents contrasted Abegweit and Lennox Island with Abegweit being depicted as less cooperative with police, having more social problems, factional strife among its three constituent sites, and less economic development. Police programs available in Lennox Island, such as D.A.R.E. and "two-way street" (a substance abuse initiative that involved parents/guardians and complemented the D.A.R.E. program which focuses on youth, often at the grade six level), were not available in Abegweit since there was no CTA and the relations between police and the political leadership were cool at best. With changed leadership since the recent band elections there is an expectation that changes will ensue.

The police officers strongly believed that Lennox Island received quality policing in terms of response, enforcement, investigative quality and other standard policing functions. Indeed, they usually considered that the service provided was at least as good as that available in neighbouring mainstream communities. As one officer put it, "because of the CTA, Lennox Island receives "regular plus" policing' and that translates reportedly into fast response times, better enforcement (e.g., shutting down bootleggers), crime prevention (e.g. school liaison) etc. They considered that there is a culturally sensitive policing, the result of regular participation by RCMP members in cultural activities (e.g., pow wows) on the reserve, the frequent contact with leaders and with the community consultation group to develop and operationalize policies, and regular programs for cross cultural training put on by the band for its members. They also held that there is, and generally has been over the past decade, an excellent relationship between the police and the community (especially the band leadership). One indication of the latter, stated by several officers who have policed there at different periods over the past ten years, is that residents report wrongdoing to the police, even incidents of sexual abuse that occurred years earlier. At the same time the police respondents noted that the community has high expectations for policing and wants a proactive and highly visible policing. Perhaps in such a close-knit community even minor violations and assaults can have significant reverberations! There have been some complaints over whether the reserve is receiving the 80% of the designated officer's time as specified in the CTA. The police generally acknowledged that work schedules and multiple tasks as well as the desire of officers "to go where the action is" and do clerical work at the Summerside office may well result in a situation where there is a shortfall. There is a police office on reserve and a book to record time spent there but as one officer commented, "There is a challenge to the officers to fruitfully spend their time on community business, adapting RCMP programs to fit the needs and wishes of the community, thinking outside the box

(what is police work?)". Interestingly, within the RCMP, there does not appear to be any specific formal preparatory training for officers who are assigned to reserves under the CTA format so the fit between the assigned officer and the community has occasionally been problematic.

In large measure the policing on reserve is conventional. The police generally declared themselves in favour of restorative justice initiatives in the community, whether in the form of their own community justice forum a decade ago or by referral to the circle keepers nowadays. At the same time the former initiative in the late 1990s never really got going reportedly because of inadequate organizational resources to process cases and there have been few cases handled by the circle keepers in the last two years in large part because police have instead utilized the "caution" option as an alternative to court processing and left referrals largely up to the crown. Police, whether in Lennox Island or Abegweit, indicated that they rarely become involved in band bylaws and do not consider such involvement to be a measure of the FN ownership / participation of policing. As is true across the country, band bylaws are problematic apparently for the police. A senior officer for Abegweit indicated that he informed the then-chief that "there is no way the RCMP would effect eviction notices". Band bylaws for tags and loose dogs are handled in each FN by a dog control person hired by the FN and the RCMP rarely would ever become involved. The officers also considered that family and regulatory justice matters were neither a major problem on the reserves nor required their special attention. At the same time there was interest in the communities' developing a conflict resolution capacity (through the circle keepers) to deal with local issues before they explode as happened a few years ago in the wake of a band council election in Abegweit, and as happened a few times in the 1990s when different interests on reserve brought mainland warriors over as a show of support. There was some skepticism about the effectiveness of such conflict resolution; as one officer commented, "The residents do not like to confront one another".

The main issue for policing from the police perspective would appear then to be residents' demands for a proactive, visible policing highly engaged in community activities. Perhaps the policy solution here would be to have Community Support Officers (CSOs) supplement the conventional policing. The CSO program, involving full-time support officers trained and supervised by the detachment officers and specializing in liaison and visible police presence and not the conventional police roles (911 response, investigation, court processing etc) has become popular in England and is utilized by the RCMP in other parts of Canada. Overall, then, returning to the five themes found in Nova Scotia and New Brunswick policing, it can be said, based on these interviews with police, that for PEI Aboriginal communities, (1) yes, substance abuse and drug dealing is a problem area but on a more minor scale, (2) yes, youth crime may be increasingly found among a small number of individuals, (3) yes, young adult are the potentially problem group for police but as yet constitute only a modest problem, (4) yes, as yet the AJP initiatives have had little impact for the police, and (5) yes, community efficacy through increased capacity to have effective circles and diffuse local conflict in the regulatory area would be very beneficial.

OTHER JUSTICE ROLE PLAYERS

A small number of justice role players, all non-Aboriginal were also interviewed as noted above, namely two judges, a senior prosecutor, a senior provincial corrections official, a legal aid lawyer and a Justice bureaucrat. Again, for comparison purposes it is useful to note central themes that emerged from previous related research in Atlantic Canada.

Interviews with thirteen judges in Nova Scotia and New Brunswick in 2005-2006 found many points of consensus, including,

1. An openness to the argument that Mi'kmaq culture is different and that the differences have salience for both criminal and family court.
2. A willingness to respond to requests for sentencing circles despite their perceived considerable demands on time and resources and despite occasional problems in successfully achieving the results hoped for, whether in process or in outcomes.
3. A conviction that sentencing circles are not especially appropriate outside the aboriginal community, a view related to legislative policy (i.e., cc section 718) and a belief that aboriginal communities are different (e.g., feature more communitarianism, more overlapping and intensive relationships)
4. The view that Mi'kmaq alternatives to conventional court processing, whether justice circles, family group conferencing or alternative dispute resolution should be encouraged, and an accompanying view that Mi'kmaq capacity along these lines needs to be nurtured since it is limited at this time.
5. The assessment that Aboriginal justice programming should be expanded, in particular with respect to court worker services and to the family justice services (e.g., summary advice counsel and family legal information centres).
6. A view that the Gladue reports have value but can be accommodated within the format of pre-sentence reports.
7. An openness to the idea of a provincially administered native criminal court along the lines of a healing to wellness court, especially since alcohol and drug abuse and addiction remain considerable and underlay high levels of crime, family dysfunction and general social disorder in some Mi'kmaq communities.

One Nova Scotia judge, much experienced in court processing of Aboriginal people and having been involved in more full-blown sentencing circles (i.e., circles where the judge, clerk of the court, prosecutor and defence counsel attend along with the offender and victim, their support people and community representatives and where the sentencing decision may be rendered on-the-spot) that any other judge in Atlantic Canada, commented that "in the 1960s [the major native justice expansion] was getting the vote, in the 70s and 80s it was learning, and from the 1990s on as getting power". In his view and that of the other judges, to go beyond where native justice is now, "the Aboriginal leaders need to develop community support more". The judges identified

community legitimation, presence of victims and correct procedure (the session is recorded and neither private nor confidential) as pivotal to their support for full-blown sentencing circles and other such justice initiatives. Apart from Gladue reports for native offenders, the judges on the whole did not utilize other alternative justice options such as having conferences as encouraged under the YCJA of 2003, and most judges were inclined to favour a sentencing circle format where they observed and listened but reserved their sentencing decision until a future court sitting. As noted, the judges were usually very supportive of having native court workers especially if the latter were well informed about court procedure and the judge's role, and knowledgeable about the community services available to native offenders.

There was less consensus among Crown prosecutors in Nova Scotia and New Brunswick especially regarding the salience of Aboriginal cultural factors and the value of sentencing circles. Generally though they were in favour of a native court worker program and they referred cases to FN restorative justice programs; indeed, in both provinces the trend clearly is for referrals to alternative justice to come more from the crowns rather than from the police, and the Aboriginal programs, like their mainstream counterparts, are increasingly focused on the crown level of referral. The prosecutors generally supported a native court worker program especially if it reduced the number of "no shows" and yielded information on community services for offenders. A number of crowns however held that resources might be better spent on having a native legal aid lawyer with whom they could negotiate charges and possible sentencing recommendations. The prosecutors did see value in there being Aboriginal alternatives in the matter of civil cases and the regulatory justice sphere. Defence counsel views yielded little consensus as they were of mixed minds concerning the value of a native court worker ("a large percentage of our clients are repeaters") and, not themselves being able to make referrals to restorative justice type alternatives, were wary of such referrals though not opposed in principle. Defence counsel typically did emphasize the value of more cultural awareness and sensitivity in the mainstream justice systems and more promotion work with regard to legal information and services in the Aboriginal communities.

The PEI judges interviewed were both senior and very knowledgeable about Aboriginal issues in PEI, having either participated in the creation of the MCPEI or acted at one stage in their career as an attorney for one of the bands, in addition to presiding over criminal court for years. They were less inclined than the police officers to consider that crime and violations were low or decreasing or minor among Aboriginal people in the province. One noted that there certainly have been serious crimes in Lennox Island (e.g., he recently dealt with a serious assault / attempted murder) but more on a sporadic basis. The other judge, a thirty year veteran of the judiciary, echoed that view (i.e., serious violence was sporadic not continuous) and considered that violence and violations had neither increased nor decreased over the past decade, adding that Aboriginal offenders were not disproportionately high in PEI ("surely nowhere near the high levels found in Western Canada"). Both judges held that substance abuse, more so drug abuse these days, remained a significant problem for FN communities in PEI. The judges were uncertain about whether there were any differences in attitude and demeanor among

offenders, victims, and witnesses appearing in the court according to their being Aboriginal or mainstream PEIers. Asked whether Aboriginal assault victims on reserve were less willing to testify or whether Aboriginal offenders were more intimidated in court and quick to plead guilty, the veteran judge contended that he had found no striking difference between native and mainstream people in these regards but allowed that on occasion such behaviour was displayed.

Both judges were quite open, as judges in Nova Scotia and New Brunswick were, to having sentencing circles for some Aboriginal criminal cases. One judge looked forward to having a full-blown sentencing circle scheduled just weeks after the interview. The other judge had presided over two "sentencing circles" in the past several years though these were basically either conferences as outlined in the YCJA or 'pre-sentence report' type sentencing circles. Both judges indicated an interest in and a willingness to be available for sentencing circles were that option to be requested. They were informed about the concept (one had attended a seminar by a leading judicial advocate – Barry Stuart), considered them quite time-consuming and special ("you cannot go back to the well too often"), and suggested that the initiative would have to come from either the crown prosecutor or the defence counsel. They reported that no protocol (e.g., eligibility, format) was in place in PEI and that the veteran crown prosecutor in the area would be the gate-keeper for requests. As for ordinary restorative justice referrals to MCPEI AJP, again they pointed to the absence of any protocol and suggested that the police and prosecutors would be the referral agents.

The judges were also supportive of other Aboriginal justice initiatives. They supported the idea of having one Aboriginal court worker for the province and held that court scheduling could easily accommodate such a role (i.e., having docket on different days for the different regions). There was also some modest support for having criminal court sit on reserves as is the case in Eskasoni, Nova Scotia; however it was noted that the provincial government has been closing regional courts (and schools) in the face of significant public protests, so it would difficult to allow them in the smaller Aboriginal communities. The judges accepted the argument that justice and especially social services for FNs may be in a kind of twilight, transitional phase where the mainstream officials are pulling back because of legal and policy uncertainties while the FNs have not the infrastructure, resources and personnel to take up the slack. The currently most active judge noted that he has detected such a backing off in the case of Social Services. The judges expressed concern that native victims might bear the brunt of this situation and queried the support system that prevails on reserve for assault victims. For the judges, the solution for justice services is Aboriginal engagement without parallelism, to be achieved through cross-cultural training, court workers and, in the future, some Aboriginal persons in Justice roles. The judges saw such developments as long-term and did not think a lot of progress had yet occurred; one, when asked about future directions for the MCPEI AJP, replied, "Oh, is it going anywhere?". The judges also appreciated the importance of developing and implementing Aboriginal capacity in the area of regulatory matters such as fishing rules. In one interview there was a long discussion of the potential for "double jeopardy" if Aboriginal violators of FN-DFO agreements were required to face both the mainstream courts and a community justice panel. Overall, the PEI judges expressed

essentially the same views as noted above for the judiciary in Nova Scotia and New Brunswick.

The prosecutor and defence counsel interviewed were also senior persons with much professional experience in Aboriginal justice cases and issues. These two respondents shared similar viewpoints but differed on how they saw violence and crime on reserve. The prosecutor suggested that, while there was some substance abuse and occasional violence, the levels were modest. He contended that crime has gone down in Lennox Island as the economy has improved, especially because of the post-Marshall fishing agreements, and that there has been more pride of culture. In his view Lennox Island is a true community with all the assets that term implies while the Abegweit FN is less progressive and has more troubles. The legal aid lawyer, on the other hand, reported that there were serious problems of social disorder and domestic violence even in Lennox Island which seriously reduce its attraction as a place to raise children. Offending was considered to involve much more than just some vandalism by youth – "there is a lot of substance abuse, drinking and excess on weekends, and significant violence"; the point was underscored by reference to a recent attempted murder (and threats to bystanders) on reserve. The respondent also commented that often the same few people and families are involved in the assaults but most families in Lennox Island were caught up in the violence. It was suggested that the underlying factors for the serious violence were two-fold, namely the mixed parent families (the result largely of marital instability) and a legacy of rage that boils over in the community. In response to a query whether AJP and the circle keepers could favorably impact on this situation, the respondent stated, "The circle keepers could not handle this stuff".

Like the judges, both prosecutor and defence counsel were quite positive about the value of there being a native court worker program. The defence counsel commented that legal aid clients never come to the office and usually do not show for appointments and thus the respondent only sees the clients in court. A native court worker could be of value in providing legal and procedural information ("not advice of course") to clients and perhaps encouraging more pre-court contact. The prosecutor noted that there used to be a court worker program in PEI but was unsure for how long and why it did not endure. He believed that a native court worker program would reduce "no-shows" but, even more, would better identify the needs of individuals and make justice more effective. While acknowledging the problems of there being few native court cases, he suggested that the court worker program could combine some crime prevention activity and also be involved in the preparation of Gladue reports, none of which have yet been prepared for a PEI Aboriginal person.

Both respondents were also supportive of other Aboriginal justice developments in PEI. Neither suggested a need for a translator service and the prosecutor remarked that in several decades on the job he has never had encountered a request for a translator. Legal aid services were also deemed to be readily accessible. Both respondents were supportive of the circle keepers program while wary about its possible effectiveness. The prosecutor indicated that, in PEI, authorization of alternative justice referrals would be a crown task, adding that the RCMP could refer cases pre-charge but "did not do much of

that any more" (the researcher has found that to be the case also in Nova Scotia). He noted, too, that in the fall of 2007 there would be a sentencing circle and when asked what format it would take, replied, "To use your words [in Future Directions in Mi'kmaq Justice, 2006] it will be a full Monty. We decided to go for the whole bit". The defence counsel, like the judges, referred to a twilight phase of retreating mainstream service providers and inadequate local alternatives, as follows, "The number of child protection cases has fallen almost to zero [in the last few years]. It's very politically correct now. There is a vacuum, a twilight zone where Lennox Island, and maybe Abegweit, doesn't get adequate mainstream services because people backed off or are uncertain [of their mandate in Aboriginal affairs] yet the local service is inadequate". The defence counsel considered that more treatment programming was necessary and was not enthused about the effectiveness of the circle process – "Yes, shame is shown but it does not seem to result in changed behaviour. The community tolerates a lot, maybe to avoid shame to the community, to themselves as a collectivity".

The respondents advocated a slow, careful evolution in Aboriginal justice on PEI across all justice areas, criminal, family/civil and regulatory. The prosecutor articulated these views at length. He noted that there are several structural and process issues in such an evolution, namely the small, scattered Aboriginal population, limited core funding, and the possibility that, if the FNs get too quickly into programming, a backlash could be created in the mainstream society; concerning the latter, he noted that the fisheries remains volatile and "if mainstream fishers did not see 'wild cards' on the native side being taken to task by the native justice meted out, they would be very angry". In his view, the Aboriginal community has to deliberate about options and new directions, proceed slowly, carefully relying on increasingly built-up capacity, and get the right people (e.g., judges, crowns) to the table before embarking on new trajectories – "the last time we had to say whoa, you can't do that".

The remaining two interviewees were veteran PEI Department of Justice officials, one in Corrections and the other in justice policy development in the Office of Attorney General. They had close personal ties with the FNs; one was very instrumental in the development of MCPEI's AJP and both collaborated and indeed were key organizers of various Aboriginal initiatives in the past seven years, such as cross cultural training, youth leadership and cultural gatherings, and the like. One respondent commented that especially since the 1990s the PEI government has encouraged self-government and worked for a comprehensive justice approach that would include victims as well as offenders, and off reserve as well as reserve Aboriginal people. Both these respondents were strongly supportive of Aboriginal justice initiatives such as the circle keepers, sentencing circles, cross cultural training, partnerships between mainstream and Aboriginal programs, and of the desirability and need for new programs such as a native court worker program. Both were highly aware of the diversity within the Aboriginal community in PEI and of the challenges that future development would have to meet. They advanced quite measured views on the level of crime and violence among Aboriginal people in PEI. The Corrections official reported that the Aboriginals make up less than 2% of the PEI population and also less than 2% of the Corrections caseload. He opined that compared to the 1970s and 1980s there is, nowadays, much less substance

abuse and violence ("sniffing" he recalled was a big problem in Scotchfort in that era) and some perpetrators of serious, unpleasant offences (e.g., certain sexual assaults) have been ostracized to the streets of Charlottetown. The Justice Services official however downplayed the idea that crime and violence on the reserves is modest and of low levels, commenting that there is much substance abuse (especially drug use) and significant family violence and sexual assault.

Both respondents appreciated the basic dilemma of PEI, and of the FNs there, in developing programs where small clientele populations exist. The Corrections official noted that while PEI does not have large-scale diversity among its population, there is indeed some diversity and it must be responded to, so resources are needed despite the small numbers. Under such circumstances, "If you cannot have flexibility in service delivery then you cannot balance the disadvantage of small numbers with its advantage". In his view, that same issue exists for FN people in PEI. In the case of a court worker program, the caseload would be too light to be seen as efficient if the court worker just did conventional court worker as specified in the formal mandate of that role according to Justice Canada; accordingly, it would be important that flexibility be allowed in the role and, if so, then a more holistic, less "silo-based" court worker role could achieve much and be quite effective. Fortunately, in his view there is appreciation among the federal program officials of the need to be flexible in adapting the court worker role to small clientele pools. He suggested too that both mainstream PEI justice services and a FN system are building capacity and emphasizing a social development approach so there is a common agenda and they could work together in the future. Corrections' activity in responding to the Aboriginal offender – there has been a departmental version of a native court worker program in existence since 2003 - could focus more on case management for clients whether in custody or probation (e.g., counseling, reintegration planning) while an MCPEI AJP's court worker program could combine conventional court worker activity with crime prevention work, and providing legal information to native communities as well as offenders.

The Justice Services official provided an overview of the emergence of MCPEI and its AJP program, describing the structure of the latter, namely its board constituted of band leaders and its advisory group constituting representatives from the four founding groups (Lennox Island FN, Abegweit FN, Aboriginal Women's Association and the Native Council). It was noted that the AJP at present is the only program in PEI where all four parties (plus the provincial government) are at the table and there have been tensions and disagreements as the relationship between FN leaders in the Confederacy and Native Council leaders has changed and the MCPEI become the exclusive carrier for funding – the political and funding issues between FN leaders and Native Council (Congress) leaders are similar to those elsewhere in Nova Scotia and in Canada more generally. Also, there have been issues with the Abegweit participation in the AJP programming both with respect to attendance at advisory group meetings and in collaboration with the circle keepers initiative and the justice circles. Still, there are MOUs in place among the four founding parties and also with the provincial and federal governments, new leadership in Abegweit, revisions advanced for the composition of the advisory group, a protocol already in place for selecting neutral facilitators to handle any justice circles, and

recently announced multiyear federal funding, so this respondent was optimistic about future AJP activity.

As noted, both these respondents have worked to develop Aboriginal capacity in the justice field in the past and were supportive of future developments. Both suggested increased utilization of the circle keepers ("a major resource now for Aboriginal justice", said one person) in sentencing circles ("a good strategy if the community is in a healing mood" said the other respondent) and dispute resolution more generally. In addition they suggested the priorities of improving services for victims, engaging Aboriginal youth and early intervention approaches. The Justice Services official noted that resources for the MCPEI AJP need to be increased since "really AJP is only one person [staffing] now". In virtually all respects their views were similarly to their counterparts in Nova Scotia.

COMMUNITY SURVEY RESPONSES

The modest community survey was not part of the original evaluation plan but was done largely because it suited the personnel available. One-on-one interviews were done by the evaluator and the local engaged personnel distributed the survey questionnaires; in many instances the questionnaire was completed in their presence and they assisted the respondent while in other cases they simply dropped off and picked up the questionnaire. The number of community surveys completed was modest, roughly twenty-two in each of the milieus of Lennox Island, Abegweit and Charlottetown, two-thirds of the expected totals in each case. For both these reasons – number and quality – the survey has modest value. At the same time it has value and a good many of the questionnaires were well done, so it contributes to the overall evaluation. The survey involved only adult respondents (i.e., persons eighteen years of age and older). In reviewing the data it should be noted that 'don't know' responses were not deleted from any percentage calculations and there were many 'don't know' responses. Often when data are presented in reports the 'don't knows' are deleted when calculating the percentage who are agree or disagree with a specific question but the evaluator thought it best to be cautious here and not overstate positive or negative answers given the data collection procedures. The reader will also note that the created table compares the total sample of 67 respondents, the reserves sample, and the comparable and available survey responses of Elsipogtog adults obtained a little over a year earlier. Both the PEI and Elsipogtog surveys were reasonably representative of adult ages but heavily skewed to female respondents. The Elsipogtog sample was large (i.e., 209 completed adult questionnaires) and virtually all the respondents were interviewed by well-trained and closely supervised Mi'kmaq university students who probed for answers; accordingly, the data are much more reliable and there are many fewer 'don't know' responses, so the comparisons with the PEI answers have to be cautiously interpreted. In comparing the frequencies for the entire PEI sample and then for the PEI reserves, it is suggested that two criteria be used namely, emphasize only consistent patterns of differences, and the 10% rule (i.e., any % difference less than 10% should not be considered significant). Where the PEI percentage is significantly greater than that for the reserves, that can be interpreted as indicating that the Charlottetown subsample indeed yielded higher percentages than the reserves did. Where it was significantly lower, that can be interpreted as meaning that the Charlottetown subsample yielded lower percentages than the reserves subsample did. Unfortunately, the small sample size precludes any comparison between Lennox Island and Abegweit responses.

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CRIME, VIOLATIONS AND OTHER ISSUES

As would be expected, most respondents have lived all their lives in their local community (73%), especially reserve respondents (84%); among the small Charlottetown subsample, not shown, the percentage was 55%. Survey respondents in PEI in the three milieus of Lennox Island, Abegweit and Charlottetown shared views about crime in their local area, namely that while it is increasing (roughly two thirds in each subsample held this opinion), it is not at a high level (only about one-fifth said it was high). They also

shared similar views about different matters such as break-ins, wife beating, and substance abuse as being "a big problem". Generally, a minority of respondents took that view but there was a slight tendency for Charlottetown residents to report somewhat more conventional crime. The area where the reserves stood out was in the higher proportion who identified feuding and fighting among groups in the local area as a big problem, namely 46% compared to 33% overall and virtually 0% in the Charlottetown area. In all groupings, substance abuse issues were seen by far as the more common 'big problem" (about 66%). There was little difference among the PEI groupings in terms of worrying much about being a victim of assault (some 25%) or of property crime (about 20%) and of actually having been victimized in the last two years (about 20%) and having reported it to the police (about two thirds).The PEI total and reserve subgrouping were similar in their view of what violations go unreported in their area (property crime is more likely to be reported than life style offences) and in agreement that unreported violations usually do not get dealt with (some 75%) in any informal way such as through extended family interventions or service counsellors. A young Abegweit college student commented, "I would like to see people who are loud and under the influence reported more often. I don't like how it is socially acceptable to have individuals under the influence being public nuisances". One 30 year old Lennox Island male commented on the absence of informal community control succinctly, "The community gave up a long time ago" and an 80 year old co-resident agreed, "There is no informal way". A young Abegweit college graduate also discounted informal controls, observing, "Informal controls? Not really! We need more help in the community". The table clearly shows too that, even allowing for the more probing interviewing done there, there is much more concern about crime and violations in Elsipogtog and double the rate of reported victimization.

Family justice concerns were identified more frequently by the aboriginal respondents in the Charlottetown area than on the reserves though, even there, only a small minority identified the different issues such as divorce settlements, enforcement of maintenance orders and compliance with custody arrangements as a big problem. The more frequently cited big problems in the family justice area were enforcement of child support and the availability of salient information about family legal matters. Roughly 17% of the reserve sample identified these two matters as a big problem while 40% of the respondents in Charlottetown did so. One Charlottetown 32 year old woman recently in family court noted, "I was absolutely appalled at the lack of information available to someone who could not afford a lawyer". Another Charlottetown woman reported that even though "I was informed with adequate information during the proceedings and even support from the native communities", I was overwhelmed". There was little difference in terms of frequency in the responses of the different PEI groupings concerning big problems in the regulatory justice field – about 20% considered that compliance with band bylaws, enforcement of band policies and conflicts over housing and other benefits were areas of big problems. The Charlottetown respondents were more likely though to make comments about regulatory issues pertaining to on and off reserve conflict over input into land claims and distribution of certain funds.

VIEWS ABOUT THE MAINSTREAM JUSTICE SYSTEM

Respondents were asked about their experience in the criminal and family justice systems, its problems as they saw them, and what their high priorities would be for change in each system. While about 20% had recent family court experience, roughly one-third of the sample, with little difference by subgrouping, indicated they, or a household member, had had involvement with criminal court as either an accused person or a victim within the past three years. Surprisingly, despite the lower level of victimization, this figure was similar to that reported by the Elsipogtog respondents. There was also little difference among the PEI groupings in the percentages reporting various criminal justice system matters as "a major problem". The matter that received the largest frequency (roughly 40%) of "a major problem" responses was "Sentences are too severe or too light" but roughly 30% also applied that characterization to cultural differences and aboriginal persons not knowing what to do and how to act. 'Prejudiced court officials' was identified as a major problem by only about 15% of the PEI respondents. There was a widely held view that the "The court need to be more strict" and more balanced in considering the victim as well as the offender, positions that are very widespread in mainstream society nowadays. It can be noted in that table that Elsipogtog adult residents were far more likely to identify all of the itemized matters as major problems but especially inappropriate sentencing and cultural differences between mainstream officials and native persons. About 50% of the survey respondents, on and off reserve in PEI, and 80% of those in Elsipogtog, most frequently identified as their high priorities for change the same three issues, namely more legal advice and services for aboriginal persons including court workers, more services for victims, and more cultural sensitivity training for lawyers and judges. Concerning the latter, there was a general consensus that mainstream justice had changed for the better in its sensitivity and treatment of aboriginal people but there remains an on-going need for cultural orientation; as one Charlottetown respondent who worked in the court system put it, "The judicial system continues to educate themselves re the aboriginal community. They certainly have come a long way but continual training is greatly needed".

The respondents appeared to relate to the concept of a court worker, in part because they were not overly critical of the mainstream justice system and saw the court worker ("someone who understands our way of life") as a practical way to make it more responsive while providing advice and support to the native offender, especially given the absence of Mi'kmaq lawyers or a native presence in the court system. Between a quarter and a third of the PEI respondents also suggested as high priorities more community involvement in sentencing, services / programs for offenders, and discussions of new and different justice programs. About a quarter of the respondents considered that moving towards an independent Mi'kmaq justice system was a priority and several more respondents echoed the views of a prominent Mi'kmaq leader in Charlottetown who said, "Low priority for the time being. If we were economically self-sufficient it may work but trained people in justice such as lawyers and judges would be needed. Presently the government can pull the plug". Elsipogtog residents, in higher proportions, identified virtually all the possibilities offered as having high priority.

NEW ABORIGINAL INITIATIVES

The table below also describes the awareness that the PEI respondents reported with respect to various aboriginal justice initiatives. More than half the respondent indicated that they were at least somewhat informed about the MCPEI 's Aboriginal Justice Program and the Circle Keepers of PEI, a larger percentage than expected. Smaller percentages reported any awareness whatsoever about the AJP's restorative justice circles or Aboriginal treatment programs and services or the native court worker program in Canada; virtually no one had heard of the wellness courts in USA tribal jurisdiction. Surprisingly, for the evaluator at least, there was little difference between the on and off reserve population save in the latter's greater awareness of treatment and counselling programs. The majority of the survey respondents believed that the aboriginal organizations and programs in the justice field were at least somewhat, if not very, valuable, though a smaller percentage than that found among Elsipogtog residents in their assessments of their own justice initiatives. One Abegweit female summed up the consensus view with her comment, "Any program offered to the native people as a liaison to the legal system is beneficial". A number of respondents pointed to the need for more programs, sharing the view of a young Abegweit woman who said, "Somewhat because we don't have very many programs to benefit our reserve". Several Charlottetown respondents, expressing similar views, argued for "A family in crisis circle".

While some respondents argued for an unrestricted use of the justice circles, and about an equal number argued in the words of one respondent, "I think every crime should be dealt with by the current justice system", typically most persons indicated that child abuse, serious crimes and re-offenders should only be dealt with by the current justice system, albeit with more aboriginal input. Two chief concerns appear to account for some qualification of support for the aboriginal initiatives. First there was a concern frequently expressed that they might reduce the drive to equality that has been important to many respondents; one Lennox island person expressed this as follows, "We need our people to be judged the same as others". The second concern was that new aboriginal initiatives would weaken the deterrence to more crime and violation as expressed in the following comment which was echoed by other respondents, "Natives would get away with it; too much happens now". A 47 year old Lennox Island female held, "People would commit crimes, then ask to go before the circle. The circle is a joke". A challenge for the MCPEI AJP, as it evolves, is to respond effectively to these positions or qualifications as it communicates more with the FN communities.

Concerning future directions, respondents were asked about a variety of possible new frontiers for aboriginal justice. Again there were few differences between the on and off reserve assessments. Virtually all possibilities offered received similar levels of support but the number one for the PEI subgroupings, and also for Elsipogtog in their survey, was "doing community research on native justice issues and possibilities" which was especially popular in the Charlottetown sample (60%) but also received the most support from the reserve respondents (42%). It would appear that while people may

occasionally complain about surveys and the like, they also appreciate the need to know more about what is happening in aboriginal justice whether in PEI or elsewhere and how that can be adapted to their needs and wishes. A widespread view was that there has to be more community awareness and engagement in future justice programming. A senior Charlottetown leader commented, "They [the AJP] need to gain the trust of the community and they have to reach out to the people. They need more open house occasions where people can become familiar with the organization and programs … be creative". Certainly the respondents were on the whole optimistic about effecting change as no more than 40% of the Charlottetown grouping and 30% of the reserve sample identified any of the suggested obstacles as major obstacles to change. In both cases the item most frequently considered the major obstacle was "provincial government resistance". Off reserve respondents were more likely to see major obstacles across the board but especially also with respect to community resources and community support. Only about one fifth of the reserve respondents reported that community capacity would be a major obstacle to future justice initiatives. Implicit in improving community capacity for some respondents was the need for effecting impartiality ("fairness / equity") in all programs. A few respondents suggested that the biggest obstacle to AJP progress is getting at the root causes of poverty and low self-esteem while a few others commented about the need for partnerships ("Smallness and close family ties makes things more difficult for PEI natives, Need outside help")

Overall, then the PEI respondents on and off reserves shared similar opinions and awareness about crime, problems, and the justice situation facing aboriginal people. While they did not report the crime levels, community problems and personal worries found in the larger reserves in Atlantic Canada, they did identify crime as increasing and the substance abuse problem as the central social issue. While not especially critical of the mainstream justice system or its officials, they were cognizant that there were no native faces in these systems and identified a number of problems such as inappropriate sentencing ("too severe" or "too light" but more "too light"), cultural differences, and aboriginal persons being uncertain what to do when involved with the court system; they also identified a few top priorities for change, most importantly, more legal services including a court worker, cross cultural orientation for justice officials, and victim services. There was some awareness of the new aboriginal initiatives in PEI and an appreciation of them (i.e., they were of considerable valuable for the Mi'kmaq community in PEI) but at the same time some strong qualifications about the reach or scope of the initiatives. The survey respondents expressed too a desire to know more about what is happening in aboriginal justice and how these developments might be adapted to PEI aboriginal realities. In considering suggested obstacles in the way of future justice initiatives, none were deemed to be major according to a majority of the respondents. Off reserve respondents were more likely to cite community capacity and provincial resistance as major obstacles but reserve residents appeared more optimistic on both issues.

TABLE 7

Survey Results by 3 Adult Groupings: PEI Overall, Reserves, and Elsipogtog

ITEMS	ALL PEI (67)	RESERVES (44)	ELSIPOGTOG (209
% Females	68%	66%	73%
Lived in present community all life	73%	84%	Not Available
High level of crime in community	20%	23%	67%
Crime increasing there	60%	68%	64%
Break-ins a big problem	6%	2%	74%
Sexual / other harassment a big problem	22%	21%	51%
Wife battering a big problem	21%	11%	38%
Vandalism a big problem	25%	23%	79%
Feuding a big problem	33%	46%	54%
Substance abuse a big problem	63%	68%	90%
Worry much about an attack	26%	25%	66%
Worry much about property loss	21%	16%	75%
Victim of crime in past two years	20%	18%	41%
Reported victimization to police	70%	63%	70%
Wife beating usually not reported in community	33%	20%	56%
Petty theft usually not reported	26%	25%	53%
Vandalism usually not reported	22%	21%	34%
Bootlegging usually not reported	58%	64%	68%

TABLE 7 (continued)

Survey Results by 3 Adult Groupings, PEI Overall, Reserves, Elsipogtog

ITEMS	ALL PEI (67)	RESERVES (44)	ELSIPOGTOG (209
Underage drinking usually not reported% Females	62%	66%	81%
Unreported violations may get dealt with informally	24%	23%	24%
Family Justice Area			
Divorce settlements are a big problem	11%	2%	Not Available
Enforcement of maintenance orders is a big problem	17%	7%	Not Available
Compliance with custody arrangement is a big problem	11%	2%	Not Available
Enforcement of child support is a big problem	26%	16%	Not Available
Inadequate information about family legal issues is a big problem	23%	18%	Not Available
Regulatory Justice			
Compliance with band bylaws a big problem	12%* (many don't know in city sample)	18%	Not Available
Enforcement of band policies a big problem	15%* (many don't knows in city sample)	18%	Not Available
Conflict over housing and other issues a big problem	22%	23%	Not Available

TABLE 7 (continued)
Survey Results by 3 Adult Groupings, PEI Overall, Reserves, Elsipogtog

ITEMS	ALL PEI (67)	RESERVES (44)	ELSIPOGTOG (209
Criminal court experience and views			
In past 3 years in court as accused or victim,	31%	34%	37%
Prejudiced officials a major problem	17%	14%	47%
Language, cultural differences a major problem	32%	28%	70%
Court not understanding natives a major problem,	34%	30%	65%
Communicating with lawyers a major problem.	25%	19%	51%
Sentencing appropriateness is a major problem	42%	39%	68%
Knowing what to do and how to act is a major problem	31%	31%	57%
Neglected victims' needs is a major problem	26%	23%	65%
High Priorities for Criminal Justice Changes			
More legal advice and service such as court workers	57%	46%	83%
Community involvement in sentencing	29%	26%	60%
Community programs / services for offenders	39%	33%	63%

TABLE 7 (continued)

Survey Results by 3 Adult Groupings, PEI Overall, Reserves, Elsipogtog

ITEMS	ALL PEI (67)	RESERVES (44)	ELSIPOGTOG (209
Regular court sittings in FN communities	29%	22%	64%
More services for victims	56%	50%	79%
Cultural sensitivity training for lawyers and judges	52%	45%	86%
A community justice program for minor crimes	30%	31%	71%
Moving toward an independent Mi'kmaq justice system	38%	29%	68%
Community justice committees to discuss new and different justice programs	37%	28%	70%
Family Court experience for self or other household member	18%	23%	Not Available
Knowledge of Aboriginal Justice Initiatives			
Much or somewhat informed re the MCPEI	56%	64%	Not Applicable
Much or somewhat informed about the circle keepers of PEI	52%	57%	Not Applicable
Much or somewhat informed about AJP programs	22%	17%	Not Applicable

TABLE 7 (continued)

Survey Results by 3 Adult Groupings, PEI Overall, Reserves, Elsipogtog

ITEMS	ALL PEI (67)	RESERVES (44)	ELSIPOGTOG (209
Much or somewhat informed about the native court worker program in Canada	27%	24%	Not Available
Much or somewhat informed about Aboriginal treatment and counselling programs	44%	31%	46%* (refers to Elsipogtog milieu)
Much or somewhat informed about Wellness courts in USA tribal areas	4%	0%	Not Available
Are These programs valuable for the community –much or somewhat	64%	62%	92%* (refers to Elsipogtog programs)
Mi'kmaq justice program needed to deal with matters such as			
Disputes between bands	38%	34%	49%
Non-compliance with band regulations	43%	37%	71%
Community disputes or feuds	40%	37%	74%
Victim – offender mediation	45%	37%	72%
Civil (property and other) disputes	36%	32%	76%
Community research on native justice alternatives and possibilities	56%	42%	81%

TABLE 7 (continued)

Survey Results by 3 Adult Groupings, PEI Overall, Reserves, Elsipogtog

ITEMS	ALL PEI (67)	RESERVES (44)	ELSIPOGTOG (209
Major Obstacles to having more			

aboriginal justice activity in PEI			
Community resources lacking	37%	22%	72%
Community support lacking	28%	18%	65%
Current justice system would resist	34%	22%	51%
Provincial government would resist	38%	30%	63%
Community resident would not respect it	31%	22%	58%
Communities would not see any need to	27%	20%	50%
Aboriginal communities in PEI are too small and scattered	32%	28%	Not Available
Very interested in Mi'kmaq traditions	42%	33%	60%

FUTURE DIRECTIONS

Here the researcher suggests some recommendations and possible options for the future evolution of MCPEI AJP**. T**hese are advanced in the hope of contributing to the discussions planned for reviewing the initiative, its mandate and future growth, and no special claims are being made for the researcher's standpoints, other than to note that they are empirically grounded in Mi'kmaq views and feasibility considerations as I have interpreted them. Hopefully they will contribute to fruitful strategic planning by all stakeholders. The MCPEI AJP has come a long way in a few short years despite formidable challenges and obstacles. It is poised to make greater strides in the future.

GENERAL THEMES

Specific recommendations advanced by respondents and occasionally by this researcher can be found in the text. Here the focus is on more general themes**.** One theme that has emerged from this assessment is the need for resolving the political in-fighting among the four founding parties. Conflicts concerning the authority of the board and advisory committee need to be put to rest as far as the MCPEI AJP is concerned. Similarly, the alienation and limited collaboration of Abegweit FN vis-à-vis the operations of the AJP has been a brake on the AJP evolution. Regarding the former issue, both the MCPEI and the NCPEI need to acknowledge a common position of the "carrier" responsibilities of the MCPEI and the need to have an advisory committee that is inclusive, non-political, and whose advice is well-respected. The advisory committee should perhaps exclude elected band council members, and the representatives of the AWA, NCPEI, Abegweit FN and Lennox Island FN founding parties should be joined by some of the outstanding leaders among the elders, service providers and youth. This, by the way, has happened in response to a somewhat similar situation in the Nova Scotian Mi'kmaq justice initiative last year. In the case of the Abegweit FN "alienation", the Aboriginal population in PEI is too small to sustain such limited formal collaboration in one of its central programs. Fortunately, it does appear that significant and positive changes are expected on both these matters.

A second theme is the need to respond to the high turnover in the role of AJP coordinator. Given that the AJP has only had this one staff position, the turnover has weakened the program since the tasks of the coordinator are so multifaceted (e.g., from case preparation for justice circles to organizing conferences with justice officials and Mi'kmaq local service providers to community linkages for information dissemination and discussion of future possibilities to seeking funds and responding to opportunities presented by governmental funding bodies) that there is a steep learning curve and a deep need for experience in order to optimize effectiveness. The tasks of the AJP, as reflected in the objectives for 2006-2007 are very worthwhile and necessary but also very demanding. There needs then to be a careful sorting out of priorities and the development of a strategic plan with possible phases, something that will require a fully committed and focused advisory committee's participation. More than this too, there appears to be a need for more operational support. This latter need could be met in several ways. One

would be for the AJP to secure funding for a robust and broad-based court worker position (see the elaboration below on the potential of the native court worker role) and accompanying this, there could be great advantage in the AJP engaging part-assistants for the coordinator in each of the three major Aboriginal milieus, namely Lennox Island, Abegweit and Charlottetown. The former role is required to respond to the needs expressed by Aboriginal people in this assessment and could make a huge difference for the partnership with mainstream justice officials and subsequent referrals to the justice circles. This latter role would be especially important for shoring up support and having meaningful dialogues at the community level, crucial since the evolution of the AJP programming requires more community consensus about the future directions, and additionally, it would enable the AJP to take a leadership role in coordinating interagency dialogue and formal lobbying concerning matters such as the addiction issue which was identified as the major social problems / justice substantive issue in this research. It is suggested that such part-time associates would be more effective for the operations of the AJP than simply forming community justice committees though there may be benefit in having these as well.

A third theme is the need to have flexible roles and take advantage of the holistic advantage that small scale operations can yield. If there cannot be flexibility in roles and service delivery then it is impossible to balance the advantages of small scale with its disadvantages such as the small numbers of referrals, the few ex-offenders to be reintegrated, and so on, which make a program appear inefficient and not warrant funding in official eyes. There are many examples of such flexibility in Aboriginal justice services in other Atlantic region provinces. In New Brunswick there are part-time associates in victim services in many small communities who receive a modest monthly honorarium and provide useful tracking information and two-way information flow (between local victims and Victim Services) as well as victim assistance when needed. In Nova Scotia, the MLSN aboriginal organization has multifaceted roles such as combining court worker and justice circle facilitator duties in the less densely Aboriginally-populated regions.

A fourth theme is the value of consolidating the developments already achieved by ensuring the infrastructure for justice programming is adequately in place. This would require protocols for receiving and monitoring referrals (e.g., what to do in the case of an "incomplete"), identifying the types of referrals that might be made from the different justice levels such as the police, crown prosecutors and judges and the acceptable range of extra-judicial sanctions that might be agreed upon in the early intervention justice circles. It would not be necessary to reinvent the wheel here as in Nova Scotia such protocols and policies have already been developed and implemented by the Mi'kmaq MLSN program. Another aspect would be an inventory of services and programs available for justice circle facilitators and justice officials to take into consideration when dealing with both offenders and victims. It is unclear how much work has already been done by the AJP in these regards but interviews with the circle keepers and justice officials indicated that they did not have such relevant information at their finger tips.

A fifth theme is the importance of scanning the future possibilities while concentrating on the improving the services and activities already engaged in by the MCPEI AJP. It seems clear that increasingly, as mainstream service providers either withdraw or seek Mi'kmaq partnership and leadership in responding to Aboriginal needs and wishes, there could be gaps and opportunities that require AJP services and programming. There will be such situations, as many Aboriginal respondents contended, in both the civil/family and regulatory spheres of justice. Moreover the scale factors, geo-demographic factors, cited at numerous points in the text above, and the effective utilization of the circle keepers (not to mention the return on the major investment by MCPEI in the circle keeper initiative) would seem to require an evolution of the AJP's thrusts into other areas, not only the above but also perhaps in responding to other challenges through partnering with other Aboriginal justice bodies in the Atlantic region. Overall, this imperative will require strategic planning. To assist this the researcher will make a few observations below about strategic planning and perhaps more importantly enclose in the appendix to this report recent strategic planning models adopted by Aboriginal bodies in both New Brunswick and Nova Scotia.

A STRATEGIC PLAN

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 socials 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 more 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.

A strategic plan involves articulating priorities, feasibilities, responsibilities, timing, and anticipated challenges and positive outcomes. Rough ideas are advanced here. Guiding the strategic plan are several key themes, namely (a) the concept of building upon, not jeopardizing, what was been accomplished and is working well; (b) the patient perspective of Mi'kmaq political leaders which emphasizes getting it right rather than getting it quickly; (c) the concept of a continuum of Mi'kmaq justice from the perspectives of management, ownership and values. Such a continuum, as noted above,

would be anchored at one end by the standpoint of "integration and fairness" as exemplified in most inquiries and commissions on aboriginal justice since the late 1980s and, at the other end, "autonomy and control" as exemplified in the recommendations of the Royal Commission on Aboriginal Peoples. It seems fair to say that currently the MCPEI AJP is more at the 'integration and fairness" end of the continuum since its programs are principally reactive to CJS referrals (providing restorative justice alternatives in cases of minor crime) and court charges (providing information and support to defendants). The strategic planning encouraged by this report would be incremental, starting with feasible changes in Mi'kmaw involvement within the mainstream justice system, and with the support of Mi'kmaq leaders and FN members and, in collaboration with the governmental partnerships that have been nurtured and should continue to be nurtured, evolving into a more Mi'kmaw system for Mi'kmaq communities in PEI.

The principles that underline the strategic plan are at least three-fold, namely (a), Do not jeopardize the significant MCPEI AJP achievements. Overloading staff, and not tailoring MCPEI AJP's evolution to management capacity and funding feasibility, has to be always guarded against since the demands for more justice initiatives are considerable; (b) Moving along the continuum toward the RCAP pole requires both province-wide organization and Mi'kmaq direction and vision sustained by community linkages and accountability to Mi'kmaq FNs. Given the powerful centrifugal forces inherent in construct of independent FNs and particularly now that the bar for consultative policy formation has been raised, this principle is crucial and applies even if short and mid-term evolution will be largely in the criminal justice sphere (e.g., getting more engaged routinely in dealing with offending); (c) Evolution will require some institutionalization of MCPEI AJP, manifested in longer term core funding so that such planning and strategizing for the future can occur and virtually all management energies not be focused on survival of the existing state of affairs. It would appear that significant growth would require additional core funding along with funding under the Native Court Worker Program (sufficient to maintain a full-time managing director, adequate administrative support, and modest payment for part-time associates). The current level of MCPEI AJP management, a full-time coordinator manager, would mean limited growth potential for MCPEI AJP and risk continued turnover in that position.

There are several assumptions which undergird this strategic plan. The most basic is that there is a three-fold way by which MCPEI AJP may advance the justice agenda along the direction envisaged, namely (a) through direct program development, management and direction, (b) through coordination and partnering with other Mi'kmaq and perhaps mainstream agencies, and (c) through advocacy with its collaborators in the emerging Office of Aboriginal Affairs and possible Tripartite Justice Committee. There may well be a wider range of initiatives in the future but funding constraints and management capacity suggest that, in areas such as victim services and conflict resolution, the short and mid-term strategy might be to find partners to co-deliver such services. For example, there is much demand among Mi'kmaq people for more balance in MCPEI AJP services by having it provide more information and support for victims, largely though not limited to the court process. Solutions may be found in partnering with

the provincial Victim Services for modest "para-legal" funding (as is the case in New Brunswick among a handful of FNs) and simultaneously partnering with bodies such as local service providers in family and community services (e.g., the Women's Shelter in Lennox Island).

A third role for MCPEI AJP relates back to the purpose of discussing Mi'kmaq justice issues and in their advocacy. There is some of that going on at present (e.g., the conference in February 2007) but much more might be done. It is clear from the Mi'kmaq interviews with opinion leaders, local agency personnel and political leaders that the two consensus justice priorities are more cultural awareness, visibility and presence of Mi'kmaq persons in the mainstream justice systems and dealing more effectively with the matter of alcohol and drug abuse and addiction. The MCEPEI AJP can a very appropriate and effective forum to consider possible initiatives along these lines, some of which could bring funding for services (e.g., the aboriginal perceptions orientation of the RCMP), involve identifying other service deliverers, or encouraging proposals submitted by other bodies. For example, a healing to wellness court appears to be an effective response to addictions in USA tribal jurisdictions. This, in Canada, would be a provincial criminal court and leadership on such a proposal would have to come from judges and provincial officials as well as Mi'kmaq advocates; also, it would likely require inter-provincial collaboration among some FNs in the Atlantic region.

POSSIBLE PHASES

Assuming that the "political" issues noted above are dealt with, the NCPEI AJP should continue to stress its designated objectives with respect to the criminal justice area in the next phase of its evolution. That is where it started and that is where the mandate is clearest. In this next phase, phase one of what is being proposed, there should be an emphasis on structural and infrastructural matters. The latter concern whatever is required with respect to issues of the protocols, inventories, pamphlets and web site discussed above. The former refer to securing the court worker program and putting in place a system of part-time associates to assist the AJP coordinator. There should also be more effort at community dialogue about the future thrusts of the MCPEI AJP and exploration of more utilization of the circle keepers. Community support and community efficacy are crucial to any enhancement of the AJP justice activities (such as laying adequate groundwork for involvement in civil/family and regulatory justice matters) in phase two.

Phase two, two or three years later, could see the early intervention justice circles taking on more serious offenders in referrals from justice officials. It could also be expected that circle keepers could be engaged in some family and regulatory matters. There could be task forces coordinated by the MCPEI AJP focusing on justice-based and holistic (especially health, justice and perhaps native spirituality sources) strategies for dealing with major problems such as addiction. Partnering with mainstream and other FN communities in the Maritimes (e.g., reintegration services, treatment, and specialty courts) would also become major trajectories to pursue in this stage.

THE NATIVE COURT WORKER PROGRAM

As was recommended often by respondents in the text of the assessment report, the centerpiece of the first phase of the strategic plan suggested for the MCPEI AJP is to secure funding for an aboriginal court worker under the (ACP) program. The ACP is a federal –provincial cost-shared program currently in operation in every jurisdiction in Canada save New Brunswick and PEI. Formerly labeled the Native Court Worker Program (NCWP) its roots goes back over forty years to largely voluntary efforts organized through the urban Friendship Centres and focused upon mitigating the cultural and experiental gaps between the criminal justice system's officials and aboriginal peoples, primarily offenders being processed by the system. . The central objectives were to assist aboriginal clients in securing legal information and services and to support them in a context where there were "no native faces" among the officials, and major issues of language and cultural differences abounded. It aimed at better, fairer integration of native peoples in the justice system. The first federally-authorized pilot projects occurred in the early 1970s in Western Canada and by the end of the decade the pilot projects were transformed into a program, a program which has survived over the years and is essentially the only federal Aboriginal justice program in place even today (there is a minor native law program also extant).

The program has evolved formally and informally. Formally, its mandate was extended in 1987, in the wake of the Young Offenders Act, beyond Aboriginal adult accuseds in the criminal justice system, to include young Aboriginal accused persons. Informally, there was for years some acknowledgement that courtworker activities extended beyond assisting persons being processed as accused offenders in the criminal court but such activities – community-based work, legal information work and even assisting victims on occasion at least with referrals – were not formally defined as part of the courtworker's mandate. Over the past decade, and as a result of a growing gap between the formal mandate and the actual court worker activities, it has become accepted – and is acknowledged in the official federal government website on the Aboriginal court worker program - that "besides providing in-court information, advice and community referrals to Aboriginal persons in conflict with the law, courtworkers are increasingly involved in helping promote and facilitate alternative justice models, cooperating with community councils, and coordinating clients participation in diversion programs". Thus, while the formal mandate of the courtworker has not changed since 1987 the official definition of the role certainly has. Such evolution is crucial and now positions the courtworker as a key role for facilitating both a wide range of support services for clients and a greater First Nation community participation and sense of partnership in justice matters. **Because of this evolution, the courtworker role is essential for PEI's Mi'kmaq people and it is essential that the "carrier" of the program be the MCPEI AJP**. Had the definition-of-the-situation not changed, the

courtworker role would have remained focused on individual support and in-court activities and its efficiency would depend in large measure on the number of Aboriginal accused persons being processed by the criminal justice system. Thus, it would have been a lower priority for MCPEI AJP given its central objectives and the small number of Aboriginal persons charged with a criminal offense.

In the Maritimes, unlike other parts of Canada, the courtworker program has been either non-existent or "off-and-on". In Nova Scotia (see Clairmont, 2001) the program had several lives but never lasted for more than two and half consecutive years from the 1970s until the current program under the auspices of the Mi'kmaq Legal Support Network which has now accomplished that feat. A number of factors accounted for the intermittent collapses but the main one was the province withdrawing its commitment (indeed in one period when the province withdrew its financial support the Union of Nova Scotia Indians provided the province's share for a while in order to keep the program afloat). Over twenty years ago there was apparently also a courtworker program in PEI but it too proved to be short-lived and it is unclear what accounted for the demise. With the expanded role of the courtworker program now having official sanction, a strong case can be made for its re-emergence. There has been some Aboriginal courtworker activity provided through New Brunswick Corrections over the past several years with federal funding support but not apparently under the Aboriginal Courtworker Program. While that initiative has been appreciated by Aboriginal clients and local FN leaders, it has been very client-focused and there has not been the sense of community and Mi'kmaq participation and ownership.

In all four sectors of research for this assessment – focus groups, mainstream police and justice officials, one-on-one interviews with First Nation local leaders and service providers, and the community survey – there was strong support for a robust courtworker program under the direction of the MCPEI AJP. In the focus groups, launching a courtworker program was deemed to be the number one priority for advancing Mi'kmaq justice interests. The other justice priorities, making more information about legal matters and services available to Aboriginal people and being an effective liaison for greater awareness and cultural sensitivity among mainstream justice officials, could readily be seen to be associated in part with a robust definition of the role which transcends in-court information and support to the accused persons.

In the interviews with mainstream justice officials at all levels there was support for having an Aboriginal courtworker program. Police officers believed that it would help some accuseds and would contribute to fewer "no shows". One officer who has worked intensively in Lennox Island opined that "unlike other Aboriginal locales, the people here seem reasonably satisfied with the mainstream way of justice" and a courtworker program would make that fit even better. Another officer, an aboriginal, earlier observed that in recent years there has a cultural awakening (e.g., annual pow wows just began in 2002 or 2003) and much more culturally sensitive policing as police have become aware of the salience of this aspect. At the same time, she noted the ambiguity of "cultural salience" and drew attention to the fact that girls doing drumming, the nature of the drumming and the sweats were, in her view, all foreign to the Lennox Island traditional

culture so she was uncertain where the cultural awakening is going. In this uncertainty, having a proactive courtworker could be of benefit to all parties in liaison and information flow. A senior police officer with considerable experience in Lennox Island in particular underlined that viewpoint, adding that the biggest policing issue in a community such as Lennox Island, where there is a community tripartite agreement in place, is providing a consistent, empathetic service and that requires a good fit between the officer's approach and policing style and the community's style and policing preferences; a good courtworker networking well and knowledgeable about services and people, could greatly facilitate that fit. A veteran crown prosecutor observed that interpreter service has never been requested in his long experience prosecuting Aboriginal offenders in PEI but cultural differences can impact on conventional socio-economic and personal needs and therefore a courtworker program would better identify these needs and make justice more effective. Like other justice officials he shared the hope that such a program would reduce the "no shows" problem in processing Aboriginal cases. While acknowledging the "problem" of few Aboriginal court cases, he considered that the courtworker role could combine some crime prevention activity and also be involved in the preparation of Gladue reports (up to now there have been no such Gladue reports prepared for a PEI native person but there have been several in recent years in Nova Scotia).

Legal Aid noted that Aboriginal clients seldom if ever come to their offices prior to court appearance (and were "no shows" for appointments) so clearly a proactive native courtworker would be valuable in apprising the clients about the court process and what they might expect with regards to legal Aid and other court processing matters. The view was expressed that the courtworker program should be top priority since the court cases such as assaults, the other major concern for the respondent, were deemed to be too difficult for the circle keepers (restorative justice) to handle at this time. Judges indicated that such courtworkers could perform a valuable service to the court processing system as well as to the clients and suggested that one courtworker could serve the entire province since court scheduling could be arranged conveniently (i.e., at present the Summerside docket is Wednesday and Charlottetown's is Monday).

Federal Corrections officials noted that the number of PEI Aboriginals incarcerated in the federal institutions has been "extremely low" over the years and provincial Corrections officials reiterated that view regarding the provincial scene, noting that well less than 2% of the probation caseload in PEI is Aboriginal. One senior provincial official emphasized that in small provinces such as PEI and small FN communities such as exist in PEI, it is crucial to have flexibility in program delivery since if not, one cannot balance the disadvantage of small scale with its advantages such as a more holistic approach. Thus he believed that a robust courtworker role is essential and to some extent that that was how the provincially appointed Aboriginal courtworker did her job, engaged in visiting inmates, offender reintegration counseling and crime prevention work as well as in-court services. Far from feeling threatened by the MCPEI AJP having a courtworker program under the existing federal-provincial program, this veteran suggested strategies to make such funding more probable, namely emphasizing crime reduction, anti-violence activity and the mobilization and communication of

pertinent legal information (not of course legal advice), along with conventional courtworker services. In his view, were there not such facets to the courtworker role, the role would be problematic since one might deal with "only one or two cases over say a six week period". An MCPEI-directed court worker initiative would well compliment the work of the current staff member under provincial supervision who focuses much on preparing and monitoring a case management program with aboriginal offenders.

In the community surveys respondents 75% of the 60 respondents (to date) checked 'high priority" for the need for "greater legal advice and services such as a courtworker program" and a handful of the remainder were uncertain concerning the priority level in large part because they were unsure about what courtworkers did. In their comments "more legal services" and "an aboriginal courtworker" were most frequently cited. Local leaders and service providers, generally possessing a greater knowledge of the criminal justice system and often in regular contact with its officials, shared that assessment. Pending aboriginals occupying roles such as prosecutor, duty counsel or judge, they held that the courtworker role was a top priority. In the off-reserve milieu, the several respondents highlighted the priority of a courtworker program, especially the need to have knowledgeable native assistance beyond Legal Aid. They usually noted too that the AJP, if not the MCPEI in the case of some Native Council respondents, should be at the forefront of aboriginal justice initiatives and thus the appropriate carrier agency. They highlighted the need for better informing native persons about their rights in court and greater cultural sensitivity on the part of justice officials such that differences in aboriginal and mainstream cultures are recognized; both these areas of concern they believed would be furthered by the courtworker program. In the Abegweit milieu, all the respondents shared the view that of one very knowledgeable woman that "a broad-based courtworker role would be helpful" and essentially reiterated the views expressed among the off-reserve subsample. Several respondents pointed out that youths in particular would benefit since "youths do not speak up enough in their own defence" and "they do not understand what the police are doing and sign things to get out of jail that perhaps they should not have done. They want to get home and get released".

In the case of Lennox Island key informants, virtually all the above themes concerning the value of a courtworker initiative were again articulated. An additional point was expressed more clearly, namely that there is a widespread view among residents that many offenses, certainly the more serious ones, are best dealt with at this time by a judge in court; given that viewpoint, the courtworker as liaison between interests and cultural differences and as a key purveyor of legal information to individuals and the community at large would be understandably quite important. Other themes raised included the contention that older Aboriginal persons may be more intimidated by the criminal justice system than youths, and that the courtworker should have a holistic approach and assist in breaking down the "silos" between health and justice. Generally, the Lennox Island interviewees considered that courtworkers and the criminal justice system should be the priority, not family justice intervention or even regulatory justice initiatives; as one interviewee observed, "that [the criminal justice system] is what we started so let's do that first".

Other respondents directly associated with the MCPEI AJP also strongly expressed the priority of having a courtworker program under its mandate. They recognized the need for a robust courtworker role and several readily identified with the concept of a native justice worker and / or possibly a native youth justice worker which convey such a conception. The realities of funding (certainly in connection with the NCWP) would undoubtedly require the label courtworker and that focus is consistent with the widespread consensus we have described above. Other issues were raised such as the possible engagement of the courtworker in regards to victim services, a key concern of many respondents both in the native communities and among mainstream justice officials, and whether the courtworker would have any role vis-a-vis family court. At this point in time, these areas – victim services and family court – seem beyond the currently accepted evolution of the courtworker role.

The data from the criminal justice system indicate that there are only modest numbers of Aboriginal persons who are charged and processed for crimes in PEI. The police statistics dovetail to a considerable degree with the views of local Aboriginal leaders and service providers, namely that reported violations are few. The reported violations that are dealt with through actual charges being laid in court are much fewer; apart from assaults and administration of justice offenses, most violations are dealt with at the police level through police cautions and occasionally, referral to restorative justice venues. Accordingly, a narrowly conceived courtworker role would be difficult to justify on a full-time, year-round basis. A robust multifaceted courtworker role, as has been evolving throughout Canada, would, however, greatly benefit the individual accused persons, the court system and the Mi'kmaq communities. It would mean higher quality service and support for the criminal cases that do arise, and, as has been the case among the Mi'kmaq in Nova Scotia, likely lead to more referrals to restorative justice and the circle keepers by mainstream police and justice officials. Part-timers would be less likely to acquire the requisite knowledge and networks to be as effective. It would mean fewer "no-shows" and more confidence among court officials that Aboriginal language and other cultural differences are being heeded and that the Aboriginal persons in court are fully informed. It would mean – via outreach, community information sessions, exploration of the range of extra-judicial sanctions and local support services and so on - that the Mi'kmaq communities in PEI would be better informed and ultimately more confident in taking on a larger partnership role in the administration of justice especially on the reserves. The flexibility of the modern courtworker role fits well the imperatives of the small, multi-located PEI Aboriginal population. The fact that the Aboriginal Courtworker Program is a program and would not require year-to-year renewal underlines its significance for Mi'kmaq people in PEI.