ABORIGINAL JUSTICE IN LIGHTLY POPULATED ABORIGINAL COMMUNITIES: THE PRINCE EDWARD ISLAND CASE

THE ASSESSMENT OF THE MI'KMAQ CONFEDERACY OF PEI'S ABORIGINAL JUSTICE PROGRAM

FINAL REPORT

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EXECUTIVE SUMMARY

This assessment examines how the AJP has evolved over the past three years and explores future trajectories for its development. It centered on the three major objectives highlighted in each annual report issued by the MCPEI AJP since its inception, namely (a) networking, communicating and building partnerships with the CJS and other mainstream officials; (b) building Aboriginal community capacity in the justice and justice-related areas, and (c) establishing and implementing an 'Aboriginal' justice system of intervention, especially through various types of circles. In addition, key specific questions formally advanced by the AJP were considered. Both quantitative and qualitative data were gathered and indeed information from all salient sources, whether secondary or primary data sources, was sought. The research methodology was multi-dimensional but the core consisted of almost 70 one-on-one interviews and extensive analyses of literature, documents and diverse accessible data.

The assessment begins with a review of five major justice events and how they have shaped the context for current Aboriginal justice initiatives. The five are (a) the Constitutional Act of 1982 which affirmed and enshrined Aboriginal rights; (b) the 1989 Marshall Inquiry; (c) the RCAP reports in 1996 which set out a different trajectory and agenda for Aboriginal justice; (d) the 1999 SCC's Gladue decision that emphasized the unique considerations that should be taken into account by judges when sentencing Aboriginal offenders; (e) the SCC's 1999 rulings in the case of Donald Marshall's conviction for illegal eel fishing that had profound effects for Aboriginal economic development and Aboriginal regulatory governance. In addition, recent pivotal developments were considered, namely (a) trends in federal funding of Aboriginal justice initiatives that earmarked capacity building so that FNs could better develop and administer justice programs; (b) the growing academic and activist consensus that Aboriginal uniqueness and rights for greater self-government in justice and other matters do not depend on Aboriginal socio-economic disadvantage and deep cultural differences but rather on their being the original sovereigns in their traditional territories; (c) the emergence of social movements in justice with special significance for Aboriginal people which appear to call for significant, perhaps regional, extra-band partnership among Aboriginal peoples, and (d) the increasing popularity of restorative practices in all aspects of social life, a development that might be salient, and raise the bar, for the AJP in PEI.

The assessment then turns to contexts specific for MCPEI AJP, namely socio-demographic patterns, Aboriginal political economy in PEI, crime and police statistics, and justice concerns beyond the criminal justice system. Analyses of census data, as well as INAC data on population and post-secondary education trends, identified a number of key points with major relevance for the AJP. Twelve census patterns were noted ranging from where Aboriginal population is growing to trends in family composition and socio-economic wellbeing. The implications of the small Aboriginal populations in PEI for the feasibility of justice programs and services such as separate courts, court workers and so forth were considered at length. The increasing integration of registered Mi'kmaq in mainstream PEI society as a result of post secondary education and economic

collaboration also has demographic implications both for natural population growth rates and intermarriage and, under federal eligibility legislation, for registered status. Sharp differences in post-secondary education attainment between females and males, with the latter much less likely to go on to that level, were identified and linked to special concerns such as gender issues in interpersonal relationships.

Turning to political economy, important contexts for justice were noted, such as the 2007 PEI tripartite Partnership Agreement, the stronger relationship between the provincial government and Aboriginal people, especially the FNs, issues over the roles of the NCPEI, MCPEI and its constituent FNs, and collaboration with other FNs in the region. Economic developments were discussed and important progress noted, largely powered by developments centered on fisheries. The economic gains appeared significant but INAC's comparative community well-being scores showed a less salutary picture for PEI's FNs, aside from education. In-depth analyses of crime and police statistics indicated a fairly stable pattern of modest crime in the FNs and also among Aboriginals in the urban areas. The implications of these crime findings for MCPEI AJP activity and priorities in the justice field were discussed at length.

The section on specific contexts for AJP activity concludes with a consideration of possible mandates beyond the CJS. Given the considerable possible significance of Aboriginal governance in the fisheries sector, attention was paid to violations there and how they are and might be dealt with. While the impact on the AJP may be quite modest in terms of the number of referrals, still, recourse to the circles for fisheries violations is important for symbolic reasons, not least because "the fisheries" is such a key economic area for Aboriginals in PEI. There are other regulatory concerns that could possibly benefit from AJP engagement, such as the whole area of band bylaws and policies. These and related issues were discussed at length since there are important requisites and challenges to take into account. Extending the AJP approach (e.g., circles, CK facilitation) into the areas of family violence and beyond the criminal justice system into the family and civil justice spheres, was also explored. Most respondents, mainstream and Aboriginal, did not consider them to be currently major problems in the FN communities. The available data did seem to support that position but the data were inadequate and did not track Aboriginals especially in the family and civil court; moreover, the seemingly non-use of civil and family courts by Aboriginals could be interpreted as a problem in itself. Three areas were suggested where the AJP may play a significant future role, namely in responding to CJS referrals involving family violence, in extending its approach in cases of non-criminal family and civil disputes in collaboration with other services such as MCPEI CFS), and in filling the current gaps in providing information to Aboriginal peoples about family and civil legal processing where, unlike in criminal matters, it appears that Aboriginal people do not utilize the courts and are unrepresented in the few times that they do. Such AJP evolution would require more AJP strategic action planning, more CK training and upgrading, and stronger community linkages, and these in turn would require more resources.

The assessment then turns to an in-depth look at the AJP program itself, primarily dealing with the evolution of the AJP since the last assessment in 2007. A chronology

lays out the overall development of the AJP since its conception in the early 2000s. The AJP's objectives and activities are closely examined, followed by a description of the number and variety of circles carried out by the AJP since 2007; the circles, by consensus in both mainstream and Aboriginal society in PEI, constitute the centerpiece of the AJP program. The section concludes with an assessment of the AJP's evolution, successes and challenges. The evidence indicates that the central AJP objectives were well implemented. Building community capacity remains a major challenge and, to significant degree, so do protocol development for CJS referrals and exploring the possibilities of the AJP approach in the family and regulatory areas of justice. The major annual meetings - the AGM, the Circle Keepers Conference, and the Annual Aboriginal Justice Forum - crucial for the AJP from many points of view (e.g., networking with mainstream officials, CKs learning from peers elsewhere in Atlantic Canada, and accountability to PEI Aboriginal communities) have been quite successful in drawing the targeted population and generating discussion on key issues such as protocol development, advancing collaboration on victim services, and exploring possible futures. The AJP in the last three years also has increased its base funding as well as obtained special funds for upgrading CKs and carrying out research.. Other data indicated that the AJP has improved "on-the-ground" relationships with the NCPEI and has succeeded in eliminating some restrictions initially imposed by the FNs on the assignment of CKs.

Analyses of the circles held by the AJP since 2007 show that there has been a modest, but steady number of conventional restorative justice circles held once the AJP got fully operational after 2008. The AJP has also carried out a number of what have been labeled sentencing-recommendation circles which may be seen as satisfying the Supreme Court of Canada's Gladue imperatives. The Healing circle is an interesting example of the AJP's reaching beyond the strict definition of CJS referrals, responding to suggestions of CJS officials and to the direct requests of Aboriginal persons. The number of circles of all types has increased from eight / nine in 2008-2009 to fifteen or so in the last two fiscal years. The evidence from completion rates and from the testimony of the circle keepers / facilitators and from the CJS staff who have attended the sessions is that the circles have been quite successful; however, usually both CKs and CCS persons reported that they would welcome more follow-up information on the session's impact. Unfortunately no first-hand data have been obtained from the offenders, victims and other participants, a shortfall that should be corrected. Also, a more sophisticated data management system should be utilized to record circle data in order to ensure complete coverage and assist internal assessments of the circles' impact.

The AJP has made significant progress since 2007. There are more and diverse circles being held in the Aboriginal communities, and networks and collaborative strategies with mainstream justice services have entrenched the AJP program in the CJS. The director has provided effective leadership and improved the standing of the AJP in the mainstream society and among the FNs. The AJP has also been reasonably successful in obtaining funds for valuable supplemental front-end initiatives. There are nevertheless major challenges to be faced, particularly around the issues of building community capacity and the future direction of the AJP. The suggestions advanced in the 2007 assessment – a robust court worker program and part-time outreach workers in the three

key Aboriginal milieus of Lennox Island, Abegweit and Charlottetown continue to have merit in relation to those challenges if the AJP is to evolve further. Another crucial consideration would be freeing up the AJP director to do more specific targeted engagement with mainstream and Aboriginal leaders and more strategic action planning.

The views of key Aboriginal persons concerning the AJP initiatives were obtained. The circle keepers, almost all of whom were interviewed, constituted a significant slice of the Aboriginal leadership and influential grouping in PEI. They were quite positive about the CK role and the circles in every respect (for Aboriginal justice, offenders, and their own personal life) and generally were quite eager to do more circles. They appreciated the accomplishments of the AJP in putting a solid program in place, networking and partnering with CJS officials, and contributing to an Aboriginal justice strategy in PEI. They identified some shortfalls at the level of community presence and linkages, and offered suggestions to deal with that issue. They suggested a number of specific priorities for Aboriginal justice in PEI and advanced specific ideas for improving the CK role within the AJP. They typically valued a more holistic approach that could include dealing with more serious offences, visiting school to do presentations on the CK / circle activity, and contributing to an overall improvement in the quality of life in Aboriginal communities by implementing the CK/circle approach in disputes and conflicts throughout Aboriginal communities. The CKs appreciated that such an evolution would require more training and upgrading for their role and activity, the support of mainstream justice officials, stronger linkages with and acceptance in the Aboriginal communities, and more resources for the AJP.

Aboriginal elected leaders and AJP advisory board members – persons with significant roles, whether directing or advising, vis-à-vis the AJP - were quite positive about the accomplishments of the AJP, especially in relation to its objectives of networking with and orienting mainstream CJS officials, and developing the circle process. They were less positive with regard to the AJP success in building community capacity. Both groupings advanced a need for the AJP to build upon past successes and expand the program. There was however a sharp difference of emphasis between these two groups as the small sample of FN - elected leaders, the directors of the AJP - emphasized a more holistic AJP engagement beyond the CJS, while the small group of advisors focused more on the CJS. Other informed stakeholders considered that the AJP had achieved much over the past three years, especially in two of its objectives, namely networking with and orienting mainstream CJS officials and credibly establishing justice circles, especially for youth. They too had some reservations concerning the impact on community capacity in the justice area and viewed that objective as pivotal for the future directions they hoped that the AJP would consider, namely pioneering a more holistic approach to conflict, disputes and the quality of life in Aboriginal milieus. They appreciated that the AJP would need more resources to enable the director to continue to lead the AJP along the paths already successfully being mined and, as well, explore strategic action plans for a broader AJP role in Aboriginal life on PEI.

The views of the mainstream CJS role players were also obtained, particularly officials in Corrections and Community Services (the CCS) since the CCS's in-depth

engagement with Aboriginals and the AJP, from prevention to treatment, and with both offenders and victims, is quite unique in Canada. Other CJS role players, namely the Police, Crown Prosecutors and Legal Aid Lawyers, and the Judiciary, were also interviewed. Police respondents reported significant and positive changes with respect to the appropriateness, cultural awareness and engagement of the policing in Aboriginal milieus. The AJP's networking and its justice circles were generally considered by police respondents to be successful initiatives. The judges supported the current thrusts of the AJP and expressed a willingness to accommodate to AJP concerns. They reported little contact or familiarity with the AJP though they were quite informed and experienced with broader Aboriginal justice issues. The judges, like the police, did not foresee the AJP going beyond its current level of involvement in the CJS but held that there could be valuable work done by the AJP in other areas of justice and at the level of community conflicts. The crowns and defence counsels alike held that Aboriginals were not much different than the mainstream offenders in the type of offences, demeanor in court, alcohol and drug dependency etc. Both crowns and legal aid interviewees identified referrals to the AJP as minor offenders with, at worst, a modest criminal record, and did not see the diversion to AJP as impacting much on their own workload. There was more nuanced difference among the interviewees in terms of how effective they perceived impact of the AJP referral to be for the offenders but a common position adopted was that the AJP intervention, at least for the immediate future, should be limited to minor offences and offenders. There were a number of suggestions advanced for AJP consideration, ranging from better communication of circle outcomes to developing a much broader vision for itself. Certainly, the consensus view of the CJS officials was that the AJP should focus more on conflict at the community level and crime prevention while its CJS interventions should be limited to minor offenders and offences.

The conclusions of this assessment focus on issues of future directions for MCPEI AJP. The themes here are six-fold, namely (1) prospects for increased and different types of CJS referrals; (2) possible expansion of AJP activity into other areas such as schools and non-CJS conflict / disputes, and the implications of such a mandate; (3) the requirements of protocol development and data management; (4) resources issues and staffing needs in order to free the director to pursue expansion and new directions; (5) greater collaboration in programming and service delivery with both mainstream and other Aboriginal organizations in Atlantic Canada; (6) strategic planning for the mid-term and long-term visions of MCPEI AJP.

LIST OF ABBREVIATIONS

ACWP	Aboriginal Court Worker Program (formerly NCWP)
AFNs	Abegweit First Nations
AJP	Aboriginal Justice Program (PEI)
APD	Aboriginal Policing Directorate
AWA	Aboriginal Women's Association (PEI)
CCRA	Corrections and Conditional Release Act 1992 (amended)
CCRSO	Corrections and Conditional Release Statistical Overview
CCS	Community and Correctional Services
CJS	Criminal Justice System
CK	Circle Keeper
CRC	Conflict Resolution Circle
CTA	Community Tripartite Agreement (Policing)
CWB	Community Well-Being (INAC)
CYW	Community Youth Worker (PEI)
CRCVC	Canadian Resource Centre for Victims of Crime (also NRCVC)
DFO	Department of Fisheries (Canada)
EJM	Extra-Judicial Measures
EJS	Extra-Judicial Sanctions
EIC	Early Intervention Circle
FASD	Fetal Alcohol Spectrum Disorder
FN	First Nation
HC	Healing Circle
INAC	Indian and Northern Affairs Canada
LIFN	Lennox Island First Nation
MCPEI	Mi'kmaq Confederacy of Prince Edward Island
MLSN	Mi'kmaq Legal Support Network (Nova Scotia)
M.O.U.	Memorandum of Understanding
NBVS	New Brunswick Victim Services

NCPEI	Native Council of Prince Edward Island
NCWP	Native Court Worker Program
NSVS	Nova Scotia Victim Services
NOV	National Office for Victims, Public Safety Canada
NPB	National Parole Board (Canada)
PEILA	Prince Edward Island Legal Aid
PSE	Post-Secondary Education
PSR	Pre-sentence Report
RCAP	Royal Commission on Aboriginal Peoples
RJ	Restorative Justice
SC	Sentencing Circle
SrecC	Sentencing recommendation Circle
SCC	Supreme Court of Canada
VIS	Victim Impact Statement
VS	Victim Services (PEI)
YJS	Youth Justice Services (PEI)
YJW	Youth Justice Worker (PEI)
YIOW	Youth Intervention Outreach Worker (PEI)

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INTRODUCTION

In the 2007 assessment of the MCPEI AJP completed by this researcher, it was observed that these are exciting times in Aboriginal justice across Canada as First Nations and other Aboriginal groups seek to realize the promise of their constitutional rights and new flexible government policies in developing justice programs that respond to their own needs and wishes as their societies evolve in terms of self-management. That excitement and perception of options continues to grow as does the need to carefully assess initiatives so that the First Nations involved can profit from the opportunities increasingly available and craft justice programs suitable to their needs and preference. Increasingly, too, there is from the funding governments and the First Nations' constituencies, a demand for evidence-based policies and programs. It was also noted in the 2007 assessment that until recent years the almost exclusive thrusts in Aboriginal justice were with reference to minor crime (Hollow Water excepted), court support for defendants, and support services for those who were incarcerated. While these foci remain crucial (witness the 2006 report of CSC's investigator concerning racism and inequity within Canada's penitentiaries), the emphasis is increasingly on exploring new Aboriginal justice programming across all justice spheres, including the regulatory area of securing band members compliance with band policies and contractual obligations, and also family justice issues, not simply reacting to limited opportunities available in the criminal justice system. That situation remains important and increasingly so in Aboriginal communities with small populations where efficiency and effectiveness virtually require a broad engagement on the part of the modest-sized justice organizations. Those same contextual imperatives also usually require collaboration among First Nations, as well as the establishment of strong networks with mainstream justice officials, and government bureaucrats in economic and social services.

There is a large variety of Aboriginal justice initiatives all across Canada that can be profitably scanned for best practices and specific insights on the above issues. This was done in the 2007 assessment and an updating of this literature and the Aboriginal program context for this 2010 assessment has been completed for this assessment. Similarly, they are other justice initiatives in Atlantic Canada as well that merit attention

for MCPEI, AJP. Again these were discussed at length in the 2007 assessment but interesting new relevant developments have occurred in the past several years in both New Brunswick (e.g., Aboriginal court initiatives) and in Nova Scotia (e.g., community linkages to the province-wide organization, victim services, special programs for youth-at-risk, and initiatives regarding domestic violence); these too were updated in this assessment. The other crucial context for the "placing" or analyzing the specific objectives of the assessment would be the developments in justice and other institutional areas (e.g., the economy, social services) so here too there was a thorough updating carried out.

THE TASK

At time of the 2007 assessment, the AJP was just getting underway. The infrastructure had significantly been put in place. The circle keepers (CKs) and circles were ready to go, though few circles had been scheduled (basically several conflict resolution circles and, most importantly, a "full monty" sentencing circle which took place in Lennox Island in November 2007) and senior MCPEI officials expressed concern about the need for formalization of the referral process and protocols for the AJP, and the under-utilization of the circle keeper program in which the MCPEI had invested $128,000. The major task of the 2010 assessment was to examine how the AJP evolved over the subsequent three years. The examination centered on the three major objectives that were highlighted in each annual report issued by the MCPEI AJP, namely (a) networking, communicating and building partnerships with the CJS and other mainstream officials; (b) building Aboriginal community capacity, and (c) establishing and implementing an 'Aboriginal' justice system of intervention through various types of circles. In the examination / assessment both quantitative and qualitative data were gathered and indeed data from all salient sources whether secondary or primary data sources were sought.

The major task of this 2010 assessment could be operationalized as evaluating the following key questions as formally advanced by the AJP itself, namely

1. Has the AJP program resulted in the development of collaborative partnerships with key community, Law enforcement and government representatives?
2. Was the program successful in strengthening partnerships?
3. Has the program been successfully engaged both Aboriginal and government stakeholders?
4. Has the program been successful in enhancing skills among Aboriginals relevant to justice objectives?
5. To what extent have the program participants been satisfied with the program processes and outcomes?
6. Have the anticipated short-term outcomes been achieved?

The emphasis on partnerships and collaborative networks, satisfaction with programs and distinguishing between phases in the evolution of the AJP was congruent with the strategic action plan advanced in "Future Directions for the MCPEI, AJP" discussed in the 2007 report. The 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, it was very appropriate to go beyond the foci of the 2007 assessment which examined what was been put into place by the MCPEI, AJP, and how it was seen by the organization (board, staff, volunteers) and other stakeholders, and their views concerning the future directions. Now the focus properly shifts to the questions identified above in order to determine how the MCPEI AJP has evolved. Of course, how the program relates to the justice needs of Mi'kmaq (and other Aboriginal) people in PEI remains the central issue.

In advancing the thrusts and tasks of this assessment, the centerpiece always has been 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. Therefore the central thrusts in this assessment included (a) the three key objectives reflected in the six AJP questions listed above; (b) the contexts of Aboriginal Justice developments elsewhere and of PEI / MCPEI developments; (c) the implications for future directions in MCPEI, AJP justice objectives.

THE APPROACH FOLLOWED

The approaches delineated below were as initially planned for with one major exception, namely contacts with the clients of the circles. The evaluation could not gain access to the offenders, victims or supporters involved in the circles for reasons of AJP-promised confidentiality; also, no systematic data management system was in place so the evaluation depended for appreciation of the circles largely on the CK interviews (almost all were interviewed) and a case review by the AJP director. **T**he main components of the approach were:

1. Examining, where feasible, contextual information regarding socio-demographics, educational and economic data and Justice statistics.
2. Examination of MCPEI, AJP documents, reports and data, where feasible, to assess achievement of objectives across the various programs and services.
3. An overview of MCPEI, AJP from an organizational / management perspective
4. One-on-one interviews, in person preferably, with MCPEI AJP staff (i.e., coordinator and circle keepers, and with the members of the advisory board). These interviews were mostly carried out by the evaluator and some by an assistant), using an interview guide (exploring themes in an open question fashion) rather than a fixed choice questionnaire (the interview guide is appended).

5. One-on-one interviews, in person preferably and following an interview guide, with officials from the Mi'kmaq organizations (the Lennox Island and Abegweit First Nations, Native Council, Aboriginal Women Association), and with the provincial and the federal Department of Justice representatives.
6. One-on-one interviews, in person and following an interview guide, with appropriate CJS personnel (judges, crowns, police and corrections) and with DFO officials.
7. One-on-one interviews with representatives from the major Mi'kmaq service agencies such as Children and Family Services (5 interviews)
8. Scanning for recent salient developments in First Nation Justice (via library, and internet)
9. Focus groups with selected stakeholders.

As noted, all interviews with the exception of those carried out by the project assistant were done in person, not by telephone. Experience has shown that, for evaluations and assessments, such an approach is far superior to telephone interviews. All respondents were assured of the confidentiality and anonymity of their interview. The evaluator met four times with the project three-person advisory committee and made eighteen, usually multi-day, trips to PEI from Halifax. The following table provide more detailed information on the number of interviews by category or type of respondent.

INTERVIEWS CARRIED OUT

Sixty-seven people were interviewed in 2010, one-on-one, for the assessment, nine on two or more occasions; additionally, substantive email exchanges were carried out with twenty-three of the persons interviewed. Another six persons participated in a youth focus group. The research assistant conducted the youth focus group, did two of the one-on-one interviews and was responsible for seven mailed responses. The number of interviewees by category was as follows:

1. Seven Police Officers / Officials (RCMP, Municipal, Provincial Policing Authorities)
2. Seven PEI Government Officials
3. Fifteen PEI Criminal Justice System Officials
    a. Four Judges (I in Summerside and 3 in Charlottetown)
    b. Two Crowns (Summerside and Charlottetown)
    c. Two Legal Aid Lawyers (Summerside and Charlottetown)
    d. Eight CCS Corrections / Justice Teams
4. Four Federal Justice / Enforcement Officials (including two DFO officials)
5. Four PEI Aboriginal Political Leaders
6. Twelve AJP Circle Keepers (plus two others)
7. Two AJP Staff + Project Advisory Committee
8. Four MCPEI Staff
9. Six Others Aboriginal Justice Workers
10. Youth Focus Group (Six)

REVIEW OF THE ABORIGINAL JUSTICE LITERATURE

In this section there is a brief review of the key points highlighted at length in 2007, followed by a brief discussion of three recent academic and policy developments that might be quite relevant for the MCPEI AJP.

Review of Key Themes in 2007 Assessment

It was suggested in the 2007 assessment of the MCPEI AJP that the signal events in the past 25 years that have shaped the context for justice possibilities for Aboriginals in Atlantic Canada have been (a) the 1982 Constitutional Act ("the existing Aboriginal and treaty rights of Aboriginal peoples of Canada are hereby recognized and affirmed"); (b) the report of the Hickman Inquiry on the Wrongful Prosecution of Donald Marshall Jr in 1989 (bearing most specifically on the Mi'kmaq in Nova Scotia but having rippling effects throughout Atlantic Canada); (c) the 1996 Royal Commission on Aboriginal Peoples (RCAP) report, Bridging The Cultural Divide, which laid out a new agenda for Aboriginal justice in Canada; (d) the SCC's 1999 Gladue decision which was a culmination of earlier court decisions and sentencing policies and emphasized the unique considerations that should be taken into account by judges when sentencing Aboriginal offenders; (e) the SCC's 1999 rulings in the case of Donald Marshall's conviction for illegal eel fishing (a regulatory conviction whose overturning by the SCC had profound effects for Aboriginal economic development and Aboriginal regulatory governance).

The recommendations of the Hickman / Marshall Inquiry have had a major impact on Aboriginal justice in Nova Scotia, leading up to its current province-wide justice services provided through the Mi'kmaq Legal Support Network (MLSN) which may well be the most effective and well-established multi-FN Aboriginal justice programming in Canada (Clairmont and McMillan, 2006). The Marshall Inquiry report was generally seen as progressive by FNs and, overall, was favourably received by the Union of Nova Scotia Indians as per their following statement - "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". The Inquiry recommendations have mostly been implemented and

indeed the justice services provided by MLSN in some ways have gone well beyond them. A key factor in this progress has been the Inquiry's recommended Tripartite Forum on Native Justice whereby quality federal, provincial and Mi'kmaq representatives meet regularly to monitor current justice initiatives and consider new ones. The Tripartite Forum launched in 1991 continues on and has spawned the current "Made in Nova Scotia" treaty process.

The Hickman / Marshall Inquiry reflected – as did most but not all such inquiries on Aboriginal justice issues between 1985 and 1992 – an agenda oriented to fairness and integration within the mainstream justice system. It focused on the criminal justice sector but there were aspects of its recommendations that referred to family justice issues and the general use of alternative dispute resolution – ADR – in civil and regulatory (e.g., 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, as suggested, might well be captured by describing it as focused on "fairness and integration". The vision and the accompanying agenda were to eliminate racism, reduce legacy effects (e.g., the impact of the IRS experience) and secure the more satisfactory inclusion of Mi'kmaq people in mainstream society. The 1996 RCAP Commission's recommendations reflected a somewhat different agenda, one more oriented to autonomy and difference. In 1996, at a general meeting of Nova Scotia chiefs, there was consensus that, given the accomplishments of the 1989 Marshall recommendations, the appropriate agenda for Aboriginal justice services in Nova Scotia, going forward, should be that advanced by RCAP.

The RCAP agenda called attention to two additional points that are salient in considerations of Aboriginal justice in general and PEI possibilities in particular, namely (a) the possible importance of transcending community-specific justice programming to construct tribal or multiple-FN, partnered justice services to achieve cost efficiency and better cope with conflicts of interest and favouritism, and (b) the importance of justice segments other than the criminal sphere in order to effect more culturally and need-specific justice services (e.g., family justice and regulatory or band-initiated administrative justice initiatives). RCAP discussed jurisdictional and collaborative issues at length with respect to both law-making and administration of justice and, in arguing

for significant Aboriginal rights in both areas, differentiated between core and peripheral concerns; core concerns, defined as crucial to Aboriginal culture and society and not profoundly impacting on mainstream society, were the areas where, in the RCAP argument, significant Aboriginal autonomy could be exercised. RCAP also underlined that not all laws enacted in Aboriginal nations will be criminal laws; many will be what are referred to as regulatory offences. Writing on this for the Royal Commission, Peter Hogg and Mary Ellen Turpel (see "Implementing Aboriginal Self-Government: Constitutional and Jurisdictional Issues", 1995), suggested that dispute resolution in the following areas should always lie within the exclusive territorial jurisdiction of Aboriginal nations: the management of land; the recognition of activity on the land, including hunting, fishing, gathering, mining and forestry; the licensing of businesses; planning, zoning and building codes and environmental protection".

Family justice, it was argued, would be more likely than criminal justice to be a jurisdictional site where Aboriginal values and practices might yield substantially different justice policies and practices. Having an ethos of "difference and autonomy", then, directed attention to where constitutional rights, cultural differences and circumstances could lead to Aboriginal administration and jurisdiction in justice matters. Interestingly, the RCAP commissioners expected that whatever the level of parallelism in justice matters, there would only be minor differences in the criminal justice field were the RCAP position to be accepted by Government and Aboriginal peoples. It can be reiterated 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 wider regional Aboriginal partnerships. Of course, given the relative autonomy of each FN, there would be significant centrifugal forces making such collaboration problematic, so to benefit from regional integration, especially where the constitutive units are small scattered population bases as in PEI, there would have to be resources and policies to ensure strong community linkages.

The other two major policy events highlighted above sprang from two decisions (and related policy imperatives) of the Supreme Court of Canada (SCC) in 1999, one dealing with criminal and other regulatory justice. A major SCC decision and entailed

policy directive announced in 1999 concerned the Gladue case where the conviction and incarceration of an Aboriginal person was successfully challenged on the grounds that more attention in sentencing should have been paid to the attenuating factors associated with unique legacy of the Aboriginal experience in Canada which has long been associated (and continues to be) with a very high disproportionate incarceration level. The policy called for judges to ensure that Aboriginal offenders being sentenced were recognized as such and that special Gladue reports be submitted indicating the salience of the Aboriginal legacy, if any, in relation to the offence in front of the court. The SCC imperative has been adhered to most strongly in Ontario where there are several designated Gladue courts and where the applicability of the Gladue policy has been, in principle, extended to bail, another point at which a person's freedom from incarceration is at stake. Elsewhere in Canada, the Gladue policy has been much less implemented if implemented at all. Canada-wide visits to courts dealing with Aboriginal offenders by this evaluator in 2008 and 2009 found that there were few specially designated Gladue reports produced in any criminal court, that most judges left the determination of whether a formal Gladue report should be prepared to the crown prosecutor and especially to the defence counsel, and that, generally, Aboriginal probation officers and court workers seem to be presumed to deal with the Gladue issues in their regular court roles. Field observations suggest that some FN justice providers may not fully appreciate the significance of the Gladue decision since they may assume they have already been taking the Aboriginal legacy and other factors into account in their dealings with specific offenders. But Gladue is important for directing attention to alternatives to incarceration and for a better appreciation of how legacy, in terms of an offender's personal history and social circumstances, link up with offending patterns. The emphasis too is on having an holistic approach, avoiding custody if possible and providing access for the offender to treatment programs and other beneficial social services. In Atlantic Canada there have been formally designated Gladue reports submitted at sentencing only in Nova Scotia and just a very few there. Justice authorities in New Brunswick and PEI have considered requiring formal Gladue reports at sentencing but thus far none have taken place.

The SCC's 1999 decisions and recommendations on the Marshall eel fishing case has had a major impact in Atlantic Canada on Aboriginal economic development and the

FNs in PEI were no exception. They have also had implications for band governance since they created a situation where it has become more important for the FNs to exercise their governance capacity both in convincing members to adhere to the agreements entered into by the band, whether with governments or the private sector, and to effectively be part of any required enforcement. In essence, then, the SCC's 1999 decision has reinforced the RCAP position that the regulatory area of justice would be a major, growing focus of Aboriginal justice as Aboriginal rights are fleshed out. These implications are discussed in detail below in the section, Context for Aboriginal Justice in PEI.

It was also noted in the 2007 assessment that increasingly FNs in Canada have been developing a dispute resolution capacity which appears essential to sustain effective self-government. 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 stated that it was working with INAC and the Aboriginal Justice Directorate 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 were used to frame the management of lands and resource development according to FN laws and values in ways that were preservative and sustainable. The Esketemc (Alkali Lake) Alternative Measures program, for example, had a protocol for fish and wildlife offences that provided the delivery of a coordinated enforcement strategy. Offences were 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. Since 2006 the Nova Scotia Mi'kmaq leadership was also considering a variety of initiatives in the family and regulatory justice areas. In addition to the expansion of regulatory justice processes, there were also more family, civil and some Gladue court programs being implemented across the country as well as

projects for offender reintegration and victim services. Furthermore, many communities were 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 was evident. Overall, then, there was much Aboriginal justice activity especially at the community level. In the 2007 report the theoretical and policy debates about process, outcomes and challenges in community / band level justice were discussed at length and will be not repeated here. The bottom-line conclusion though will be, namely "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".

Three Pivotal Academic and Policy Developments

There are three academic and policy developments that merit special attention for Aboriginal justice and could have much relevance for the MCPEI AJP, namely (a) the research and policy literature on the foundations for Aboriginal self-government in Canada; (b) the continued evolution of therapeutic jurisprudence (e.g., the problem-solving court, extra-judicial sanctions), and (c) the increased attention to restorative practices throughout society. Here there will be a very brief discussion of each and what some possible implications may be for the Aboriginal justice in PEI.

Belanger and Newhouse (2004) reviewed the salient literature of the past thirty years (including of course the RCAP reports) and commented on the expansion of the meaning of Aboriginal self-government (i.e., far more expansive, substantial than 'communities have municipal like powers'), noting that Aboriginal self-government now is more a question of how rather than why. Interestingly, the courts have consistently rejected claims of analogous rights to Aboriginal programs and services (e.g., Gladue 'rights') on behalf of advocates for Black Canadians. Court rulings have contended that Aboriginals are in a unique position vis-à-vis the justice system not because they have self-government rights but for their combining two considerations, namely overrepresentation in custody and a distinctive cultural heritage (APC, 2009). The

uniqueness of the Aboriginal position is reflected in the comment of one crown prosecutor that "with Aboriginals there are different issues for court officials such as me". The Aboriginal uniqueness is essentially a consensus view within the Canadian justice system but there has long been significant divergence on the underpinnings of the uniqueness. In 1963 the famous Hawthorne Report, focused on Aboriginal rights in British Columbia, concluded that the most appropriate way to conceptualize Aboriginal rights in Canada would be "citizenship plus", that is, all the rights of ordinary citizens plus others related to treaties and to their exercise of governance prior to the settlements of Europeans. A large and growing academic and policy literature appears to have reached a consensus that self-government is similarly based.

While the SCC has yet to rule directly and definitively on the question of Aboriginal self-government, its decisions on other Aboriginal rights issues have undeniable consequences for any future ruling. Murphy (2001) traced the key court decisions from the Calder case in 1973 through the Constitutional Act in 1982 to Sparrow and Sioui in early 1992 to Van der Peet in 1996. He argued that the SCC's choice thus far to anchor the legal recognition of Aboriginal rights in the distinctive character of Aboriginal cultures (their Aboriginality) constitutes a serious diminishment of the legal and political status of Aboriginal peoples. Murphy contended that scholars and activists increasingly have based their position on Aboriginal self-government claims not on Aboriginals having a distinctive culture but on their being the original sovereigns in their traditional territories. In Murphy's view, the appropriate context is the analogy of "national minorities living within the boundaries of multinational states, grounding claims on self-government in their authority as separate and independent peoples forming their own political community and being neither derivative nor subordinate to the self-governing authority of the more powerful national communities with whom they share a state". He advanced a model of self-government rooted in a normative authority claim to the design, delivery and administration of selected services and institutions in an urban or rural setting or to a process of gradual capacity building in specific sectors such as education, resource extraction or small business development. SCC rulings clearly have stated that the Crown has ultimate sovereignty (though it must meet a 'strict' constitutional test to justify its actions) so the relation between Crown and Aboriginal

peoples established by this position is not one of equals. Still, it appears that even a SCC interpretation congruent with the model of national communities with a substantial degree of autonomous self-governing authority would arguably seem very much like the approach that is already part of the official federal policy for the recognition and negotiation of Aboriginal self-government, and quite a reasonable fit to RCAP recommendations as well as reaching back to the Hawthorne "citizenship plus'" model.

In PEI there has been a partnership agreement since 2007, essentially a tripartite agreement which provides for the parties to work cooperatively on a variety of matters, including the five "tables" of health, education, economic development, justice and child and family services. While not formally a treaty-making process as currently underway in Nova Scotia (the "Made in Nova Scotia" negotiations), it appears to be a substantive similarity. Thus far, the focus has been on the "education table" but the process ultimately could well result in significant changes in Aboriginal justice and in the role of the AJP in the future, though as yet there are few inklings about any possible changes or devolution of authority or administrative control in justice matters to the First Nations (see section below on Political Economy). Given the weak case for overrepresentation of Aboriginals in custody in PEI and the possibly questionable case for cultural distinctiveness, the position that Aboriginal uniqueness and rights for greater self-government in justice and other matters do not depend on socio-economic disadvantage and deep cultural differences but on their being the original sovereigns in their traditional territories would appear beneficial for Aboriginal interests in PEI.

Over the past two decades, there has been a very significant growth in the United States and Canada in a social justice movement captured in the phrases "therapeutic jurisprudence" and "problem-solving court" which features an integrated health / treatment and justice system approach to dealing with crime, often seen as getting at the roots of certain criminal activity. It has spawned drug treatment courts, mental health courts, FASD courts, and other substance abuse courts. Generally, the increasingly widespread restorative justice movement has been considered a kindred development. Social scientists have argued that the general perspective is itself a by-product of the evolution of citizenship from legal rights to political rights to social rights where in the social rights stage there is significant emphasis given to taking into account the views and

interests of all segments of society. Given the earlier discussion of the growth of Aboriginal rights and the strong constitutional and governmental acknowledgement of Aboriginal uniqueness and given the fact that the problems targeted by the problem-solving courts (e.g., substance abuse) are particularly rampant about Aboriginal people in Canada (e.g., the colonialist legacy), this broad social movement would seem very appropriate for Aboriginal people.

The first drug treatment court (DTC) was established in Florida in 1989 and by 2007 there were approximately 2000 in the USA. In Canada the first DTC was established in Toronto in the late 1998 and the DTC has spread to other jurisdictions such as Vancouver, Ottawa, Winnipeg, Edmonton and Saskatoon. 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 counselling, 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 but not required to plead 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. The first healing to wellness was established in 1997 and there are now roughly 75 such courts in the USA, a handful of these characterized as mentor courts for other interested Aboriginal communities. In Canada there are a few embryonic drug and alcohol court-like initiatives among Aboriginal people (e.g., the Alexis FN in Alberta), and a Wellness Court in Whitehorse which was initiated in 2008 in collaboration between the territorial government and FN chiefs of the Whitehorse area and whose clients are primarily Aboriginal (i.e., 75%). 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 usually funded through the federal ministries of Health and Justice (Clairmont and Augustine, 2009).

Elsipogtog in New Brunswick obtained a capacity grant from the federal Department of Justice to undertake a Canada-wide field study in 2008 and 2009 to explore Aboriginal solutions, including the possibility of a healing to wellness court, to its serious social problems such as extensive interpersonal violence and substance abuse. The central themes that emerged from the extensive fieldwork (Clairmont and Augustine, 2009) were (a) major concerns in FNs were drug and alcohol addiction, effective response to drug dealing on reserve, dealing with intimate partner violence, and the need for community-based solutions which presume a strong community buy-in; (b) resources to mount restorative and healing alternatives to enforcement and incarceration were seen as problematic in most but not all sites; (c) "the RCAP agenda" has taken hold among many FNs, and (d) the problem-solving court / wellness court was seen as a possibly effective way to deal with the disproportionately high level of social problems and crime recidivism found among FN people. A major problem for FNs becoming engaged in such a program is that their small scattered population works against them since the resources required are considerable and federal funding has only been available for larger cities. A major equity challenge for Canada is how to make these kinds of justice programs available to citizens outside the large urban areas. At this time, Elsipogtog FN, close to PEI's FNs geographically and in social / kinship ties, is about a launch a healing to wellness court on a three year pilot project basis. It seems likely that if successful, future justice initiatives of this expansive sort could, and likely would have to, involve a number of FNs as in tribal courts in the USA but that will require collaboration and partnerships among the FNs. The small scale of population and similar social problems among Aboriginals in PEI suggest that future engagement in these kinds of progressive justice initiative would require such partnering.

The third interesting development in justice initiatives that has pertinence for the MCPEI AJP is the increased attention to restorative practices throughout society. Over the past two decades, alternative justice developments have increasingly occurred in both mainstream and Aboriginal societies, especially in the guise of a 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, the limited services and reintegrating programs available to the RJ service providers who are usually

non-profit organizations). In its current modern guise – there was an earlier phase in the 1960s and 1970s – restorative justice (RJ), community-based alternative justice, has become more entrenched in the CJS in Canada and other societies. Some researchers have contended that restorative justice programs have penetrated the walls of the criminal justice system, passing well beyond the police-level of referring minor offences by first or second time offenders. In areas such as Nova Scotia the leading referral agents are increasingly the crown prosecutors and the justice officials acknowledge that without the RJ option for repeat offenders and somewhat more serious offences, the CJS would be in workload crisis (Clairmont, 2010). RJ 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.

At the same time, there is a growing view among some of the leading RJ experts in Canada that the RJ movement has now stalled and requires fresh input 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. Basically, the critics argue, RJ (and related alternative justice programs) remain largely a minor intervention (usually just one session and very infrequent referrals to psychological and other treatment services) and too closely linked to the criminal justice system. A major issue then has become how far can RJ go in the CJS? Can it deal effectively with serious crimes? Will the CJS and the community allow it do so? Another major question is does the restorative practice have a place as well outside the CJS, dealing with conflict and disputes in general at the community level.

It is interesting that in some areas the idea of restorative practices extrapolated to general social life has been catching on. Hull U.K. (Towards a Restorative City, 2009) has become famous for pursuing that agenda – "the goal is for everyone who works with children and youth in Hull, one of England's most economically and socially deprived cities, to employ restorative practices". In the United States restorative practices have been utilized on a large scale in the school systems since the 1970s. Currently, the city of Bethlehem Penn., a centre for much RJ activity, initially closely tied to the police service, has made a commitment similar to Hull's for pervasive restorative practices throughout

its urban life. In Canada there are programs to introduce restorative practice in prisons and youth custody facilities (currently it is being introduced in part of the Youth custody facility in Waterville Nova Scotia) to improve the quality of social life there as well as for its presumed log-run benefits for prisoner reintegration.. Examining the literature associated with these developments, one finds numerous references to the materials / literature on Aboriginal justice / healing circles, presumably a model for these mainstream initiatives.

In the 2007 assessment of the MCPEI there was a detailed review of conflict resolution in Aboriginal societies in the context of discussing alternative dispute management and pluralistic justice systems. Webber (2004) has summed up the empirical findings citing the issues and challenges and noting 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. Interestingly, in the two largest Mi'kmaq FNs, Eskasoni in Nova Scotia and Elsipogotog in New Brunswick, there has been significant training in dispute resolution beyond the criminal justice system (i.e., the Apigsigtoagen initiative) but thus far little evidence of its practical implementation. On the other hand, a similar initiative in the Siksika FN, a community with a population of 3000 plus, 100 kilometres outside of Calgary has become well-known for its Aiskapimohkiiks traditional dispute resolution program started in 2003. The program has been one of dispute and conflict resolution based on traditional principles, essentially using what would nowadays be called restorative practices. Thus far over 500 cases have been successfully dealt with, less than half being criminal cases referred from the provincial court; the majority have been concerned with family disputes and band policies (housing, land, employee issues). Unlike the Apigsigtoagen initiatives, Siksika's, from the beginning, has received significant funding from the band council and reportedly has much community support. A strong community justice team undergirds the Siksika program and there is no mistaking that it exists alongside rather than as a sub-unit of the mainstream justice system. It is not clear whether that kind of a program is a future possibility for the MCPEI but, while mainstream and Aboriginal interviewees cited below are skeptical about the AJP getting

involved in more serious crimes and multiple repeat offenders, they also generally seem to think that restorative practices spearheaded by the current AJP approach could impact on the quality of life in the Aboriginal communities.

CONTEXTS FOR ABORIGINAL JUSTICE IN PEI

INTRODUCTION

No program or service exists in a vacuum. Its evolution and its successes and challenges always have to be seen in context. In this section the focus is on an appreciation of the socio-demographic, socio-economic and socio-legal contexts for the MCPEI AJP. Four contexts are considered namely (a) socio-demographic patterns based on census analyses; here there is also a discussion of INAC data on the registered FN population over time and on post-secondary education trends (b) the political economy of First Nations in PEI; (c) patterns of crime and social disorder; (d) beyond the criminal justice system – issues of regulatory and family justice. These four contexts were examined in the 2007 assessment of the AJP and in each case there is an updating of the patterns found then; in some instances the contextual changes have been quite significant.

SOCIO-DEMOGRAPHIC PATTERNS

There were five sources used for the description and analyses of socio-demographic patterns among Aboriginals in PEI, namely the 2001 and 2006 Census data (the conventional censuses plus the Aboriginal Identity censuses), the 2006 Well-Being data obtained from INAC, INAC data on registered populations and on post-secondary funding of band members over the past decade, and special data available from PEI Aboriginal Affairs' analyses of the 2006 census comparing Aboriginals and the PEI general population on a variety of measures. Here there will be analyses of the census materials followed by examination of population and educational trends for both Abegweit and Lennox Island First Nations.

CENSUS DATA, 2001 AND 2006

The 2006 data as well as the 2001 set discussed in the previous assessment (Clairmont, 2007) were drawn from the overall Statistics Canada census and their Aboriginal Identity census. Tables 1 to 3 below provide the descriptive material for

analyses. While the overall PEI population was essentially stable at 135,851, the Aboriginal population in PEI between 2001 and 2006 increased by 28% from 1345 to 1730. It remains primarily a North American Indian and Mi'kmaq population (i.e., 1230 of the 1730 in 2006). Data for the two FNs in PEI are included under the province-wide category. The Abegweit FNs, unlike Lennox Island, are geographically inside the Charlottetown agglomeration but the census data on the Abegweit First Nations at Scotchfort, Morrell and Rocky Point were not included as part of the census agglomeration of Charlottetown (Census Canada, email note, November, 2010). The term agglomeration is used since Charlottetown and its environs do not meet the population criterion for the "metropolitan" designation.

It can be seen from a comparison of tables 1 and 2 that the Aboriginal population in the Charlottetown agglomeration area has remained quite stable at between 735 and 730 persons as has the total PEI population (up slightly to 135,851). The Aboriginal population outside Charlottetown and on reserve increased substantially (i.e., approximately 25%) over the five year period, a growth that runs counter to the Canada-wide trend for Aboriginal population increases in the larger urban off-reserve areas vis-à-vis the reserves. The provincial Aboriginal growth is two-thirds accounted for by increased numbers of females, whether identifying as North American Indian or Metis. Among PEI Aboriginals, females outnumbered males, 54% to 44% whereas in the total PEI population the corresponding percentages are 52% to 48%. The Aboriginal population increases, somewhat surprisingly (to the author at least), have been found almost as much in increasing identification of oneself as Metis as in describing oneself as North American Indian. It is unclear what the underlying causes of these increases in self-identity are but they may especially reflect females reclaiming their band membership in the latter case and females identifying with their Aboriginal legacy in the former. Interestingly, self-identified "registered Indian" status increased more modestly though there was a 10% increase over the 2001 figures, and in 2006 this Aboriginal category included 925 persons. Currently, registered Indian status accounts for 75% of the self-identified North American Indians and 53% of the total self-identified Aboriginal population in PEI; the latter is a decline from 60% in 2001. Congruent with these data, it has been estimated by some MCPEI staff that roughly 50% of the Aboriginal people in

Charlottetown are band members (i.e., presumably having registered Indian status). Given the number of registered Indian status living off reserve in the Charlottetown and the number of registered band members living in Lennox Island and Abegweit FNs, it would appear that virtually all status Indians in PEI reside in one of those three milieus.

While clearly a small percentage of the PEI population, namely 1% in 2001 and 1.4% in 2006, the Aboriginal population is unquestionably a modest growth node for PEI. As seen in the 2006 table, the median age for the Aboriginal groupings – Charlottetown and province-wide – was just 60% that for the total PEI population (i.e., 25 / 24 to 41 years old) and the proportion of the Aboriginal populations aged 15 or more was roughly fifteen percentage points less than for the total PEI population, whether overall, male or female (i.e., 68% to 83%). There were also minor patterns evident as well in the comparison of 2001 and 2006, chiefly that, though much less dramatically than for PEI as a whole, a trend to an aging population is discernible for most Aboriginal population groupings, especially among the females (perhaps reflecting females' longer life expectancy rates). The facts that INAC-credentialed band members living on reserve account for no more than 35% of the Aboriginal population in PEI (MacDonald and Clark, report the figure to be roughly 25%, 2009, p30), and that just slightly more than half the Aboriginals in PEI have "registered Indian" status could well have implications for the future development of MCPEI AJP.

Table 2, depicting 2006 census facts, is clearly different from the 2001 table with respect to language retention. In 2001 the census questions were different. At that time 15% to 20% of the self-identified Aboriginals in PEI reported that they first learned and still understood an Aboriginal language; surprisingly, the Charlottetown Aboriginals had a modestly higher rate of language retention than Aboriginals province-wide. Well under 10% in either milieu reported that the Aboriginal language was spoken at home. The 2006 census questions asked of mother tongue, current knowledge of the Aboriginal language, and whether an Aboriginal language was spoken most often at home. Table 2 indicates that very few PEI Aboriginals reported that in their home an Aboriginal language is most often spoken; indeed, it would appear no more than a dozen people in either on or off reserve milieus gave an affirmative response. A small core of 6% to 7% of the Aboriginals in each of the two milieus- Charlottetown and elsewhere in PEI –

indicated that they retained some knowledge of an Aboriginal language. Neither the 2001 nor the 2006 census versions explored persons' engagement in other aspects of Aboriginal culture.

Given the older population and the small urban and town character of PEI, it is not surprising that the population aged 15 or more, where there is a common-law relationship, was but a small proportion of the total PEI population, roughly 7% in 2006. The Aboriginal populations in both milieus examined here had roughly twice the percentage (among those aged 15 years old or more) associated with common-law unions, namely 15% and 18% respectively in 2006. And, as in the larger society, those percentages represent a significant increase from that recorded in the 2001 census (i,e., 11% among Aboriginals). Table 2 indicates that Aboriginal populations in both the Charlottetown agglomeration and province-wide areas were quite similar in terms of the percentage aged 15 or more who are single, married, separated, divorced or widowed, and quite different from the overall PEI population. Compared to the latter, the Aboriginal populations in 2006 had proportionately more single persons (45% to 35%), much fewer married persons (33% to 53%), more separated (8% to 3%), similar rates of divorced, and, province-wide, fewer widowed. Another way of looking at family structure is examining the breakdown within census families. Table 2 indicates that, among Aboriginal census families in 2006, 55% of the household heads were spouses and the remaining 45% were common-law partners or lone parents; in comparison, among the general PEI population, these figures were sharply different, namely 79% and 21%. Further, among Aboriginal census families, female household heads were almost equally likely to be spouses as common-law partners or lone parents (i.e., 51% to 49%) whereas, among the males, the ratio was 60% to 40%. The patterns are consistent with those found in the 2001 censuses. They clearly establish that the Aboriginal population in PEI is younger, a growing one, and that marriage as an institution is as vulnerable among there as it is in the larger Canadian society.

Predictably, the self-identified Aboriginal population both province-wide and in Charlottetown agglomeration exhibited modestly more geographical mobility than did the general PEI population in both 2001 and 2006. Within the Aboriginal groupings, females reported more intra-provincial mobility (by an absolute percentage difference of 10%)

while males had higher levels of inter-provincial or inter-country geographical mobility (see table 2); there were no such significant gender differences among the general PEI population. The 2006 Aboriginal informants reported more household mobility in 2006 than in 2001, again unlike the general PEI population.

There was limited information pertinent to assessments of social mobility in the available 2001 and 2006 census data but some inferences can be drawn from educational and employment data. Table 3 which focuses solely on the age grouping 25 to 64 in the 2006 census indicates that the Aboriginal and non-Aboriginal populations were similar in the percentage of persons with no degree, certificate or diploma (i.e., 16.8 %) but that non-Aboriginals have been more likely to obtain post-secondary credentials (62.1% to 55.9%); the difference between Aboriginals and non-Aboriginals was less among those with University education (19.3 to 17.6). Table 3 also shows that while University degrees were more common in 2006 than in 2001 for both populations, the percentage increase was greater for Aboriginals.

Table 2 elaborates on the gender and location impact for educational attainment. The 2006 educational data indicate that a higher percentage of those Aboriginal persons aged 15 or more and living outside the Charlottetown area did not have any educational credential (i.e., diploma, certificate or degree) compared with those living in the Charlottetown agglomeration, and especially with the general, equivalent age PEI population (e.g., 32% compared to 30% and 26%). However, taking the age structure of the different populations into account, perhaps more significant is the gender difference in educational achievement in all the groupings; as shown in table 2, among the males there was a significantly higher proportion of people without credentials. This interpretation is consistent with the educational patterns when the data were broken down by three age categories, namely aged 15 to 24, aged 25 to 34 and aged 35 to 64. Among Aboriginals living outside the metropolitan area and aged 15 to 24, the percentage of persons without educational credentials was 50% greater than in the corresponding general PEI population, but among those aged 25 to 34 there was no difference in educational attainment between these two groups. The older age cohorts (i.e., 35 to 64) did show modest differences between the non-metro Aboriginal and the general PEI population but the latter's advantage largely evaporated with subsequent cohorts. While

there may well be, as shown in table 3, continuing modest differences between these two primary groupings in terms of the percentage with a BA or better, social mobility reflected in educational attainment appears to be increasingly equal between Aboriginals and non-Aboriginals in PEI; perhaps the continuing important difference lies less in the race/ethnic and more in the gender difference, males achieving less educational attainment in all groupings.

Census materials also provide some indication of social mobility patterns as reflected in employment data. Interestingly, the employment participation rate for persons aged 15 or more in 2005, was highest among Aboriginals province-wide (e.g., 72.1 to 68.2 in the corresponding general PEI population) and predictably greatest among males in all milieus (e.g., among Aboriginals outside the Charlottetown agglomeration, 69 for males and 53 for females). The actual employment rate in 2005 was quite similar for Aboriginals and non-Aboriginals with the former having higher rates for males and the latter higher rates for females. Unemployment levels were clearly greater among the Aboriginal populations, namely some 17.3 to 11.1 among the general PEI population; this pattern held for both males and females. Compared to the patterns in 2001 (see table 1), it is clear in these data that the Aboriginal - non-Aboriginal gap has been largely eliminated at least with respect to employment participation rate and actual employment. As well, the unemployment levels among Aboriginals have been significantly reduced (e.g., from 24.3 to 17.3) and the gap between Aboriginals and non-Aboriginals significantly narrowed (i.e., from an absolute difference of 11.1 in 2000 to 6.2 in 2005, and for males to only 3.9).

In table 3 the employment activity is broken down by age grouping and by educational attainment. In these data the employment rate among Aboriginals was less in 2006 than that of the general PEI labour force for both age groupings, that is ages 15 to 24 and 25 to 64 but, as might be expected given the younger Aboriginal population, the gap was less among those in older age group (i.e., 11% to 7% in absolute points).The same gap, and the same trend, was recorded for the unemployment rate. The difference between the 2001 and 2006 census data reflect the impact of the different Aboriginal and non-Aboriginal age structures on different age cut-offs for employment activity. Clearly though, there have been significant Aboriginal gains in reducing the gaps and clearly too

the unemployment rate remains higher for the Aboriginal population. Table 3 also points to the impact of educational attainment on employment activity for those aged 25-64. Post-secondary University education is associated with higher levels of employment for both Aboriginals and non-Aboriginals, substantially better than for those with no educational certification (a difference of 20 percentage points) and better than those with trades and non-University certifications (a difference of 7 to 12 percentage points). Aboriginal and non-Aboriginal without any certification have essentially the same level of employment while non-Aboriginal with trades do slightly better than their Aboriginal counterparts (i.e., 77% to 73%) and Aboriginals with University degrees do slightly better than their non-Aboriginal counterparts (i.e., 85% to 82%). Overall, then, the educational impact on employment rate was largely equivalent for both Aboriginals and non-Aboriginals.

Table 3 shows that the median private household income in 2005 was greater in the general PEI population than in the two Aboriginal milieus (e.g., $46,553 or after taxes $40,778 compared to $34,741 among the province's Aboriginal population. The dollar difference in 2005 was at roughly the same level as in 2000, namely $10,000. The chief reason for the income gap would appear to be the different unemployment levels and the correlated proportion of persons working full-time, full year. As shown in table 2, that latter figure was 45% among the general PEI population but only 35% among Aboriginals. The gap was greatest among males where it is 47% to 32%. Overall, the census data point to a significant narrowing of social mobility differences, as reflected in economic indicators, between Aboriginals and non-Aboriginals in PEI.

Another dimension of social mobility would be the dispersal of the experienced labour force over the different industry sectors. Overall, the 2006 census indicates a high level of similarity between Aboriginals (province-wide) and the general PEI labour force in this regard, particularly so among females but for males as well, aside from wholesale and retail trade where male Aboriginals were quite under-represented. The gender variable seems more crucial for industry allocation than race-ethnicity (e.g., agriculture and natural resources plus construction being male preserves whereas females are much more concentrated in the health and education industry sector). The changes since 2001 (see table 1) reflect increased social mobility among Aboriginals. Whereas the general

PEI experienced labour force in 2006 was spread among the industry segments in proportions very similar to their distribution in 2001, amongst Aboriginals, there was a significant change since 2001 – males were less concentrated in Agriculture and Natural Resources (a decline from 22% to 13%) and more were engaged in Manufacturing and Construction (up from 13% to 20%) and in Finance and Real Estate, while females moved more into Finance and Real Estate and Wholesale and Retail Trade. Note too that these gains were prior to the establishment of a lobster processing plant in Lennox Island in 2009-2010.

It is possible also to examine social mobility in more direct socio-economic terms. Above, differences in median private household income were discussed and it was suggested that variation in income appears to be largely a function of unemployment levels in the three population groups and the proportion in them who worked full-time, year round. Table 3 provides for additional examination of income by focusing in on individual-level variation in 2005 incomes. Clearly, the income gap between Aboriginal and non-Aboriginal females aged 15 years or older was much less than the corresponding gap for males, namely $3135 to $13,940. The same underlying reasons noted above in accounting for variation in household income would apply, namely the younger Aboriginal population had, proportionately, fewer individuals aged 15 to 24 in the labour force, and those Aboriginals in the labour force, especially the males, were much less likely to be employed full time, year round (recall that the rate of such employment was 32% among male Aboriginals compared with 47% among PEI males in general). Table 3 also indicates that employment income was the major source of income for both Aboriginal and non-Aboriginal persons aged 25 to 64 in 2005; in each grouping employment income was the major source of income for 85% of the population; government transfer payments, however, constituted the major income source for a higher percentage of Aboriginals, 15% to 11% among other PEI residents.

Housing conditions were also described in the censuses and may be an indicator of quality of material life. It can be seen in table 2 that there was little variation among the three population groupings in terms of the percentage of private dwellings constructed before 1986 but there was a significant difference in terms of the proportion requiring major repairs; here the two Aboriginal milieus reported twice the percentage of homes in need of major

repairs as was reported in overall PEI population (i.e., 20% to 8%). Comparison with the 2001 census (table 1) indicates that all three groupings recorded a major increase in the quality of their housing, in the sense of reporting a lower percentage of older homes in 2006 (despite the tougher standard in 2006 of whether theirs was pre-1986 housing) and a lower percentage of homes in need of major repair; all population groupings reported a 20% decline so the disparity between the Aboriginal and non-Aboriginal housing quality remained.

The key points then are

1. that the Aboriginal population in PEI between 2001 and 2006 has grown only outside the Charlottetown area,
2. that the growth has especially been due to more women identifying themselves as Aboriginal,
3. that there has been an increase in both North American Indian and Metis self-identification,
4. that only roughly 56% of the self-identified Aboriginal people in PEI are now registered Indian status (i.e., 975 of 1730),
5. that the Aboriginal population is younger and growing faster than the overall PEI population,
6. that INAC-registered band members living on reserve account for no more than 35% of the Aboriginal population in PEI,
7. that common-laws relationships have increased substantially following trends in the larger Canadian society,
8. that Aboriginals in PEI (especially males) have shown more household and inter-provincial, inter-country mobility than other PEI residents,
9. that there has been little Mi'kmaq language retention,
10. that educational attainment differences between Aboriginal and other PEI residents have been consistently diminishing and that social mobility, measured by educational attainment and employment / unemployment rates is increasingly equal between these groupings, as is the impact of educational attainment for both employment and income,
11. that housing gains have also been evidenced between censuses (2001 and 2006) though Aboriginal households are still, on average, more in need of major repairs,

12. that gaps between Aboriginals and non-Aboriginals in PEI have narrowed if not become virtually eradicated in many areas of social well-being. Increasingly, the issues have become those of gender differences, structural population patterns, and equity in top-end participation in the economy.

TABLE 1

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 2

SOCIO-DEMOGRAPHIC PATTERNS BY CHARLOTTETOWN ABORIGINAL POPULATION, TOTAL PEI ABORIGINAL POPULATION, AND TOTAL PEI POPULATION, 2006 CENSUS, AND ABORIGINAL IDENTITY CENSUS

	Charlottetown (Aboriginal)			PEI (Aboriginal)			PEI (All residents)		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Aboriginal Identity Population	730	280	450	1,730	760	970	135,851	66,595	70,255
North American Indian	490	190	300	1,230	565	665	N/A	N/A	N/A
Metis	215	85	130	385	145	240	N/A	N/A	N/A
Inuit	15	0	10	30	10	20	N/A	N/A	N/A
Other	10	0	10	75	35	35	N/A	N/A	N/A
Registered Indian	410	175	235	925	410	515	N/A	N/A	N/A
Registered Indian as % of total Aboriginal Identity Population	56%	63%	52%	53%	54%	53%	N/A	N/A	N/A
Median age Pop	25.0	20.4	28.2	24.1	20.9	27.1	40.9	39.9	41.6
% Aboriginal Identity Pop 15+ years	65.1	62.5	66.7	65.3	61.2	68.6*	82.3*	81.3*	83.3*
Total Aboriginal Identity Population aged 15 years and over	475	170	300	1,130	465	660	118,865	53,335	58,535
% Pop 15+ in a common law relationship	14.8%			17.7%			7%		
Legal Marital Status of the pop 15+ (total)									
Single	46%	45%	46%	46%	50%	44%	31%	34%	29%
Married	34%	43%	32%	36%	40%	33%	52%	54%	50%
Separated	9%	5%	11%	7%	5%	8%	3%	3%	4%
Divorced	7%	5%	9%	7%	5%	8%	6%	5%	7%
Widowed	2%	1%	3%	4%	0%	7%	7%	3%	11%
% Aboriginal identity with Aboriginal language(s) as mother tongue *	6.8	8.9	5.6	6.1	5.9	5.7	N/A	N/A	N/A
% knowledge of	6.2	8.9	5.6	6.1	6.6	5.7	N/A	N/A	N/A

Aboriginal language									
% Speaking Aboriginal language most often at home	0**	0**	0**	0**	1.3	1	N/A	N/A	N/A
	Charlottetown (Aboriginal)			**PEI (Aboriginal)**			**PEI (All residents)**		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Total population 5 years and over	610	215	395	1,495	640	855	127,570	61,705	65,863
Lived at the same address five years ago	46%	53%	43%	56%	60%	52%	67%	68%	67%
Lived in a different prov./terr. or country five years ago	12%	21%	6%	13%	15%	11%	8%	8%	7%
Total population aged 15 or more	475	175	300	1,125	465	665	110,205	52,693	57,510
% 15 or more with no certificate, diploma or degree	30%	31%	28%	32%	36%	29%	26%	30%	23%
% of the population 15 to 24 years of age with no certificate, diploma or degree	68%	81%	70%	61%	61%	62%	40%	42%	38%
% population 25 to 34 years of age with no certificate, diploma or degree	?20%?	29%	15%	?13%?	17%	8%	12%	17%	7%
% population 35 to 64 years of age with no certificate, diploma or degree	15%	13%	19%	24%	31%	20%	22%	25%	16%

Total Aboriginal Identity Population aged 15 or over	475	175	300	1125	465	665	110,205*	52,693*	57,510*
In the Labour Force	330	155	175	810	375	435	75,210*	38,245*	36,965*
Employment Participation rate*	69.5	88.6	58.3	72.1	80.6	65.4	68.2*	72.6*	64.3*
Employment rate	60.1	80.1	48.3	59.6	68.8	52.6	60.7*	64.7*	56.9*
Unemployment rate	13.6	9.7	17.1	17.3	14.7	19.5	11.1*	10.8	11.4
% income earners working full time, full year	40%	28%	48%	35%	32%	36%	45%	47%	42%
Median private household income	$32,764			$34,741			$46,553 ($40,778)		
INDUSTRY CHARACTERISTICS									
	Charlottetown (Aboriginal)			**PEI (Aboriginal)**			**PEI (All residents)**		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Total Aboriginal Identity- Experienced labour force	325	155	170	780	370	415	74,510*	37,990*	36,525*
Agriculture and other resource-based industries	8%	13%	0%	13%	23%	5%	13%	20%	6%
Manufacturing and construction industries	10%	26%	0%	20%	30%	8%	16%	23%	8%
Wholesale and retail trade	12%	6%	21%	8%	0%	13%	13%	12%	14%
Finance and real estate	4%	6%	6%	3%	3%	3%	4%	3%	4%
Health and education	15%	13%	21%	12%	3%	18%	15%	6%	26%
CENSUS FAMILY STATUS FOR THE ABORIGINAL IDENTITY POPULATION									
Total - Census Family Population	730	280	445	1,730	760*	970	113,636		
Spouses	155	60	90	390	180	215	54,400		
Common-law	70	40	30	200	100	100	8,170		

partners									
Lone parents	60	*	55	120	20	105	6,400		
Children in census families	330	145	185	800	400	400			
Non-family persons	115	30	80	215	70	145			
SELECTED OCCUPIED PRIVATE DWELLING CHARACTERISTICS FOR THE ABORIGINAL IDENTITY POPULATION									
% of dwellings constructed before 1986*	65%			74%			69%*		
% of dwellings in need of major repairs	19%			20%			8%*		

Source: Statistics Canada 2007, 2006 Aboriginal Population Profile. 2006 Census

TABLE 3

Key Indicators: First Nation & Non-Aboriginal Populations - Prince Edward Island 2006 Census

		First Nation	Non-Aboriginal
1. Education	1a. Highest Educational Certification: Highest Degree, Certificate, or Diploma for Aboriginal and Non-Aboriginal populations (aged 25-64), 2006 Census		
	i. University degree	12.1%	15.7%
	ii. University certificate below bachelor level	5.6%	3.6%
	iii. Trades/apprenticeship or other equivalent only	38.3%	42.8%
	iv. High school diploma or equivalent only	27.1%	21.2%
	v. No degree, certificate or diploma	16.8%	16.7%
	1b. Proportion with a University Degree: University Degree Attainment of Aboriginal and Non-Aboriginal populations (aged 25-64), Census		
	i. 2001	10.4%	14.6%
	ii. 2006	12.1%	15.7%
2. Labour Force Partici-pation	2a. Employment and Unemployment Rates: Labour Force Rates for the Aboriginal and Non-Aboriginal populations aged 15-24 and 25-64, 2006 Census		
	i. 15-24 Employment Rate	47.4%	58.5%
	ii. 15-24 Unemployment Rate	28.0%	16.5%
	iii. 25-64 Employment Rate	67.3%	74.3%
	iv. 25-64 Unemployment Rate	17.9%	10.1%
	2b. Employment Rate by Highest Degree: Employment Rate by Highest Certification for Aboriginal and Non-Aboriginal Populations (aged 25-64), 2006 Census		
	i. No certification	63.0%	63.5%
	ii. High school only	65.0%	70.9%
	iii. Trades and other non-University	73.0%	77.2%
	iv. University degree	85.0%	82.6%
3. Income	3a. Median Income: Median Total Individual Income for the Aboriginal and Non-Aboriginal populations 15 years of age and over, 2006 Census	$15,416	$22,565

	3b. Median Income by Gender: Median Total Income for the Aboriginal and Non-Aboriginal Populations over 15 years of Age by Gender, 2006 Census		
	i. Male	$12,797	$26,737
	ii. Female	$15,965	$19,100
	3c. Major Source of Income Distribution of Population by Major Source of Income for the Aboriginal and Non-Aboriginal populations (aged 25-64), 2006 Census		
	i. Employment Income	84.9%	85.4%
	ii. Government transfer payments	15.3%	11.2%

Source: Adapted from Aboriginal Affairs, PEI and drawn from Statistics Canada 2006 Census

POPULATION IN PEI'S TWO FIRST NATIONS

The total registered population for the Abegweit FN – a custom band which one local official defined as "the band council decides on who to include or exclude" - has not grown much since 1995, overall rate of less than 1% per year. Over the past decade the population on reserve has gone from 169 to 201, including the dozen persons registered with other FNs. Table 1 reports a puzzling sharp decrease in Abegweit on-reserve, registered band population from 212 in 1995 to 157 in 2000. Interestingly, the sharp jump in the registered band off-reserve population offsets the decline in the on-reserve members so perhaps this illustrates the band's becoming a "custom band". The high proportion of Abegweit band members living off-reserve is striking, hovering around 40% since 2000. There is only a small proportion of Abegweit's registered population accounted for by other bands' members living there. Of course the total population residing in the Abegweit FNs would likely exceed the INAC registrations but the number of such non-status, metis or white residents reportedly would be quite modest, basically a handful of persons.

As for male / female proportions, the overall figures in each of the three time periods examined 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 so 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. In terms of age categories the only significant age-gender differentials have been for males to slightly outnumber females in the 5 years and under age category (e.g., 18 to 9 in 2007) and for females to outnumber males in age categories beyond 45 years (e.g., 39 females to 24 males in 2007). The Abegweit FNs population in 2007 was spread over three locales, namely Rocky Point (some sixteen homes), Morell (about eight homes) and Scotchfort (about forty homes). There has been little change between 2007 and 2010 in Abegweit's basic demographics on virtually all counts – total registered population on reserve, 40% registered band members living off reserve, and distribution of the population among the three reserve areas.

In Lennox Island, the total registered population has grown by less than 2% per year since 1995 (see table 2). In 2010 it had double the population of Abegweit living on reserve, namely 384 registered persons. The off-reserve population has constituted a very significant of the total registered population for Lennox Island First Nation since 1995 (51% in 1995 and 54% in 2010); indeed the off-reserve members now significantly outnumber the band's reserve membership (i.e., 432 to 362). As in Abegweit, there is only a small proportion of population accounted for by other bands' members living there (i.e., roughly a dozen people). As for male / female proportions, the overall figures in each of the three time periods examined favoured females (330 to 300 in 1995, 372 to 329 in 2000 and 433 to 372 in 2006) but the gender difference among the on-reserve population has been minimal (actually favoring males prior to 2001) so the total registered gender difference has largely been accounted for by the greater proportion of females living off-reserve where they have outnumber the registered Lennox Island males by a significant percentage (e.g., in 2000 it was 212 to 156 in favour of the females). The same two factors cited above in the case of the Abegweit FN probably account as well for the off-reserve gender distribution among Lennox Island band members. Also, as in Abegweit FNs, males modestly outnumbered females in the 5 years and under category while females have considerably outnumbered males in the age category 46 and over (e.g., 142 to 102 in 2007). As in the case of Abegweit FNs, the total population residing in Lennox Island would likely exceed the INAC registrations but the number of such non-status, metis or white residents reportedly would be quite modest, basically a handful of persons.

Overall, then the two FNs have experienced quite modest population growth over the past 15 years and both have a high percentage of registered band members living off-reserve, mostly in the Charlottetown area according to MCPEI officials. The small populations of both the Abegweit and Lennox Island First Nations could have many implications for the feasibility of justice programs and services such as separate courts, court workers and so forth. The so-called "silo" model in mainstream society, whereby funded programs such as court worker services are rigidly defined, works against small communities where efficiency, defined in terms of cost-effectiveness, might require more flexible and multidimensional roles. The increasing integration of registered Mi'kmaq 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 1

ABEGWEIT FIRST NATIONS REGISTERED 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

ABEGWEIT		
2007	2009	2010 April
181 On-reserve (Own Band)	189 On-reserve (Own Band)	189 On-reserve (Own Band)
10 On-reserve (Other Bands)	12 On-reserve (Other Bands)	12 On-reserve (Other Bands)
191 Total On-reserve	201 Total On-reserve	201 Total On-reserve
127 (40%) Off-reserve	127 (39%) Off-reserve	126 (39 %) Off-reserve
318 Total	328 Total	327 Total

*According to INAC's Indian registration system, June 2010

TABLE 2

LENNOX ISLAND FIRST NATIONS REGISTERED POPULATION

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

LENNOX ISLAND		
2007	2009	2010 April
370 On-reserve (Own Band) +1	377 On-reserve (Own Band) +1	374 On-reserve (Own Band)
10 On-reserve (Other Bands)	10 On-reserve (Other Bands)	10 On-reserve (Other Bands)
380 Total On-reserve +1	387 Total On-reserve +1	384 Total On-reserve
440 (54 %) Off-reserve	461 (54 %) Off-reserve	462 (54 %) Off-reserve
821 Total	849 Total	847 Total

*According to INAC's Indian registration system, June 2010

POST-SECONDARY EDUCATIONAL ATTAINMENT IN PEI'S FIRST NATIONS

In 2006 Indian Affairs (INAC) assessed the community wellbeing of First Nations and other communities across the country, combining, with equal weight, four separate indexes namely, income, housing, education and labour force activity. Only the overall index score was available for Scotchfort and the other Abegweit First Nations but in the case of Lennox Island the community wellbeing index score was available both overall and for each separate index. Lennox Island's education score of 53 was better than that of most communities assessed in PEI; it placed in the top third of the more 60 PEI communities sampled, higher than over 40 other PEI non-Aboriginal communities.

As noted in the 2007-2008 assessment of the MCPEI AJP, 2001 census data yielded a comparison of Aboriginals on and off reserve (the latter only Charlottetown where the off-reserve Aboriginal population is concentrated) with the overall population of PEI with respect to educational achievement. The 2001 census material was supplemented by the census' Aboriginal Identity Census for PEI which focuses on persons who are either registered band members or consider their Aboriginal identity to be their paramount or central ethnic/cultural identity. In terms of educational attainment, two major patterns emerged (see table 1)**,** namely (a) that Aboriginals 25 years and older in both Charlottetown and elsewhere in PEI had 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 were 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 between Aboriginals and non-Aboriginals was partly a gender effect among the Aboriginals; among males, almost twice the proportion (i.e., compared to the non-Aboriginal males) had not graduated from high school but among females, the proportion was only modestly less than that for 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 was largely accounted for by the poorer results of Aboriginal males; Aboriginal females were 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 did appear to be diminishing, especially the Aboriginal –non-Aboriginal disparity. Looking at the proportion of the population aged 15 to 24 attending school

full time in 2001, the Aboriginal proportions for PEI as a whole matched the provincial average and it would appear that the Aboriginal population outside Charlottetown, that is the reserve-based native population in PEI, would be as least as high (perhaps 57%) as the provincial average. Table 2 which provides data on key socio-economic indicators from the 2006 census, shows that indeed the educational attainment gap between Aboriginal and non-Aboriginal adults aged 25 to 64 has been reduced by roughly 10% from the 2001 census; 12.1% of the Aboriginal adults in that age category had a university degree compared with 15.7% of the non-Aboriginals.

The evaluator observed in the 2007 assessment of the MCPEI AJP that the implications of these educational trends, along with other socio-economic trends, may be quite diverse but at the minimum they suggest (a) an increasing capacity among the Aboriginal people in PEI to mount new justice initiatives and (b) 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 and educational attainment are crucial, they are not the only determinants of cultural identity and the drive to generate culturally different programs in justice and other areas.

In order to explore the two trends suggested in the above paragraph, data were accessed from Indian Affairs (INAC) in 2007 and again in 2010 on the number of Aboriginal band members funded in post-secondary academic institutions (there could be a trade program or "non-University certification seeking" participants funded under the band's discretion) for the four fiscal years 2006-2007 through 2009-2010 (see Table 4). 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 reportedly 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. According to INAC sources in 2010, there have been no new programs or significant policy changes in the funding for post-secondary education (PSE) since 2006 but there has been a modest 1.5% budget increase for a band's PSE eligibility - "Agreements have formula adjustments (DFNFA defined) in the neighbourhood of 1 to 2 percent. That's all, no program change, no big budget change" (personal communication, 2010). It needs to be emphasized that the INAC data refer to yearly 'student counts" and of course a specific individual could be funded for several different years.

In table 4 below, the figures for the much larger Elsipogtog FN (Elsipogtog has a reserve population of almost 3000 residents and is closely connected to the PEI FNs by intermarriage, socio-cultural activities, and occasionally some programs / services) are provided for comparison purposes. The number of post-secondary enrollments has stayed relatively constant in Elsipogtog over the four fiscal years from 2006-2007 through 2009-2010 (i.e., 63, 58, 60 and 62) while both Lennox Island and Abegweit FNs have experienced declines, especially the Abegweit FNs (the latter's PSE-funded student counts steadily declined from a high of 10 in 2006-2007 to but 4 in 2009-2010). Were one to compare the three FNs using, at the low end, registered on-reserve populations and then, at the high end, all registered members living on or off reserve plus others' registered band members living on site, the comparisons might be more meaningful. The bracketed numbers in table 4 represent the low and high ends as described. Clearly, whatever population base is used to calculate a rate of enrollments, Lennox Island has done better than Abegweit in securing INAC's PSE funding. It has also done better than Elsipogtog but only if the comparison is based solely on the number of band members living on reserve. It is also known that at least a few of the funded PEI students have studied in academic fields related to MCPEI AJP activities (e.g., Law, Criminology) and one such student has become a lawyer working outside the province. As will be noted in sections below, there are at present no Aboriginal judges, crown prosecutors, legal aid or private criminal justice lawyers in PEI, something that respondents frequently mentioned in their remarks that "there are no native faces" in the Justice system (there are a few RCMP officers and several Aboriginal liaison role players in Community and Correctional Services). This absence of "native faces", in conjunction with the limited post-secondary attainment, underlines the need for MCPEI AJP to continue its emphasis on networking and bridging the gaps between Justice officials and FN Justice system participants in terms of understandings and cultural experiences, and its aspirations to mount new initiatives such as a robust, multi-dimensional court worker program

Table 4 also provides a breakdown of the INAC funded post-secondary educational activity by gender. It can be seen that there is a very significant disparity between males and females in terms of obtaining the designated funding support. Whether post-secondary education was obtained outside the INAC funding could not be determined but reliable sources suggest that it would be uncommon and would not affect the differentials described here. In the case of Elsipogtog, for fiscal years 2006-07 and 2007-08 there were 94 female student counts versus 27

for males; for fiscal years 2008-09 and 2009-10, the figures were 90 vs 32, so overall females were about three times as likely to receive such funding and attend institutions of higher education. The pattern holds also for the two PEI First Nations, Lennox Island and Abegweit where, overall, in the last two years there were 39 females versus 15 males receiving the funding, roughly the same three to one differential as in Elsipogtog. Comparing the years 2006-2008 with 2009-2010, in the case of Lennox Island the funded females outnumbered their male counterparts 28 to 17 and 30 to 13 respectively while, for Abegweit the comparable figures were 16 to 3 and 9 to 2; clearly, the gender disparity has not declined.

The accessible INAC data could also be broken down by whether the student was pursuing a graduate degree, regular university degree, a non-university program or was not seeking a qualification. As table 5 shows, the large majority of the INAC funded students from all three FNs were enrolled in undergraduate university study. Troubling though, while, in the case of Elsipogtog, such students increased by 10% in the last two year period, they declined by 40% over the same time period in the case of Lennox Island and Abegweit. Not surprisingly, the larger Elsipogtog FN accounted for all but one of the few students from the three FNs funded for graduate studies in the last two years. Lennox Island students surprisingly were by far the more likely to be enrolled in non-University certification programs, especially in the last two years where almost half the Lennox Island persons INAC-funded for post-secondary education were so enrolled, compared to 0% from Abegweit and only 8% in Elsipogtog. Unfortunately, more elaborate data were not available on the non-University certification programs being taken nor was there any further specification by gender.

The gender patterns found in the educational data reinforce the socio-demographic patterns of migration and inter-marriage cited earlier and suggest potentially significant problems for interpersonal relationships, individuals and families. In many Aboriginal and mainstream communities in Canada, especially the Aboriginal communities, the pattern of young male adults often having low self or community esteem (‘zero status” is the concept researchers have used) as a result of poor school performance, limited skills and limited job opportunities, has been associated with high levels of violence where young women have been the usual victims, and unstable relationships where the male role as partner and father is marginalized. In interviews in 2010, for example, some Elsipogtog Child and Family Services (CFS) and other professionals have commented on these issues, noting that “it’s the same thing here” [and] “when CFS deals

with foster home guardians, it is almost always with the mom / woman, and virtually always assumed that the male is likely to drift on so is a less important resource. Male roles have for many evolved into a self-defeating system". Other interviewees engaged in the school system have made similar comments and have pointed out that, even in elementary school, the children with serious behavioural problems (frequently diagnosed as having FASD disabilities) are overwhelmingly male. A number of interviewees also commented on the implications of male status issues for weak family formation; one nurse observed, "Most of the young mothers are not married though there are many "common-laws" of various duration. There is not a high rate of formal marriage or of formal separation and divorce". The implications of these same patterns for violence and abuse can be seen in the Elsipogtog police statistics where there has been a very high rate of intimate partner or domestic violence.

In the small PEI FNs these gender effects have been noted by some police and other local service providers. One veteran police officer commented "the women have come a long way over the past two decades while there are some males who have a "you owe me attitude". An experienced Aboriginal social services worker readily identified the alienation, frustration and anger of the less educated young and underemployed adult males as a major problem requiring significant one-on-one intervention; she wrote, "Yes, lower levels of literacy and effects of family violence seem to be at the heart of this, based on my 26 year experience with Mi'kmaq communities. Focusing on more 1 to 1 and small group literacy efforts and youth programs would be a great service". At the same time, the few local elected Aboriginal leaders interviewed in 2010 did not think that gender disparities in educational attainment were pronounced or associated with such disruptive, harmful consequences.

Table 4

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

First Nation	2006~ 2007	2007-2008	2008- 2009	2009~ 2010
	M F T	M F T	M F T	M F T
Lennox Island (362 to 805)*	9 16 25	8 12 20	6 17 23	7 13 20
Abegweit (176 to 312)*	2 8 10	1 8 9	2 5 7	0 4 4
Elsipogtog (2131 to 2826)*	13 50 63	14 44 58	15 45 60	17 45 62

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

*Source: INAC – Atlantic. 2010

TABLE 5

POST SECONDARY STUDENT COUNTS INAC-FUNDED FROM LENNOX ISLAND, ABEGWEIT AND ELSIPOGTOG FIRST NATIONS BY TYPE OF PROGRAM AND YEAR

2006-07 / 2007-2008 (2 years)	Elsipogtog	Lennox Island	Abegweit
Number in University Graduate Studies	7	2	1
Number in University Undergraduate Studies	94	36	16
Number in non-University Accreditation Programs	20	7	2
Number “Not Seeking a Qualification”	0	0	0
2008-09 / 2009-2010 (2 years)			
Number in University Graduate Studies	9	2	1
Number in University Undergraduate Studies	101	22	10
Number in non-University Accreditation Programs	10	17	0
Number “Not Seeking a Qualification”	2	2	0

Source: INAC, 2010

FIRST NATION POLITICAL ECONOMY IN PEI

The 2007 report discussed at length the political economy for Aboriginal peoples in PEI. Some of the key dates in its evolution have been depicted in the chronology of key dates included here. In this assessment there will be a modest updating of the patterns and issues. Certainly a major political-economic development has been the partnership agreement signed on December 1, 2007. The tripartite agreement - Canada / Prince Edward Island / Mi'kmaq - was signed by the chiefs of Lennox Island and Abegweit on behalf of the Mi'kmaq, the Premier on behalf of the PEI government and the Minister of Indian Affairs on behalf of Canada. The Partnership Agreement provides for the parties to work cooperatively on a variety of matters, including the five "tables" of health, education, economic development, justice and child and family services. While not formally a treaty-making process as currently underway in Nova Scotia (the "Made in Nova Scotia" negotiations), it appears to be a substantive similarity. Thus far, the focus has been on the "education table" but the process ultimately could well result in significant changes in Aboriginal justice and in the role of the AJP in the future, though as yet there are few inklings about any possible changes or devolution of authority or administrative control in justice matters to the First Nations. One implication, though, for the FNs, is that the band councils will have to play a major role in seeing that their people adhere to the agreements that they negotiate, otherwise their credibility as government would be in jeopardy, and that requisite in turn would appear to require a meaningful regulatory capacity (see the section Beyond the Criminal Justice System below).

The relationships between the provincial government and the First Nations appear to have improved considerably over the past three years. Collaboration and participation and more holistic strategies appear to suit the approaches and styles of both types of government, and elected Aboriginal leaders strongly endorsed that position. It is noteworthy that some current senior officials in the provincial Aboriginal Affairs Secretariat - Aboriginal Affairs was moved into Health and Wellness from Justice in 2008 - were former senior staff members of the MCPEI or of Lennox Island FN. In the field of justice, as will be noted below, there are more and stronger links especially between the AJP and the provincial Corrections and Community Services department (e.g., Victim Services). The election of a new chief and council in Abegweit has improved collaboration as evidenced by renewed effort on all sides to finally sign and implement the on-and-off-again, M.O.U. for dealing with fisheries violations by Aboriginal

people. The M.O.U., which when effected would likely involve resort to the AJP's circle keepers and circles as the preferred way of DFO responding to fisheries' offences (i.e., it reads 'diversion to a community-based justice resolution body"), details quite thoroughly the diversion referral process and protocol, its conditions, types of sanctions and consequences of non-compliance. It would represent a formal agreement signed by the MCPEI, the Lennox Island and Abegweit First Nations, the federal Prosecution Service and the federal DFO.

There are a number of issues related to the political developments of recent years. One concerns the increasingly ambiguous role of NCPEI and off-reserve Aboriginals, some with status and even non-Mi'kmaq. As noted above, NCPEI is not a direct participant in the Partnership Agreement which is deemed to be an agreement among recognized governmental bodies. Another issue is the appreciation that the relationship between the province-wide organization (i.e., MCPEI) and its constituent sub-entities (the participating FNs) is quite different from that between the province and its constituent cities and towns. The centrifugal forces are much more pronounced, if latent, among the former as there is acknowledgement of the FNs' fundamental autonomy vis-à-vis the provincial organization. What this translates into, in areas such as justice and economic enterprise, is that FNs can exercise significant independence of action and therefore MCPEI services and programs have always to be very sensitive for this reason to their community linkages (and of course for other reasons too such as community effectiveness and equity in service delivery). Another issue is the collaboration of PEI's FNs with FNs elsewhere in Atlantic Canada. As discussed in the review of the literature section, RCAP emphasized the importance of there being - but offered little strategic advice for achieving it – larger tribal units for effective FN administrative capacity. There has been some collaboration of the FNs in PEI with Elsipogtog in New Brunswick and MLSN in Nova Scotia (e.g., FASD awareness, circle keeper training, consultations with the federal Aboriginal Justice strategy) and some prospects for economic collaboration (e.g., Abegweit and Millbrook FN in Nova Scotia currently are in discussions regarding fish processing); that collaboration could develop much further in future years in justice matters (e.g., a regional Healing to Wellness court?) as well as in economic developments.

The 2007 report provided an account of economic developments in Aboriginal society especially among the FNs. The centrality of the 1999 SCC's Marshall Decision and the fisheries were shown to be dramatic and profound. A regional Aboriginal leader referred to it as "the

single greatest driver of the Atlantic Aboriginal economy in the last 5 to 8 years. Opportunities such as generating value added product and developing the eco-tourism component of harvesting lobster and other species must be explored". There was some modest commercial fishery in the FNs in PEI prior to that decision; the three regional FNs with some commercial fishery prior to the Marshall Decision were, according to DFO respondents, Abegweit, Lennox Island and, in Nova Scotia, Pictou Landing, where the commercial licences were mostly for lobster and herring. The subsequent federal strategy to facilitate, with funds and new policies, the development of an Aboriginal fisheries led to significant participation in the commercial fishing enterprises on PEI and "the two First Nations on PEI, Lennox Island and Abegweit, have also entered into a voluntary agreement with the Department of Fisheries and Oceans to follow the regulations that the department already has in place". The 2007 report also noted that the variety of resource management activity on-going in PEI's Aboriginal communities and the sound business strategies (e.g., Lennox Island's Development Corporation established in 2006 managed arms-length of band council) developing especially in the fisheries area (e.g., different species, aquaculture, employment opportunities etc). While there were other economic agreements being negotiated with the provincial government with respect to other resources (e.g., the forestry sector), clearly fisheries were the centre-piece for the Aboriginal political economy. Small wonder then that there was considerable enthusiasm for the 2009 Minigoo Fisheries plant initiative in Lennox Island aimed precisely at the value added product development hoped for in the fisheries, and for seeing through the M.O.U. with DFO as noted above.

The census data referred to in the previous section provide a rather positive picture of Aboriginal economic developments between 2001 and 2006. They indicate significant progress in most areas of economic activity from unemployment to household income and showed that the economic differences between the Aboriginal and mainstream populations were being reduced. Data from INAC's community well-being (CWB) 2006 research provide for a direct comparison of the FNs with other mainstream communities in PEI. The CWB scores which represented a composite index of well-being items yielded a less salutary picture. The overall CWB score for Scotchfort, for example, was 59, by far the lowest of all PEI communities listed. Lennox Island had a score of 71 which was lower than all but a handful of the 60 plus listed PEI communities, though close to a number of others. For Morell and Rocky Point, two small but quite different FN communities there was no information provided. There was no breakdown by specific CWB

index scores for Scotchfort but there was for Lennox Island. Its income score of 62 was the lowest of all the listed PEI communities; its housing quality score was low too with just one community having a lower score and one tied with 85; its education score of 53 was better, with over 40 PEI communities (2/3 of the entire listing) having a lower score; its labour force activity score was 84 and there were 27 communities with lower scores and 7 with the same score. These CWB measures underscore two central points that are relevant for the AJP, namely the reality of economic disadvantage continues for many Aboriginals, and the considerable variation that exists among the FNs (e.g., Lennox Island compared to Scotchfort, Rocky Point compared to Morell), both of which tend to create criminogenic conditions and may require special AJP strategies. In light of these phenomena one can appreciate the priority given to economic development by the elected Aboriginal leaders. As one chief commented, "for effective self-government we need our own sources of revenue".

There have been interesting economic developments since 2007. In the Abegweit FN, there has been a significant change in the way the Scotchfort gas bar operates, putting it on a more business-like basis with increased revenue being available for the band's priorities; indeed, the gas bar has already been expanded. While Abegweit leadership did not take up a partnership in the Lennox Island's Minigoo plant, advances have occurred in the area of purchasing and reselling fish under their new company Redstone Seafood and the band council is exploring other possibilities in the fisheries including the harvesting of more species and, as noted above, has purchased a lobster pound and is negotiating a relationship with the Millbrook FN of Nova Scotia for fish processing. An auto and marine shop also has been opened on the reserve. There are also some prospects in forestry (access to the limited crown land for making certain products) and the band did purchase earlier what one band employee described as "a large agricultural area in the Scotchfort area", though as yet there has been no commercial agricultural production". As in the case of Lennox Island, virtually all interviewees observed that there is not much arable land, and, indeed, in the case of Morell and Rocky Point, virtually no more land available to be build on, never mind farm on. Under the circumstances, the focus has been on the communally owned ten fishing licences / boats and exploring options and agreements in fisheries with others, mainstream or Aboriginal.

In the Lennox Island FN the emphasis on the fisheries has been even greater, especially with the decline of earlier Lennox Island-based economic activity such as harvesting of peat

moss. Economic development possibilities in forestry and agriculture are virtually non-existent. Like Abegweit, the Lennox Island leadership has been exploring options in conservation and eco-tourism projects but clearly the major economic boost has been seen to be in the fisheries. The band now (2010) has ultimate control over 28 licences, 19 of which are annually transferred to private individuals who own their own boats while in 9 cases both the licences and the boats are communal (i.e., band–owned) and the crew work for the band. The Lennox Island band has developed a solid reputation for its progressive management and entrepreneurial activity, highlighted by initiatives such as the arms-length Development Corporation in 2006 and the significant investment in the Minigoo processing plant in 2009. The latter collapsed into bankruptcy in 2010, a significant blow for the FN as well as for local area creditors but the new excellent small facility is still there and is expected to rise again with its promise of employment and, hopefully, secure processing agreements with non-Aboriginal fishers in the region..

It is clear that the post-Marshall fisheries developments have generated significant employment on the reserves. In the case of Abegweit, reportedly, 30 plus jobs have been generated directly by the ten boats, and, in Lennox Island, the boats basically have had a working complement of two persons per boat. That is significant, if seasonal, employment for these small communities, indeed for any small PEI community. Both FNs have exhibited strong entrepreneur thrusts, exploring fisheries-related endeavours of all sorts (e.g., harvesting different species such as salmon and smelts; boat maintenance) aided by MCPEI resource and economic development specialists. There clearly have been and remain major challenges, such as how Aboriginal rights are interpreted (e.g., the issue for example of taxes on landing where the boat is non-communal in designation), and as an industry, fisheries in Atlantic Canada has had many challenges in recent years. While the band's fishing operations have occasionally operated in the red, there is evidence that the FNs have become better entrepreneurs and more successful in business dealings with non-natives (e.g., the costs for having local businesses do maintenance on FN boats have decreased sharply from an average of $3400 to $80 as a result of their securing INAC funding for hiring fleet and mechanic managers).

While it can be argued that the high expectations initially associated with the SCC's 1999 Marshall Decision have not been realized, virtually all respondents, Aboriginal, provincial and federal, agreed that it has yielded significant positive economic change for Aboriginal people in PEI and will continue to drive economic development in Aboriginal communities. While it can

be argued that the high expectations initially associated with the SCC's 1999 Marshall Decision have not been realized, virtually all respondents, Aboriginal, provincial and federal, agreed that it has yielded significant positive economic change for Aboriginal people in PEI and will continue to drive economic development in Aboriginal communities. The NCPEI also has now several lobster licences though not being a FN, it is not eligible for DFO services (NCPEI's publication, Gigmanag, reports that the L'nu Fisheries manages 4 vessels for the NCPEI in the lobster fisheries; the L'nu employs 8 people, six of whom are NCPEI members and the boats operate out of Launching and Alberton PEI). There has been in recent years a leveling off of lobster prices and a very significant drop in the quota for snow crab but DFO officials did not think current conditions would prevail. DFO officials however pointed to two problems that, in their mind, have more pertinence than market conditions for the Aboriginal fishery. The first was the claim that fishing is an economic activity that has to be passed along generationally - "it is hard work, dangerous work in some ways and being out on the briny is challenging so a subculture has to develop to sustain it" – and suggested it would take hold only among some smaller subset of Aboriginal fishers. The second problem in their view was that federal monies provided for the Aboriginal fisheries were gone and little re-investment / re-capitalization had occurred among the Aboriginal fishers with the result that the necessary recapitalization would have to come again from government coffers and that might be an issue this time.

Generally, both Aboriginal and DFO respondents considered that that their relationship has become quite positive. DFO interviewees contrasted the PEI situation with Nova Scotia where disputes / differences in interpretation of Aboriginal rights between a few FNs and DFO remain significant problems. Aboriginal spokespersons in PEI reported that currently, in the case of DFO (and Environment Canada) and Aboriginal fishers, partnering is basically by the government's rules; one wrote **"**There is a management agreement but recognition of native rights is still a work in progress". The respondent went on to claim that racism still occurs in the fisheries and DFO officers still are prone to believe that the Aboriginal fishers are doing "something wrong". As for conflict between Aboriginals and mainstream fishers, both DFO and Aboriginal respondents held that the conflict has lessened and the situation has "stabilized". DFO respondents felt that "things seem to be getting better all the time", while the Aboriginal spokespersons indicated that there was still an underlying tension which could readily become manifest if the non-native fishers think there is a native advantage. Here they pointed to the

importance of continuing education about Aboriginal rights, especially in the Aboriginal food fisheries where Aboriginals are allowed to fish out of commercial season for food for their families. Apparently, there is no established mechanism in place to deal with such conflict; as one respondent said, "it's the cut of the knife", destroying the traps when conflict or disputes between native and non-native fishers break open. Both DFO and Aboriginal respondents emphasized that it is important for the FNs to show that they govern their residents and that agreements, such as the food fisheries agreements, are not breached without sanctions of some kind. It was also agreed that such capacity on the part of the FNs would be the first step in exercising authoritative ownership in the fisheries. In the section below, Beyond the Criminal Justice System, the issue of the regulation of the Aboriginal fisheries and the possible role of the AJP, including the type of incidents likely to be referred and the number of referrals will be discussed.

ABORIGINAL SOCIETY IN PEI: KEY DATES

1870 – Lennox Island First Nation was established

1960 – Mary Bernard is the first woman elected chief of the Lennox Island FN.

1972-73 – the causeway to LI, the formation of a separate FN namely Abegweit, and the formation of Native Council PEI (It was local #17 of the New Brunswick and PEI Association of Metis and Non-status Indians).

1972-73 – Margaret Bernard is elected first chief of the newly formed Abegweit FN.

1975 – the PEI Association of Metis and Non-status Indians was formed as an independent group, incorporated under the Societies Act of PEI.

1981 – Mahemigew Inc created. It was a major commercial venture of the Lennox Island band council and its major business was harvesting peat moss.

1986 – the Aboriginal Women's Association of PEI was founded to facilitate awareness and advancement of issues relevant to Aboriginal women in PEI

1999 – SCC's Marshall decision re fisheries

2002 or 2003 – first pow wow (M.Sark reports that annual cultural awareness programs go back to 1ate 1990s)

2002 – In April the MCPEI was formed and became "the common forum and the unified voice for the advancement of Treaty and Aboriginal rights for the Lennox Island and Abegweit First Nations".

2004 – LIFN elects an all-female band council which includes D. Bernard as chief, E.Bernard and T.Thomas as on-reserve councilors, and MM Philips as off-reserve councilor.

2004 – The MCPEI received recognition from the Department of Indian and Affairs as a tribal council (TC) and provincial territorial organization (PTO), a recognition enabling it to receive funding to deliver five core TC programs namely economic development, financial management, community planning, technical services and band governance.

2006 – The Lennox Island Development Corporation was established and managed at arms-length from the band council. Its primary government contact was with the federal Department of Fisheries and Oceans.

2007 – On December 1, 2007 the Canada / Prince Edward Island / Mi'kmaq Partnership Agreement was signed by the chiefs of Lennox Island and Abegweit on behalf of the Mi'kmaq, the Premier on behalf of the PEI government and the Minister of Indian Affairs on behalf of Canada. The Partnership Agreement provides for the parties to work cooperatively on a variety of matters, including health, education, economic development, justice and child and family services. It is effective 2008 to 2012.

2008 – The Aboriginal Affairs was moved from Justice to the Health and Wellness Ministry of the PEI Government. The new deputy director was formerly a senior staff member with MCPEI

2009 – The Minigoo Fisheries was created on Lennox Island. It was a lobster processing facility, the first wholly owned and operated by a First Nation in Atlantic Canada. It complemented the extensive lobster fisheries in Lennox Island and was available for processing lobster from other sources. The multi-million dollar investment was put together and construction begun in December 2009. The plant opened on May 1, 2010 in time for the lobster season. At full capacity it could engage as many as 70 workers, a major economic boon for Lennox Island and the local area. Subsequent to completing the lobster season Minigoo Fisheries had to file for bankruptcy but there are plans to re-open the processing facility for the 2011 season.

2010 - MCPEI has a staff complement this summer of 54 compared to 24 in 2006 and 2 in the year of formation, 2002. As one MCPEI staff person commented "That's growth".

ABORIGINAL CRIME PATTERNS IN PEI

CRIME AND VIOLATIONS: OFFICIAL RCMP STATISTICS

The 2007 assessment of MCPEI AJP examined crime patterns as documented in 'hard data", namely police statistics. Such data were only available for the Abegweit and Lennox Island FNs, policed by the Prince and Queens RCMP detachments respectively. No such data identifying Aboriginal persons were being tracked by the municipal police services at Charlottetown (CPS) or Summerside (SPS); officials there indicated that there were few Aboriginals charged by police so it was not considered a significant matter. In 2010, again the RCMP "mayor's reports" at the two FN sites provided the only available hard data but the CPS reported that as of 2010 they will be tracking Aboriginal cases. There was more information available this time from the CPS and SPS but it was largely anecdotal and "guesstimates" so will be discussed in the section below on Views and Experiences of Criminal Justice System officials.

The RCMP reports on crime in Lennox Island and Abegweit for 2005 and 2006 (see tables 1 and 2) indicate that there were a modest number of offences there. The offences were essentially minor ones in both milieus. The two FNs, Lennox Island and Abegweit, also had basically the same patterns of reported violations. Apart from traffic violations, the main actual (i.e., reported offences / violations confirmed as such by the police service to have taken place) crime incidents involved assaults, mischief, disturbing the peace and administration of justice issues (i.e., breach and "fail to comply"). The two FNs had basically the same annual number of offences cleared by charge, averaged over two years, namely 33 in Abegweit and 36 in Lennox Island but given that the latter had roughly twice the former's population, the rate was of course higher in the Abegweit FNs. Over the two years, and consistent with police interviews, the offences 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-confirmed 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 registered reserve population of Lennox Island (187 to 362 in 2006), had roughly the same number of assaults and twice the number of 'disturbing the peace' offences cases as Lennox

Island. RCMP officials indicated that the relatively high level of these offences in the Abegweit FN (especially Scotchfort) had to do with the well-known political strife there during 2005 and 2006 and did not reflect a widespread pattern of intimate partner / domestic violence or of social disorder. Lennox Island, on the other hand, had proportionately more administration of justice offences (i.e., breaches and failure to comply) which might have been related to its greater distance from the court (i.e., the Summerside court).

In the 2007 assessment, the level of actual offenses in the PEI FNs was compared to the Millbrook FN in Nova Scotia (see table 4) and the Elsipogtog FN in New Brunswick (see tables 5 and 6), 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 registered 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 registered 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 was "in the middle" among Atlantic area First Nation communities. Overall, the statistics indicated that, while the numbers were modest, the rate or level of reported offenses was reasonably significant. Such patterns helped account for the paradox encountered in the field work. Respondents, whether community residents or CJS officials, noted little reported crime 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.

It was noted in the 2007 report that the RCMP practice was 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 were usually "cleared otherwise". If the circles initiative by the MCPEI AJP were to become 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 were currently employing when they did not lay charges in an actual offense. Regarding the regulatory sphere of justice, a subject drawing significant attention in the original protocols of the MCPEI AJP, it was observed 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.

The RCMP crime data for 2008 and 2009 indicate that there have been no significant changes in the crime patterns on reserve. In the case of Lennox Island, there was the usual modest number of actual criminal code offences, aside from provincial statues, where there were roughly 50 violations in each year, of which the large majority were ”cleared otherwise”, not by charge. The number of yearly criminal code charges made by the police averaged over the two years, 2008 and 2009, was 34, essentially the same as the two year average found in the 2007 report. The offences were typically minor offences but there were in each year four charges of assault with a weapon or assault causing bodily harm. There were about a dozen police interventions under the Mental Health Act which could indicate a problem for such a small community. Here, though, and indeed in the case of all offences recorded in the RCMP report, it is not indicated whether a few people accounted for multiple incidents but one would assume that to be the case (see the section on CJS officials views and experiences below). The police reports for 2010, up to the September 2010, followed closely the patterns cited for 2008 and 2009. It may also be noted that there was only one fisheries offence recorded by the RCMP in Lennox Island in the two year period. In sum, then, the last three years have seen the same patterns as found in the 2007 assessment, namely a relatively small number of minor offences where the criminal code charges made by police averaged some 34 yearly. There were however a handful of more serious assault offences which may have been caused by two or three persons. As indicated in 2007, even a small number of crimes in a small population can yield a significant rate of crime, and assaults and mischief, even if few, can wreak great havoc in a small densely connected community. Nevertheless, compared to other regional FNs such as Elsipogtog (see tables 5 and 6 below), Eskasoni and Indian Brook, the Aboriginal crime problem in PEI clearly is quite minor.

In the case of Abegweit FNs, one would expect a major decline in simple assaults and disturbing the peace in 2008 and 2009 since the political strife underlying the 2005 and 2006 incidents was ‘resolved’ in the 2007 election. Initial data available to the evaluator (the Mayor’s Report were not available just monthly calls for service sheets) for parts of 2009 and 2010 did support that presumption; there were only 5 instances of calls for service involving disturbing the peace in 2008 compared to an average of 18 actual incidents in each of 2005 and 2006, and

assaults similarly declined from 20 yearly actual offences to but 12 reported offences in 2008. The calls for service for Abegweit data suggested a yearly level of about eight per month. The RCMP's National Survey Codes data indicated that, in 2009 and 2009, alcohol abuse was associated with most of the criminal code incidents recorded. Criminal code offences then appeared to have declined in the Abegweit FNs and may well mostly have represented the actions of a very small number of residents. Subsequent data obtained from the RCMP Mayor Reports for the Abegweit FNs for the years 2008 through 2010 (unfortunately not strictly comparable to that obtained for Lennox Island since no information was available to the evaluator on charges) presented a somewhat different picture. It showed that averaging over the years in table and table 1B, actual offences, with the possible exception of disturbing the peace, did not decline in the last few years but rather there was considerable continuity as regards the level of assaults, mischief and property crimes. As in the earlier years, Abegweit had about double the rate of crime as Lennox Island (e.g., more assaults with half the population). Again, too, it is not known whether a few persons accounted for the yearly average of 20 assaults or the 10 or so harassment cases but one can conclude that crime in Abegweit has not been in decline and that, at least on a rate basis, it is not insignificant.

Overall, then, the RCMP crime statistics indicate a fairly stable pattern of crime in the FNs, declining some in Lennox Island but apparently not in Abegweit. The criminal code violations involve minor offences and possibly are largely accounted for by a small number of residents. This portrait apparently also describes Aboriginal crime in the urban areas of Charlottetown and Summerside. The only anomaly is that, as will be seen below in the section on Corrections, there are almost 40 Aboriginals currently on probation in PEI, a figure that seems out of kilter with the modest level of Aboriginal crime occurrences noted here. The modest crime and calls for service levels on reserve do suggest, as the RCMP officers themselves noted, that policing can be more along the lines of community-based policing emphasizing crime prevention, since the terms of the tripartite policing agreement require that officers designated to police the FNs spend 80% of their duty time on reserve-related policing activities. The implications of these findings and the possibilities for MCPEI AJP activity are diverse but two key trajectories might be (a) more partnering with the local police in crime prevention and, (b) as suggested in 2007, substituting the circles for whatever extra-judicial processes the police currently employ when they did not lay charges in an actual offence.

TABLE 1: 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 1B: ABEGWEIT FNs RCMP VIOLATIONS STATISTICS BY YEAR

	2008	2009	2010
Offences	Actual	Actual	Actual
Impaired driving	3	3	4
Traffic Offence – Regular	6	7	4
Liquor Act Offences	6	9	9
Mental Health Act Activities	15	8	12
Disturbing the peace	20	10	7
Fail to Comply	10	6	9
Sexual offences	2	0	1
Harassment/Threats	8	14	8
Assault (Non-sexual)	16	29	13
Theft under $5000	7	9	9
Break and enter	5	4	3
Mischief	17	17	20
Police Activities re false alarms, suspicions person / vehicle	8	2	9

TABLE 2: 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 3: LENNOX ISLAND RCMP VIOLATIONS STATISTICS BY YEAR

	2008		2009	
Offences	Actual	Cleared by Charge	Actual	Cleared by Charge
Impaired driving	3	1	2	2
Traffic Offence – Regular	13	10	13	9
Traffic Offence – Special	0	0	3	3
Liquor Act Offences	9	7	7	4
Mental Health Act Activities	2	0	12	1
Disturbing the peace	4	0	3	0
Breach Probation	8	6	7	6
Fail to Comply	4	3	2	2
Sexual offences	1	1	2	1
Harassment/Threats	5	3	1	1
Assault (Non-sexual)	11	7	12	10
Theft under $5000	3	1	2	2
Break and enter	3	0	4	2
Mischief	14	5	12	5
Police Activities re false alarms, suspicions person / vehicle	11	0	15	0

TABLE 4

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

TABLE 5

ELSIPOGTOG POLICE STATISTICS 2005 THRU 2007

VIOLATION	Elsipogtog 2005	Elsipogtog 2006	Elsipogtog 2007
Intoxicated Persons Detention Act - Offences Only	3	2	2
Intoxicated Persons Detention Act - Other Activities	26	45	44
Mental Health Act - Offences Only	0	1	3
Mental Health Act - Other Activities	30	75	125
Fail to comply w/ condition of undertaking or recog…	1	8	22
Disturbing the peace	36	56	131
Resists/obstructs peace officer	3	12	7
Fail to comply probation order	3	8	17
Harassing phone calls	5	12	15
Uttering Threats Against Property or an Animal	3	9	4
Breach of Peace	34	111	158
Public Mischief	2	6	9
Drug Offences – Trafficking	0	8	13
Total Sexual Offences	5	6	33
Robbery/Extortion/Harassment/Threats	19	52	64
Assault on Police Officer	1	6	12
Aggravated Assault/Assault with Weapon or Causing Bodily Harm	18	21	55
Total Assaults (Excl. sexual assaults, Incl. Aggravated Assault, Assault with Weapon, Assault Police)	66	147	225
Total theft under $5000.00	27	52	73
Break and Enter	32	71	68
False Alarms	31	51	89
Crime against property - Mischief (exclu. Offences related to death)	52	102	136

TABLE 5

ELSIPOGTOG FIRST NATIONS RCMP
POLICE ACTIVITY REPORT 2008 and 2009

OFFENCES REPORTED	2008	2009
ASSAULT	189	189
SEXUAL ASSAULT	28	22
ASSAULT CAUSING	68	69
ASSAULT P.O	7	4
UTTERING THREATS	66	65
BREAK & ENTER	91	118
THEFT	110	113
DAMAGE TO PROPERTY	184	160
FAIL TO COMPLY	82	80
IMPAIRED DRIVING	78	60
DRUG TRAF / POSS	34	25
INCARCERATED PERSONS	286	306
OTHER CRIMINAL CODE	418	360
MENTAL HEALTH ACT	113	96
911 ACT OFFENCES	381	704
# OF CASES SENT TO CROWN	549	497
RESTORATIVE JUSTICE CIRCLES	43	55

Elsipogtog RCMP First Nations Detachment, 2010

BEYOND THE CRIMINAL JUSTICE SYSTEM: REGULATORY AND FAMILY JUSTICE

There are several reasons why one might expect Aboriginal justice interventions and systems to especially blossom outside the criminal justice system. As the Royal Commission on Aboriginal Peoples (1996) and other Aboriginal leaders and advocates have noted, regulatory and family justice matters (e.g., custom adoption, significant roles for elders) especially may be linked to the cultural and other specific features which differentiate FNs from the mainstream societies and thus create a demand for a "made in Aboriginal community" thrust. Secondly, as they are seen as pertaining to local community life, special Aboriginal justice administration and special Aboriginal laws may be considered both necessary and of no threat to the mainstream society. As noted above, a third reason is that as FNs continue, on an escalating basis, to expand band governance and to enter into agreements with other governments and businesses, it is imperative, as many chiefs have commented, that they be able to regulate the agreements among their own people. A major issue arises then of band governmental authority with its requisites in governmental capacity to ensure compliance by its members whether voluntary or by sanctions; such requisite capacity is cited with increasing frequency in the Canadian literature on First Nations and also is reflected in federal Justice funding patterns targeting FN government capacity over the past decade. A fourth possible reason is that there may well be a void otherwise in dealing with regulatory or family / civil issues especially given the problem of lack of legal representation in civil/family justice matters and the ambivalence of provincial authorities as a consequence of their ambiguous jurisdiction in FN communities (e.g., the pull-back of provincial authorities discussed in the 2007 assessment of the AJP). Related to the latter point may be the importance of FNs responding to the void or opportunity by developing a model of dispute or conflict resolution given the absence of a formal appeal process at the reserve level (see below). Overall, then, there increasingly appears to be a need to pay more attention to these areas of justice in FNs and to perhaps cultivate a vision for how to respond to challenges. In this 2010 follow-up strong support was found both inside FNs and in the mainstream PEI society for a more integrated, holistic community justice

approach so it is important to appreciate what is happening now in these areas beyond the criminal justice system and what role the AJP might play.

Fisheries

Fisheries has long been seen by both FN leaders and DFO officials as a prime area for community-based regulatory justice solutions to take hold. It has also been noted above (see the section on Political Economy) how crucial the fisheries is to the political economy of Aboriginals in PEI. Not surprisingly, when the AJP was being launched several years ago, it was apparently expected to play a significant role with its circles and CKs in dealing especially with youth crime and fisheries violations (DFO define a violation as evidence sufficient for laying a charge), and, as noted, in 2006 an M.O.U. spelling out the protocol and details for such community-based resolution was in principle agreed to by the federal government (DFO and the Federal Prosecution Service) and the Mi'kmak Confederacy, Lennox Island and Abegweit FNs), though the agreement was "rescinded" just prior to its formal adoption. The issue of the FNs' dealing with fisheries violations was seen as a measure of the effectiveness of FN government authority since agreements entered into by the FNs were to be enforced with their collaboration. There would be of course significant challenges beyond the question of FN governance capacity per se, including the issues of individual vs collective Aboriginal rights, "wildcards" or persons rebelling against the negotiated agreements, and aggravating circumstances related to confrontation with mainstream fishers.

In the years since 2007 the M.O.U. has remained "up in the air" but there is evidence now from both the Aboriginal and DFO perspectives that an agreement will be signed and its implementation is imminent. Interestingly, the RCMP and Municipal Police Services data for the past two years record but one or two fisheries violations where charges have been laid in PEI. The fisheries scene appears quite calm and orderly. Still, the interviews revealed a lingering sense of "there could be problems"; one senior RCMP officer, for example, expressed relief that no protest or occupation occurred at Lennox Island when the Minigoo fish plant recently went into bankruptcy.

DFO officials in Nova Scotia and Moncton (the office responsible for DFO's Gulf Region enforcement which has jurisdiction for PEI is located in Moncton) were

interviewed on DFO policy, the enforcement process and the possible impact of recourse to community-based solutions to fisheries violations in order to gauge what the significance of a greater FN role in handling fisheries violations might entail for the AJP. It was noted that there are types of regulatory offences where DFO is not prepared to go through alternative community-based resolution but will insist on the court path, namely where there are obstruction violations or where there is significant financial gain associated with the violations; otherwise, the DFO would prefer the community-based or circle path for handing violations. The officials commented also that the Aboriginal offender has the right to choose in the latter cases and can withdraw at any time, and if so, or if the person does not fulfill the agreement reached in the circle, the case may go to court processing where nothing said in the circle can be held against them (i.e., introduced as evidence in the court proceedings). DFO respondents noted that most Aboriginal violations ("at least 70%") occur in the food fisheries segment (the ceremonials / social fisheries where one is not allowed to sell, trade or barter the catch) as opposed to the commercial fisheries.

The officials reported that there has been and remains significant variation among the different areas of Atlantic with respect to alleged fisheries violations by Aboriginal fishers. Last year in Nova Scotia, where the Aboriginal population is at least 10 times that of PEI, and where there have been poor relations between DFO and some FNs, the yearly total of violations was roughly 50 or less according to DFO respondents. It was not possible to get from DFO the precise number of Aboriginal violations for PEI but it would appear that the rate would be lower (i.e., possibly less than 5 violations annually). Here DFO officials reported that there were more alleged Aboriginal violations in PEI a few years ago which they considered to be a direct result of the SCC's Marshall Decision, but that the numbers have declined in recent years ("it would be very low as of today"). In general, the DFO respondents claimed that "there is more accountability nowadays among the [Aboriginal] leadership and more information available [to DFO] from local [Aboriginal] sources**".** DFO officials also reported that there are, as usual, a few repeat violators who account for most of the violations and some repeaters do claim there is distinction between collective rights as vested in the band and individual Aboriginal rights, a distinction sometimes advanced in defence of their alleged violation. DFO

respondents emphasized that the DFO puts the stress on crime prevention – meeting with chief and council, and hiring both native and non-native liaison officers who have "done much to create a new climate and better relationships".

In discussing the experience of processing Aboriginal fisheries violations along the court path, the DFO respondents highlighted the frustrations, starting with the reported decided lack of enthusiasm among federal prosecutors for handling such cases (for many reasons such as the complexity of "charter challenges", judges having different views on the significance of a "catching under-sized lobsters" charge) to the almost invariably "legal counsel-less" or unrepresented accused Aboriginal pleading guilty and getting a fine which he then does not pay. The whole exercise appears frustrating for all mainstream players from DFO to crowns to judges and cries out for something better. The current system for dealing with violators was considered ineffective as well as inefficient. Yet, apparently, there have been no Aboriginal cases going through extra-judicial sanctions anywhere in Atlantic Canada in the past few years, and several cases that did go through restorative justice earlier in Nova Scotia were not successfully dealt with there by all accounts. This situation has also frustrated FN leaders who have held that these fisheries violations for the most part should be handled at the community level and doing so is essential to FN governance.

One central dilemma has been the compellability problem. For example, an MCPEI staffer cautioned that even with an implemented M.O.U. only a few cases would be likely to go to the AJP 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. That strategy indeed has been the rule in Nova Scotia. It is difficult apparently to get violators to elect to go through the community-based circles, and court-based solutions as noted have been ineffective. Both elected FN leaders and DFO enforcement officials are well aware of the issues here and have advanced suggestions to deal with it, balancing individual rights and compellability but the dilemma remains. Another issue, according to DFO officials, may be the reluctance of some Aboriginal leaders to sanction violators of the FN-DFO agreements because of some Aboriginal ambivalence about the agreements

and the "contested terrain" of Aboriginal rights which make internal FN sanctions problematic.

Overall, then, use of community-based solutions to fisheries violations has long been the desired approach by DFO and elected Aboriginal leaders. It has been delayed but now appears to be imminent. The impact on the AJP may be quite modest in terms of the number of referrals since there appear to be few eligible violations in PEI and the violators may reject the community-based circle in favour of going to court where, reportedly, not much happens if they are convicted. Still, while the cases referred under the M.O.U. may be few, recourse to the circles for fisheries violation is important for symbolic reasons not least because fisheries is such a key economic area for Aboriginals in PEI.

While suggested recourse to the AJP approach in the regulatory justice field has usually been associated, for good reasons, with the fisheries, there are other regulatory concerns that could possibly benefit from it. One is the whole area of band bylaws and policies. Typically, across the entire country, the policing of band bylaws in FNs has been a source of much dissatisfaction by both self-administered or RCMP police services, and band councils, the police because of alleged ambiguities in the legal standing of such laws and their enforcement, and the band councils because of frustration that some community enforcement needs go unheeded by police. There are also frequently in FNs significant conflicts related to band policies such as housing; indeed, most Aboriginal occupations and protests in Canada in the last twenty years have not been about rights vis-à-vis land and other treaty claims but about dissatisfaction with band policies (Clairmont and Potts, 2006). Given the apparent lack of FN-specific ombudsmen or "appeal" processes at the FN level, some PEI elected Aboriginal respondents indicated that there could be a role for some body such as the AJP with its circles and CKs to fill this void without infringing on the authority of council. Indeed, in several FNs elsewhere in Canada (e.g., the Siksika outside Calgary) the central engagement (measured by the number of cases dealt with) of their equivalent to the MCPEI AJP has been in dealing with conflicts and disputes in matters such as housing and other band service areas, not the criminal justice system.

Family and Civil Justice Issues

The demographic data presented above, on patterns of common law relationships, separation and divorce over the past decade, suggest that justice services in the non-criminal family justice / court area could be an increasing concern in the Aboriginal communities, a concern that MCPEI AJP might well take into account in its strategic action planning. It is clear that, in the criminal justice sphere, extending justice circles to deal with more serious offences, such as family violence and sexual offences, will require much greater community and mainstream justice support than currently exists. Requisites appear to be a good track record (within the current mandate) well communicated to these parties, in addition to greater community and justice linkages in the three milieus of Lennox Island, Abegweit and Charlottetown. While virtually all respondents were wary about, if not opposed to, any justice circle intervention in domestic violence, some saw a possible role for the AJP approach (i.e., circles and the circle keepers) with respect to distinctly family justice matters such custody disputes and matrimonial property issues. These comments, taken from the 2007 assessment, continue to be apt in 2010. There also continues to be much ambivalence as to whether or not non-criminal family justice issues constitute a major justice problem in Lennox Island and Abegweit FNs. Several informed respondents noted that increasing private wealth, along with intermarriage and common-law relationships, create major "issues" (e.g., custody, support, matrimonial property rights, different cultural considerations) when relationships are broken. As in 2007, it was noted that unless there is a joint certificate of possession (apparently not the common practice) there is a problem, whether formal marriage or not, concerning matrimonial property rights upon dissolution of the spousal / partner relationship and, also selling a property under a joint certificate is problematic since it is not a fee simple situation.

On the other hand, several service providers and elected officials in both FNs considered that family justice issues were not especially critical, pointing out that the band does respond to support court orders (e.g., garnishee wages) and that while there were child protection cases and custody cases, they have not been a significant cause for concern; one influential elected leader, for example, observed in 2007 and reiterated in

2010 “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”. A few respondents in 2007 did express some concern about different cultural emphases between PEI Children and Family Services and the Mi’kmaq community, essentially contending that the former stress individual rights / concerns in child protection and custody cases while the Mi’kmaq community also consider as important the interests and views of the larger family grouping. In 2010 this concern was much less expressed, in large part, it seems, because in the intervening years, the MCPEI liaison to PEI Children and Family Services, which was just getting off the ground in the fall of 2007, blossomed into a well-regarded, community-linked service in both FNs. The Mi’kmaq CFS program, funded by INAC, includes a director, two full-time family service workers (one in each of Lennox Island and Abegweit FNs) and a family conferencing coordinator. Through its well-known FAMILY PRIDE program, it focuses on prevention and early intervention supports and services to children and families living on reserve in PEI. While not having a mandate for child protection, its director is the designated representative for the FNs to the provincial program and receives all notices on behalf of the bands as per the Child Protection Act. While working cooperatively and collaboratively with PEI CFS, the staff works directly in the community and as one staff person commented, “our clients are the community not the government of PEI”. The Mi’kmaq CFS has also developed a family conferencing capacity exemplifying the holistic approach it has adopted. Interestingly, the Mi’kmaq CFS liaison unit also provides some counselling to each partner in family violence cases, separately never together; apparently the service is usually accepted by both partners. Clearly, any greater role of the AJP in family violence cases or in distinctly family justice matters should integrate well with programs such as the MCPEI CFS and the MCPEI Family Resource Centre in Summerside.

In 2010 the respondents providing direct family services to the FNs did hold that family violence was a significant problem, though, in that regard, their views were in the minority as noted below in the sections on the views of CJS officials, and elected leaders, CKs and other stakeholders in the FNs. There was a similarly small percentage of interviewees reporting big problems in the family justice area, congruent with the 2007

survey where enforcement of child support and the availability of salient information about family legal matters – the most frequently cited problems among a list presented to respondents - were identified as "big problems in my area" by "only" roughly one-seventh of the reserve respondents. There were reportedly (by the MCPEI officials) very few reserve-based cases of Aboriginal children in Child Protection but "significantly more" (no number was provided) in the off-reserve in Charlottetown. The latter statement is consistent with the 2007 assessment where family violence as well as non-criminal family justice issues (e.g., custody, maintenance payments) were considered more prevalent among Aboriginals in the Charlottetown milieu; indeed, in 2007, 40% of the Charlottetown sample cited enforcement of child support and the availability of salient information about family legal matters as "big problems in my area" among Aboriginal people. No comparable data were available for 2010.

Although in the 2007 Aboriginal survey, about 20% of the respondents reported that they had had a recent family court experience, mainstream PEI officials who were interviewed in 2010 on the subject of Aboriginal involvement in civil and family court indicated that there was no visible Aboriginal presence in either sphere. A senior family court judge, quite knowledgeable about the FNs and the development of the MCPEI AJP, commented, for example, that "I don't see that many Aboriginals in court so it is difficult to frame an opinion [about any differences vis-à-vis non-Aboriginal litigants]". He did say that there is too much self-representation in the family and civil court but reiterated that he was not in a position to say whether that was more true for Aboriginals. Essentially his position was that, in his judgeship so far, Aboriginal differences and issues have not been burning questions. In extrapolating to Aboriginal suits in civil matters, he presented the same position, namely very few cases and nothing distinctive, leading him to conclude "if there is not a problem, why not accept that…maybe the people work things out themselves somehow". Essentially the same position was advanced by mainstream officials providing services regarding family legal education. One key respondent stated that she had not heard of the MCPEI AJP and could not recall anyone ever coming in to ask questions or seek advice as an Aboriginal person. She could appreciate possible differences involving matrimonial property issues and the

applicability of provincial property law to reserves where home and land ownership rules are different, but no particular case had come to her attention**.**

From the discussions, it would appear that there are several areas where, from a justice base, the AJP could further contribute to the family and civil justice areas, namely dealing with referrals in family violence cases, providing CKs and circles in non-criminal family and civil conflict / disputes as a supplement to the work of programs such as the MCPEI CFS program, and providing information (not of course legal counsel) on family and civil justice issues and family court processing, supplementing the work of the MCPEI's CFS and Family Resources Centre. As noted above there are challenges to be overcome were AJP to take on cases of family violence, not the least of which is convincing the CJS and FN communities that the AJP 's approach can handle such serious offences and that the CKs' skills have been appropriately upgraded. As one prominent elder said in 2007, "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". At the same time, there is increasing trend for FNs' taking on this challenge in different areas of Canada (not to speak of domestic violence courts in mainstream society) and the initial training / orientation received by the CKs was substantial so there is a base to build upon; clearly any such development would have to part of a strategic action plan and require more resources. The second area of utilizing the AJP approach (circles and trained facilitators) in providing healing circles in cases of family conflict and disputes, especially but not only where there might otherwise be conflict of interests, real or perceived, in extant Mi'kmaq family services, seemed to a well-received possibility by local FN service providers and elected leaders; again of course, there would have to be specific upgrading for the CKs. The third area, namely providing information concerning family and civil justice legal processing so that Aboriginal persons would be less likely to be unrepresented / self-represented in these matters in court or at least better (and more appropriately informed from an Aboriginal perspective) informed should also be on the AJP's radar according to most respondents in 2010, whether Aboriginal or mainstream. It is clear that AJP's expansion in these areas requires both a strategic action plan and more resources. The latter would not only necessitate more planned and targeted upgrading of

the CK program but also more in-depth community linkages, possible through a full-time community liaison staff position similar to the MCPEI CFS community outreach worker.

Overall, then, the views on the possibilities of extending the AJP approach (e.g., circles, CL facilitation) into the areas of family violence and beyond the criminal justice system into the family and civil justice spheres, were not dramatically different from that reported in the 2007 assessment. While broader socio-demographic trends indicated that these areas might well become increasing concerns in Aboriginal justice, most respondents, mainstream and Aboriginal, did not consider them to be currently major problems in the FN communities. Aboriginal respondents working directly in the family services area did think that family violence in the FNs was a significant issue and Aboriginal respondents were definitely more likely to claim that family violence, custody issues and child support and even child protection were issues in the off-reserve in Charlottetown. On the reserves, the major change that occurred since 2007 was the strong community role for prevention, early intervention family support, and family services more generally, taken on by the MCPEI CFS. In the mainstream communities key respondents reported that there was little Aboriginal 'presence' in family and civil court so, in their view, perhaps there was either no problem or there were community solutions. The available data did seem to support the position that problems in these areas were minor in frequency but the data were inadequate and did not track Aboriginals especially in the family and civil court; moreover, the seemingly non-use of civil and family courts by Aboriginals could be interpreted as a problem in itself. Drawing upon these patterns and responses, it would appear that there are three areas where the AJP may play a significant future role, namely in responding to CJS referrals involving family violence, in extending its approach (healing circles, CK facilitation) in cases of non-criminal family and civil disputes in collaboration with other services such as MCPEI CFS), and in filling the current gaps in providing information to Aboriginal peoples about family and civil legal processing where, unlike in criminal matters, it appears that Aboriginal people do not utilize the courts and are unrepresented in the few times that they do. Any development along any of these three trajectories would require on the part of the AJP strategic action planning, more CK training and upgrading, and stronger community linkages, and these in turn require would more resources.

PART TWO: MCPEI's ABORIGINAL JUSTICE PROGRAM

INTRODUCTION

The AJP is one of three major MCPEI service programs, along with Health and Family. Here the focus is on the evolution of the AJP especially since the last assessment in 2007. The chronology below lays out the overall development of the AJP. The section begins with a discussion of the AJP's objectives and activities. It is followed by a description of the number and variety of circles carried out by the AJP since 2007; the circles by consensus in both mainstream and Aboriginal society in PEI constitute the centerpiece of the AJP program. The section concludes with an assessment of the AJP's development, successes and challenges, a topic which is picked up again in the final section of this report, Conclusions and Future Directions, where the AJP's three central objectives and six assessment questions will be reviewed.

AJP Objectives and Activities

In the original 2007 assessment of the MCPEI AJP, it was noted that MCPEI material described 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".

The central objectives for the AJP were defined in AJP documents most generally as threefold, namely cultural orientation and liaison with mainstream justice officials, building Aboriginal community capacity in justice, 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. While the same three general objectives continue to structure AJP's formal presentation of self through annual work plans and activities reports, AJP documents since the formation of the MCPEI AJP have elaborated on the vision of the initiative, an elaboration consistent with the trends in FN post-RCAP approaches as noted earlier (section on literature review), namely

> "to take ownership for Aboriginal justice issues and allow Aboriginal people to self-administer justice by building a traditional justice system based on holistic community values and effecting a unity among our people"(2007).

As stated in the 2007 assessment, the goals of the first objective were to enhance the understanding between Aboriginal people and mainstream justice officials, facilitate Aboriginal input in justice matters, and assist in the justice system's becoming more responsive to Aboriginal culture and everyday Aboriginal realities. These goals were to be achieved especially through networking and cross cultural orientation at conferences and workshops. The basic listed activities subsumed under this broad objective were 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 (i.e., police, crowns, legal aid and corrections officials) about the MCPEI AJP and the alternative measures available to Aboriginals through this program", and (5) consulting with the RCMP and Municipal police services to encourage their reporting systems to track for Aboriginals.

The second objective, community capacity and training, centered around, but was not limited to, the most well-known and inventive feature of the AJP, namely the launching of the circle keepers program (see Chronology below for details). The circle keepers or CKs represented a significant investment of the modest MCPEI resources available 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, judges and correctional staff). The main activities for building on such 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; (3) holding information sessions on Aboriginal justice issues; (4) actively seeking funds to develop front-end services (e.g., crime prevention, circle keeper upgrading) for the MCPEI AJP, (5) developing an inventory of resources that can be provided for justice-related support in Aboriginal communities and beyond, and (6) developing a tool to effectively monitor the circles program. The third broad objective, impacting on the justice system, apart from overlapping activities with the second

objective such as seeking funds, expanding front-end resources, and monitoring justice circles, focused upon (1) having the CKs facilitate the circles occasioned by referrals from CJS role players and others, (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, (4) expanding the types of offences to be dealt with by community-based justice, and (5) examining other areas of justice impacting Aboriginal communities (e.g., family, regulatory especially fisheries). The 2007 assessment was completed as the AJP was getting off the ground but already there had been significant steps taken with respect to the three objectives through the implementation of most of these planned activities.

Since 2007, as a result of increased federal funding, the AJP annual budget has been increased, allowing for a full-time staff member to complement the work of the director/ coordinator as well as to allow for workshops and special research by the director into similar initiatives elsewhere in Canada. The increased budget is in place until fiscal 2012-2013. The job description for the new role – executive assistant to the director of the AJP – emphasized the tasks of coordinating and organizing the annual PEI Aboriginal Justice forum, CK workshops and other justice-oriented conferences. The director / coordinator continues to be responsible for overall direction and leadership, preparation of reports, management of funds, partnerships with mainstream justice officials, research related to best practices, and securing new funds for the evolution of the AJP (e.g., the development of front-end services). Though not specifically stated in the job description, the director has been responsible as well, in almost all circles planned for and held, for all phases of the circle process, including pre-circle preparation, session management, and post-session monitoring of the circle 'agreements'. As described below, the number of circles has increased appreciably since 2007, so the work load for the director has increased very significantly.

Organizationally, the AJP continues to be directed by the MCPEI board and has an advisory committee of eight persons, two from each of its original supporting organizations, namely Lennox Island FN, Abegweit FNs, NCPEI and the AWA. The board meets annually and as needed, while the advisory committee meets quarterly. There remain unresolved political issues from the NCPEI's perspective concerning its

role in the direction of the AJP (see the detailed discussion in the 2007 report) but while this dispute has continued to impact on NCPEI engagement (e.g., attendance at annual and quarterly AJP meetings), the relationships "on the ground" have apparently improved, possibly for three key reasons; (a) a different chief elected in 2007 in one of the FN; (b) an AJP policy to de-politicize the advisory committee (i.e., differentiate between the board and the advisory committee); (c) the need to collaborate on projects such as a recent major, and successful, Youth summer project**.** There have been some minor organizational changes. The MCPEI no longer funds community liaison roles to the specific FNs, so AJP's community linkages depend much more on the AJP's workshop or presentations in the different Aboriginal milieus. Also, earlier 'protocols' restricting the use of CKs based on FN identity (e.g., for a Lennox Island offender the CK must come from Lennox Island) are no longer in effect, possibly an indication of the program's growing acceptance in all Aboriginal milieus. An added bonus according to some AJP informants has been that "now AJP can tailor the charge or issue to the circle keepers' experience and expertise" (e.g., a CK knowledgeable about drugs for drug issues). A casualty of the change has been the earlier AJP committee established to select CK facilitators for specific CJS referrals which has been inactive.

Examining the AJP documents, for the years 2008 through 2010, shows that the AJP has been accomplishing its three major objectives by implementing the specific activities cited above and by supplementing them with other activities. In 2008-2009, AJP documents show that the three major annually scheduled meetings were held – the MCPEI AJP general meeting (i.e., the AGM), and the 2nd Annual Aboriginal Justice Forum co-sponsored and organized with the PEI government and bringing together Aboriginal leaders, justice and related service providers with mainstream governmental, policing and other CJS officials. The third major meeting brought together circle keepers and customary law facilitators from elsewhere in Atlantic Canada to discuss their craft and related issues. Funds were secured as a result of an AJP bilateral proposal being accepted by the federal Aboriginal Justice Strategy to facilitate training and capacity building. These funds enabled the AJP to mount workshops on the circle keeper role and Alternative Measures (bringing together Aboriginal circle providers throughout Atlantic

Canada), and for the director to visits other Aboriginal justice programs across Canada (Ontario, British Columbia, Saskatchewan, Yellowknife and Nova Scotia).

The 2008-2009 documents also detailed several informational sessions put on by the AJP with CJS and other community stakeholders and laid out the specifics (e.g., the steps and rounds) of the "Aboriginal Justice Circle Process". A special Cultural Training Workshop was conducted with RCMP officers in March 2009. Throughout documents and informational appendages in that year's reports, other activities related to all three general AJP objectives were identified, notably, increased collaboration with the PEI CCS (especially the Aboriginal Case Worker), work on an inventory of resources available in the Aboriginal and mainstream communities for CJS and CKs to refer 'clients' to, and extension of the circle format to healing circles for incarcerated persons. Statistics were also provided for all the circles undertaken. A special concern for the AJP since its initial conception was working with youth and in March 2009 there was a comprehensive Youth Violence Prevention Workshop. Overall, the year's activities lined up well with the work plan submitted earlier for 2008-2009 and fitted well with the general AJP objectives. There were a few areas where more activity would have been appropriate such as the development of formal protocols for referrals from the various CJS role players and the recruitment of volunteers and more CKs but clearly the AJP had a full workload.

The work plans and activities for 2009-2010 and 2010-2011, as expected given the same budget, same objectives and same three major annual events – the AGMs, the Circle Keepers Conference, and the Annual Aboriginal Justice Forum - basically imaged those for 2008-2009. These major meetings have been crucial for the AJP from many points of view (e.g., networking with mainstream officials, learning from peers elsewhere in Atlantic Canada, and accountability to PEI Aboriginal communities). The meetings were well attended in relation to their targets; for example, the 3rd Aboriginal Justice Forum in 2009-2010 brought together roughly 100 participants representing a very significant slice of the mainstream governmental and CJS officialdom plus the major Aboriginal players in justice and justice-related activities. The Circle Keeper workshop in February 2011 was focused more on discussion of issues, challenges and opportunities in the context of federal Aboriginal Justice Strategy; it brought together federal officials in

that directorate plus key Aboriginal justice leaders (and elders) in PEI, N.S. and N.L; this gathering echoed earlier meetings arranged by the Aboriginal Justice Strategy for "East Coast Aboriginal Justice" initiatives.

Documents for these two fiscal years indicated AJP attention to developing protocols (especially for post-charge referrals), data management issues for monitoring the circle activity , negotiating services for Aboriginal victims, and exploring how other justice-related activity (e.g., regulatory, family justice / conflict) would fit within the scope of the AJP. The AJP advisory committee continued to meet regularly and the valuable role of ex-officio members (federal and provincial government representatives and the CCS Aboriginal Case Worker) was noted in new terms of reference (April, 2009). The advisory committee held meetings at various sites (e.g., in 2009-2010 at Summerside, Lennox Island and Charlottetown). Community information sessions were held in that year at four different sites and of course there were numerous other consultations carried out by the AJP's director. In 2010-2011, in addition to the events noted above, the AJP produced an extensive resource guide that had been in the works for several years and also announced an undertaking by CCS's Victim Services to hire staff to respond to the needs of Aboriginal victims, the result of much consultation with the AJP (see details of this Victim Services initiative below). In 2010-2011, there also were also meetings between the AJP director and the Charlottetown Police Service which resulted in the CPS designating a sergeant to be Aboriginal liaison and cultural awareness being built into the municipal police service's training – a very significant step since Charlottetown has the largest concentration of Aboriginal residents in PEI and there may be Aboriginal persons there not identified as such. Also, in 2010-2011 significant collaboration among the AWA, NCPEI and AJP continued in a major project for Aboriginal youth.

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 including mainstream justice officials and Aboriginal leaders and service providers.

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. Attendees were of diverse background as in the 2001 workshop.

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. An M.O.U. explicitly detailing that organizational structure was signed on October 2, 2003 by chiefs Gould and Bernard and presidents Marilyn Sark (AWA) and Jason Kockwood (NCPEI).

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. The ceremony took place on October 15, 2005.

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

**2006 – Additional training was provided to the Circle Keepers and Paula Marshall of the Confederation of Mainland Mi'kmaq's Mi'kmaq Legal Support Network in Nova Scotia was the guest speaker and talked about customary law and community cultural values.

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. The M.O.U. subsequently has been subject to further amendment and re-negotiation and as of December 2010 has yet to be adopted as formal policy.

2007 – In February there was a major workshop held on Alternative Measures and Aboriginal Justice, the first of what was to become an annual workshop hosted by the AJP. 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.

**2007 – The MCPEI AJP's first sentencing circle was held on November 2, 2007 at Lennox Island with over 19 persons in attendance. Judge Jeff Lantz participated.

**2008 – Funding from the federal Department of Justice made possible MCPEI AJP's holding workshops on the Circle Keeper role (March 15 and 16) and Youth Justice (March 20, "Smart Approach to Youth Aboriginal Justice")

2010 – The 4th Annual PEI Aboriginal Justice Program hosted by the MCPEI AJP in partnership with Justice Canada and Public Safety Canada. The theme for the one day conference, which brought together a large number of officials and others in the mainstream and Aboriginal community, was **Walking the Path Together with special workshops on Healing Justice with Circles, Surviving Residential Schools, Aboriginal Youth, and the National Native Alcohol and Drug Program.

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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

** Added since the chronology completed in 2007.

THE AJP CIRCLES

The MCPEI AJP has implemented four types of circles utilizing the circle keepers. They are the conflict resolution circle (CRC), the early intervention circle (EIC), the sentencing circle (SC) and the healing circle (HC). The CRC may well have a generic implication that could apply to conflict situations at the edge of the criminal justice system or to social conflict more generally. Thus far, there have been only five referrals to a CRC and all took place in the 2007-2008 period (see table A below). They were RCMP referrals of youths on reserve who had caused significant damage to reserve property (e.g., public benches). The results were mixed. Three of the youths (all second time offenders) did not complete the circle process but two, both first time offenders, did so. The agreement called for a public apology and the offenders' helping to rebuild the damaged benches. In a CRC there can be no direct recourse to the CJS processing if the referral is not successful, that is, if the referred person does not collaborate or adhere to the circle agreement the case cannot be referred to the court system. Perhaps the mixed results and the general lack of recourse to this strategy by RCMP officers (reportedly for concerns about accountability) have accounted for the lack of CRCs since 2008. In PEI, extra-judicial measures (EJMs) of this type are commonly referred by police pre-charge to CCS' Youth Intervention Outreach Workers associated with and co-located with the police services. Another factor may well have been that some social conflict – referred to the AJP by both CJS and non-CJS sources - has been handled under the rubric, Healing circle.

The usual type of restorative justice referral in both Aboriginal and mainstream justice throughout Canada is a pre-conviction CJS referral from the police or the crown prosecutor. These are usually labelled pre-charge and post-charge respectively, and, interestingly, in many jurisdictions, the number of the post-charge or crown referrals has increased sharply in recent years, testimony to the growing acceptance or institutionalization of restorative justice in the CJS. These type of referrals in PEI are designated Extra-Judicial Sanctions (EJS) and are essentially crown-level referrals (i.e., post-charge) managed through the CCS. In these referrals, lack of collaboration or failure to complete the process and honour the circle agreement, can lead to the offender's case being processed in court. The AJP refers to these pre-sentence referrals as

early intervention circles (EIC). It can be seen (table A for details) that there have been seventeen EICs over the four fiscal years and a fairly stable pattern since 2008-2009 (extrapolating in the case of 2010-2011). The EICs, with but two exceptions, have involved young males on reserve and have been successful in terms of offender collaboration and completion. Data were not available always with respect to whether the offenders were repeat offenders but in known instances, with few exceptions, they were first time offenders charged with theft or mischief. The sanctions featured in the agreements were typically apology and restitution. In two instances multiple youths were charged in the same incident but the AJP practice has been to hold separate circles for each co-offender. The core attendees at the EICs would be the AJP director, two CK facilitators, offender, victim, elder and CCS official. Perhaps a unique feature of the EICs, compared to other provinces, has been that the referral agent has been designated as Probation / Community Correctional Services; this designation reflects the broad engagement of the CCS in prevention and extra-judicial sanctions, as discussed elsewhere in the report; but all the EICs apparently must have the authorization of the public prosecution service. It can be noted from the footnotes to the table below that the AJP accepted all the CJS referrals save two dealing with domestic violence.

The SC completed in the fall of 2007 was a highly symbolic event and was what could be defined as a "full monty" SC since, in addition to the offender and victim, all crucial court role players were present (judge, crown, defence, clerk of the court) plus a large number of AJP / CK persons and local community people attended. As one CK expressed it, "the event provided a great opportunity to expose the judge to the Mi'kmaq way". The circle lasted most of the day and the official sentence was rendered by the judge after a short recess. The on-reserve, adult offender's sanctions for her theft included an apology, community service and one year probation. While virtually everyone interviewed about that event – CJS officials and AJP and CK participants - considered it a successful circle, there also was a broad consensus that such a format was too elaborate and demanding for the offender as well as for the other parties to be utilized on a routine basis. Since then, AJP sentencing circles have been basically sentencing-recommendations circles (SrecC) where a much smaller group – a core of AJP director, two CKs, offender, victim, elder, CCS person – engages in the circle process and sends

the circle recommendations to the court. Judges have indicated that, while they do not consider themselves bound by the recommendations, they respect them and have found them helpful in their decision-making. Since 2008 there have been seven SrecCs, all involving males, mostly living on-reserve and repeat offenders, and the majority of the offenders were youths (see table below). The judge' final sentence usually was probation plus an apology and, occasionally, restitution. Limited specific follow-up information was available.

The healing circles have been quite varied as one might expect. In five of the twelve HCs the individual (adults usually incarcerated in provincial custody) requested the circle for healing via ceremonies (e.g., smudging) and meeting with the CK-elders (usually two) in a counselling and mediation context (se table below). In several other instances the healing circle involved conflict among a small group of persons. Half of the HC referrals came from CCS personnel. The limited information available made it impossible to assess the value and significance of the HCs but clearly this reaching out by the AJP may point to an important future trajectory of its restorative and healing thrusts as suggested in the section on future directions. Interestingly, the HCs that have dealt with conflict among a small group of people can be likened to Elsipogtog's Apigsigtoagen approach discussed earlier whereby that FN's restorative justice program has reached beyond the CJS to respond to general social conflict in the community.

Overall, there has been a modest, but steady and not decreasing, number of conventional restorative justice circles (i.e., what is defined here by the acronym EIC) held by the AJP once it got fully operational after 2008. The AJP has also carried out a number of what have been labelled sentencing-recommendation circles which may be seen as satisfying the Supreme Court of Canada's Gladue imperatives. Both CJS and AJP officials appear to be in favour of SrecC approach, at least for routine cases rather than the more elaborate "full monty" SC as described above. The Healing circle is an interesting example of AJP's reaching beyond the strict definition of CJS referrals, responding to suggestions of CJS officials and to the direct requests of Aboriginal persons. The EICs and SrecCs have usually ended with a feast, something that has become quite common in Aboriginal circles throughout Canada. The AJP has invested heavily in the circles through the feast, providing modest honoraria to the participating

facilitators and elders, and most especially in the director assuming responsibility for virtually all case management and also being present at all EICs and SrecCs.

Clearly, the number of circles of all types has increased from eight / nine in the first two fiscal years depicted in the table to fifteen or so in the last two years. The EIC and SrecC have usually been well-attended. In particular it can be seen that the CCS in its referrals and attendance at the EIC and SrecC circles has played a major collaborative role. Police officers sometimes attend the EICs (preferably by AJP policy in civilian clothes) but they do not appear to play the major referral role that one finds elsewhere in Atlantic Canada and beyond.. The evidence from completion rates and from the testimony of the circle keepers / facilitators and from the probation staff who have attended the sessions is that the circles have been quite successful; however, usually both CKs` and CCS persons reported that they would welcome more follow-up information on the session's impact. Unfortunately no first-hand data have been obtained from the offenders, victims and other participants, a shortfall that should be corrected and that is usually achieved by using exit forms where participants may also indicate their willingness (or not) to be interviewed at a later date by an independent party with guarantees of confidentiality and anonymity. Also, a more sophisticated data management system should be utilized to record circle data in order to ensure complete coverage and assist internal assessments of the circles' impact.

AJP CIRCLES 2007-2008

ALTERNATIVE MEASURES	SENTENCING CIRCLES	HEALING CIRCLE
1 referral from Probation EIC*	**1 Referral from Crown*****	**2 Referrals (from Probation)**
Type - Criminal Code	**Type – Criminal Code**	**Type – Mediation and smudging**
Mischief damage	**Theft and forged documents**	**2 adult males off reserve Both incarcerated**
1 youth, 1st time offender, off reserve	**female adult, on reserve**	
completed circle	**completed circle**	**two mediation sessions one smudging ceremony**
Circle Prescription: apology and restitution	**Circle Recommendation: apology letter, community service and 1 year probation**	
Completed circle Prescriptions		**No further information**
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5 CRCs referred By RCMP**		
All were cases of mischief by Youths on reserve (damage of Public property)		
3 youths, 2nd timers did not complete the circle but 2 youths, 1st timers, did so.		
	No information provided	**No further information**
Circle agreement of Youths: Apologize and help rebuild damaged benches		
None of the prescriptions completed in reporting period		

The AJP received 12 referrals and accepted 10 referrals. The 2 rejected were seen as domestic violence cases. *EIC refers to early intervention circle. **CRC means conflict resolution circle where no charges were laid and no CJS sanction would follow if unsuccessful.* Assuming such referrals are crown referrals.**

AJP CIRCLES 2008- 2009

ALTERNATIVE MEASURES	SENTENCING CIRCLES	HEALING CIRCLES
4 Referrals all from Probation	**No referrals**	**4 Referrals (1 Self 3 fromCorrections*)**
Type - Criminal Code theft from motor vehicle		**Type – conflict resolution in 2 cases (1 involved 5 adults at shelter) and 2 cases where adult incarcerated**
All youth on reserve		**all clients were adults**
All completed circle process		**2 incarcerated adults met several times with elders while in another case there were several circles. The group case did not ultimately go forward.**
Circle prescription: Apology and restitution		
1 completed during reporting Period		

The AJP received 10 and accepted 9 referrals. One accepted case did not go forward as the youth was assessed as having mental health issues. The Corrections referrals were identified as made by the provincial Aboriginal case worker and by the Youth Coordinator.

AJP CIRCLES 2009-2010

ALTERNATIVE MEASURES	SENTENCING CIRCLES	HEALING CIRCLES
6 Referrals all from Probation EIC*	**3 Referrals all from Crown**	**6 Referrals (4 Self 1 from Victim Services 1 from Youth Worker)**
Type - Criminal Code	**Type – Criminal Code**	**Type – Conflict Resolution**
4 Theft and B&E 2 Mischief	**Theft (Adult), 2 B&E Mischief (Youths)**	**One domestic violence One a group of youth Others NA**
		All but one case involved Adults
All young males on reserve. 3 were 1st time offenders, 1 was 2nd time 2 NA**	**All were males (?), the youth were 2nd time offenders No further information provided**	
		2 Adults completed the circle Others NA
All Youths completed the circle	**No information provided**	**No further information**
Circle agreement of Youths: 4 were to apologize and make restitution. 1 to apologize and do community service and 1 to apologize, restitute and seek assessment for addiction	**No information provided**	
All completed circle agreement		

The AJP received and accepted 15 referrals. health issues. *EIC refers to early intervention circle. **NA means no information was provided.

AJP CIRCLES April 1 2010 –Dec 1 2010

ALTERNATIVE MEASURES	SENTENCING CIRCLES	HEALING CIRCLES
4 Referrals all from Probation	**4 Referrals all from Crown****	**3 Referrals (1 Self 2 fromCorrections)**
Type - Criminal Code 3 MaleYouth Theft, 1 female Adult*	**Type – Criminal Code 3 Theft, 1 Assault All male**	**Type – Family Issues but one referral involving adult and youth females was an assault case**
All offenders lived on Reserve and were 1st Time offenders	**All were males, two youth and one adult* In one case the client was off-reserve and in another the client was on reserve while in the 3rd the male was in custody**	
	Two clients were 2nd timers	**All clients were first time clients**
All 3 Youths completed the circle prescriptions	**All completed the circle***	**No further information**
Circle agreement of Youths All were to apologize, make restitution and in 2 cases meet with an elder	**Circle recommendations for all included an apology and probation. The youths also were to make restitution while the adult to do drug /alcohol treatment and community service**	

The AJP received and accepted 11 referrals. *No specific offence cited nor any further information on the adult's case. **All sentencing circles were "sentencing recommendations circles" where the results were conveyed to the court for consideration so it was not recorded what the final sentence or level of compliance were.

AJP SUCCESSES AND CHALLENGES: ASSESSMENT

In the 2007 assessment of the MCPEI AJP, it was concluded that overall, the MCPEI AJP in its first few years had struggled for a variety of reasons, mainly political conflict, turnover in the coordinator role, limited resources (i.e., a one person organization with a limited budget) and perhaps too large a mandate, but that it had established itself and was well poised to take advantage of recent developments. Reaching out more effectively to the Aboriginal communities appeared to be a major priority as was the securing of a more–resourced operational capacity, something that it was suggested could be achieved with the addition of a court worker and part-time outreach workers in the three major Aboriginal locations in PEI, namely Lennox Island FN, Abegweit FNs and Charlottetown. It was considered that while the number of justice circles would probably always be modest in light of the low to modest level of criminal offences and the a low ceiling for offences eligible for referral to the AJP, they could be increased somewhat and in any event they constituted just one dimension of a robust AJP justice service for Aboriginals in PEI. The three years since 2007 have represented a period of significance progress for the AJP in terms of stable effective management, increased resources, significantly more referrals and sentencing circles, and 'institutionalization' of the AJP with respect to mainstream CJS and the Aboriginal communities in PEI.

In documents attached to minutes of the AJP's annual meetings for 2009 and 2010, advisory group members submitted confidential and anonymous assessments of the strengths, weaknesses, opportunities and threats for the MCPEI AJP. In the 2009 document, the strengths emphasized were the trained CKs, the involvement with youth, the stable funding, and the good relationships with the federal and provincial government and the judiciary. The weaknesses emphasized were the need to work more with victims, the low level of Aboriginal community interest, and the lack of commitment from some of the CKs. Key opportunities identified were the interest of other Aboriginal people in taking the CK training, and having secure funding till fiscal 2012-2013. Threats emphasized were the lack of credibility for the CKs, no new CKs having been trained, and possibly becoming essentially just an appendage of the CJS and losing the broader vision that generated the AJP initiative. The 2010 document largely echoed these

'insider' assessments. Strengths emphasized again were the CKs and the support of the federal and provincial government, plus, in 2010, the addition of pride in how much the AJP had developed. Weakness emphases were similar too, namely the need for more buy-in from the Aboriginal communities and for more CKs (especially males), but also emphasized was the need for the AJP to expand its programs and do more in off-reserve in Charlottetown. Opportunities emphasized in 2010 were the possibilities for more networking and collaboration within and beyond the Aboriginal service sector. In 2010, the threats focused chiefly upon the long-run funding sustainability and the staff resources required for the continued development of the AJP.

The evaluator's sense of successes, weaknesses, opportunities and threats since 2007 – elaborated in this section and at various points throughout the report – are quite congruent with these 'insider' assessments. The successes to be emphasized have been the CK program, the support, financial and otherwise, of the federal and provincial government and especially of the mainstream CJS, and the stable, effective stewardship of the AJP management. The central weaknesses identified focus on the modest linkages to the FN communities and the off-reserve in Charlottetown, and the need to revitalize and expand the CKs as part of a strategic action plan for the next five years. The key opportunities appear to be in the expansion of the AJP activity into more general conflict and dispute resolution while maintaining its core roots in the criminal justice system, and collaboration with other Aboriginal services and programs. The threats for the AJP appear to be the "low ceiling" (i.e., limited scope allowed) for the applicability of the AJP program in the criminal justice field, and the absence of resources and a management plan to facilitate supplementary initiatives beyond the criminal justice system, the need for greater collaboration with other Aboriginal services, and especially the shoring up of linkages at the Aboriginal community level.

As noted in the Introduction, the evaluation centered on the three major objectives consistently reiterated in AJP documents, namely (a) networking, communicating and building partnerships with the CJS and other mainstream officials; (b) building Aboriginal community capacity, and (c) establishing and implementing an 'Aboriginal' justice system of intervention through various types of circles. These were re-phrased by the AJP in the following six questions posed to the evaluator:

1. Has the AJP program resulted in the development of collaborative partnerships with key community, Law enforcement and government representatives?
2. Was the program successful in strengthening partnerships?
3. Has the program successfully engaged both Aboriginal and government stakeholders?
4. Has the program been successful in enhancing skills among Aboriginals relevant to justice objectives?
5. To what extent have the program participants been satisfied with the program processes and outcomes?
6. Have the anticipated short-term outcomes been achieved?

This assessment suggest that objective # 1 has indeed been very successfully accomplished while the other two objectives, modestly so. With respect to the six questions, there seems little doubt that the anticipated short-term outcomes have been achieved and that collaborative partnerships have been developed and strengthened, particularly with the mainstream government and CJS. It is more difficult to gauge how successful the AJP has been in engaging Aboriginal stakeholders and enhancing skills among Aboriginals relevant to justice objectives or whether program participants have been satisfied with the program processes and outcomes. These observations and assessments are elaborated below. Throughout the rest of report the views of the different role players and stakeholder grouping are discussed at length.

The AJP has accomplished much in networking and collaborating with senior government and CJS role players. The annual Aboriginal Justice Forums have been very well-attended and, as the interviews below indicate, have increased appreciation of Aboriginal rights and issues. Mainstream officials have generally expressed quite positive assessments of the AJP management and the circles. The typical assessment of the AJP from mainstream interviewees (see the section below on Mainstream Views) was that it had stable, effective leadership, networking and advocating well with the CJS and beyond; indeed, most mainstream respondents suggested that, while maintaining this level of activity, future development of the AJP requires that it focus more on the Aboriginal communities. The networking and collaboration with the RCMP in the FNs and the Charlottetown police now appear ready to blossom thanks to the AJP efforts since 2007 and the commitment of the designated officers. The collaboration with CCS through

the Aboriginal Case Worker and Victim Services has been significant in getting at the roots of offending behavioural patterns and possibly in responding to victims needs (it is too early to know how effective the Victim Service Assistant initiative will be). Undoubtedly, the AJP will be able to build on these collaborative efforts with the police in crime prevention and community policing strategies and with the CCS (e.g., youth outreach workers). The chief criticism of the AJP, expressed mildly by the respondents, concerned the lack of clear protocols on the referral process and the lack of follow-up information concerning the referral. The challenges with respect to this objective appear to be securing more referrals for the CKs, whether the current "low ceiling" for eligible referrals from the CJS will be adjusted assuming that it is a goal of the AJP, and possibly developing collaborative relationships in other areas of justice.

Community capacity in justice has clearly been advanced with the CK initiative and the circle processes. And, as noted above, upgrading the CKs' skills and awareness of other, similar, Aboriginal justice approaches in Atlantic Canada and beyond, has been the focus of a major annual workshop which reportedly has been well attended. There is now an experienced cadre of CKs available to the AJP. The AJP has also conducted workshops in the major Aboriginal milieus in PEI. Initial restrictions on the use of the CKs have been eliminated and the AJP, in theory at least, can better tailor CK excellence to the circumstances of the case (e.g., the offender's issues and the community concerns). Depoliticizing the AJP advisory committee as noted earlier may also contribute to a more effective community capacity. The challenges for the AJP with respect to building community capacity in justice are also significant. The cadre of experienced CKs is small and, despite under-utilization of other CKs, would definitely have to be increased if the AJP expands further (at an estimated cost of $10,000 each if the original format for CK training was followed). There also appears to be a question of how well the AJP has engaged the off-reserve as noted by both mainstream and Aboriginal respondents below. The evaluator is puzzled by the large number of Aboriginals on probation given the small number of charges in the FNs that would warrant probation; are there Aboriginal offenders in Charlottetown not recognized by the police service as such and not familiar with the AJP despite its posters in the police station? An improved on-the-ground

relationship between the AJP and the NCPEI appears to have been established in the past few years but further collaboration might be valuable in the Charlottetown area.

A major challenge for just about any FN province-wide or regional service, whether it be a self-administrated police service or a justice program such as the AJP in PEI or the MLSN in Nova Scotia, appears to be the centrifugal forces in governance. When each partner in such a program or service is an FN, the organization has to be very attentive to community linkages and the investment of time and resources to that end are often underappreciated by government funders who may assume a provincial – municipality model where the municipality is the constitutional creation of the province; that is not the situation in the Aboriginal context where collaboration not subordinacy reigns between the regional authority (here the MCPEI) and the individual FNs (here Abegweit and Lennox Island). A corollary may be that mainstream government officials and FN leaders may have somewhat different conceptions of community linkages, the former seeing them as crucial primarily to prevention and treatment while the latter – the FNs – emphasizing also the ownership of the program or service.

In terms of general objective # 3, the penetration of the AJP in Aboriginal justice matters, the developments during the past three years have been significant as seen in the increased number of circles and the extension of the circles and the CK role in the "healing circle" format as described in the section above. Also, the AJP has done some examination of further extension of the AJP approach outside the CJS. Still, it is clear that the number of referrals has been modest and that the circles have focused upon minor offences. How far the AJP approach can extend in the CJS and whether it can contribute in other spheres of justice, and collaborate with other Aboriginal services and programs there, are uncertain. There is at present no strategic action plan to address either of these challenges.

One of the six basic questions asked of the assessment was **"**To what extent have the program participants been satisfied with the program processes and outcomes"? Unfortunately the evaluator was unable to obtain access to the circle participants because of AJP protocols about confidentiality for the participants. This is an issue that requires attention and it will be addressed in the section, "Future Directions". It was possible to get the views of the circle keepers who facilitated sessions and also of the few CJS

officials who participated in them (typically the AJP does not invite judges, crowns and defence counsel to the justice circles). These views were almost unanimously positive especially on the part of the CKs who appeared to be genuinely moved by the circle experience and who also reported that the offenders and others generally were positive about the experience as well (see CKs' Views below). CCS officials expressed similar personal views though several questioned the impact on the offender and cited instances of recidivism. Related to this shortfall of information on the views of the program participants is the problem that the circle data are not yet available in an accessible data management system so it was not possible to analyse the increasing number of circles to determine patterns and dynamics in the circle processes and outcomes, nevermind the type of attendees, save in the latter instance by asking about the individual case files. The AJP itself has raised these data management issues on several occasions in its documents so there may be resource issues underlying them.

Overall, then, the AJP has made significant progress since 2007 in all of its major objectives and with most of the key evaluation questions with which it was concerned. There are more and diverse circles being held in the Aboriginal communities, and networks and collaborative strategies with mainstream justice services have entrenched the AJP program in the CJS. The director has provided effective leadership and improved the standing of the AJP in the mainstream society and among the FNs. The AJP has also been reasonably successful in obtaining funds for valuable supplemental front-end initiatives. There are nevertheless major challenges to be faced, particularly around the community capacity issues and the future direction of the AJP. The suggestions advanced in the 2007 assessment – a robust court worker program and part-time outreach workers in the three key Aboriginal milieus - continue to have merit in relation to those challenges if the AJP is to evolve further. A crucial consideration would be freeing up the AJP director to do more specific targeted engagement with mainstream and Aboriginal leaders and more strategic action planning for the AJP's future.

THE AJP: ABORIGINAL STANDPOINTS

THE CIRCLE KEEPERS

While the MCPEI AJP initiative has several key dimensions, consensus among Aboriginal and non-Aboriginal respondents referred to the circle keepers (CKs) and their circles as the heart of the Aboriginal justice thrust. Nineteen Aboriginal adults (half from Lennox Island) graduated from a year-long certificate program at UPEI's Centre for Conflict Resolution Studies in 2005. The class of CKs constituted a significant slice of the leadership in the PEI Aboriginal communities, including the current chiefs at Lennox Island and Abegweit FNs, the director/chiefs of the NCPEI and AWA, senior administrators in MCPEI services, distinguished elders and others. These persons are named Circle Keepers and generally available for becoming engaged in extra-judicial sanctions (i.e., restorative justice) and conflict resolution matters. New Brunswick Judge (now lieutenant-governor, New Brunswick) Graydon Nicholas, featured speaker at the graduation ceremony in Charlottetown on October 15, 2005, described the Circle Keepers program as a breakthrough course, likely to be adopted by the Aboriginal community elsewhere in Atlantic Canada.

At the time of the 2007-2008 assessment of the MCPEI AJP, there were but a few youth justice circles held and only one sentencing circle (an adult), all involving offenders from Lennox Island. Since that time the number of circles held has increased significantly and, accordingly, there have been opportunities for the nineteen circle keepers to put into practice the expertise they acquired in the special university-based program. Fourteen of the nineteen CKs were interviewed for this assessment, twelve specifically because of their CK role and two where the CK role was incidental to the interview (in part, but not only, because they had not taken participated in the CK role as such). The interview guide used in the twelve interviews is appended to this report. The CKs as a grouping were heavily involved in the administration and services of MCPEI and the PEI FNs so, not surprisingly, their responses focused on the reserves' milieus and there was little comment on the off-reserve situation.

Justice Issues

The CKs were in much agreement that the central justice issues for Mi'kmaq people in PEI were drug and alcohol abuse and the violence, theft and vandalism that often come in its wake. Several others also highlighted domestic violence while some pointed to minor but troubling youth vandalism. Virtually all respondents considered these justice issues to be the major crime / offender problems too. No one suggested that these crimes were out of control or increasing significantly but, save for a couple of dissenters and the issue of spurts of youth vandalism in Lennox Island, there was an overall consistent opinion that they were not decreasing, especially in the Abegweit FNs. One respondent advanced the view that drugs and alcohol abuse among teens and young adults seems to be a modern malaise, the trend in all communities, not just Mi'kmaq. Another CK made the interesting observation that, as youth become adults, some seem to become dependent on drugs and alcohol, but with "a return to their culture and finding things to do", there may be a decrease in that pattern. Less common, but mentioned by at least several respondents, were elder abuse and driving violations; for example, one respondent stated, "what I see (here in Lennox Island) is elder abuse", while another considered that driving violations, ranging from drunken driving to driving without a licence, were too prevalent. It was generally acknowledged that the criminal incidents, numbers-wise, were few but that there were a handful of mostly male repeat offenders, usually young adult males. One respondent also made the observation that in small FN communities, there are ripple effects from assaults and vandalism that extend throughout the entire population so small levels of crime can have an impact. There are no V.L.T.s available for gambling in either Lennox Island or the Abegweit FNs and no one reported gambling addiction as a major problem for Aboriginals in PEI.

In the civil justice sphere, there were some references to family conflict (e.g., families "splitting up") and neighbour-neighbour disputes (said to be frequently not reported to police) but problems here were not typically highlighted. One respondent, very active as an elder and member of the AWA, observed that in recent years there has been a high rate of intermarriage (with Aboriginals outside PEI as well as with non-

Aboriginals) and more fragility in marriage (e.g., fewer formal marriages, higher levels of divorce/separation) with the result that family justice issues such as rights in property upon splitting-up, maintenance and custody – sometimes aggravated by cultural differences between Aboriginal customs and provincial laws and culture – have become significant. Several CKs discussed justice issues linked to poor care giving and alienation emerging from the lack of available foster homes on reserve. A very active CK and well-regarded elder highlighted the generational discontinuities and considered that the CK role and the circles might have a role in bringing the generations to greater understanding and acceptance. Another respondent, quite informed on family issues, downplayed the need for the extension of the CK role to family conflict and reported that the band follows general provincial practices such in honouring orders for garnisheeing wages in maintenance cases.

As for regulatory justice issues, a majority of the respondents referred to fisheries issues (e.g., how fisheries offences are dealt with, drinking and drugs abuse on the job, relations between the Aboriginal and other fishers) as important while a few others cited housing maintenance, band council rules in general (e.g., the policy of shooting stray dogs), and social problems (apart from crime). One well-informed CK commented, "There will always be grievances between band members and the fisheries management but it's not out of the ordinary… DFO official should use the circles and circle keepers to discuss the issues rather than giving fines"; he added that he remembered that fisheries were a designated area for CK activity when the AJP was established but that nothing had come from it since. Another CK commented that there were fisheries issues "but they [DFO officials] do not refer these to the circles". One CK emphasized that the small, Aboriginal population on PEI with its limited economic resources places a premium on partnering and sharing in the fisheries (e.g., sharing wharfs) and this means that Mi'kmaq leaders have to monitor their own people and "have the courage to confront the violators" of fishing policies agreed upon with DFO and others.

The Circle Keeper Role

The twelve CKs varied much in their CK activity over the past three years but all save two had had at least one experience as a facilitator or co-facilitator (assisting the

facilitator) over the past three years. The circles were essentially either for minor offences (e.g., vandalism) or were healing circles that according to the CKs did not generate heated conflict. With just the odd exception, the CKs reported that both victim and offender were present at the circles they participated in as well as other persons such as probation officer and social service staffer, and that the circle was successful in reaching a consensual resolution or agreement. There was also much consensus that the circle experience had been a good experience and one where the CK drew significant personal satisfaction. They also shared the value of being able to use their CK skills in circumstances and matters outside the designated justice activity. Virtually all the CKs participated to some degree in the AJP's CK upgrading and related activities, valued it, and looked forward to honing their CK skills in the future; in particular the CKs spoke of their wish to meet occasionally with other CKs and learn directly about others' experiences and strategies / techniques in different types of circles. Another common recommendation that the CKs advanced was that they be informed about what happened subsequent to the circle session (e.g., whether the agreement was kept by the offender etc) since that facilitates their learning about the circle process and assessing their own activity therein.

The range of circles engaged in by the twelve CKs varied from zero to "eight or more" and most CKs clearly indicated that they would like to do more circles (e.g., even the one with the most circles carried out commented, "I would love to do more circles"). Some CKs facilitated a range of circles (EIC plus healing circles) but most facilitated or co-facilitated just the circles occasioned by a CJS referral from police or crown (through the intercession of probation). One respondent did not facilitate an AJP-initiated circle in PEI but used her CK skills to facilitate several circles in another province and with IRS "clients". Certainly the largest circle, and perhaps the one with the greatest impact for the AJP for what one CK called "exposing the CJS to the Mi'kmaq way", was the "full monty" sentencing circle that occurred in November 2007 at Lennox Island. The judge and other CJS officials were present as well as a large crowd "eager to get in on the first sentencing circle on the island". Most CKs and CJS officials considered it to be successful but both major parties also deemed it too elaborate a model ("too many

people, too much hoopla") and thereafter smaller scale sentencing recommendation circles became the norm, not the "full monty" sentencing circle.

In discussing their CK engagement and characterizing it as a good experience, the CKs as noted above, usually cited the presence of the different parties (offender, victim, authority figures such as probation officers, support people) and that, as one said, "it was not difficult to reach a resolution" – "the offender owned up to the offence and was prepared to do the treatment that was asked of him". Only in one instance, reportedly, did the circle not reach a satisfactory resolution. Most respondents, in almost all cases, shared the comment of one CK, namely "the process was a great experience and everyone was happy with the outcome". Several CKs emphasized that the circle enabled attendees to see the whole picture, not simply the specific offending act. One of the CKs with much circle experience characterized the circle as "an amazing experience … Magic happens … all had great outcomes". Several specifically commented on the valuable preparatory work for the circle done by the AJP director. Only one CK expressed some disappointment with the circle she participated in, noting that, as someone focused on youth issues, she found the circle had little depth in getting at underlying factors that could account for the youth's offending.

Virtually all the CKs indicated that they gained much satisfaction from the CK role, emphasizing how it has caused them to learn more about how to communicate and know people. One CK stated her satisfaction as "Knowing that I made a difference in someone's life" while another simply said, "It felt good to be a part of it [the CK initiative and circle). A third cited "directing the circle and seeing the process to the end with positive outcomes is a great sense of accomplishment". One senior MCPEI administrator, also a CK, commented that she found the CK role to be very rewarding and pointed to the satisfaction obtained from having an impact on youth and contributing to cultural continuity among Mi'kmaq in PEI.

Some disappointing aspects of the CK experience were also noted such as offenders' lack of understanding their own role in the circle and what the circle commitment entails for them; for example, one respondent commented that initially there may be mess-ups such as the offender walking out, refusing to talk and so on, but usually these get resolved. At least half the CKs mentioned as disappointments either or both not

being well prepared before the circle and not knowing what happened in the case after the circle was held (e.g., did the offender complete the agreement?). One respondent observed that earlier on perhaps there was less adjustment of the circles for the different clients but that is no longer a problem – "we make it work for them, not us". Unquestionably though, the most frequent disappointment expressed by the CKs was not being able do more circles than one did. In a few cases the CK complained that "only a few favourites were used" but for the most part the CKs pointed to not enough circles being held as the key limiting factor.

With but one or two exceptions, the CKs indicated that they have been able to use the CK skills in their everyday life. One respondent stated, "I learned how to listen, paraphrase, to question, to deal with conflicts and to better communicate with people". Another commented that "Yes a family member was having a hard time with a sibling. I helped them out so they did not have to call social services. It felt good". A third stated. "the skills I gained, I use daily. I am in the fisheries and need to do a lot of problem solving". Interestingly, and with striking similarity to the Hull England approach of pervasive RJ and circles in all urban schools and government services referred to earlier, one of the busiest CKs noted that she uses circles for "clarifying" when problems occur – "I have the kids hold hand and discuss the problem, to have them understand one another. It flows into everything I do on a daily basis".

With a few exceptions, the CKs indicated that they have taken advantage of AJP-provided opportunities to upgrade their CK skills, and the few who did not, regretted not being able to do so. Typically, the CKs indicated that the upgrading they have received occurred at a few MCPEI annual meetings where "we come together and do mock circles". They were generally of the view that the mock circles were very limited from the point of view of enhancement of their CK skills (especially as one noted "because we have usually done these with the same people before"). Another respondent, who reportedly had not facilitated a circle since graduation but did co-facilitate one in 2007, commented, "I do want to stress that if you do not conduct circles on a regular basis, you will lose all the training [benefits] you have gained. I feel I would be a little uncomfortable doing one today because it has been a long time since I did one"; that viewpoint was shared by another respondent who also had not done a circle in the last

three years ("I would want to be a co-facilitator because I am out of practice"). All reported that they were keen to learn more about the CK role and circle work, especially through meeting with other CKs and sharing experiences and strategies about facilitating different types of circles. One respondent stated, "I would rate it [my interest in honing the skill] as a 9 on a 10-point scale. I would like to network with other CKs to see new ideas. One way is not always the right way … People are different so should be the circle". Several other respondents proclaimed that their interest in more training and upgrading, on a ten point scale would be ten.

Not surprisingly in light of their views discussed thus far, the CKs typically considered that the CK role and circle activity was very important for Mi'kmaq justice. As one CK explained, "It allows you to take ownership in the justice process which is needed in the community". Another commented that the circles facilitate healing and following upon that theme, one respondent contended that "face to face with the victim, they feel remorse for the crime and bad for the victim". Healing and ownership were the key items that the CK associated with the circle processes but other consequences were deemed to be a more human form of justice and better crime prevention (i.e., the circle as an effective crime prevention strategy).

Some CKs were unsure as to the appreciation and understanding of the circles and the CK role – and the extent there would be support for a more extensive use of them in justice matters and community conflict – in the Mi'kmaq communities, but most respondents appeared modestly confident, expressing the views "I believe so", "some families appreciate the circles", and pointing to the apparent goodwill about the program in the communities (e.g., trust that the circle proceedings are treated in confidence, everyone is discreet, people respect the CKs). That said, almost all the CKs indicated that much more reaching out to the communities had to be undertaken by the AJP in order to enhance the receptivity there. Several prominent CK respondents in fact contended that the CK/circle program is not yet securely rooted on the reserves. The general view was that such outreach would be a wise investment since as one CK held, "most participants were surprised and pleased by the circle experience and that route to justice was seen as way more human".

There was more uncertainty expressed about the receptivity in mainstream PEI but some respondents held that as they learn more about the circle process and become involved in it, mainstream officials and others will appreciate its value for the non-Aboriginal community too – "we need more circle keeping in all aspects of the justice system, Aboriginal and non-Aboriginal". Several CKs observed that there has been a major positive change over the past ten years with respect to the mainstream society listening to native people and appreciating their perspective.

The uncertainty was deemed to be greater with respect to the possible receptivity to CK-directed circles in family issues on reserve and, among the mainstream officials, for major crimes. Generally though, the CKs considered that with more education and exposure to the circles and CK role, obstacles could be overcome in both milieus, the results being more appreciation of the circles and more "referrals to us" [by justice officials]. A very active CK and senior MCPEI administrator commented that advancing forward along the Aboriginal justice path requires the support of both the CJS officials ("It's there but takes time to be realized") and the Aboriginal community ("a way of life has to come back, balance and harmony as before colonization").

The CK Role and the AJP

Most CKS reported that they were familiar and up-to-date with respect to the specific AJP programs and the AJP overall. Typically, as noted earlier, they are active administrators / coordinators in the MCPEI or social service providers at the FN level so that is not surprising. Most reported that they attend all the annual meetings held. The few who do not attend, nor hold the positions cited above, indicated that they had little knowledge of the AJP's operations or functioning. There was broad consensus that the AJP and its programs were valuable and that the AJP was "doing the right things in the right way". One respondent commented, "Yes they are valuable. I feel they empower the community. They take control of the issues and [enhance] self-government".

The CK were asked whether they believed that the MCPEI AJP was accomplishing its three stated objectives, namely (a) networking and partnering with the mainstream justice system; (b) building Aboriginal community capacity in the justice area; (c) developing components of an Aboriginal justice system (e.g., circle keeper

capacity). The responses here were quite varied. About a third of the CKs indicated that they did not know enough about the AJP activities to render an assessment. Among the others, most CKs considered that the objectives, partnering and networking with the mainstream justice system, and developing the components of an Aboriginal justice system, were reasonably well accomplished. There were some concerns expressed by a few CKs about the AJP being presumably more focused on the MCPEI side than the CJS side (one argued "that is why the number of referrals is low") while a few others held that more work had to be done training and screening the CKs ("they need to find the right candidates for the CK role", "more upgrading is needed not just the occasional mock trial"), but generally the CKs gave quite positive assessments regarding these two AJP objectives. Of the objective (a), several CKS expressed views along the lines of one who commented, "[the AJP director] has done an excellent job of networking with justice officials, represented MCPEI AJP well and has established it as a respected program". Concerning objective (c), a CK offered, "The hardest lesson learned by the CKs was trusting in the power of the circle. If you try to manipulate the outcome of the circle then you are circumventing that power. I think most of the CKs have an excellent grasp of this". Indeed, about half the CKs considered that now the CKs can and should manage the actual circles themselves and the AJP director need not be present to direct the circles.

There was more uncertainty concerning the "building Aboriginal community capacity" objective. Most CKs held that the AJP had not developed much of a presence in the FN communities and compared it unfavourably in that regard to some other MCPEI programs. Others suggested that the AJP has been "improving in this area [objective (b)] but the priority still should be to "continue with the stride we now have" and forge a stronger connection between community members and the MCPEI. A few CKs suggested that the AJP might consider establishing community justice committees in Lennox Island, Abegweit and Charlottetown, especially now that the former linkages (i.e., the advisory and selection of CKs for handling specific referrals committees) were apparently less active. Most CK considered that the AJP should be doing more to inform the communities about the justice system and about its own programs and service and shared somewhat the view of one respondent who commented, "This is not done in a one day

workshop or a weekend but a continuous training. It could be discussion with officers, schedules activities on a monthly basis, or a justice drop-in centre on the reserve".

When asked their views on the issues and challenges for Aboriginal justice initiatives in PEI, the CK's spontaneous responses varied but four views were most frequently advanced, namely (a) more cultural awareness and a more pervasive use of circles in all aspects of Aboriginal life; (b) more justice initiative in fisheries' issues (e.g., in response to violations and conflict); (c) more cultural awareness for CJS officials, and (d) more focus on healing for Aboriginals (i.e., dealing with the legacy effects of colonialism, residential school experiences and so forth).

There was much enthusiasm among the CKs for what might be called a bigger vision, that is, extending the underlying philosophy and actual practice of circles to more serious offences in the criminal justice field, and beyond the CJS to family and regulatory justice matters and even to other facets of everyday Aboriginal disputes and conflicts (e.g., housing disputes). One prominent CK envisioned a role for the CKs as a kind of appeal mechanism for disgruntled band members disputing band policies or decisions where the circles might generate more in-depth appreciation of the issues and even advance non-binding suggestions to the agencies or band council. While musing about such an extensive role for the CKs and the circles, most respondents suggested that significant upgrading and orientation would be required were that broader vision to be pursued, including more knowledge of policies in the family area, of band policies etc.

Certainly most CKs who referred to this possible evolution of the AJP acknowledged that, aside from the support of the mainstream CJS in matters of dealing with more serious crime, such development would hinge on greater community engagement by the AJP and significant new resources and / or realignment of resources for the AJP. Forging a consensus at the FN level was seen as a prerequisite for an expanded AJP since such expansion would clearly impact on community relations, values and conduct. As for resources / realignment, it was acknowledged that a prerequisite would be freeing up the director to focus more on the big picture and engage in the considerable planning and networking an expanded vision would necessitate (extending, a few CKs suggested, to collaboration with other FNs in the region).

Overall Conclusion

The circle keepers clearly constituted a significant slice of the Aboriginal leadership and influential grouping in PEI. They were credentialized in their role and most received some upgrading though only roughly a quarter of the grouping had engaged in more than three circles (in the CK role) over the past three years. They were quite positive about the CK role and the circles in every respect (for Aboriginal justice, offenders and their own personal life) and generally quite eager to do more circles. They appreciated the accomplishments of the AJP in putting a solid program in place, networking and partnering with CJS officials and contributing to an Aboriginal justice strategy in PEI. They identified some shortfalls at the level of community presence and linkages and offered suggestions to deal with that issue. They suggested a number of specific priorities for Aboriginal justice in PEI (cultural awareness, fisheries violations and disputes etc) and advanced specific ideas for improving the CK role within the AJP. These latter included more upgrading and training (e.g., going beyond the occasional mock trials), facilitating more networking and exchange of experiences among the CKs and with other Aboriginal facilitators in the region (““it’s hard to be an expert because there are a lot of CKs and not enough circles for us all”), more feedback to the CKs concerning the post-session developments in a case, and devolving the entire management of the circles to the designated CKs.

The CKs were in strong consensus that the CK / circle activity should extend well beyond the current emphases. They typically valued a more holistic approach that could include dealing with more serious offences, visiting school to do presentations on the CK / circle activity (creating cultural awareness and “that way if the students / youth get into trouble and need the CK circles, we do not have to spend time on explaining the process to them”), getting involved in other areas of justice such as the family and the regulatory, and contributing to an overall improvement in the quality of life in Aboriginal communities by implementing the CK/circle approach in disputes and conflicts throughout Aboriginal communities. The CKs appreciated that such an evolution would require more training and upgrading for their role and activity, the support of mainstream justice officials, stronger linkages with and acceptance in the Aboriginal communities

and more resources for the AJP. To that end, they suggested the need to free up the AJP director to pursue the larger vision and also pointed to the value of a robust native court worker program that would supplement the services provided by the CCS and focus on outreach at the community level (programs and services "navigation" at the local Aboriginal community level).

ABORIGINAL ELECTED LEADERS AND AJP ADVISORY BOARD MEMBERS

The Issues

Ten persons were interviewed who were either elected Mi'kmaq leaders in PEI (four) or were on an AJP's advisory committee (six). The former (with one controversial exception) could be said to be in a directive role vis-à-vis the AJP while the latter constituted a true advisory committee / sounding board for the AJP. The elected respondents from the FNs all emphasized economic development issues as their priority concerns and did not think that crime and criminal justice issues were pivotal aspects of Mi'kmaq policy concern. Two major FN leaders emphasized that economic development has been and remains top priority since "that could yield the resources necessary for greater self-government … We need our own sources of revenue". Both Abegweit and Lennox Island elected respondents emphasized too that "the fisheries is the future" and the initiatives they cited were essentially fisheries-related endeavours along with one or two currently minor, other specific projects (see above Context for Aboriginal Justice). Not surprisingly then, they also did not think that the crime levels were significant nor that factors proximately related to crime such as socio-economic inequality, gender differences in achievement, and domestic strife were particularly problematic. One elected leader commented that he did not think significant socio-economic differences were emerging on the reserves since "we have effective, engaged community services". Another leader commented that, while young women have done better with respect to achieving high school graduation and postsecondary education, there was no especial problem with the young adult males, suggesting too that some young people on his reserve in the past few years have been taking non-university, trade-type programs. The

elected respondent from the NCPEI did contend that crime and justice issues were major concerns for that organization operating primarily in the Charlottetown area.

Asked specifically about the crime and justice issues in the Aboriginal communities, the three FN- elected respondents did acknowledge that substance abuse was troublesome but not a pervasive crime problem (e.g., no gangs, little drug dealing). One leader suggested that alcohol and drug abuse while "it's there", has not generated great violence, and another observed that drugs and alcohol may be a problem (and there may be some cases of FASD) but actual crime was low in Abegweit. The third elected leader, speaking of Lennox Island, noted that there has been some significant vandalism, some assaults and some domestic violence ("but not many and basically the same repeat offenders") and possibly a growing issue of adult drug abuse. Still, that respondent considered that there were no great problems in the criminal justice area and also no especially problems for Aboriginals with the Legal Aid and the rest of the CJS system. The elected NCPEI official pointed to alcohol and drug abuse as major problems and related strongly to repeat offending; another NCPEI official commented that the NCPEI alcohol and drug unit has a caseload of 70 Aboriginal persons.

The three FN-elected leaders also held that there was no major policy issue in the family justice area. It was noted that now there is an INAC-funded social worker (coordinator of the Family PRIDE Program and director of the MCPEI Child and Family Services Program) working in liaison with PEI Child and Family Services**)**, that the bands honour court orders, and that the bands get regular reports in the event of adoption and other family protection issues; in sum, mainstream and FN relations in the family areas of justice were considered to be good. This relationship reportedly has been significantly enhanced by the Family Pride program – based in Summerside MCPEI but with outreach workers - which has been active at the reserve level. Similarly, there were no pressing issues highlighted with respect to the regulatory areas of justice (e.g., fisheries violations, civil matters) but here suggestions were advanced for more AJP activity (see below).

Among the six AJP advisory group respondents there were four who were very much engaged in their regular work with Aboriginal offenders and justice issues. Not surprisingly, the advisory group members placed more emphasis on the significance of

crime and justice policy. Typically though, they reiterated the views of the elected FN leaders in identifying alcohol and drug abuse as a big problem for a small number of repeat offenders and seeing crime on the reserves as stable if not declining and largely of a minor nature. Basically, apart from sporadic vandalism on the reserves, offences were deemed to be addiction-related. There was some suggestion from three of the six respondents that such offending was more prevalent off-reserve in Charlottetown; one respondent noted that there were at least fourteen Aboriginals on probation there (including four youths) and the majority were repeat offenders with substance abuse issues, committing offences such as impaired drinking and minor assault. The advisory group members elaborated on the reasons for the offending and substance abuse, suggesting that the offenders were particularly confused and frustrated culturally and identity-wise, which in turn was seen to be a legacy effect of colonialism and the IRS. Most advisory committee members also considered that the current criminal justice system in PEI still has an indifferent if not unfair and racist dimension vis-à-vis Aboriginal people and that aggravates the other limitations and problems of Aboriginals who "come into contact with the law" (e.g., not knowing their rights).

The advisory group respondents, who commented, had mixed views about the family/civil and regulatory areas of justice. The more urban-oriented members did not identify any problems as especially significant for Aboriginal people in these justice spheres but the reserve-oriented respondents raised a variety of issues such as family issues, from lack of homes for adoption to matrimonial property issues, as well as divisive band by-laws (e.g., dealing with dogs) and housing policies, and fisheries issues (e.g., violations in the food fisheries, substance abuse among some crew members jeopardizing others). Like the FN-elected leaders, these advisory committee respondents also emphasized that the small size / minority status of Aboriginals in PEI placed a premium on sharing with mainstream partners (e.g., in the area of fisheries, citing sharing quota, wharfs and so on) and that in turn required that reserve residents comply with negotiated agreements.

Engagement with the AJP

Three of the four elected respondents and two of the six advisory committee members had graduated from the circle keeper program at UPEI in 2005. For

a variety of reasons (e.g., self-perceived potential conflict of interest, time and related pressures associated with their central roles) none of the elected persons ever facilitated or co-facilitated a justice though two had participated in justice circles. Half the advisory people had participated in justice circles and two, on multiple occasions, had acted as facilitators or co-facilitators. The elected respondents usually did not report as much practical routine contact with the AJP activity as the advisory people but they were knowledgeable about the overall AJP program and just as readily offered assessments and suggestions for the AJP's future development. One elected respondent commented that he had not been active in any AJP policy formation and added "I am not that familiar with the program". Two other elected respondents, key MCPEI AJP board members, appeared to be more active and generally considered themselves to be reasonably well-informed about AJP activities. The NCPEI elected person considered herself well informed about the AJP through attendance of her organization's members at formal AJP meetings and some collaboration with the AJP in a variety of activities, but also noted that the political issues, referred to in the 2007 assessment concerning the respective roles of MCPEI and NCPEI, had not been settled to NCPEI's satisfaction, and considered that the NCPEI role in the AJP was essentially "tokenistic".

The FN- elected respondents appeared favourably oriented to the AJP as a program and considered that the AJP has been successful and doing well with respect to two of its three objectives, namely networking with the mainstream CJS officials (informing them, emphasizing cultural sensitivity and Aboriginal engagement), and putting into place and operating the justice circles. They had more mixed assessments of the third objective, contributing to capacity building in the Aboriginal communities. One leader expressed their common view in his comment, "the CKs are under-utilized" and thus have limited community impact while another observed "they [the AJP] should be doing more serious cases and adult cases [but so far] it is been mostly kids". The third FN-elected respondent highlighted the significance for the AJP and Aboriginal justice of the 'full monty' sentencing circle held in Lennox Island in 2007 but stressed that the program needs revitalization, needs to expand, to raise things to another level, expressing that assessment for the community capacity objective in the succinct phrase, "the program needs to get a bump". The three FN-elected leaders, in the words of one,

indicated that “the AJP is not totally secure in the community”, clearly highlighting the issue of community linkage. The NCPEI respondent emphasized the same issue highlighting the allegedly modest AJP presence in urban off-reserve (e.g., in youth programming there) but held also that more evidence was required that the circles were having the desired impact and were being taken seriously by the youth.

The advisory group members were generally very positive about the AJP in all respects. Four of the six claimed to have rarely missed an advisory group meeting (held quarterly they reported) while one had attended four meetings and the other, an NCPEI staff person, participated only in the annual AJP meetings. Five considered that AJP was quite successful to date, generally using two standards, namely the number of circles and their successful completion. One respondent commented, “It [the success to date] is great. There have been a lot of advancements in the circles. There was one on Scotchfort and it was very successful. We are not proceeding fast as I would like it to be but we are on the right track”. A respondent, from Lennox Island observed, “I assess [the issue of AJP success] by the number of circles done. So far it has been great**;** very positive for the community, victim, and offender. I also look to see if the follow-up to the recommendations has been reached. So far it has not been an issue”. A third commented, “We discuss the mandate and accomplishment of the AJP [at the advisory meetings}. I ask if each phase has been completed and view the stats that are available. To date it is doing very well and I am pleased with its outcomes so far”. A committee member engaged full-time as a CJS staff person added, “[I judge based on] the follow-through of the recommendations from the Circles. If the offenders do not follow-up on the recommendations, then the Circle was not successful. To date all recommendations have had a positive follow-up. I also assess the time of completion of the recommendations. Again this has not been an issue. [the executive director] does an awesome job ensuring that all follow-throughs are completed within the given time frame. I also look at the number of referrals we receive from the public (justice system). The more cases we receive the better understanding of the Circle process for all who participate”. Only one respondent, basically working with off-reserve Aboriginals, did not share the very positive judgment, contending that the AJP just dealt with early, minor cases such as first time offenders and not the kind of people he generally services.

The advisory group respondents were specifically asked whether they considered that the AJP was "understood and appreciated by people on reserve or in your area". Generally, they held that it was indeed, essentially among those residents who had come into contact with the program. One respondent wrote, "Yes, but the Aboriginal community and the public need to be more educated in this area**.** The people who go through the service know about the AJP and the Aboriginal people who do not know soon learn about it only when they need it. Unless you are in the justice system you know very little about the AJP. We need to change it so everyone, the Aboriginal people, the justice front line workers, and the public know about the AJP". Another commented, "It varies. It depends on who you talk to. I would say 40% know about the AJP and 60% of the population do not. It all depends if they use the AJP resources". A third wrote, "Yes, if they used the AJP resources. No, if they did not. We need to have sessions on the AJP programs and its resources available to the general public, the justice system as well as the Aboriginal communities. We need to be open and proud of the successes we made in this area thus far". A fourth person advanced a less equivocal claim, writing "Definitely, they know and access the AJP program**.** I think the success rate of the Circles we conducted is the main reason why people know about the AJP". The two other respondents pointed to specific features which may have limited the general awareness and appreciation; one held that the designated community liaison roles to the AJP [these three roles were actually MCPEI positions for liaison with Lennox Island, Abegweit and Charlottetown respectively, and overall, of course, would include liaison with the MCPEI AJP] were no longer functional and so a potentially valuable avenue for communication was not being used, while the other advanced the thesis that "there are troubled and troubling Aboriginals in Charlottetown but they are not concentrated [population-wise] and not especially visible there", adding that "Poor relations between NCPEI and MCPEI AJP don't help!".

Challenges and Future Directions

The three FN-elected interviewees each held the view that the AJP should expand its scope, taking on disputes and violations beyond the CJS, at the regulatory and community level. Only one explicitly suggested that the AJP should also be mandated to handle more serious criminal offences or offenders or deal with serious family issues but

all appeared to share the view that the AJP should adopt a more holistic approach that would see it utilize the CKs and the circles to effect an improved quality of life on the reserves. Fisheries issues, such as substance abuse on boats and violations of band fisheries agreements, were quickly identified as a possible AJP trajectory, and one respondent, very informed on the issue, reported that the long-sought MOU between the FNs and DFO, with respect to handling band members' violations through the AJP circle process, is ready, and should be part of the AJP's next stage of development. Another FN-elected leader mused about a possible role for the AJP's circles as a kind of appeal process ("there is now none at the band level") even in areas such as housing and employee-employer relations, akin to the pervasive 'restorative practices' approach being adopted by some institutions and local governments; the respondent commented that while elders may have a place, the role of trained, competent people such as the CKs would be crucial here. While all three FN-elected interviewees agreed enthusiastically that AJP could be doing a lot more, in the limited one-time interview there were few specifics and no strategic action plan advanced, nor any mention of new resources or upgraded CK training that might be required. Apart from these general reflections, the only specific suggestion advanced was that the CKs should be given more case information and have more autonomy in conducting the circles which could then free up more time for the AJP director to pursue AJP's challenging next phase. The NCPEI-elected respondent basically contended that a more expansive Aboriginal engagement in the criminal justice system is needed to deal adequately with the off-reserve, the non-status and the non-Mi'kmaq people, a grouping the respondent held was increasing proportionate to the reserve population; the official believed that such an expansive engagement required a better resolution of the MCPEI-NCPEI divide.

Advisory committee respondents, reflecting their own more front-line justice responsibilities – four were as noted were directly involved with offenders and justice system officials - emphasized the importance of more networking with, and education / cultural sensitivity training for mainstream CJS officials. One respondent wrote, "The major challenge is getting the province to work along with us. The MCPEI puts on a forum but the people who should attend do not. The forum is a good way to educate the public about the circles and the Circle keeper's roles. Some of the frontline workers

(police) now ask if the person is Aboriginal and if they reply yes, then they do the referrals. There are also posters on the walls to let Aboriginal people who they can call when in trouble". Other interviewees echoed that comment. One advisor saw the major challenge for the continued effectiveness of the AJP as "the balance between the province and the grassroots people; we need more education in this area especially with the justice workers of the province" while another, herself occupying a crucial linkage role, wrote, "We need to identify / clarify the roles the justice system plays (judges, lawyers, probations, police / RCMP) when dealing with Aboriginal people. Everyone needs to know their role from when an Aboriginal person is charged by police / RCMP to the final decision made in court. We are making headway but more education is needed in this area". Two advisory group members placed top priority on community awareness and capacity; one simply stated that the AJP should expand but a prerequisite would be more effort at the community level, while the other wrote "The AJP programs that are available to the Aboriginal people should be public knowledge rather than a handful or selected few. If you want community approval then you must share your programs or whatever is of interest to us". The advisory committee respondents, on the whole, appeared to hold that the CKs need to deal with more cases, be busier, and that required more outreach and networking among both mainstream justice officials and the Aboriginal communities. They did not spontaneously raise the same issues as challenging for the AJP as the small group of FN-elected officials, focusing instead almost exclusively on criminal justice matters. Like the former, they were not asked and did not spontaneously comment on how the AJP could meet the challenges advanced, though one advisor did comment that, "the major challenge would be the lack of resources for the Circle Keepers that we have now and the lack of money to train new ones**.** I believe the lack of funds to get more resources is the biggest challenge".

Overall, then, the respondents discussed in this section had significant roles, whether directing or advising, vis-à-vis the AJP. They were quite positive about the accomplishments of the AJP especially in relation to its objectives of networking with and orienting mainstream CJS officials, and in developing the circle process. They were less so with regard to the AJP objective of building community capacity. Both groupings advanced a need for the AJP to build upon past successes and expand the program. There

was however a sharp difference of emphasis between these two groups as the small sample of FN- elected leaders, the directors of the AJP, emphasized a more holistic AJP engagement beyond the CJS, while the small group of advisors focused more on the CJS. Also, there was a significant divide between the majority of respondents and the few involved with the NCPEI; the latter considered that the AJP was largely focused on the reserves and that greater concern should be directed to off-reserve (i.e., Charlottetown) where they reported significant unattended Aboriginal justice problems.

OTHER ABORIGINAL STAKEHOLDERS' VIEWS

Five interviews (one quite brief) were carried out with women who have long been active in Mi'kmaq organizations in PEI and have a good familiarity with justice issues and the AJP while, themselves, being only marginally involved with the CJS or the AJP. All but one is Aboriginal and that person has been a long time senior employee with FN organizations in PEI. All were reportedly well-informed about the AJP mandate, and had familiarity with the justice circles (if only in the mock circle format) and had attended at least one annual AJP meeting. Like other interviewees they identified the crime problem among Aboriginals in PEI to be minor property damage and assaults (especially family violence) related to alcohol and drug abuse. The roots of the alcohol and drug abuse were seen to be the legacy effect of colonialism and even the IRS (though it was acknowledged that few PEI children were sent to residential schools, the impact / wider effect was still deemed significant in the "message" the IRS conveyed). Only one of the five lived on reserve and, perhaps not surprisingly then, while family issues were seen as significant problems none highlighted regulatory issues. Three of the five respondents held that there was in the criminal justice system a continuing discrimination and lack of awareness of Aboriginal culture and rights which required persistent cultural sensitivity training. Four of the five interviewees considered that Aboriginal offenders frequently were disadvantaged by their lack of knowledge about how the CJS operated, thereby making a native court worker program valuable and needed.

The five respondents were all positive about the AJP and believed that it was successful, on the right track, and well-led. They placed much value on the networking and annual meetings / workshops that the AJP did with mainstream justice officials ("an

excellent job with this" succinctly captured the common view). They generally too were positive about the circle format seeing it as "a great initiative" which has effected healing and empowerment, and generated a sense of community ownership. The respondents emphasized that the AJP programming was especially effective with youth which they identified as the primary focus of the AJP intervention. They saw too more opportunities for the AJP approach (i.e., CKs, circles) in healing, working with Family Services (where there is a family group conferencing coordinator) and with both on and off reserve Aboriginal milieus.

Looking to the future, the respondents shared a consensus that the AJP should expand. In particular the respondents held that the AJP, while continuing with what is already being done, needs to move beyond the alleged current focus on Aboriginal youth. Beyond that very general position, they expressed quite nuanced different thrusts. One stakeholder, for example, wrote, "There seems to be a youth-centered focus now and [there is a] need to go beyond to deal with community disputes and community courts**".** Similarly, in arguing for a much broader AJP role in responding to disputes and conflict in general, one stakeholder exclaimed, "We have trained individuals so let's use them"**.** Another person commented, "[AJP] has done [a fine job] for youth so now go beyond. [AJP] needs to expand and needs to develop a concrete plan to show how things can grow with this program, a phase report – phase 1 we do this, phase 2 we do this, the end results of each phase and what it will mean to the Aboriginal people on and off reserve".

The respondents clearly appreciated that these further steps that they were suggesting would offer two major challenges, namely enhanced capacity requiring more funding and more community support being mobilized. It was contended that at present the capacity was not there for the AJP to take on more serious criminal offences even in the unlikely circumstance that CJS officials would support such initiatives. And a well-placed Aboriginal stakeholder, referring to family issues, wrote that "No family violence goes to the AJP. The AJP does little preparatory work and participating people often know very little about the case, the people, the principles of circles etc – there is an opportunity being wasted".

The respondents generally considered the strategic action, that would be required for the desired expansive AJP, would be rooted in three strategies, namely building more

community support, obtaining more resources for AJP management and developing an action plan. They all emphasized the need for the AJP as a province-wide body headquartered in Charlottetown to be more visible and engaged in at the community level, sponsoring workshops pertaining to law and related information sessions, and networking there with local service providers, elected officials and ordinary residents. One stakeholder wrote, "You can have all the posters and all the mainstream people on board but it does not mean much [without strong community buy-in]". Another respondent observed, "Let the people see the progress, the changing. Having the circle keepers was a great big step, and community recognizes it, now what else can be done?" Another strong supporter of the AJP wrote: "[It will be necessary to] reach more to communities via presentation to chief and council, small community meetings, not booklets or handouts as they are rarely thoroughly reviewed"**.** The respondents clearly recognized that their suggestions transcended the criminal justice system and would require more resources for AJP as a prerequisite, especially more management resources which may meet external resistance.

Overall, then, the small grouping of informed stakeholders considered that the AJP had indeed achieved much over the past three years and has been quite successful in two of its objectives, namely networking with and orienting mainstream CJS officials and credibly establishing justice circles, especially for youth. They had some reservations concerning the objective of increasing community capacity in the justice area (defined broadly) and viewed that objective as pivotal for the future directions they hoped that the AJP would consider, namely pioneering a more holistic approach to conflict, disputes and the quality of life in Aboriginal milieus. They appreciated that the AJP would need more resources to enable the director to continue to lead along the paths already successfully being mined and, as well, explore strategic action plans for a broader AJP role in Aboriginal life on PEI.

An Aboriginal Youth Focus Group

A research strategy of having several focus groups with youths on and off reserve could not be realized and only one focus group was held. No claim is made for the youth being representative of Aboriginal youth in PEI but nevertheless there are some interesting points to reflect upon.

In the focus group session with six Aboriginal youth (four of whom lived off-reserve, two of the six were female, and one of the six had been an offender at a circle) held at the NCPEI offices, the youth considered that crime among Aboriginal youth had increased in recent years for a great variety of reasons (e.g., peer pressure augmented by Facebook exposure, "stealing" games) but none explicitly mentioned causes such as racism, and poverty though later in the discussion there was a reference to low self-esteem as a contributing factor to youth crime. The consensus of the small group was that it would be more difficult to get away with crime on reserve because of the lack of anonymity there and that this view has been borne out by more reports of arrests on reserve as per newspaper reports or conversations during pow-wows when youth on and off reserve get together. The youths presented a picture of significant if periodic excessive drinking as the key proximate cause of most youth crime in both milieus. Minor crime was perceived as differently configured on-reserve and off-reserve, being said to be more utilitarian off-reserve (stealing from stores, break and enter) while more expressive on-reserve (vandalism, disturbing the peace).

Not surprisingly in light of their limited experience with the CJS, the youths focused on the relations with the police when discussing the consequences of Aboriginal youths being arrested for offences and said little about other CJS role players such as prosecutors, legal aid lawyers, judges or probation officers. They were critical of the police response, contending that police are not fair in that "they don't let you call anyone, don't tell you your rights, assume you're mature and that you are guilty". They also reported that an apparently widespread view among Aboriginal youth is that the police – presumably here the Charlottetown Police - are not oriented to Aboriginal cultural traditions and neither know about the circle process nor refer young Aboriginal offenders to it. Not surprisingly, then, the major change suggested by the youth called for more

information being disseminated by Aboriginal organizations such as NCPEI, AJP and band councils informing youths of what they should do when arrested by police, perhaps putting the information on Facebook. They held too that police should not only have posters at the police stations but also be obligated to inform youth who identify themselves as Aboriginals of their options.

The youths held that there should be a different set of rights for Aboriginal youth, something which they believed flowed from constitutional and Aboriginal law. At the same time they clearly did not know themselves what the specific differences were or should be and, consequently, a second priority they advanced was some exposure to Aboriginal law in high school and also age-appropriate workshops. They were rather critical of the summer workshops they attended on the grounds that the programming went over the heads of the younger set and did not engage the older set of youths. The youths contended that, for best effect, specific workshops might be tailored to younger and older teens respectively. Somewhat surprisingly, the youths, only one of whom had been an offender in an AJP circle session, were rather critical of the circles, conveying perhaps a more common stereotype, that "Aboriginal youth that go in [to the circles] know that they are going to get less punished". They suggested that the circle program should be carefully monitored to ensure offenders do not get off with "a slap on the wrist' and also that eligibility should be limited by the "three strikes rule". A few youths also observed that participants in a circle would likely be family members, not impartial, and there were mixed valuations as to whether or not that was "a good thing". The one youth who had been an offender in a circle expressed more positive views about the value of the circle process but did not emphasize the point.

VIEWS FROM THE CRIMINAL JUSTICE SYSTEM

INTRODUCTION

In the 2007 assessment of the AJP, roughly half of the dozen interviews conducted with mainstream justice officials were done with police officers and only one CCS official was interviewed. In 2010 almost half (i.e., 11) of the 24 mainstream justice system interviews were with CCS personnel. Essentially the difference is because the CCS role players have had by far the most continuous and in-depth engagement with Aboriginal offenders and victims and represent the major CJS partner for the AJP in providing programs and services to both parties. We open this section then by discussing the CCS involvement with Aboriginal peoples in PEI and explore the impact of that engagement on the evolution of the AJP. Subsequently, the focus shifts to the other CJS role players, namely the Police, Crown Prosecutors and Legal Aid Lawyers, and the Judiciary.

COMMUNITY AND CORRECTIONAL SERVICES (CCS)

As indicated in other sections of this assessment (e.g., the AJP circles) the correctional level is where there are the strongest linkages between the criminal justice system in PEI and the Aboriginal communities. To appreciate this relatively unique pattern in Atlantic Canada and beyond, it is important to first understand the evolution of CCS, then to provide the statistical data which describe the linkages, and finally to discuss the views of the CCS role players regarding their involvement with Aboriginal communities and individuals and their assessments of shortfalls and possible future strategies.

The PEI response to the YCJA promulgation in 2003-2004 has led to an unusual but very impressive, and apparently effective, approach to the challenge of young offenders. Indeed a crucial component, the Youth Intervention Outreach Worker role was

initiated in 2002 prior to the YCJA's taking effect (AEVInc. 2005). The overall CCS approach brought into being an holistic approach, integrating programs and services across the continuum of prevention, response and treatment under one organizational umbrella or division. In doing so, the strategy took advantage of scale opportunities in PEI and turned small size and limited resources into an advantage. That strategy was set forth in a government policy paper as follows:

> "The Youth Criminal Justice Act (YCJA) came into effect on April 1, 2003. This legislation built on lessons learned from the Young Offenders Act by expanding on the notion of societal/community responsibility. The YCJA specifically states that community, families, parents and others concerned with the development of young persons should, through multi-disciplinary approaches, take reasonable steps to prevent youth crime by addressing its underlying causes, to respond to the needs of young persons, and to provide guidance and support to those at risk of committing crimes.
> In response to this focus on prevention and early intervention the Office of the Attorney General restructured Community Services to provide community-based youth justice services under one section. On June 24, 2004 Community and Correctional Services, Office of the Attorney General, launched the Youth Justice Services section. Youth Justice Services teams consists of Youth Justice Workers; Community Youth Workers, Youth Intervention Outreach Workers and Youth Justice Services Managers".

The Community and Correctional Services Division, whose director has deep roots in the Correctional field, subsequently integrated four major segments, namely Custody Programs (including the custody centres, critical investigation, security and performance assurance), Community Services (including Youth Justice Service and Adult Probation), Clinical Services (including risk assessment, therapists and treatment coordinators as well as a case worker for Aboriginal issues) and Victim Services.

The mandated goal of Youth Justice Services (YJS) "is to provide a meaningful multi-disciplinary approach to intervention with youth and families with the intent of reducing the incidence of youth crime and the entry of young people into the formal justice system. Youth Justice Workers (YJW) provide case management and supervision to young persons and enforce court orders (i.e., probation, deferred custody and supervision orders, conditional supervision orders, and intensive rehabilitative custody supervision orders)" (personal communication). But beyond the more conventional probation officer role, Youth Justice Workers are expected to provide timely and

effective interventions with young people at risk of, or in conflict with the law, focussing on rehabilitation, protection of the public, and repairing of harm to victims.

The other two YJS direct service roles are clearly focused on prevention and alternatives to the formal justice system. Youth Intervention Outreach Workers (YIOW or more commonly OW) provide a community-based intervention service by working directly with police agencies to assist with youth and family problems where the police have identified youth criminal behaviour or behaviour that places them at risk for potential conflict with the law. There are four such role players linked closely with –co-located - municipal police services in Charlottetown and Summerside, and, in Montagu, Souris and Bloomfield with RCMP detachments. All have significant community partnerships as well, particularly, reportedly, Montague with the school milieu in that area. While the Charlottetown and Summerside OWs began their activity in 2002, all OWs have been in place since 2004. Community Youth Workers (CYW) provide one-to-one counselling and support services, and augment community supervision to high risk youth and their families. They support and maintain alternative residential placements and youth within these homes through regular contact. Community Youth Workers provide consultation, case management and liaison support to other agencies and community organizations. In addition, they initiate and facilitate preventative programs for youth and their families within the community.

CCS and The Aboriginal Community in PEI

Table B below indicates the current level of basic involvement that CCS has with the Aboriginal population in PEI. It shows that there were no Aboriginal youth in provincial custody on October 25 2010 but there were five Aboriginal adult inmates. In recent years there has been, at most, one Aboriginal adult from PEI in federal custody elsewhere in the Maritimes (Clairmont, 2010). There were few Aboriginal youth on probation (i.e., court mandated to Youth Justice Services), a small handful of 6 or 7 in either the Charlottetown or Summerside region, the two administrative regions for probation in PEI. On the other hand, a modest but significant number of Aboriginal adults – significant given the small Aboriginal population in PEI – were under probation supervision, roughly 18-19 in each of these two administrative regions.

It is only recently and through the AWA Youth Initiative that the Community Youth Worker program has become active in the Abegweit FNs, but currently the CYW is represented on the youth committee and is co-facilitating a parenting group with the MCPEI Family PRIDE program**.** However**,** in the Summerside administrative region, where the Community Youth Worker program has been an established presence with the Lennox Island First Nation, in October 2010 there were 27 youth voluntarily engaged with Youth Justice Services, essentially through the outreach activity provided by two Community Youth Workers; for example, one community youth worker was working with two groups with 8 individuals in each of two groups and, additionally, with 2 youths one-on-one. These preventative and integrative activities reflect the holistic approach adopted by Community and Correctional Services, something quite uncommon for Correctional Services anywhere in Canada. There are other CYWs in PEI (e.g., three in the Charlottetown area) but they are minimally involved with Aboriginal individuals or communities.

Consistent with the holistic, engaged approach to CJS problems, Victim Services in PEI is also under the administrative direction of Community and Corrections and, in the case of Aboriginals in PEI, there are five Aboriginal victim liaison workers currently employed on a service contract basis by Victim Services to provide services to Aboriginal victims whereby they are trained and supervised by VSPEI and compensated for specific tasks that they may perform (in keeping with the unionized environment in government); travel costs are paid in addition to the modest fee. Three persons serve the Lennox Island community and two serve Charlottetown and the Abegweit FNs. Four of the five persons are Aboriginal. This program was initiated in Spring 2010 so really it is just getting off the ground. Twelve Aboriginal victims were receiving such services as of October 25, 2010.

TABLE B

Community and Correctional Services (CCS): Caseload of Self-identified Aboriginal Clients as of Monday October 25, 2010*

1. Youth Custody = 0
2. Adult Custody = 5
3. Victim Services = 12
4. Adult Probation = 37 (18 in Charlottetown, 19 in Summerside)
5. Youth Justice Services = 40 (7 in Charlottetown, 33 in Summerside)

    a. Court Mandated, Charlottetown region = 7
    b. Outreach / Community Youth Work, Charlottetown region = 0
    c. Court Mandated, Summerside region = 6
    d. Outreach / Community Youth Work, Summerside region = 27

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* Data provided by Community and Correctional Services, PEI

Views of the CCS Role Players

While there are no Aboriginal persons employed by CCS as probation officers, youth intervention outreach or community youth workers, there is an Aboriginal person engaged full-time as Aboriginal case worker (attached to Clinical Services in the organizational chart) and four of the five contract VS assistants have Aboriginal roots.

The Youth Intervention Outreach Program

Of the four YIOWs, only the two employed in Charlottetown and Summerside where some Aboriginal clients might have been expected given the urban build-up there and the larger case loads, were interviewed. These two YIOWs were co-located with the Charlottetown and Summerside police services respectively, and accepted referrals only from the police service. Both had long backgrounds in youth custodial services but with the YCJA and the subsequent, enhanced decline in custody sentences for young offenders, they assumed their new roles in 2002. Located in the police building, they receive referrals from police officers usually for minor offences, sometimes even where no offence has been committed but familial and school issues and negative peer group influences have been identified and early intervention is deemed to be called for (AEV Inc, 2005). Police may exercise discretion and occasionally refer repeat offenders and even youths committing significant assault (i.e., "assault causing"). Formally, only offences of murder, manslaughter, aggravated sexual assault**)** cannot be referred under the EJM section of the YCJA, and as one YIOW stated, "I have dealt with assaults, armed robbery and other violent acts". While the program obviously allows for net-widening (defined as a referral that could not stand as a charge for court processing), it is monitored, voluntary and focused on prevention. The police referral to the YIOW is irrevocable where an offence has occurred and whether the youth collaborates or not, there can be no subsequent recourse to charging and court action. As one YIOW noted, "Should the youth choose not to follow through, the police cannot charge him/her with that offence; it has been my experience that when a kid does not follow through, they often give police many other opportunities to charge them on new offences". The referral to the YIOW can be seen, in YCJA categorization, as a step above a formal police

caution and a step below an extra-judicial sanction (EJS). An EJS on the other hand is essentially post-charge in that it has to have the crown's imprimatur (though administered by a youth probation officer), and the youth's file can be referred to court processing if the youth does not collaborate and meet the sanctions that result from the EJS process; as one YIOW put it, "if I want to have an official Community Justice Forum, I would need to speak to the Crown about it and take direction from them".

Once the police referral is accepted by the YIOW (and apparently virtually all are accepted by the YIOW "now that the bugs have been worked out of the system", AEV Inc 2005) the standard procedure has been for the YIOW, accompanied by the police officer where feasible, to visit the youth and guardians at their home. The police officer's presence reinforces the seriousness of the at-risk youth's situation while also communicating the message that the diversion is voluntary on the youth's part. The YIOW may spend much or little time on the file (from "2 to 200 hours" as one put it) and work with both the youths and the parents / caregivers. There is usually some one-on-one sessions with the youth, sometimes some navigation / advocacy with schools etc and sometimes either the youth or parent or both is referred to other services. Both YIOWs interviewed considered that the program has been quite successful. Their assessment was supported by the earlier 2005 program evaluation which showed that the number of youths charged in the areas had declined appreciably (i.e. in line with the above objective of reducing the entry of youths into the justice system) and that police officers, parents and youths praised the program for its effective proactive early intervention strategy.

Both YIOWs have had minimal contact with Aboriginal youth; one reported, "I could count on one hand the number of Aboriginal youths I have dealt with over the past eight years", while the other noted that he had not had an Aboriginal youth client in at least a year. While the YIOWs did not have much awareness of or contact with the AJP, they were open to restorative justice and circle approaches and both had been trained in the RCMP "community justice forum" program (indeed one YIOW indicated that he had used restorative justice formats with offender and victim present). They were familiar with the roles of CCS's Aboriginal case worker and the community youth worker in Lennox Island. For a number of reasons (see the section on Types of Circles), the RCMP

officers policing the reserves at Lennox Island and Abegweit FNs have not apparently used the YIOW program. A recent agreement may well change that since as of January 10, 2011, under a new pilot program fully funded by the RCMP, a 50% Outreach position will be implemented in Queens County where the Abegweit FNs are and as an CCS official stated, "This will give officers the option to divert via EJM" (It can be noted that RCMP could have diverted such EJMs or pre-charge cases to the AJP and indeed did so in 2007-2008 an Lennox Island incident). There is an agreement in place between East and West Prince detachments that enables the YIOW in West Prince to take referrals on Lennox Island but no data are available on its impact to date or indeed whether any Aboriginal youths have been clients of the Bloomfield YIOW.

The YIOW program appears to be a solid effective prevention program with trained, experienced and monitored staff that could serve well Aboriginal youth, especially youth who are the prime focus of the YIOW, namely either first time minor offenders or who are seriously at-risk of becoming offenders There seems to be little advantage to reproduce it as a parallel AJP program but there should be much closer contact between it and the AJP. The AJP should be informed about Aboriginal youths referred to the program, fully aware of process of referral and the substance of the intervention, confident about equal access for Aboriginal youth, collaborate as appropriate (minimally having an advisory role) and, if satisfied that the program is effective with Aboriginal youth, encourage the police services to refer Aboriginal youths to it. There are programs elsewhere for adults where an EJM option (pre-charge) complements the EJS adult diversion program (post-charge); in light of the data presented above, the AJP might want to explore its possibilities in PEI.

The Aboriginal Victim Assistance Program

Aboriginal victims of crime have been considered throughout Canada as largely not engaged in governmental and non-profit Victim Services programs. The problem has been defined as one of "adverse effects", that is, the programs as constituted have been ineffective in reaching out to and including Aboriginal victims. This has been true at the federal corrections levels (i.e., Aboriginal victims have had low registration with CSC

and the NPB and low involvement in parole board activity) and at the provincial level. Nova Scotia Victim Services reported that it had virtually no contact with Aboriginal victims (and no response to offers of assistance apparently) prior to sub-contracting – with federal funding - that task to MLSN, the Mi'kmaq agency for justice services. New Brunswick VS had pretty much the same experience until it was able to work through, monitor and supervise the Elsipogtog Victim Services program which received federal funding. In the only recent (i.e., 2007) and accessible survey of Aboriginal victims in Atlantic Canada, most respondents said "we need our own system".

It was noted that the CCS has an holistic character to its programming and that is reflected also in its organizational structure including Victim Services. It is not known how effective VSPEI was in reaching Aboriginal victims but there obviously was some concern both in government and among AJP staff as noted in the 2007 report. One former non-Aboriginal VSPEI, now engaged elsewhere in CCS, commented in 2010 that "when I was in VSPEI I would sent out letters to Aboriginal victims but I got no response". In the spring of 2010 VSPEI launched its Aboriginal Victim Assistance (AVA) program on a fee for service basis and now engages 5 such persons, four of whom have Aboriginal identity while the fifth has had long involvement with NCPEI. The activities include individual meetings with the victims referred, attending court or an AJP circle as support persons for victims who want the support, and file management and write-up. According to the CCS policy (see below) and the AVAs themselves, cases of domestic violence require special attention and are beyond the mandate of the AJP circle at present (the lines may be blurred somewhat despite the protocols as for example in the case of harassment).

Three persons engaged in (AVA) program were interviewed in the fall of 2010, just a few weeks after the training and certification. Only three victim clients had been referred to them and only two files were activated by the time of the interview. The contacts with victims were quite limited in scope – basically a sympathetic ear – and there were no circles held for the AVA person to attend as a supporter nor apparently any courtroom support activities. The AVA role players were well-connected with the Aboriginal communities they served whether on or off reserve and appreciated the book

training (the SOPs for VSPEI) and some shadowing experience (accompanying a VS staffer in her work) provided them by the VSPEI employer. While expressing a wish to have less delay over background police checks and have more front-line on-the-job training, they expressed confidence about being able to provide effective, culturally-sensitive support services to Aboriginal victims. They identified the central crime and social problems for Aboriginals to be alcohol and drug abuse, generally considering them to be legacy effects (e.g., colonialism) that have continuing significant impact on behaviour. At the same time, the AVA workers considered that, overall, the PEI CJS served Aboriginal people well and emphasized that accountability is crucial; as one put it, "overall I feel it [the PEI CJS] does [a good job servicing Aboriginals], but I feel there needs to be more accountability for those who are constantly involved with the law". They shared the view that victim rights and needs have long been unattended; thus, the victim advocacy and support role harmonized with their perceptions and views about victims' needs and offenders' accountability. An off-reserve AVA person added that there may be important differences between on and off reserve victims' needs, contending that "I think not only are they [the off-reserve] discriminated against by non-Aboriginals, but they are also made to feel less worthy than those who live on the reserve or those who are status vs. non-status".

The development of the AVA program appears to be a very helpful response to Aboriginal victimization by VSPEI and reflects the philosophy of CCS and its appreciation of the need to be flexible organizationally in order to respond to the different needs of different groupings (and perhaps also it is an implicit acknowledgement of the "citizenship plus" Aboriginal status that governmental policy and the courts interpret in the constitutional / treaty rights of Aboriginal people). There is, according to both VSPEI and the AJP, reasonable satisfaction with new AVA arrangement and a sense that an effective and efficient culturally appropriate victim services is now in place for Aboriginal victims. From the government side there is the view that a separate victim services program managed by the AJP would not be warranted given the small dispersed Aboriginal population and the low level of crime activity; as one key official stated, "I do not think there is a demand for it, either in principle or in the numbers". The victim

services' mandate is to work with victims of crime who want the service. While all victims referred by police (some cases come from VSPEI following the court dockets) are apprised of the service and the AVA option (victims are not directly asked if they are Aboriginal) no victim is required to accept the service and no Aboriginal victim is required to take the AVA option. The directors of VSPEI and the AJP, according to both parties, have a good relationship and work closely together planning annual forums and on improving information about the AVA initiative through brochure and presentations by VSPEI, AVA and AJP personnel to CJS officials and the Aboriginal communities.

CCS Probation Services

The three probation officers (two YJWs and one Adult probation officer) were very much engaged with Aboriginal offenders and the AJP. The two male YJWs had responsibility for most of the Aboriginal youth cases (8 of the 12 outstanding files at the time of interview) in the two administrative districts, namely Charlottetown and Summerside, while the other Probation officer supervised roughly one quarter (9 of 37) of the Aboriginal adult cases in PEI. These represented a minority of the officers' caseload, roughly $1/7^{th}$ in the case of all three Probation respondents. All were quite positive about their work and apparently empathetic with Mi'kmaq traditions; as one said, "It's a beautiful culture". They were frequent participants at AJP circles, whether EJSs or SCs, and, in the case of the adult Probation officer, attended sweats and, accompanied by the CCS Aboriginal case worker, traveled to the Aboriginal communities to meet with the probationers to check on probation orders. All three respondents indicated that they worked closely with the CCS Aboriginal case worker. Further, their collaboration included not only supervising court-mandated orders but going beyond that in other ways such as encouraging clients to pursue possible healing circles with AJP (several such instances were cited though reportedly none actually resulted in a healing circle being carried out). The probation officers, whether youth or adult, agreed that the services often provided to Aboriginal clients, such as going to them rather than requiring them to come to the office) went beyond that usually provided to non-Aboriginal clients but they considered that extra effort to be fundamental to the CCS approach of responding to different clients in different milieus in special ways.

The YJWs were not involved in cases where there was a police referral to the YIOW or to the AJP under s.6(1) , the extra-judicial measures program option (recall that these referrals carried no implication for court processing in the event of the youth's lack of collaboration). But where the Aboriginal offender are referred to extra-judicial sanctions (EJS) the cases are channeled usually from the Crown through Probation before proceeding to the AJP. Probation in such referrals is "obligated to speak to compliance or lack thereof" in court. The YJWs in virtually all such cases have been invited to and have participated in the AJP circles; indeed, they see an important role for themselves there "to help guide the conditions so that the conditions do not become too far from what he/she would normally get through the regular system [of case processing]". This elaborate role of the YJW of course also means that the AJP diversion initiative has not been a major "time saver" for the YJWs though it may have reduced their visits to the reserve (or nearby school) somewhat and may well have had some time-saving impact for conventional court processing. In general, too, whether laying a breach or in the case of unsuccessful EJSs proceeding back to Court, the YJW would consult with the Crown. All Probation interviewees reported that they are reluctant to, and rarely do, file breach charges, especially in the case of Aboriginal offenders. In the case of YJWs it was noted that court interpretations of the YCJA and other court decisions (e.g. the Stoker decision on taking urine samples) have contributed to making it hard to meaningfully enforce breaches.

The Probation officers were positive about the AJP circles. They reported them to be long (often four hours or more reportedly), interesting, and well-attended with the offender, offender supporter, an elder plus, of course, the facilitating CKs and the AJP director and usually the victim and a police officer. They reported that the CKs used a stone or feather for speakers but the youths were allowed to speak without holding the feather (stone) and generally whenever they felt like talking. The sanctions for the EJSs were typically appropriately modest (e.g., meet with elders, restitution) and quite reasonable in their view (one commented on a slight tendency for the agreement to require too many community service hours which could make it difficult to complete the agreement on time) and the offenders completed the agreements. While successful on the

circle terms, the long run impact of the circles was less certain in their view and one YJW respondent observed that two of the four youths referred to a EJS circle subsequently re-offended and had SrecCs for their new offences (among other things they received probation for the new offences).

The Probation officers did not consider their Aboriginal clients to be significantly different from the rest of their caseload. Typically they were low socio-economic status with some alcohol and drug problems. One YJW observed that his Aboriginal clients appeared to be part of marginalized families that the community has cut off; the adult Probation officer echoed that description noting that a few areas among the Abegweit FNs produce most of the clients and have done so for years. The adult probation officer observed that there were a few chronic offenders among her Aboriginal clients and that, while specific offences varied, virtually all her clients, including the Aboriginals, had alcohol and drug issues. Neither veteran YJW has had as clients more than the occasional off-reserve Aboriginal youth; one suggested that such youths might not be likely to be referred to the AJP. The adult Probation officer, on the other hand, operating out of from Charlottetown office, was quite familiar with off-reserve Aboriginal offenders and with the NCPEI's alcohol and drug counselor who regularly was in court and provided much assistance to Aboriginal accused persons and offenders.

All Probation interviewees appeared to share several views about the AJP circles, the limits of AJP's scope and the Gladue imperative. They considered that "the more serious, repeat offenders and complicated cases, including domestic violence, need to go through the formal Justice System". They reported that they do not specifically prepare Gladue reports for court-processed cases, adding that they always identify Aboriginals as such in their reports; the adult Probation officer commented, "My reports for Aboriginal offenders are lengthier and go into background factors such as culture and historical legacy". The probation officers considered it quite unlikely that a number of Aboriginals could "slip through the system" (i.e., not be recognized as Aboriginal) since "CJS officials know the people on the island well" and "what incentives would there be for a person to deny their Aboriginal identity; all incentives work the other way". There was also consensus that the small number of Aboriginal offenders did not justify a separate

native court worker position unless there was a more holistic strategy where the court worker would have significant engagement with offender reintegration and services and programs at the community level. They appreciated that such initiatives could complement court case processing and timely securing legal aid and most saw some advantages in a robust court worker role for Probation since it could offer some solution to one of their key concerns, namely that the local community services apparently do not do much outreach, seeking persons who fail to meet appointments and so forth; here perhaps the court worker would act as something of a "navigator" effectively linking probationer and local services. This possible role was further underlined by one YJW respondent who commented that "there seems to be a lot of services available for young Aboriginal persons but maybe they are not effectively coordinated".

The Probation officers offered a few suggestions for improving the AJP program. All considered that there could be better follow-up since the Probation officer needs to be informed about the agreement's completion or the offender's failure to complete and to timely meet with the Crown. Apparently there is not a formal end date for a circle referral. Another common suggestion was that perhaps the AJP could be more efficient if the director stepped back and let the CKs handle the sessions; at the same time, one respondent noted that where the police and /or the victim do not show up, it has been left to the director to "represent the authority / complainant side".

Views of the Other CCS Role Players

An interesting CCS role is that of the Aboriginal case worker. She operates out of CCS' Clinical Services and provides counselling and some specific treatment programs, such as anger management, to Aboriginal clients (and to others as well) as ordered by the court. In effect she does case management for Aboriginal clients whether in custody or on probation (e.g., develops a case plan for offender reintegration). She travels to Lennox Island and Abegweit FNs as required, attends court when her clients make appearances, links the Aboriginal clients to the full range of CCS services, and facilitates their engagement with other CCS staff as has been seen above with respect to the Probation staff. The case worker implements a program called Turning Point which has a number of

youth and adult clients and aims at challenging the clients to turn their lives around. In her view the major issue remains alcohol and drug abuse rooted in the historical legacy of Aboriginal people in Canada. She called attention also to gender differences and especially noted the plight of undereducated and marginally employed young adult males with "zero status" in the community. The Aboriginal case worker role ensures effective liaison of the Aboriginal offender with CCS staff and programs. While she may take the initiative in suggesting diversion for Aboriginal clients, any actual diversion requires the consent of the Crown with whom she has a good working relationship. A key feature of the Aboriginal case worker role is that she transcends the MCPEI / NCPEI divide, has strong ties with justice role players in both organizations and thus effectively links all Aboriginals in PEI, on and off reserve, to the entire mainstream CCS programming, including of course that which she personally delivers. It would be difficult to imagine how a conventional court worker role could add much value to this liaison role with Crowns, Legal Aid and the other CCS officials and programs. In that regard the Aboriginal case worker also properly had some doubts.

The two other CCS officials interviewed were in management positions. Both emphasized the integrated, holistic approach that characterizes the CCS; as one respondent put it, "we focus as much on the front end [prevention] and back end [reintegration] of offending as we do on the middle [the middle being responding to the offender's actions and carrying out Court-mandated orders regarding the offender whether through custody or probation]". They interpret this approach as a way of taking advantage of the PEI's small scale, turning it into an advantage by truly implementing an holistic strategy. In their view the collaborative relationship that exists with AJP is crucial given the small size of the Aboriginal population in PEI since the alternative of a parallel Aboriginal justice program providing all these services and programs would be very costly, inefficient and ineffective; and, at the same time, not to respond to the special needs and demands for partnership would be unacceptable and in violation of government policy.

In 2007 the CCS management interviews highlighted that Aboriginals made up less than 2% of the PEI population and also less than 2%, and maybe closer to 1%, of the Corrections caseload. That claim was reiterated in 2010 as was the emphasis on youth (a

long standing activity of the CCS carried out in partnership with the bands) and the front-end generally (e.g., a parenting program was introduced in Lennox Island by the CYW in 2010. Generally, as in 2007, the interviewed CCS managers observed that trends in offences, such as the recent rise in impaired driving charges, appears to happen across the board, whether mainstream or native. There was nothing particular extraordinary about Aboriginal offences or offenders in their view, and compared to the 1970s and 1980s, there is, nowadays, much less substance abuse (e.g., "sniffing") and violence and some perpetrators of serious, unpleasant offences (e.g., certain sexual assaults) have been ostracized to the streets of Charlottetown.

In the 2007-2008 assessment of the MCPEI AJP, CCS top management suggested the priorities of improving services for victims, engaging Aboriginal youth and early intervention approaches. They have delivered on these priorities, establishing in 2010 the AVA program in consultation with the AJP and expanding the activities of the CYW program in Lennox Island and more recently in Abegweit FNs. In envisaging future developments with respect to CCS and Aboriginals in PEI, the assessments of CCS management interviewees, consistent with those of Probation officers and indeed with virtually all CJS interviewees, did not consider that the AJP should move into dealing with more serious criminal cases and family violence cases. As one senior management official commented, "Seems a little early, need more experience and training. They might draw on other provinces regionally who have more experience. Family violence cases are always supervised by our most senior and qualified Probation Officers and Victim Service Officers. These cases are all assessed to be high risk and Probation Conditions and/or Protection Orders must be monitored to the letter". One possible future collaborative initiative with the AJP could be a robust, nuanced native court worker program. As in the 2007/2008 assessment, there was little cost-effective benefit seen in the conventional native court worker program (which is a 50-50 cost shared federal-provincial program) since simply attending court and navigating Aboriginal clients through legal aid and other court processing was seen as having much down time (given the small number of Aboriginal offenders) and overlapping with the effective Aboriginal case worker role. But a court worker program where the emphasis was much more on crime prevention and offender reintegration navigation and coordination at the

community level was seen as a possible a major complement to the Aboriginal case worker mainstream activity. One respondent suggested, as in 2007, 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.

While very positive about the AJP, its effective leadership, and their partnering role with it (ranging from collaboration with AJP annual meetings to CYP community work with Aboriginal youth) there were some suggestions advanced to improve the collaboration. These revolved around the sometimes slow response of the AJP to CCS needs (e.g., the Probation officers' concerns noted above) and the pressure on the AJP director to do more in the way of coordination with CJS officials and community leaders. How to achieve that in light of limited AJP resources was more problematic but releasing the director from the considerable task of attending all circles and doing so much case management was considered a crucial step.

Overall, then, it appears that the CCS role in all its dimensions is quite an impressive program which provides very significant benefits for Aboriginal people in PEI whether offenders or victims. The reach and success of the CCS initiative presents both challenges and opportunities for the AJP. Given the holistic approach and its actual implementation, AJP partnering with the CCS over so many areas of mutual justice concerns requires a major commitment of its organizational resources to stay abreast of developments and help shape their design and implementation. The fact that such an approach is being extensively put into practice may provide opportunity for the AJP to carve out a broad holistic approach to Aboriginal justice that transcends the CJS and extends to the total Aboriginal experience whether it concerns criminal, family or regulatory matters or restorative justice (circles) at the community level in the way that has been described earlier regarding the Siksika in Alberta and the municipalities of Hull in England and Bethlehem in the USA. Such a vision would be in line with the initial goals of the AJP (e.g., the concern with disputes in fisheries) and with some forays it has undertaken in responding to conflicts, not crimes, at the community level.

RCMP and Municipal Police Views and Experiences

The 2007 assessment by this evaluator dealt essentially only with RCMP policing with respect to the reserves. In that report it was noted that there were different policing formats for the RCMP in Lennox Island and the Abegweit FNs. Lennox Island for over a decade had 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, but not often, an Aboriginal person, is expected to spend roughly 80% of his or her working time on reserve. There was also a longstanding RCMP consultative committee with one member being the councillor with the Justice portfolio. The committee had been active in recent years (2002-2006), was a large grouping representative of the community's demographics, and met every second month. There was 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, did not have a CTA so it was being policed like other areas of the regional RCMP detachment located in the Charlottetown area. A community consultative committee had been dormant for several years and there was in place no specific community policing plan acknowledged by the FN. In both Abegweit and Lennox Island the policing was supplemented by a band hired and supervised security person; whether a watchman in Lennox Island or a band constable in Abegweit (this latter position was 100% funded by the federal Aboriginal Policing Directorate), neither had received any formal training nor was supervised by the RCMP.

The general view expressed by the RCMP police officers was that both the FNs had a quite modest crime and social order problem. Lennox Island in particular was portrayed as very low crime milieu. In the case of Abegweit FNs, 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).The relationship between

the RCMP and the Abegweit band leadership was very strained and there was minimal on-reserve police presence.

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 and actually "regular plus" policing because of the CTA. They considered that it was 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 had been for more than a decade, an excellent relationship between the police and the community (especially the band leadership).

In large measure the policing on Lennox Island reserve was quite 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 had been few cases handled by the circle keepers in the previous two years in large part because police had instead utilized the "caution" option as an alternative to court processing and left referrals largely up to the crown. Police, whether in the case of Lennox Island or Abegweit, indicated that they rarely become involved in band bylaws and did not consider such involvement to be a measure of the FN ownership / participation of policing. The main issue for policing from the police perspective in 2007 was dealing with residents' demands for a proactive, visible policing highly engaged in community activities.

Overall, then, the 2007 assessment concluded that with respect to reserve policing in PEI there were differences between the two small FNs but no major crime problem in either one. There was some substance abuse especially among young adults but on a rather minor scale, and, as well a small core of regular repeaters of minor crime or social order issues. These perceptions tallied with the RCMP crime statistics. At the time, also

tallying with the statistics, the respondents reported that the AJP initiatives had had little impact for the police role but police respondents believed that greater community efficacy through increased capacity to have effective circles and diffuse local conflict in general and especially in the regulatory area (e.g., band bylaws, fisheries) would be very beneficial.

In 2010 there were eight interviews (four supplemented by email exchanges) with police officers or officials, this time including municipal police in Charlottetown and Summerside. In all four milieus – Lennox Island, Abegweit, Summerside and Charlottetown – the officers most involved in the services' Aboriginal thrust were interviewed. In the years since 2007 the major change was that the Abegweit FNs' changed band leadership signed a CTA which brought much more RCMP presence to those small reserves. The CTA agreements basically complement the usual federal-provincial PPSA, a framework agreement applicable to the whole province whereby, unless a place (e.g., Borden, Charlottetown) has another arrangement, the policing by default would be provided by the RCMP. The CTAs provide for one officer to be 80% in each of Lennox Island and Abegweit. When the CTA was signed with Abegweit the 100% federal APD funding for the band constable position was directed to that program. PEI government officials in Policing and Justice reported that the CTAs are consistent with provincial and federal policy for "a stronger Aboriginal voice in the administration of justice on the reserve" and held that the CTA principles and guidelines especially call for more accountability of the police service to the community and more emphasis on training and preparation with respect to cultural sensitivity for the CTA officer (though not necessarily that the officer be Aboriginal). The interviewees considered that with the CTAs, policing in Aboriginal communities is firmly and effectively set. In their view, it is more than comparable to policing in the surrounding mainstream communities and requires no significant structural changes (e.g., no self-administered or stand-alone Aboriginal police service). Challenges identified included improving the mechanisms for accountability such as the community consultative committees, encouraging continuous training in cultural sensitivity, and creatively responding to the 80% dedication of officers to the community as formalized in the CTA; concerning the latter, it was

acknowledged that the low crime rate on the PEI reserves can generate much boredom if the officers have not been groomed for proactive community-based policing.

RCMP officers interviewed in 2010 were, with one exception, different persons from those interviewed in 20007 but they essentially reiterated the views of the latter. The three RCMP officers in the Prince detachment which includes Lennox Island suggested that the 2007 portrait of the crime and policing there has not significantly changed from the description provided above, namely some mischief cases, a few repeat offenders and some alcohol and drug abuse but no gangs and limited violence of any sort. In their view the modest reactive policing demand (e.g., crimes, 911 calls) is such that "there is no need for any civilian crime prevention officer or support officer (such as the RCMP has in New Brunswick and in some other areas of Canada) … the designated community officer (under the CTA agreement) can handle all that". The officers did not think that there was a culture of non-reporting violence, whether common assaults, domestic violence or elder abuse (though one officer added that the reporting may be done by others, not the victim). The officers considered Lennox Island FN to be a well-integrated and progressive community with no suicides in recent years and held that community-police relations were generally good (a possible exception, one officer observed, was among young adult males who were more involved in substance abuse and more inclined to have a "you owe me attitude"). Apparently, in the past few years the community consultation committee no longer has held frequent meetings and the community policing plan has received little if any attention, largely, according to the officers, because the attitude was "not much has been happening so why waste everybody's time". Officer turnover in the CTA position has probably also been a factor but the newly appointed officer noted that "one of my priorities is to discuss the policing plan with the community consultative group".

The RCMP officers in the Abegweit area gave a similar but more nuanced description of crime and social problems. Overall, they held that there was little crime per se but a troublesome problem of alcohol and drug abuse among some persons and/or residential areas and some concern about frustrated young adult males who reportedly have been less likely than their female counterparts to succeed in school or to obtain regular employment. The officers reported that criminal offences were "few and far

between" and that there was no problem with youth ("they are well-behaved") nor was there significant family violence or indeed much interpersonal violence of any sort but there were a number of impaired driving and other driving charges and calls for service basically revolved around alcohol abuse. There was reportedly also a high level of unemployment in most of the Abegweit area and significant socio-economic differences among residents (e.g., Morell was deemed to be sharply different from Rocky Point in terms of residents' under-employment, substance abuse issues and general quality of life) That general situation of low crime but some social issues was interpreted by the officers as producing an opportunity and a need for "lots of valuable proactive work and we are doing that now". The new band leadership in the last few years and the CTA agreement were said to have created a new positive social context for policing as well as for Abegweit economic and social development (e.g., especially in the fisheries). The police respondents also held that the limited crime problem, the CTA agreement and the new social context meant that the RCMP would be engaged increasingly in proactive, preventative police functioning and that no supplemental civilian crime prevention or crime support staff was required.

Aboriginal offenders in the urban areas of Charlottetown and Summerside, according to the municipal police services there, also apparently are "few and far between". Neither police service kept records by race/ethnicity though the CPS began doing so in the summer of 2010. The Summerside respondent reported that there would be a few Aboriginals charged per year – perhaps as many as twenty – and the persons charged may often be from Lennox Island. The Charlottetown respondent reported that, "Although 50% of the PEI Aboriginal population live in the Charlottetown areas, there was no significant Aboriginal gang issue there and likely less than a dozen Aboriginal street people well-known to the police". The crimes committed in the urban areas have been mostly minor property and simple assault offences. In Charlottetown, unlike Summerside, there were "a few young Aboriginal adults who could be classified as transients", some being Aboriginal persons from elsewhere in the Maritimes (e.g., Elsipogtog) but more apparently accounted for by movement back and forth from the reserves to the city. The Charlottetown officer observed that two somewhat unique factors characterize Aboriginal offenders, namely that the transience complicates

investigations because the Aboriginals involved are harder to locate, and that "family involvement is always a big issue with Aboriginal offenders". These assessments on the number of Aboriginal offenders and their types of offences were corroborated by a senior RCMP officer very knowledgeable about Aboriginal people on the Island who commented, "There has not been a significant visibility of Aboriginal street people in Charlottetown".

The police officers' accounts of the number and type of Aboriginal offenders tallies with the available police statistical data (see section Context above) though the relatively large number of Aboriginal persons on probation (50 Aboriginals in October 2010, evenly split between the Charlottetown and Summerside administrative districts) gives one a reason to pause. Asked why the overall provincial Aboriginal probation numbers seemed somewhat higher than expected in light of the apparently low level of crime and the few referrals to the AJP, the best informed and most experienced RCMP officer regarding the Aboriginal milieu in PEI, rejected the suggestion that Aboriginals were not being identified as such either by police or in the courts, commenting, "I know them all and so do others plus there are people around and posters up"; instead, he suggested that perhaps the probationers were multiple repeat, older offenders who would not be appropriate for referral to the AJP circles and / or themselves did not want to be referred to circles "since they may be more shamed there". There could be more likelihood of "identity slippage" in the two urban areas since, as the Charlottetown police officer observed, "unlike the RCMP, the CPS does not have the resources to do liaison work with the Aboriginal community". No police respondent was of the view that the identity slippage would be significant for PEI Aboriginal offenders.

The police services, both RCMP and Municipal, were increasingly informed about and linked to the Aboriginal communities, in large measure because of the networking activity of the AJP. And they exhibited much empathy in their comments about Aboriginals and justice. The CPS officer, for example commented that because of the legacy of negative historical experiences, "Aboriginals are suspect or wary about the police so [our] establishing good ties is important"; he acknowledged that the CPS' attention to Aboriginal issues has been quite recent, noting the impact on the police leadership of the residential school meetings and the networking of the AJP. In the case

of the Summerside police, the respondent observed that "We have members who attend meetings and training on Aboriginal program; in fact today we have members attending the [AJP's] annual Aboriginal Justice Workshop in Charlottetown. I would usually attend but had other commitments for today". The RCMP officers involved with Lennox Island and Abegweit FNs, as noted, were very much engaged with both the Aboriginal community and the AJP. The Abegweit officer, for example, had a wide knowledge of the Aboriginal residents (i.e., could identify with some depth virtually every family living in each of the three Abegweit FNs dwellings) and was very proactive (e.g., driving accused persons to court, linking up with community programs and providing some counselling). An officer serving Lennox Island expressed much interest in assisting the process whereby people knew their Aboriginal rights and asserted them. She rued the fact that few residents utilized the traditional language and worried about their being intimidated by the justice system.

The key police officers with designated (not necessarily direct) responsibility for Aboriginal policing in Lennox Island, Abegweit and Charlottetown were all quite aware of the AJP and all had participated in at least one AJP circle. The Charlottetown officer noted that he had never referred an Aboriginal person to the AJP and any EJS referral would have to be approved by the crown. He observed that Charlottetown police officers can refer youth to the co-located YIOW (an EJM referral) and some Aboriginal youths may have been among the referred but he had no data on this. The Summerside officer gave the same response, namely no referrals have been generated for the AJP by that police service but perhaps some Aboriginal youths have been referred by individual Summerside officers to the co-located YIOW on an EJM. The RCMP officer at Lennox Island – the CTA there only for a few months – had yet to refer a case to the AJP but had already attended two circles, while the Abegweit CTA officer reportedly had referred several cases to the AJP and had attended several circles. Presumably the referrals were EJSs where the officer laid a charge with the recommendation to the crown that it be sent to the AJP, since, according to a senior RCMP officer, "the RCMP Community Justice Forum is not being conducted here on the Island. There can be a pre-charge referral to the Aboriginal Justice Committee; however, we try to **ALWAYS** go through the Crown Prosecutor. We lay the charge. In that way should the meeting not take place or the

offender not go with the plan of the committee we still are within the 6 months and can take the charge back to court".

The officers attending the justice circles were generally positive about their effectiveness. At the same time, they did not envisage the AJP justice circles dealing with more serious offences or multiple repeat adult offenders, in part at least because in cases of domestic and other assaults both the victims and the communities would likely be less supportive. But more generally perhaps because, whether or RCMP or Municipal, the officers considered the AJP to have limited scope; as one senior officer stated "It is not often where they get a second chance at the [AJP] forum. This has happened twice to my knowledge since we started to hold the AJP forums". Several respondents did however suggest that a focus on "justice in the round" could be an additional appropriate area for the AJP, responding to cases of regulatory and civil justice matters and generally focusing more on conflict resolution and the quality of life at the community level. A few of the more experienced police officers also suggested that a better job could be done by the AJP ensuring that the police and the crown are well-informed about what happened in the circle.

Overall, the views of the police officers interviewed in 2010 were quite similar to those expressed by their counterparts in 2007 with respect to the low level of crime, the minor nature of the offences, the small numbers of multiple repeat adult offenders in the different Aboriginal milieus, and the continuing troublesome substance abuse, maintained in part by legacy factors in conjunction with high levels of under-employment. The 2010 respondents did report significant and positive changes with respect to the appropriateness and cultural awareness of the policing in Aboriginal milieus and their involvement at both the community and individual levels. This was considered to be a function of several factors including the CTA for the Abegweit FNs and the networking activities of the AJP. The latter and its justice circles were generally considered to have represented a successful initiative. The respondents did not envisage the AJP circles approach extending deeper into the CJS but rather suggested the focus be more on general conflict resolution at the community level, building deeper support there. The area of some ambiguity for this evaluator was how much impact the changes from 2007

to 2010 – the greater cultural awareness of policing, the networking of the AJP – have had for off-reserve Aboriginals, especially of course in Charlottetown.

The Judiciary

In 2007 two judges, senior and very knowledgeable about Aboriginal issues in PEI were interviewed. Both had 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 reported that the level and type of Aboriginal crime and related violations was quite comparable to the rest of PEI, and that any violent Aboriginal crime was of a sporadic sort. 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 demeanour among offenders, victims, and witnesses appearing in the court, according to their being Aboriginal or mainstream PEI. 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 judges reported on the whole no striking difference between native and mainstream people in these regards. Both judges were quite open, as judges in Nova Scotia and New Brunswick were, to having sentencing circles for some Aboriginal criminal cases, and in general conveyed a willingness to consider options raised by the AJP. They reported that no protocol (e.g., eligibility, format) for sentencing circles was in place in PEI and that the crown prosecutor in the area would be the gate-keeper for such 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 the crown prosecutors would be the referral agents, not themselves. They also indicated modest support for an Aboriginal court worker program. For the judges, the preferred course of action for justice services for Aboriginals was Aboriginal engagement without parallelism, to be achieved, beyond limited- scope AJP circles, through cross-cultural training, court workers and, in the future, some Aboriginal persons in major Justice roles. The judges saw such developments as long-term and did not think a lot of progress had yet occurred.

Essentially in 2010, the four judges interviewed, three of whom were well aware of Aboriginal justice issues both in PEI and elsewhere in Canada (e.g., the Healing to Wellness court in Whitehorse) and two of whom had held senior governmental responsibilities in Justice, reiterated the above positions. They were in consensus that the number of Aboriginal accused persons appearing in their court, whether provincial criminal courts in Charlottetown (where all Abegweit FN criminal cases were heard) or Summerside (where all Lennox Island FN criminal case were heard) or in the Supreme Court in Charlottetown handling family and civil cases, was quite small. One Charlottetown criminal court judge commented that less than 1% of her court's cases were Aboriginal accused persons and these figures were accounted for primarily by some ten to fifteen recidivists ("and it might not be that many"). The other judges basically echoed that assessment. The judges also reported that unfortunately the provincial court statistics system – the data management system in place - is such that "we can't be sure of the numbers", "we do not get stats any more on our case load". The family / civil court judge too reported very few cases – and "none that stand out" - involving Aboriginal persons coming before his court.

Aboriginal crime was considered by the criminal court judges to be usually quite minor ("low-end offences", impaired driving) though occasional violent acts occurred, and virtually all the offences apparently could be linked with alcohol and drug abuse. Virtually all the accused in criminal cases were said to have legal aid representation, and while the proportion of unrepresented (i.e., self-represented) among the parties in family / civil court was reportedly very high, cases involving Aboriginal persons were deemed to be so few that no meaningful comparison on that dimension could be drawn with the non-Aboriginals. As in 2007, the judges reported little difference between Aboriginal and non-Aboriginal accused persons in their court demeanour. Generally the judges did not accept that the classic Canadian portrait of the Aboriginal person in court (i.e., head down, prematurely pleading guilty) ever applied in their courts. The criminal court judges in Charlottetown did observe however that a significant change in recent years has been that the Aboriginal offender now has more support people in court; indeed, one judge commented, "some days the whole crew is there".

The judges of course were aware of criminal code requirements since 1995 that judges give special consideration to Aboriginals in sentencing (taking into greater consideration the possibility of alternatives to incarceration in the light of the huge over-representation of Aboriginals in federal and provincial custody) and also of the 1999 Gladue requirement that, when Aboriginal offenders are being sentenced, judges should seek a Gladue report exploring possible links between the offence and the offender's Aboriginal legacy of colonialism, residential schools and so forth. Though they did not apparently ask offenders if they were Aboriginal, the judges did not think that Aboriginal persons appearing before them would "slip through", not be recognized as Aboriginals. Here they depended on their own prior knowledge of people and names, the presence of other Aboriginals in court and, most importantly, they believed that legal aid lawyers would always know (and "all get legal aid"). Apparently there have been no Gladue reports submitted to the judges, suggesting that there is no Gladue protocol in PEI and presumably that the Aboriginal legacy factors are commonly understood / appreciated and need no explicit attention. One judge commented that the SrecC could well be seen as a kind of Gladue report and it is interesting that the judges noted that they could not recall receiving a pre-sentence report when there had been a SrecC.

None of the criminal court judges has referred a court case to the AJP, seeing such referrals as the responsibility of the crown prosecutor, perhaps acting on the recommendation of defence counsel. But, as 2007, all judges indicated that they would consider being involved in a SC or recommending a SrecC should they be approached. Subsequent to the 2007 "full monty" SC (a SC where the required role players, court officials and others, and court recorder are present and where the judge renders a sentence at the session), there have been only SrecCs in PEI. Generally the judges pointed to the elaborate and time-consuming character of a SC as a key shortcoming for the SC and did not comment on any pressure that a "full monty" SC might place on them and their formal legal obligation to sentence. The judges gave mixed assessments of the recommendations in the few SrecCs received. One judge commented "Yes they were fine; they gave me something to work with … [and] no, they were not seen as a command". Another judge noted that in the one instance where there was a SrecC, the

offender recidivated, and commented, "the recommendations were nothing innovative … there was no beef to them".

The judges generally did acknowledge the 'citizenship plus" status of Aboriginal people and expressed a willingness to accommodate Aboriginal concerns and wishes with respect to current AJP programming; indeed one Charlottetown judge indicated that if asked he would be willing to consider having special sessions for Aboriginal cases. They appeared too to have a consensual sense of the limits for AJP engagement in the CJS. The judges considered that expansion of the AJP mandate to include more serious offences and incidents of family violence would not be warranted at least at this time. One judge commented "I would be concerned that they might not have the capacity to handle these types of offences, So far we have only had a couple of circles [SC and SrecC circles) involving less serious offences. I am not sure the group here would want to handle anything too serious and they might not get the consent of those involved to do so". Another judge commented with respect to the AJP's possibly taking on more serious criminal cases, "no, what would they do?" A third judge observed that in the case of family and civil cases, "there does not appear to be any special Aboriginal problem - maybe the people work out the issues themselves somehow - so why not accept that". Several other judges did allow that the AJP program of CKs and circles could perhaps play a significant, effective role in family and regulatory (fisheries was typically mentioned here) violations and disputes.

In 2010 the judges expressed reservations about the cost benefit and effectiveness of having a conventional native court worker program in PEI. Perhaps this is not surprising in light of their perceptions of a low level of Aboriginal crime and the absence of significant differences between Aboriginal and non-Aboriginal offenders in court. They noted that some support people have usually been at court for Aboriginal offenders though it also seems that, unlike in the most instances where there is a court worker program extant, none of the judges had a workaday relationship with specific Aboriginal persons occasionally engaging in some court worker kind of activity (e.g., CCS' Aboriginal case worker or NCPEI's Alcohol and Drug counsellor). Several judges commented that that there was no big need for the court worker role per se at the courthouse and that such a role player sitting in the court might be a waste of resources;

as one said, "what would they do". One judge, underlining that the historical conditions that spawned the NCWP, commented that "everyone is conversant in English … we have excellent legal aid and Aboriginals are invariably eligible for it …so there would be no benefit as far as I can see". Some of the judges were however more positive about a robust court worker role that could entail more outreach work such as facilitating offenders keeping to appointments with their lawyers, reducing the "no show" problem (the judge emphasizing the no show issue the most also noted that in the case of Abegweit accused persons the RCMP has made a difference by literally transporting the accused to the Charlottetown court) and linking the offender more effectively to community services and programs. Overall, though, judges emphasized directing resources to more preventative strategies such as education, employment counselling and drug prevention, "addressing the underlying factors which bring the accused before the court".

Overall, then, the judges supported the current thrusts of the AJP and expressed a willingness to accommodate to AJP concerns. They did however report little contact or familiarity with the AJP though they were quite informed and experienced with broader Aboriginal justice issues. They did not see their role as making referrals to the AJP and did not do so, though they responded positively to such requests from the crown prosecutors. The judges did not foresee the AJP going beyond its current level of involvement in the CJS but they did agree that there could be valuable work done by the AJP's CKs and circles in other areas of justice and at the level of community conflicts.

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Prosecutors and Defence Counsels

The prosecutor and defence counsel interviewed in 2007 were 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. The legal aid lawyer, on the other hand, reported that there were serious problems of social disorder and

domestic violence even in Lennox Island. 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". It was suggested that the underlying factors for the serious violence were two-fold, namely the mixed parent families and a legacy of rage that sporadically boils over in the community. In response to a query of whether AJP and the circle keepers could favorably impact on this situation, the respondent stated, "The circle keepers could not handle this stuff".

Both prosecutor and defence counsel were quite positive in 2007 about the value of 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 defence counsel 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 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 had yet been prepared for a PEI Aboriginal person. Both respondents were supportive of the circle keepers program while wary about its possible effectiveness. The defence counsel considered that more in-depth 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.

In 2010 two crown prosecutors and two legal aid lawyers were interviewed, in each case, one from the two administrative regions of Charlottetown and Summerside. Not surprisingly perhaps, given that the 2007 interviewees were re-interviewed, the views in 2010 mirrored those in 2007. The prosecutors held that there is not much Aboriginal crime but there have been some cases of high-end violence. They shared the general view that Aboriginal offenders tend to commit minor crimes such as impaired driving and

mischief (the latter deemed more common on reserve than in the cities), similar to and on the same level as other PEI residents; also they saw the underlying causal factors as similar; for example, one crown commented, "alcohol is usually involved, maybe more than in the mainstream but not by much". The Charlottetown crown prosecutor, on the job there for less than one year, estimated that her weekly docket of 25 cases would include roughly one Aboriginal case and that it seems there is a core of roughly a dozen multiple repeat Aboriginal offenders rotating through the court on a variety of minor charges (e.g., small burglaries, less egregious assaults) and all having substance abuse problems. Again such a pattern was said to exist among the non-Aboriginal offenders in Charlottetown as well. One prosecutor further noted that "I have had no Aboriginal trials; they all plead out": but, again, for the type of offender and type of charge, pleading out reportedly is the rule for non-Aboriginal accused persons as well.

The crowns noted that post-charge referrals to the AJP's, EJSs and SCs / SrecCs, are authorized by the crown and that the crown is the gatekeeper for referrals. The senior crown reported that he usually refers the diversions to Probation (e.g., the Aboriginal case worker) since "they know the people involved better". He also held that the only viable form of sentencing circle for a variety of reasons (e.g., time and effort required for a full-blown SC, the need to take the criminal record of the offender into account) is the SrecC where recommendations are passed on to the judge who decides on his / her own and announces his / her sentencing decision in court. The Charlottetown crown reported that referrals to AJP there are made at the request of the defence and others and not at her initiative but that the crown's imprimatur is essential to it being authorized.

Both crown respondents considered that a native court worker program under AJP auspices could be helpful and could be cost-effective if the role were to combine conventional court worker activity with crime prevention and community level engagement or, as one crown put it, "making a difference on the ground". The Summerside respondent, while observing that few Aboriginals would 'slip by' the court and not be recognized as such, and that, in his experience, Aboriginal accused persons in court are less intimidated and more knowledgeable than they were a few decade ago, nevertheless believed that it is important to have someone at court to inform Aboriginals of their rights and, as he said in 2007, to better identify their individual needs and thus

contribute to a more effective justice system. The Charlottetown crown had some concern that there might be some slippage in identification since the identity issue is not highlighted in court. Of course the Gladue policy advanced by the SCC would require such identity information to be routinely secured from all accused persons appearing in court but as yet there is no PEI protocol for Gladue, though some networking contacts have been made to secure a template for a Gladue report.

The crown respondents had different degrees of knowledge about the AJP but both were solid supporters of the organization and apparently quite open to strengthening the current relationship; the Charlottetown crown, for example, indicated that she had never been to a circle but would definitely go if invited. The two crown prosecutors envisioned an AJP engaged more with its CKs and circles at the community disputes / conflict level and with regulatory and family/civil justice matters. Aside from the intrinsic value of such AJP engagement, one prosecutor commented that it was important for the CKs to have a broader reach since "otherwise they'd get stale without work to hone their skills". The crown respondents did not think that the AJP should become involved with more serious offences and serious / chronic offenders (e.g., adult multiple repeat offenders), arguing instead for emphasis there on preventative strategies (though not specifying any strategic action plan in that regard). They advanced three suggestions regarding AJP as an organization, namely (a) that information on the outcomes of the referrals to AJP would be sent along to the crowns (apparently none are at present), (b) that AJP to improve credibility with CJS officials develop a more detailed statement of policy and procedure on its approach and the circle mechanism, and (c) that the AJP should evolve carefully and incrementally, "building as you go".

The two Legal Aid lawyers presented a somewhat different view on Aboriginal crime and offenders. The Charlottetown respondent, serving Charlottetown and the Abegweit FNs, reported that Aboriginal clients constituted well under 5% of her caseload and, as is the case for mainstream PEILA clients, adult clients far outnumbered the youth. In the Summerside legal aid office, which includes Lennox Island FN, the corresponding Aboriginal proportion was a significant 10% of the caseload. Exact statistics in either region were lacking and, given the state of justice data management, apparently would require a file by file search. The Charlottetown interviewee noted that

there was a mix of offences among the Aboriginal clients and little significant difference between Aboriginal and non-Aboriginal clients in terms of charges, case processing time and demeanour (style or actions) in court. The only racial-ethnic difference highlighted was that, while common among both groupings, "no shows for scheduled meetings" and "coming to court at the last moment with little or no prep time" were more common among Aboriginal clients. In the case of Summerside PEILA, similar patterns were identified but with two additional themes noted. The PEILA interviewee elaborated on the Aboriginal crime milieu, calling attention to significant violence and substance abuse (especially a growing drug problem) in Lennox Island which may have worsened since 2007 when it was already a serious problem in her view ('there are some terrible files"). The other theme was that there was no one at the reserve level to work with in trying to deal with the no-shows and missed appointments which was quite frustrating.

The respondents observed that referrals to AJP circles was largely a function of offence and record; in other words minor charges (and no domestic violence cases) and a modest, if any, criminal record were the keys to referral. They did not suggest that the referral process was difficult because of crown resistance or inappropriate in any way. It was also indicated that compared to other provinces, PEI's CJS is tough on impaired driving and on using short-term incarceration for more serious offenders and offences. Both respondents had attended either a SC or a SrecC and, while positive about the AJP intervention, were cautious about its impact. One respondent commented that she was "quite okay" with the recommendations generated by the circles but that they usually happen "outside my involvement so I am not too involved". She noted that in the one SrecC she attended, the emphasis appeared to be on connecting the youth living off-reserve with the reserve community and Aboriginal traditions. The other interviewee was more critical. She emphasized "all they [the AJP] are dealing with is alternative measures stuff and I don't see those kinds of cases anyways" and was of the view that "what they do and how they do it is not terribly meaningful and does not get at the root of the problem", adding that such change would require more of a community vision and an in-depth cultural thrust. Both PEILA respondents did not think that the AJP program as yet has had a significant impact on their legal aid caseload.

Interestingly, the respondents did not highlight the importance of requesting Gladue reports in court sentencing, and one explicitly stated that the pre-sentence reports were similar for Aboriginal and non-Aboriginal offenders. There was a mixed perception concerning the justice system treatment of Aboriginal accused persons. Equal access to legal aid itself apparently has not been problematic though there is a means test and sometimes at peak seasonal employment times Aboriginals and others may not be eligible. One PEILA respondent commented that while there may be more lip service than reality about Aboriginal equity, she did think that Aboriginals at the minor crime level had more access to diversion ("all I see in the mainstream is alternative measures and adult diversion, not any restorative justice or even any RCMP community justice forums to speak of"). She added that the difference is minor and there is nothing wrong with some people – here Aboriginals - getting a little advantage as it is not a zero-sum situation. The same respondent observed that "more Aboriginals are aware of and asking for the AJP". The other PEILA respondent considered that there are many opportunities, in terms of government policy and funding, for Aboriginal justice initiatives but the challenge is to focus on the most effective approaches to the justice problems.

Both interviewees held that there would be significant gain in Aboriginal justice were a native court worker program to be introduced. In their view it could reduce the missed meetings / no-show problem and provide liaison between themselves, court officials in general, and the accused persons and local community services and programs, something that now is essentially lacking. They also shared the desirability of a robust, broadly functioning court worker mandate. The Summerside PEILA pointed to the many practical things that a NCW could do such as driving accused persons from Lennox Island to court (something currently being done, at least occasionally, by the RCMP in the Abegweit FNs). The concept of a NCW engaged in navigating the offender vis-à-vis local programs and services was much appreciated especially by the respondent who called for more in-depth cultural thrusts (here she elaborated an example of such a violent offender's transformation) to get at the roots of the violence and substance abuse.

Beyond the call for a NCWP, the respondents did not consider that the AJP had the capacity or community credibility to become engaged in more serious offences or family violence matters. One respondent indicated that she would like to see that

expansion of the AJP mandate in the future while the other emphasized that before that could happen the AJP would have to develop an appropriate vision and cultivate more its relationships in the Aboriginal communities.

Overall, then, the crowns and defence counsels articulated views about Aboriginal Justice and the AJP quite consistent with those advanced in 2007. Legal Aid respondents were more likely to claim a higher proportion of Aboriginal clients in their workload than the crowns but otherwise the two types of role players similarly held that Aboriginals were not significantly different than the mainstream accuseds / offenders in the type of offences, demeanour in court, alcohol and drug dependency, having a small core of multiple repeat offenders and other characteristics. Both crowns and PEILA interviewees identified referrals to the AJP as minor offenders with, at worst, a modest criminal record, and did not see the diversion to AJP as impacting much on their own workload. The crowns and the legal aid respondents had familiarity with the AJP and some experience with the circles though the crowns appeared to have a more routine, workaday relationship with the AJP. All four interviewees believed that a NCWP would be a positive and cost-effective addition to Aboriginal justice in PEI, especially if the NCW went beyond the crucial liaison aspect of the role to navigating clients vis-à-vis community programs and services. There was more nuanced difference among the interviewees in terms of how effective they perceived impact of the AJP referral to be for the offenders and a common position adopted was that the AJP intervention, at least for the immediate future, should be limited to minor offences and offenders. There were a number of suggestions advanced for AJP consideration, ranging from better communication of circle outcomes to developing a much broader vision for itself.

Overview: CJS Views and Experience Respecting Aboriginal Justice in PEI

A Nova Scotia crown prosecutor, somewhat reluctantly, observed that **"**with Aboriginals there are different issues for the court officers [such as herself]". Does that sentiment apply to the PEI CJS role players? That is difficult to say. The police officers, especially the RCMP as noted, were empathetic with the view that Aboriginals have different issues and what could be called special supplemental rights – academics have characterized that position as "citizenship plus". The CCS staffers were certainly

philosophically in tune with the importance of community and culturally differences and the judges, crowns and defence counsel were generally quite open to discussing the case for Aboriginal differences in issues and rights. The general case for empathizing with "citizenship plus" may be complicated in PEI by at least three factors, namely (a) the question of efficiency in a small population which applies to both the Aboriginal and overall PEI populations and which makes desirable more integrated than parallel interventions; (b) the on and off reserve Aboriginal divide which complicates CJS acknowledgement / acceptance of special Aboriginal systems of intervention; (c) the apparently realistic emphasis among Aboriginal people in PEI in collaboration and partnership. Certainly the emphasis expressed by CJS officials overall was that the AJP should focus more on conflict at the community level and crime prevention while its CJS interventions should be limited to minor offences; few saw it (via its circles and CKs) becoming more engaged with serious offences and offenders. At the same time, the significant Aboriginal CJS developments since 2007 suggest a positive evolution and leave open some different possible trajectories for the AJP.

Concluding Comments and Future Directions

The three years since 2007 have represented a period of significant progress for the AJP in terms of stable effective management, increased ad hoc resources, significantly more referrals and sentencing circles, and the 'institutionalization' of the AJP with respect to the mainstream CJS and the Aboriginal communities in PEI. The evaluator's sense of successes, weaknesses, opportunities and threats since 2007 are quite congruent with the 'insider' assessments recorded in AJP documents. The successes to be emphasized have been the CK program, the support, financial and otherwise, of the federal and provincial government and especially of the mainstream CJS, and the stable, effective and well-regarded stewardship of the AJP management. The central weaknesses identified focus on the modest linkages to the FN communities and the off-reserve in Charlottetown, and the need to revitalize and expand the CKs as part of a strategic action plan for the next five years. The key opportunities appear to be in the expansion of the AJP activity into more general conflict and dispute resolution while maintaining its core roots in the criminal justice system, and greater collaboration with other Aboriginal services and programs. The threats for the AJP appear to be the "low ceiling" (i.e., limited scope allowed) for the applicability of the AJP program in the criminal justice field, and the absence of resources and a management plan to facilitate supplementary initiatives beyond the criminal justice system, the need for greater collaboration with other Aboriginal services, and especially the shoring up of linkages at the Aboriginal community level.

This assessment has indicated that objective # 1 has indeed been very successfully accomplished while the other two objectives, modestly so. With respect to the six evaluation questions, there seems little doubt that the anticipated short-term outcomes have been achieved and that collaborative partnerships have been developed and strengthened, particularly with the mainstream government and the CJS. It is more difficult to gauge how successful the AJP has been in engaging Aboriginal stakeholders and enhancing skills among Aboriginals relevant to justice objectives or whether program participants have been satisfied with the program processes and outcomes.

Regarding objective #1, the AJP has accomplished much in networking and collaborating with senior government and CJS role players. The annual Aboriginal Justice Forums have been very well-attended and have increased appreciation of Aboriginal rights and issues. Mainstream

officials have generally expressed quite positive assessments of the AJP management and the circles, and most mainstream respondents suggested that, while maintaining this level of activity, future development of the AJP requires that it focus more on the Aboriginal communities themselves. The networking and collaboration with the RCMP in the FNs and the Charlottetown police now appear ready to blossom thanks to the AJP efforts since 2007 and the commitment of the designated officers. The collaboration with CCS through the Aboriginal Case Worker and Victim Services has been significant in getting at the roots of offending behavioural patterns and possibly in responding to victims needs (it's too early to tell about the latter). Undoubtedly, the AJP will be able to build on these collaborative efforts with the police in crime prevention and community policing strategies and with the CCS - perhaps more with CCS's youth intervention outreach workers and community outreach workers - in the future. The chief criticism of the AJP, expressed mildly by the respondents, concerned the lack of clear protocols on the referral process and the lack of follow-up information concerning the referral. The challenges with respect to objective #1 appear to be (a) securing more referrals for the CKs, (b) whether the current "low ceiling" for eligible referrals from the CJS will be adjusted assuming that it is a goal of the AJP, and (c) possibly developing collaborative relationships in other areas of justice.

Objective #2, building community capacity in justice has clearly been advanced with the CK initiative and the circle processes. Upgrading the CKs' skills and awareness of other, similar, Aboriginal justice approaches in Atlantic Canada and beyond, has been the focus of a major annual, well attended workshop. There is now an experienced cadre of CKs available to the AJP. The AJP has also conducted workshops in the major Aboriginal milieus in PEI. Initial restrictions on the use of the CKs have been eliminated and the AJP, in theory at least, can better tailor CK excellence to the circumstances of the case. Depoliticizing the AJP advisory committee may also contribute to a more effective community capacity. The challenges for the AJP with respect to building community capacity in justice are also significant. The cadre of experienced CKs is small and, despite under-utilization of other CKs, would definitely have to be increased if the AJP expands further. There also appears to be a question of how well the AJP has engaged the off-reserve as noted by both mainstream and Aboriginal respondents. The evaluator is puzzled by the large number of Aboriginals on probation given the small number of charges in the FNs that would warrant probation; are there Aboriginal offenders in Charlottetown not recognized by the police service as such and not familiar with the AJP despite its posters in the

police station? An improved on-the-ground relationship between the AJP and the NCPEI appears to have been established in the past few years but further collaboration might be valuable in the Charlottetown area.

As has been noted several times in this study, a major challenge for just about any FN province-wide or regional service, whether it be a self-administrated police service or a justice program such as the AJP or the MLSN in Nova Scotia, appears to be able to deal with the centrifugal forces in Aboriginal governance. When each partner in such a program or service is an FN in its own right, the inclusive organization has to be very attentive to community linkages and the investment of time and resources to that end are often underappreciated by government funders who may assume a provincial – municipality model where the municipality is the constitutional creation of the province; that is not the situation in the Aboriginal context where collaboration not subordinacy reigns between the regional authority (here the MCPEI) and the individual FNs (here Abegweit and Lennox Island). A corollary may be that mainstream government officials and FN leaders may have somewhat different conceptions of community linkages, the former seeing them as crucial primarily to prevention and treatment while the latter – the FNs – emphasizing also the ownership of the program or service. In any event it would seem that the AJP and Aboriginal justice overall could profit much from resources and strategies to respond to the challenges here. The suggestions advanced in the 2007 assessment – a robust court worker program and part-time outreach workers in the three key Aboriginal milieus - continue to have merit in relation to those challenges if the AJP is to evolve further. A crucial consideration also would be freeing up the AJP director to do more specific targeted engagement with mainstream and Aboriginal leaders and more strategic action planning for the AJP's future.

In terms of general objective # 3, the penetration of the AJP in Aboriginal justice matters, the developments during the past three years have been significant as seen in the increased number of circles and the extension of the circles and the CK role in the "healing circle" format. Also, the AJP has done some examination of further extension of the AJP approach outside the CJS. Still, it is clear that the number of referrals has been modest and that the circles have focused upon minor criminal code offences. How far the AJP approach can extend in the CJS and whether it can contribute in other spheres of justice, and collaborate with other Aboriginal services and programs there, are uncertain. There is at present no strategic action plan to address either of these challenges. One of the six basic questions asked of the assessment was **"**To what

extent have the program participants been satisfied with the program processes and outcomes"? Unfortunately the evaluator was unable to obtain access to the circle participants because of AJP protocols about confidentiality for the participants. It was possible to get the views of the circle keepers who facilitated sessions and also of the few CJS officials who participated in them. These views were almost unanimously positive especially on the part of the CKs who appeared to be genuinely moved by the circle experience and who also reported that the offenders and others generally were positive about the experience as well. CCS officials expressed similar personal views though several questioned the impact on the offender and cited instances of recidivism. Related to this shortfall of information on the views of the program participants is the problem that the circle data are not yet available in an accessible data management system so it was not possible to analyze the increasing number of circles to determine patterns and dynamics in the circle processes and outcomes, nevermind the type of attendees, save in the latter instance by asking about the individual case files. The AJP itself has raised these data management issues on several occasions in its documents so there may be resource issues underlying their shortcomings. Included in the appendices are forms used by mainstream and Aboriginal justice programs elsewhere which could facilitate accessing the views of circle participants without violating the commitment to confidentiality and anonymity.

Major Issues for Considering Future Directions

1. Are more referrals to the AJP likely? As noted, there is a pervasive view, even among the CKs, that the program is underutilized and that that could pose a threat to its efficiency and effectiveness. Given the views of mainstream officials and many Aboriginal leaders and stakeholders, there is currently what we have called "a low ceiling" for referrals. Within that implicit mandate there seems little likelihood of significantly more referrals though this evaluator remains puzzled by incongruence between the large number of Aboriginals on parole and the modest reported police statistics on Aboriginal offenders. The preventative efforts being undertaken by the AJP and the CCS could also be expected to reduce the type of referrals that AJP has dealt with in the past though that could be offset by more referrals of minor offences as a result of the AJP's effective networking with the RCMP and the Charlottetown Police Service. The AJP program has been evolving

and the "ceiling" on the type of offenders and offences could be extended / heightened as has been the experience over time of restorative justice programs elsewhere (i.e., receiving referrals involving more serious offenders and offences as time passed). Still, here on PEI, expanding referral eligibility in the criminal justice system seems unlikely without stronger community understanding and support which in turn could lead to more willingness on the part of the mainstream CJS officials to refer more complex cases;, even then, given the low rate of crime, increasing CK activity would seem to require the AJP extending into other areas of justice and community conflict and disputes.

2. AJP extension into these other areas clearly has been considered as is evidenced in AJP documents and the 2010 interviews. It would be in keeping with current trajectories in restorative practices elsewhere (e.g., Hull, U.K., Bethlehem, USA, Siksika FN, Alberta) and federal funding of FN governance capacity projects. But such extension requires careful strategic planning, significant discussion with band councils and local service providers, and more "space' for the AJP director to carry on these demanding tasks while still tending to the considerable demands of the current CJS focus. In a nutshell they require more investment in the AJP whether by senior governments or the MCPEI itself.
3. Clearly the circles to date while effective and well-received have been tailored to minor offences in that the sessions appear to have been limited to one session per offender and there is little evidence of significant treatment / local service programming being utilized. Circle elements such as the presence of victims and elders and the reintegrative feast make these circles far more impressive, and likely more effective, than the restorative justice interventions elsewhere in this evaluator's experience. Still, as virtually all CKs, mainstream officials and local service providers indicated, were the AJP to expand its scope within and beyond the CJS, more protocol development, more training of CKs and more outreach orientation would be necessary. Also, there would have to be more routine self-evaluation and that would require, in turn, regularly obtaining feedback from the session participants and having a comprehensive data management system in

place. Indeed, these latter gaps require attention whether or not the AJP expands appreciably.

4. While some of these suggestions might possibly be somewhat achieved through reorganization of extant AJP roles and / or perhaps MCPEI sources, it is clear that more resources are required for outreach and freeing up the director to pursue possibilities. The recommendations offered in 2007 seem very appropriate at this stage in the AJP's evolution, namely a robust ACW role (see the appended 2007 Court Worker write-up) and some liaison capability to the three major Aboriginal milieus. There was less support among mainstream justice officials for a conventional court worker role in 2010 than in 2007 but much support if its focus was also on an ACW role which was also concerned with non-court house activities such as pre-court activity, navigation, linking offenders to community services, and crime prevention. Among Aboriginal respondents, the ACW role was strongly supported. Such a position would complement the work of the NCPEI's Alcohol and Drug worker and the CCS's Aboriginal case worker, both of which help out in response to Aboriginal offenders' needs at the court house especially if the offenders are their clients. In terms of outreach workers for the AJP, something that may be crucial to any extended AJP role, one position or several part-time positions would be very beneficial but it should be advanced in the context of an overall strategic plan for the AJP.
5. There, of course. has been collaboration of the AJP with the CCS programs, local service providers and with other Aboriginal justice programs in New Brunswick and Nova Scotia. More will be required in the immediate future. Thus far, it would appear that the AJP contacts with CCS's YIOW and CYW front-end intervention programs have been quite limited; moreover, the CCS's new AVA initiative should be closely monitored by the AJP. As new initiatives occur in other Mi'kmaq and Aboriginal milieus in Atlantic Canada (such as the Eastern Door's FASD and related non-genetic birth disabilities centre and the Healing to Wellness court in Elsipogtog), and if the AJP expands its engagement in other justice areas and at the community level, the demands on the AJP to be engaged and partner on behalf of Aboriginal people in PEI could become very demanding,

thus underlining the need for outreach resources and for freeing up the director to pursue possibilities along these channels.

6. AJP has become stronger, more rooted and better managed over the past three years. It is now at something of a crossroads, a take-off stage, where there are possible trajectories as noted above. It seems to be the right time to consider where it wants to go, should go, and how it would go, in realizing its fundamental objective of greater Aboriginal engagement if not self-administration in justice matters. To accomplish these ends, reflection of the mid-term and long-term vision of the AJP is warranted, as is the need for strategic planning since there is little doubt that resources will be required and most importantly the full active collaboration of the Aboriginal leadership in PEI.

APPENDICES

APPENDIX ONE: INTERVIEW GUIDE FOR CIRCLE KEEPERS

NOTE TO THE PERSON BEING INTERVIEWED: This interview is part of the assessment of recent MCPEI AJP initiatives. It is done independent of, but on behalf of, that program. All the information will be considered confidential and anonymous. No name will ever be used or cited in any report, oral or written. Just the overall results will be provided to the program directors. Your cooperation is much appreciated.

INTERVIEW GUIDE FOR PEI MI'KMAW ABORIGINAL JUSTICE PROGRAM: SIX CORE TOPICS TO EXPLORE WITH CIRCLE KEEPERS

A. MAIN JUSTICE ISSUES FOR MI'KMAQ PEOPLE IN PEI

What are **the main justice issues facing Mi'kmaq people** in your area today?

RECORD THEIR INITIAL COMMENTS THEN ASK THE FOLLOWING

(1) What are the major **crime** or offender problems? Is the crime level high? Is it increasing or declining?

(2) What are the major **civil** (e.g.,neighbour-neighbour disputes,) and **family** justice (access to children, maintenance payments) issues?

(3) What about **regulatory justice** issues such as violations by band members of band policies/agreements in areas such as in fisheries / forestry or use of reserve lands by band members – is this a challenging justice area?

B. THE CIRCLE KEEPER ROLE IN ACTION

(1) Have you used your circle keeper skills in **a Justice referral** since you graduated from the circle keeper program? How Often? Did you expect to? Do you want to facilitate more circles?

(2) Could you describe in a general way the **actual circle experiences that you have had**? (a) Did you receive any special preparation for these circles? (b) Were both offenders and victims present? Who else? (c)Was it difficult to come to a satisfactory resolution? (d)Were you informed about whether the agreement was monitored and adhered to? (e)Was it a good and successful experience from your point of view? Why or Why Not?

(3) Have you used your circle keeper facilitation skills in any matters or circumstances **outside the Justice system (e.g., at work)**? Please describe.

(4) What has been your **greatest satisfaction** with respect to the circle keeper role?

(5) What has been your **biggest disappointment** with respect to the circle keeper role?

C. TRAINING AND OPPORTUNITIES TO USE CIRCLE KEEPER SKILLS

Have you participated in any MCPEI AJP-sponsored **upgrading activities** for circle keepers? (a) Please describe; (b) Have these improved your skill and confidence in facilitating circles – How? To what extent?

What about the **potential opportunities to use the CK skills**,

(1) Have you identified any other opportunities to use your circles and CK facilitation skills in Mi'kmaq justice matters, whether criminal, familial or civil? (Please describe)

(2) Have you seen any opportunities to use them in **your own area of service work?** (Please describe)

(3) Are you interested in receiving **more training and upgrading?** (a) Please rate your interest from 1 (low) to ten (high); (b) What areas and kinds of upgrading would you be most interested in? Why?

D. CHALLENGES FOR THE CIRCLE KEEPER ROLE

(1) How important for Mi'kmaq Justice do you consider the circles and the CK role to be at this point in time? (a) Why? Please describe; (b) What programs or activities would you consider more important for Mi'kmaq Justice?

(2) Does the Mi'kmaq community in PEI have a good appreciation of circles and the CK role? Would the Mi'kmaq community support be there for a more extensive use of circles and CK facilitation in their Justice and conflict situations? Why or why not?

(3) Does the circle keeper intervention work as well in off-reserve situations as in on-reserve situations?

(4) Is there support for Mi'kmaq initiatives such as circles and CK facilitation in mainstream PEI society? (a) Please describe and elaborate on your opinion; (b) what about support in the following specific mainstream sectors – the Justice system? Child and Family Services? Department of Fisheries?

(5) What are the **major obstacles** that would have to be overcome if the circle keepers and the circle approach to be used more widely in Justice matters and in other areas of conflict among Mi'kmaq people (family matters, neighbour-neighbour relations)? Please describe.

E. ASSESSMENT OF THE AJP ORGANIZATION AND THE PROGRAMS

(1) Would you say you were very familiar and up-to-date with respect to the specific programs and of the AJP overall? Please elaborate.

(2) Do you think that the organization and the programs are **valuable?** If so,How?

(3) Is the MCPEI AJP doing the right things in the right way? Please elaborate

(4) The MCPEI AJP has had **3 primary objectives** namely (a) networking and partnering with the mainstream Justice system; (b) building Mi'kmaq community capacity in the Justice area; (c) developing the components of an Aboriginal Justice system (e.g., different types of circles, circle keeper capacity). How would you assess its success in each of these 3 areas?

Networking and partnering
Building Mi'kmaq capacity
Developing a Mi'kmaq justice program

F. **ISSUES AND CHALLENGES FOR MI'KMAQ JUSTICE INITIATIVES**

(1) What are the **chief issues that Mi'kmaq justice initiatives** should focus on? (Suggestions: community courts, reintegration of offenders, cultural awareness training for justice officials, community dispute resolution)?

(2) What are the **chief challenges** that new Mi'kmaq justice initiatives would have to contend with in trying achieving these? (Suggestions: is there community support for them? Mainstream society might be opposed? Small population, too small and scattered?)

(3) The AJP has been in existence for about six years. In your view what has been its major accomplishment?

(4) What would you recommend that the AJP do better or differently in order to serve the justice concerns of the PEI Mi'kmaq people?

Thank you very much for your cooperation.

APPENDIX TWO: INTERVIEW GUIDE FOR STAKEHOLDERS

NOTE TO INTERVIEWEE: This interview is part of the assessment of recent MCPEI AJP initiatives. It is done independent of, but on behalf of, that program. All the information will be considered confidential and anonymous. No name will ever be used or cited in any report, oral or written. Just the overall results will be provided to the program directors. Your cooperation is much appreciated.

INTERVIEW GUIDE FOR PEI MI'KMAW ABORIGINAL JUSTICE PROGRAM: SEVEN CORE TOPICS TO EXPLORE WITH STAKEHOLDERS

A. MAIN JUSTICE ISSUES FOR MI'KMAQ PEOPLE IN PEI

What are **the main justice issues facing Mi'kmaq people** in your area today?

(1) What are the major **crime** or offender problems? Is the crime level high? Is it increasing or declining?

(2) What are the major **civil** (e.g.,neighbour-neighbour disputes,) and **family** justice (access to children, maintenance payments) issues?

(3) What about **regulatory justice** issues such as violations of band policies/agreements in areas such as in fisheries or use of reserve lands by band members – is this a challenge area for Mi'kmaq justice?

B. THE CURRENT MAINSTREAM JUSTICE SYSTEMS

(1) Does the current PEI **criminal justice system** serve Mi'kmaq people well?

(2) Are there some justice matters (such as legal representation, sentencing, help for victims?) handled well there for Mi'kmaq people?

(3) What are the shortcomings for Mi'kmaq people? What would be your **major priorities** for change in the criminal justice system?

(4) Does the current PEI justice system serve Mi'kmaq people well in the **civil justice system** (small claims court etc) and the **family** court (issues such as divorce, maintenance, custody rights)?

(5) Are there some justice matters (legal assistance?) handled well there for Mi'kmaq people? Which?

(6) What are the chief shortcomings for Mi'kmaq people?

(7) What would be your **major priorities** for change in the civil and family justice systems?

C. CURRENT MI'KMAQ POSSIBILITIES AND CAPACITY IN PEI

Do you anticipate and/or want **more Mi'kmaq control or influence in justice matters?** (PROBE FOR SPECIFICS)

(1**)** In the criminal justice system? Discuss specifics.

(2) What about in the civil and family justice systems? Discuss specifics.

(3) What about in the regulatory area concerning fisheries, natural resources? Discuss specifics.

(4) Does the Mi'kmaq community in PEI have the **capacity** to undertake more management and direction of criminal and civil justice matters? Discuss

(5) What further **resources** are needed (education? financial? organizational? other?)?

(6) Are there **major obstacles** that would have to be overcome?

Are these obstacles **internal** to the Mi'kmaq community (not enough consensus? scattered, small population etc)?

Are some obstacles **external** (e.g., resistance from federal and provincial governments)?

Are the obstacles different among Mi'kmaq living off-reserve?

D. FAMILIARITY WITH MCPEI AJP AND THE PROGRAMS

(1) How **well informed** are you about the AJP and its three chief programs – (a) circle keepers, (b) justice circles, and (c) cultural sensitivity training for Justice officials? **(Consider Each)**

(2) Have you had **any experience** / **contact** with these programs (Please provide Specifics);

(3) Do you know about the (a) MCPEI AJP mandate, (b) its **organizational structure, (c) its membership and (d) its funding? (Consider Each)**

E. ASSESSMENT OF THE AJP ORGANIZATION AND THE PROGRAMS

(1) Overall, how well do you think the AJP and its specific programs are responding to the justice issues facing Mi'kmaq people today? (on a scale from 1(poor) to 10 (excellent)?)

(2) Do you think that the organization and the programs are **valuable?** If so, how are they valuable?

(3) Is the MCPEI AJP doing the right things in the right way?

(4) **Should it be doing other things** in the justice area? What would you recommend?

F. ISSUES AND CHALLENGES FOR MI'KMAQ JUSTICE INITIATIVES

(1) What are the **chief issues that Mi'kmaq justice initiatives** should focus on? (Suggestions: community courts, reintegration of offenders, cultural awareness training for justice officials, community dispute resolution)?

(2) What are the **challenges** that achieving these new Mi'kmaq justice initiatives would have to contend with? (Suggestions: is there community support for them? small population too small and scattered?)

G SUGGESTIONS FOR STRUCTURE AND SERVICE DELIVERY

MCPEI AJP is a **province-wide Mi'kmaq organization** providing justice programs.
(1) Is that organizational structure or service delivery model the best way to create greater Mi'kmaq direction over justice matters for Mi'kmaq people?

(2) What are the **advantages** of that province-wide model?

(3) Is there sufficient community identification with the organization and its programs? Sufficient off-reserve identification too?

(4) **If MCPEI AJP were to expand** into other justice areas, involving say serious offenders or community justice arrangements (courts, probation and parole supervision) or disputes concerning band policies, would there be strong **support** (a) among the Mi'kmaq political leaders? (b) among community members in general?

(5) **What strategies** might be usefully employed to generate support? (Suggestions: presentations of strategic plans to chief and council? community meetings, interagency meetings)

APPENDIX THREE: YOUTH FOCUS GROUP THEMES

(YOUTHS)

NINE CENTRAL THEMES FOR FOCUS GROUP DISCUSSION

1. **CRIME** IN PEI FIRST NATION COMMUNITIES- HOW SIGNIFICANT IS IT AND IS IT INCREASING OR DECLINING? WHY? IS THERE A DIFFERENCE BETWEEN THE OFF-RESERVE AND THE ON-RESERVE CRIME PATTERNS?

2. WHEN YOUTH ARE INVOLVED IN CRIME, WHAT ARE THE KINDS OF CRIME? ON-RESERVE? OFF-RESERVE?

3. APART FROM CRIME, IS THERE MUCH SOCIAL CONFLICT (e.g., neighbour-neighbour disputes) THAT NEGATIVELY AFFECTS ABORIGINAL YOUTHS ON-RESERVE? OFF-RESERVE?

4. WHEN THEY BECOME INVOLVED WITH POLICE AND THE JUSTICE SYSTEM, HAVE THE **EXPERIENCES** OF FN YOUTHS IN YOUR AREA BEEN FAIR AND APPROPRIATE? FOR OFFENDERS? FOR VICTIMS?

5. WHAT CHANGES SHOULD BE MADE IN THE MAINSTREAM JUSTICE SYSTEM TO IMPROVE ITS RESPONSE TO ABORIGINAL YOUTH PEOPLE?

6. WHAT DO YOU AND YOUR CLOSE FRIENDS THINK ABOUT THE AJP JUSTICE **PROGRAMS THAT HAVE BEEN AVAILABLE** IN THE COMMUNITY? (e.g., CIRCLE KEEPERS AND THE DIFFERENT TYPES OF CIRCLES – EARLY INTERVENTION, HEALING, SENTENCING CIRCLES). DO MOST YOUTHS IN YOUR AREA KNOW MUCH ABOUT THESE PROGRAMS?

7. WHAT ARE ONE OR TWO **ADDITIONAL JUSTICE SERVICES OR PROGRAMS THAT YOUTH IN YOUR AREA MIGHT WANT TO SEE HAPPEN**? WHAT ARE THE OBSTACLES THAT HAVE TO BE OVERCOME IF WE TRY TO ACHIEVE THESE? HOW CAN THESE **OBSTACLES** BE OVERCOME?

8. SOME PEOPLE THINK THAT TOO MUCH ATTENTION IS PAID TO YOUTHS AND TOO LITTLE TO THE PROBLEMS AND ISSUES OF YOUNG ADULTS (i.e., say between 18 and 30 years of age). DO YOU AGREE? WHY OR WHY NOT?

9. ARE SOME YOUTHS OR YOUTH ISSUES BEING NEGLECTED BY JUSTICE PROGRAMS (e.g., sexual assault, off-reserve youth issues)

APPENDIX FOUR: INTERVIEW GUIDE FOR VICTIM ASSISTANCE ROLE

NOTE TO INTERVIEWEE: This interview is part of the assessment of recent AJP initiatives. It is done independent of, but on behalf of, that program. All the information will be considered confidential and anonymous. No name will ever be used or cited in any report, oral or written. Just the overall results will be provided to the program directors. Your cooperation is much appreciated.

THE VICTIM ASSISTANCE ROLE

1. As a Victim Assistance Worker Have you had a client so far (number?)

2. Have you attended a circle with a victim client?

3. If so, [if more than one, take the last one participated in]how did it go from your client's viewpoint? From yours?

4. Concerning your own role,

    a. Was the training / orientation you received appropriate? Any areas that could be improved upon?
    b. Did you think that the victim's position was well appreciated by the facilitators and other circle members?
    c. Did you think that the circle process was fair to the victim?
    d. Did you think that the outcome was fair to the victim?
    e. Did you or the victim get updated on whether the offender met the conditions of the agreement?

5. Was the victim client
    a. nervous?
    b. Satisfied with the process?
    c. Satisfied with the input he/she had?
    d. Satisfied with the outcome?
    e. Did the victim receive any restitution or other benefit?
    f. Would the victim recommend that other victims attend circles? (elaborate if possible)

INTERVIEW GUIDE FOR PEI MI'KMAW ABORIGINAL JUSTICE PROGRAM: THREE TO EXPLORE WITH STAKEHOLDERS

B. MAIN JUSTICE ISSUES FOR MI'KMAQ PEOPLE IN PEI

What are **the main justice issues facing Mi'kmaq people** in your area today?

(1) What are the major **crime** or offender problems? Is the crime level high? Is it increasing or declining?

(2) What are the major **civil** (e.g.,neighbour-neighbour disputes,) and **family** justice (access to children, maintenance payments) issues?

B. THE CURRENT MAINSTREAM JUSTICE SYSTEMS

(1) Does the current PEI **criminal justice system** serve Mi'kmaq people well?

(2) Are there some justice matters (such as legal representation, sentencing, help for victims?) handled well there for Mi'kmaq people?

(3) What are the shortcomings for Mi'kmaq people? What would be your **major priorities** for change in the criminal justice system?

(4) Does the current PEI justice system serve Mi'kmaq people well in the **civil justice system** (small claims court etc) and the **family** court (issues such as divorce, maintenance, custody rights)?

(5) Are there some justice matters (legal assistance?) handled well there for Mi'kmaq people? Which?

(6) What are the chief shortcomings for Mi'kmaq people?

C. CURRENT MI'KMAQ POSSIBILITIES AND CAPACITY IN PEI

Do you anticipate and/or want **more Mi'kmaq control or influence in justice matters?** (PROBE FOR SPECIFICS)

(1**)** In the criminal justice system? Discuss specifics.

(2) What about in the civil and family justice systems? Discuss specifics.

(3) What about in the regulatory area concerning fisheries, natural resources? Discuss specifics.

(4) Does the Mi'kmaq community in PEI have the **capacity** to undertake more management and direction of criminal and civil justice matters? Discuss

(5) What further **resources** are needed (education? financial? organizational? other?)?

(6) Are there **major obstacles** that would have to be overcome?

Are these obstacles **internal** to the Mi'kmaq community (not enough consensus? scattered, small population etc)?

Are some obstacles **external** (e.g., resistance from federal and provincial governments)?

Are the obstacles different among Mi'kmaq living off-reserve?

APPENDIX FIVE: EXIT QUESTIONNAIRE MLSN CUSTOMARY LAW PROGRAM

INTEGRATED ADULT RESTORATIVE JUSTICE PILOT PROJECT END OF SESSION EXIT FORM

This Restorative Justice (RJ) Program is a special project undertaken by the Province of Nova Scotia in collaboration with MLSN and other Restorative Justice agencies. It is important to evaluate how well the project serves the needs of offenders, victims, and community. Your cooperation is important for that evaluation. Please take a moment and answer these few questions, and please agree to be interviewed by the project's evaluators (at your convenience and in the language of your choice) within the next 60 days, by signing your consent below.

Your responses to the following questions and later to the evaluator's interview, will be kept confidential and anonymous, and no one in the government or the agencies will access that personal information. Thank you.

A. What was your role in this conference: *(Check one)*

- Offender ( ), Offender's Relative ( ), Offender's Advisor/Supporter ( )
- Victim ( ), Victim's Relative ( ), Victim's Advisor/Supporter ( )
- Police Officer ( ), Community Representative ( ), Other (Specify) _____

B. Please Indicate how much you agree with the following statements by checking either strongly disagree, disagree, unsure, agree, or strongly agree for each statement:	**Strongly Disagree**	**Disagree**	**U**
1. I had a good idea what the circle session would be like before I came			
2. For me this circle session was disappointing			
3. I was able to take an active part and have my say in the circle			
4. I am satisfied with what the agreement requires the offender to do			
5. I was treated fairly in this RJ circle session			
6. This kind of RJ circle program helps the offender more than the victim			
7. After hearing people talk, I see this crime/offence differently now			
8. I would recommend restorative justice to deal with offences like this one			

C. Do you have any comments about this RJ experience you have had that you would like to share?

SPECIAL NOTE: IF YOU AGREE TO BE INTERVIEWED BY THE EVALUATOR AT A LATER DATE (either by phone or in person, and at your convenience), PLEASE FILL IN THE FOLLOWING:

_____ _____ _____
_____

PRINT NAME SIGN NAME TELEPHONE NUMBER
THE BEST TIME TO CONTACT YOU

TO ARRANGE THE INTERVIEW

APPENDIX SIX: NOVA SCOTIA RJ SESSION ENVELOPE FOR EXIT QUESTIONNAIRES

EXIT ENVELOPE

LOCATION _____

DATE _____

FACILITATOR _____

TYPE OF CIRCLE _____

OFFENCE _____

LENGTH OF SESSION TIME
_____

OF PARTICIPANTS _____
(EXCLUDING THE FACILITATORS)

VICTIM PRESENT ___YES _____ NO

APPENDIX #7: 2007 REPORT ON THE ABORIGINAL 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 (ACWP) program. The ACWP 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 experiential 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 court worker 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 court worker'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, court workers 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 court worker has not changed since 1987 the official definition of the role certainly has. Such evolution is crucial and now positions the court worker 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 court worker 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 court worker 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 court worker 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 court worker 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 court worker program now having official sanction, a strong case can be made for its re-emergence. There has been some Aboriginal court worker activity provided through New Brunswick Corrections over the past several years with federal funding support but not apparently under the Aboriginal Court worker 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 court worker program under the direction of the MCPEI AJP. In the focus groups, launching a court worker 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 court worker 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 court worker 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 powwows 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 court worker 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 court worker 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 court worker 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 court worker 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 court worker 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 court worker 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 court workers could perform a valuable service to the court processing system as well as to the clients and suggested that one court worker 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 court worker role is essential and to some extent that that was how the provincially appointed Aboriginal court worker 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 court worker 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 court worker services. In his view, were there not such facets to the court worker 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 court worker program" and a handful of the remainder were uncertain concerning the priority level in large part because they were unsure about what court workers did. In their comments "more legal services" and "an Aboriginal court worker" 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 court worker role was a top priority. In the off-reserve milieu, the several respondents highlighted the priority of a court worker program, especially the need to have knowledgeable native assistance beyond Legal Aid. They usually noted too that the AJP, if not the NCPEI 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 court worker program. In the Abegweit milieu, all the respondents shared the view that of one very knowledgeable woman that "a broad-based court worker 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 court worker 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 court worker 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 court worker should have a holistic approach and assist in breaking down the "silos" between health and justice. Generally, the Lennox Island interviewees considered that court workers 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 court worker program under its mandate. They recognized the need for a robust court worker 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 court worker and that focus is consistent with the widespread consensus we have described above. Other issues were raised such as the possible engagement of the court worker in regards to victim services, a key concern of many respondents both in the native communities and among mainstream justice officials, and whether the court worker 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 court worker 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 court worker role would be difficult to justify on a full-time, year-round basis. A robust multifaceted court worker 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 court worker role fits well the imperatives of the small, multi-located PEI Aboriginal population. The fact that the Aboriginal Court worker Program is a program and would not require year-to-year renewal underlines its significance for Mi'kmaq people in PEI.

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