

**DIRECTIONS IN MI'KMAQ JUSTICE:  
NOTES ON THE ASSESSMENT OF THE MI'KMAQ LEGAL SUPPORT  
NETWORK**

**PRESENTED TO THE MI'KMAQ LEGAL SUPPORT NETWORK**

**AND**

**THE TRIPARTITE FORUM: JUSTICE SUBCOMMITTEE**

**BY**

**DON CLAIRMONT AND JANE McMILLAN**

**OCTOBER 2006**

**ATLANTIC INSTITUTE OF CRIMINOLOGY**

**DALHOUSIE UNIVERSITY**

## FOREWORD

This assessment of future directions in Mi'kmaq justice builds on the research published in 2001 by Clairmont and McMillan. The assessment began in January 2006 and was completed in November 2006. The principal investigator for this assessment was Don Clairmont. Jane McMillan joined the project in May 2006 and carried out some crucial interviews. Subsequent to being named Canadian Chair in Aboriginal Studies and Community Development at St. Francis Xavier University and returning to the area in August, she collaborated fully in the assessment of data and the write-up, taking the lead role in drafting the sections on the review of the Aboriginal Justice literature, the Made in Nova Scotia Process and Mi'kmaq Justice, and the Regulatory Justice Template. Over forty-three interviews were contributed by the interviewers Doreen Prosper (Millbrook), Carol Sylvester (Membertou), Holly Meuse (Bear River) and April Maloney (Indian Brook). Blanche Mousseau (Millbrook) and Glen Gould (Waycobah) also contributed several interviews. There was great cooperation from the MLSN staff. A number of the staff people were interviewed on five or more occasions and all staff members were interviewed at least once by one or the other – and sometimes both – of the co-authors. Cooperation was excellent from the Tripartite Working Committee on Justice and the Confederation of Mainland Mi'kmaqs. Other organizations responding readily to our requests for data included Indian Affairs, the RCMP and Mi'kmaq Education officials in Membertou (MK). The ready cooperation of all the 133 persons interviewed for this assessment is gratefully acknowledged.

## TABLE OF CONTENTS

FOREWORD	p.2
TABLE OF CONTENTS	p.3
INTRODUCTION	p.5
THE PROPOSED TASKS OF THE ASSESSMENT	p.5
PREMISES OF THE EVALUATION	p.5
WHAT WAS DONE	p.6
SPECIAL IN-PERSON INTERVIEWS	p.8
KEY DOCUMENTS AND SOURCES	p.9
REVIEW OF THE ABORIGINAL JUSTICE LITERATURE	p.10
THE CONTEXT FOR MI'KMAQ JUSTICE IN NOVA SCOTIA	p.17
CONTEXT A: ALTERNATIVE JUSTICE DEVELOPMENT	p.17
CONTEXT B: THE DEMOGRAPHIC SITUATION	p.21
CONTEXT C: THE POLITICAL ECONOMY	p.24
CONTEXT D: THE EDUCATIONAL SITUATION	p.28
CONTEXT E: CRIME AND OFFENDING PATTERNS	p.31
PRELUDE TO MLSN	p.41
THE EMERGENCE OF MLSN: GOVERNANCE	p.46
THE EVOLUTION OF MLSN	p.51
THE UMBRELLA ORGANIZATION	p.51
THE COURT WORKER PROGRAM	p.55
THE CUSTOMARY LAW PROGRAM	p.59
STANDPOINTS	p.64
MI'KMAQ OPINION LEADERS / SERVICE PROVIDERS	p.64
MI'KMAQ POLITICAL LEADERS	p.75
MAINSTREAM JUSTICE OFFICIALS	p.85
TRIPARTITE AND ADVISORY MEMBERS	p.96
THE MLSN MANDATE: OTHER AREAS OF JUSTICE	p.101
SUMMARY OF KEY POINTS	p.117

FUTURE DIRECTIONS	p.119
A STRATEGIC PLAN	p.119
POSSIBLE PHASES	p.126
FEASIBILITY CONSIDERATIONS	p.128
APPENDICES	p.129
INTERVIEW GUIDE	p.129
BIBLIOGRAPHY	p.132

## **INTRODUCTION**

“MLSN is a story that needs to be told. Organizations such as ours [UINR] and the communities really need to know what programs and services they offer now and where they are going to go in the future; especially with our organization, their growth is important to us ... A lot of things have to grow with us. We are happy that we are leaders in the field and we are getting work done. But at the same time, we need all our other entities to grow with us, like MLSN”

## **THE PROPOSED TASKS OF THE ASSESSMENTS AND WHAT WAS DONE.**

The contract cites the following five components of the evaluation, namely (a) MLSN documents/ reports review; (b) interviews with MLSN staff; (c) organizational review; (d) interviews with representatives from Mi'kmaq organizations, stakeholder groups, funding partners and CJS personnel; (e) cross jurisdictional scan. No community surveys were called for nor any detailed evaluation of the CWP or CLP programs. The contractual agreement goes on to request comments on six themes, namely (a) the MLSN mandate; (b) MLSN organizational structure, work plan and services; (c) MLSN governance structure; (d) MLSN resource situation; (e) major successes and accrued value; (f) future directions.

## **PREMISES OF THE EVALUATION**

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

1. Greater direction by Mi'kmaq people over justice issues and programs in their communities is a desired objective of any justice initiative.
2. For a variety of reasons (e.g., efficiency, equity, effectiveness) and in keeping with recent national policy deliberation (e.g., RCAP), multi-band First Nation justice structures should be encouraged.
3. Transparent stewardship and accountability to the several constituencies served are valued objectives for such inclusive, integrative organizations.
4. Justice has four major segments, namely criminal justice, family and civil justice, regulatory justice, and law making. All four should be considered in assessing progress in Mi'kmaq justice.

5. Evaluations, of the type discussed here, should be formative evaluations, that is they should be conducted in full collaboration with the stakeholders and there should be continuous feedback to assist in the realization of objectives.
6. The evaluation should be respectful of the community (the people, their traditions, world views etc) and of individual persons as well. To these ends, there should be an emphasis on hiring persons living in the communities to assist in the evaluation, and there should be respect for anonymity and confidentiality in treating individual views and opinions.
- 7 Identifying and engaging a salient cross-section of role players in exploring the justice issues is important, both in the Mi'kmaq community and among mainstream justice officials.

## **WHAT WAS DONE**

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

- (a) review of literature and documents: An examination was completed of academic and policy materials dealing with native justice issues and/or of relevance to the justice programs delivered by MLSN, updating the 2001 Clairmont and McMillan material. In particular justice developments in New Brunswick, PEI, Akwesasne and T'suu T'ina were examined.
- (a) examination of appropriate secondary materials: Secondary data were obtained from several sources, such as INAC (population and educational data), RCMP (Royal Canadian Mounted Police), Corrections Nova Scotia, the Canadian Centre for Justice Statistics and the Nova Scotia Restorative Justice Program. Additionally a number of other, specific government departments at the federal and provincial levels were contacted for program information (e.g., Aboriginal Justice Strategy, Nova Scotia Department of Justice , Family Legal Information Centres in Halifax and Sydney).
- (c) examination of minutes, records and reports relating to MLSN and its constituent programs. These included annual MLSN reports, minutes of the MLSN advisory committee meetings, and minutes of the Tripartite Subcommittee on Justice
- (e) one-on-one, 'in-depth' interviews: These were carried out with a large number (133 persons) of Mi'kmaq leaders and community activists, government officials and CJS role players (i.e., police, prosecutors, judges, lawyers, correctional staff). An interview guide, advancing themes rather than detailed, specific questions, was developed for all

interviews carried out by the research team (see appendix). In all cases, core themes were explored (e.g., awareness / experience with MLSN and its programs). Sixty-one of the interviews were done by the principal researcher while seventy-two were done by six other team members. The identity of those interviewed by role and region is reported in the enclosed table.

All available members of the MLSN organization were interviewed, a number of them at least twice and over many hours. Also, all available members of the Tripartite Working Committee on Justice, and the MLSN Advisory Committee were interviewed, a few several times. CJS role players were primarily interviewed in the Sydney, Truro and Halifax areas. An effort was made to interview a modest number of Mi'kmaq leaders from across the province, whether political leaders, service providers or elders. .

- (f) in addition to the more 'in-depth interviews, the principal investigator spoke with dozens of Mi'kmaq community members who had a particular interest or responsibility in matters such as probation services or environmental concerns.

## **SPECIAL IN-PERSON INTERVIEWS**

There were 133 interviews conducted in person, 61 by the researcher and 72 by interviewers hired and trained, and using an interview guide which is appended to this report. Some persons were interviewed on several occasions. Among those interviewed, 98 were Mi'kmaq persons. The interviewed persons, by role and region, were as follows:

<b><u>ROLE</u></b>	<b><u>MAINLAND</u></b>	<b><u>CAPE BRETON</u></b>
<b>MLSN STAFF</b>	<b>6</b>	<b>4</b>
<b>TRI -WC / AC</b>	<b>8</b>	<b>2</b>
<b>JUSTICE</b>		
<b>JUDGES</b>	<b>7</b>	<b>5</b>
<b>PROSECUTION</b>	<b>4</b>	<b>2</b>
<b>DEFENSE</b>	<b>4</b>	<b>3</b>
<b>POLICE</b>	<b>5</b>	<b>2</b>
<b>PROBATION</b>	<b>0</b>	<b>1</b>
<b>OTHER GOVERNMENT</b>	<b>2</b>	<b>1</b>
<b>CHIEFS/COUNCILORS</b>	<b>4</b>	<b>6</b>
<b>BAND OFFICIALS</b>	<b>4</b>	<b>4</b>
<b>MI'KMAQ AGENCIES</b>	<b>10</b>	<b>11</b>
<b>LOCAL SERVICES</b>	<b>8</b>	<b>4</b>
<b>SPECIAL LEADERS</b>	<b>2</b>	<b>5</b>
<b>ELDERS</b>	<b>4</b>	<b>1</b>
<b>LOCAL ACTIVISTS</b>	<b>4</b>	<b>2</b>
<b>UNKNOWN ROLE</b>	<b>8</b>	<b>0</b>

In addition to the special interviews, there were many, more informal, discussions with a number of Mi'kmaq persons including law students, police officers and special role players (e.g., environmental concerns).



## **DOCUMENTS EXAMINED**

**Report of the Royal Commission on Donald Marshall's Wrongful Conviction  
Government of Nova Scotia Response and Progress Reports on above  
Response of UNSI to Marshall Commission's Recommendations  
Mi'kmaq Legal Support Network, Draft Framework, 2002  
MLSN Annual Reports, 2004-2005, 2005-06  
MLSN Project proposals  
Minutes Advisory Committee, MLSN  
Minutes Tripartite Forum, Justice Subcommittee  
INAC population and registered population by FN / Marshall 11  
INAC / post-secondary enrollments  
Mi'kmaq Kina'matnewey education enrollments  
CMM, post-secondary enrollments  
RCMP Annual Reports (Eskasoni, Indian Brook and Millbrook)  
Royal Commission on Aboriginal Peoples Reports  
Atlantic Policy Congress, Drug Prescription Study, 2006  
CSC Report by the Ombudsman / Investigator 2006**

## **OTHER SPECIFIC SOURCES**

**Dan Christmas Report (events leading to the MJI) 1996  
Clairmont and McMillan Future Directions ... 2001  
PEI Confederacy Programs 2005/06  
Elsipogtog Justice Advisory Committee (ADR, Justice Planning) 2005/06  
Akwesasne Department of Justice  
T'suu T'ina Peacemaker Court  
The Problem-Solving Court (Wellness Court) in USA (and in Indian  
Territory) and in Canada - Multiple Sources  
SMU Business Centre, Organization Review, Tripartite Forum, 2005  
Manitoba Legal Aid / Department of Justice (Family Division Full Service  
Project) 2006  
Nova Scotia Restorative Justice Program, 1999 to 2006  
Eastern AJS Steering Team, Discussion Reports, Action Plan 2006**

## REVIEW OF ABORIGINAL JUSTICE LITERATURE

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

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

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

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

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

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

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

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

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

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

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

Catherine Bell examines traditional values and contemporary justice initiatives in four programs; the Alberta Métis Settlements employed community consultation and consensus, the Nisga'a Youth Justice Initiative uses a consensus based approach of an Elders Advisory Council, the Tsuu T'ina Nation, and Justice in Nunavut which embeds Inuit values in the decision making processes and structures of the government. She concludes that effective justice initiatives must be anchored in the values of the communities they are to serve. She argues that while many view the right to administer justice as an inherent right, an important strategy in selling Aboriginal initiatives to non-Aboriginal public has been to emphasize how similar they are to existing non-Indigenous initiatives.

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

Craig Proulx's book *Reclaiming Aboriginal Justice, Identity and Community* (2003) discusses the merits of legal pluralism, particularly in response to the failings of mainstream justice for Aboriginal peoples. He explores the interconnection of healing and tradition and the role of community in the delivery of justice. Rather than merely describing the Community Council Project of Aboriginal Legal Services of Toronto, Proulx historicizes the development of Aboriginal justice programs and provides innovative theoretical justification for such processes. He foregrounds the role of culture in justice practices and deconstructs the problems of mainstream justice by taking into account colonialism, cultural difference and economic and social structural discrimination. He argues that, while the government is involved in legal legitimation, it is the community that does the real work. The chapters on the case study and the ideal hearing are comparative strategies that highlight the goals of diversion while revealing the challenges of reaching those goals in ways that do not dismiss the merits of

Aboriginally-controlled justice programs. His portrayal of Aboriginal justice issues is sophisticated, thorough, and he tackles the fluid nature of cultural change against the false dichotomies of justice as static and equal.

Dickson-Gilmore and La Prairie explore restorative justice in Aboriginal communities in their book *Will the Circle Be Unbroken?* (2005). These authors cast a critical eye on the concepts of community, healing and tradition in restorative justice processes to reveal the risks Aboriginal communities take when they Endeavour to create alternative justice programs. They caution against the uncritical use of the emerging discourse of responsibility that is shaping Aboriginal justice strategies. 'Taking responsibility' they argue is seen as a magic bullet that will empower communities and solve their problems, but the reality is that Aboriginal communities are being driven by the state and local elite to articulate their 'responsibleness' through the adoption of largely externally defined and developed restorative processes, whether or not these are relevant to their specific needs and capacities. The authors point out that despite efforts to make courts, police and corrections more culturally aware and appropriate through cross-cultural training, indigenization, section 718, and culturally focused programs, such as healing lodges instead of prisons, over-representation and recidivism rates have not declined. They suggest that an emphasis on culture as both the cause and cure of over-representation is inadequate, and, developing the construct, "community efficacy", highlight issues of community capacity to meaningfully engage in alternatives such as restorative justice.. In sentencing reform they raise important concerns over the protection of victims by noting that in some cases, greater harm can come to an Aboriginal community when Aboriginal offenders are allowed to remain there. In order to address this problem community justice processes should look to victim focused reintegration. Assuming victims have community support and are free to speak in justice programs is an error that must be corrected if community based justice processes are to be safe, fair, meaningful, and not cases of re-victimization.

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

In reviewing the current literature it is clear that community controlled justice processes for Aboriginal peoples are a necessary part of social justice and self-determination. Recent scholarship addresses the thorny issues of power, culture, assimilation, accommodation and tradition in community healing. These insights are particularly useful as community-based justice programs in Aboriginal communities

provide relevant programs in sentencing, mediation, family, civil and increasingly in regulatory matters across Canada. While progress is evident, the authors argue that political will is required to increase capacity for social justice. Aboriginal communities require greater consultation, respect and trust in their relations with the state, and as the state recognizes, affirms and supports efforts of self-determination and social justice, Aboriginal communities will become healthier, productive and just places.

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

According to the federal Department of Justice, there are approximately 89 community based agreements with a reach of 451 communities as of 2005. The Department is working with INAC and AJD to develop projects and resources to support self-government capacity building in the local administration and enforcement of Aboriginal laws prior to the implementation phase of self-government negotiations. For example, the Union of Ontario Indians received funding for developing capacity for appeal and redress mechanisms and the necessary training for the effective adjudication of their regulatory and civil laws when their self-government agreements comes into force. In British Columbia agreements respecting First Nations knowledge are used to frame the management of lands and resource development according to their laws and values in ways that are preserving and sustainable. The Esketemc Alternative Measures program, also known as Alkali Lake, has a protocol for fish and wildlife offences that provides the delivery of coordinated enforcement strategy. Offences are dealt with in a dispute management process using traditional healing circles, family group conferencing, mediation or victim/offender reconciliation with an interagency justice committee monitoring a community living contract. In addition to the expansion of regulatory justice processes, there are also more family, civil, reintegration and Gladue court programs being implemented across the country. Furthermore, many communities are employing strategies to expand capacity for alternative referral sources, particularly community referrals, such as the Vancouver Aboriginal Transformative Justice Service. In most

community programs an emphasis on community panels or advisory committees to facilitate programs is evident.



## **THE CONTEXT FOR MI'KMAQ JUSTICE IN NOVA SCOTIA**

The future directions for Mi'kmaq justice and MLSN's role therein will be shaped by many external factors. Whatever its leaders' and advocates' intentions and hopes may be, their realization will depend in large measure on certain contextual developments. Here we have attempted to highlight the pivotal contexts, namely alternative justice developments elsewhere, demographic trends, major developments in Mi'kmaq political economy, educational change, and crime and offending patterns.

### **CONTEXT A: ALTERNATIVE JUSTICE DEVELOPMENTS**

Here we briefly discuss developments that bear more directly on MLSN objectives and programs, especially restorative justice, therapeutic jurisprudence or the problem solving court, and regional developments in aboriginal justice.

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

A review of the literature and short site visits to other Canadian urban centers where interesting RJ initiatives are taking place has provided some insights. The vast majority of RJ or alternative measures (AM) programs and projects in Canada pertain to minor offences committed by young offenders who are not chronic offenders to say the

least. There are RJ projects afoot that are indeed directed at serious offending, ‘experimenting’ with strategies for developing governmental – community partnerships, and utilizing innovative service delivery models (Clairmont, 2006). While interesting, there are some major limitations concerning their contribution to further appreciating the issues or challenges cited above. First, most of the projects appear to be struggling with their funding and their securing of referrals from the conventional justice system. Secondly, with one exception, the projects are indeed projects, operating on a short-term basis and not well-established (not institutionalized) vis-à-vis the justice system. There is no RJ programming in the Atlantic region or elsewhere in Canada that has anywhere near the funding, vision and scope, and organizational structure that characterizes the Nova Scotian approach (NSRJ) with which MLSN’s CLP is associated.

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

Overall, there is among some of the leading RJ experts in Canada a sense that the RJ movement has now stalled and requires fresh input of terms of theory and policy, 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. To some extent, the emphasis in justice innovation has shifted to another movement that represents an alternative response to conventional court processing of offenders, namely therapeutic jurisprudence or the problem-solving court. The problem-solving court may take several guises, namely domestic violence court, mental treatment court (dealing with persons who have mental health issues but are not considered to be criminally insane), and drug and alcohol treatment courts dealing with offenders whose offending is a product of their addictions. The first drug treatment court (DTC) was established in Florida around 1990 and now there are approximately 2000 in the USA. In Canada the first DTC was

established in Toronto in the late 1990s and has spread to other jurisdictions such as Vancouver and Ottawa. These courts usually deal with serious offending where the adult offender pleads guilty and opts for a treatment program which is very demanding (e.g., regular individual and group counseling, urine tests for drug use, bi-weekly appearances in court etc) and of significant length (seven months to well over a year). There are variants of this DTC model where youth are involved and also where the offending is of a less serious nature and the program parameters accordingly are different (e.g., pre-charge, taking responsibility not pleading guilty, shorter program duration etc). Participation in the program enables the offender to avoid incarceration (or a record in the minor version) and to receive considerable and focused rehabilitative attention. The problem-solving court in the USA is popular as well in “Indian Territory” where it is called a “wellness court” and more open to cultural and community input. In Canada there are two embryonic drug and alcohol initiatives among aboriginal people (see appendix). The wellness court appears to have had a positive impact on dealing with addiction-related offending and on reintegrating the offenders. In Canada the DTCs are funded through the federal ministries of Health and Justice.

As noted in the review of literature there are also more conventional courts in several First Nations in Canada. Two that have been referred to above and are discussed further in the appendix are the T’suu T’ina Peacemaker Court and the Akwesasne Mohawk Community Court operated by the Akwesasne Department of Justice. Both these courts go beyond the concept of a provincial criminal sitting on reserve as for example is found in Eskasoni, but they do so in different ways. The Akwesasne Department of Justice’s court is engaged in all justice areas, namely criminal, family/civil, and regulatory, while the Department of Justice itself has also been engaged in law making, outside the band bylaw format. The Akwesasne court and its Department of Justice in practice have limited scope thus far but a wide potential reach. The T’suu T’ina Peacemaker Court is a provincial court on reserve which attempts to incorporate a role for elders, and encourages both restorative justice for criminal matters and alternative dispute resolution approaches for civil ones.

There are other interesting aboriginal justice initiatives that could impact on Mi’kmaq future developments in justice. In the North there is the one-stop, legal support centre concept, a full service centre featuring legal aid lawyers, court workers and related services. In Toronto the well-known Aboriginal Legal Services has pioneered a number of arrangements with justice officials (e.g. a protocol with the coroner’s office whereby ALS is contacted by the coroner and privy to all pertinent information in the event of certain aboriginal deaths) and has a central role in the operation of the Gladue court there. There are some interesting developments as well among FNs in the other Atlantic Provinces. Mi’kmaq people in Elsipogtog N.B. have that province’s most far-reaching alternative justice program. In practice it does not have the depth of MLSN’s CLP (i.e., it deals solely with minor offences and has not carried out any sentencing circles) but it is engaging the RCMP as an advocate in its attempts to obtain referrals at the post-charge levels, and, in cooperation with Children and Family Services and the RCMP, does obtain referrals and utilize restorative justice processes for youth under twelve years of age. The program is also branching out to do work with CFS doing facilitation with adults in

separation issues where access and custody matters loom. There is no separate funding for this but the restorative justice program's small caseload permits it.. Elsipogtog also has recently begun an intensive offender reintegration program (referred to by a Mi'kmaq term which means "coming home in a good way") which entails not only 'section 84' parole release agreements generated by the "circles" but also treatment programs and healing circles for offenders, victims and families.

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

"A Mi'kmaq word used to describe a ceremony that in past decades was a very powerful ritual engaged in by individuals wherein they would ask for another's forgiveness for a transgression, offence or omission. Thereafter, according to Mi'kmaq custom and tradition, once a person once a person engaged in this ceremony and sincerely asked for forgiveness from another person or the community, the person or the community was obliged by the social mores governing society within the Mi'kmaq Nation to comply by granting forgiveness to the perpetrator"(The Apigsitogan Project 20006-2007).

At present all of the above conflict resolution initiatives have basically been readied but not implemented. It is not clear why there is this hiatus between training and utilization but there is an indication perhaps of some ambivalence and ambiguity with respect to self-government.

There are other justice initiatives in Atlantic Canada as well that merit attention for MLSN. In New Brunswick only one community (Elsipogtog) has a victim services employee, advising and supporting residents who have been victims of crime. Interestingly, though, several other FNs in that province have been funded by the province for "para-legals" who work with victims and liaise with New Brunswick's Victim Services; apparently the "para-legals" receive a very modest monthly honorarium of several hundred dollars but it may be a feasible and acceptable way of responding to small scattered populations. Recently, too, under the sponsorship of the federal

Aboriginal Justice Strategy, persons involved in directing justice initiatives from across the region have been meeting and discussing future directions. A report of the E.A.S.T. (Eastern AJS Steering Team) 2006 based on these deliberations highlights the need for (and value of) more cross-cultural training for non-aboriginal justice staff, more aboriginal staff in all areas of the justice system, and more attention to victim services (to achieve a “natural law based balance”). The draft report goes on to call for extension of the circle approach to regulatory offenses. These emphases are reiterated in the E.A.S.T. Action Plan, September 2006 where also emphasized is ‘more community involvement in planning, decision-making and service delivery’ and ‘more aboriginal advisory groups’. Another point that might be underscored is the imperative noted there “to constantly scan the horizon for opportunities to advance the aboriginal justice agenda through win-win relationships” – these exist in the criminal justice areas (e.g, offender reintegration, wellness courts) and also in the family and regulatory justice areas.

MLSN is clearly on the cusp with respect to leadership in justice initiatives. Nova Scotia provides a unique context organizationally in having the well-functioning Tripartite Working Justice Committee and the province-wide MLSN. The province-wide character provides a strong Mi’kmaq visibility and services to smaller FNs that otherwise they probably would never receive. It provides opportunities for use of aboriginal facilitators and other specialists from outside any specific band or Mi’kmaq agency, thereby reducing the problem of conflicts of interest. In terms of the programs – the CWP with its recent Gladue reports and the CLP with its range of referral sources – MLSN is in the avant-garde. On the other hand, the focus is offender-based, on a segment of justice, and in some respects the program is still significantly short of the Marshall Commission’s 1990 recommendations and of RCAP’s 1996 vision. There is still much to be learned from considering how other FNs in the region and beyond are dealing with justice issues.

## **CONTEXT B: THE DEMOGRAPHIC SITUATION**

The 2001 Clairmont and McMillan monograph reported a total registered band population of 5369 in 1976 and of 11,469 in 1998. The registered population in 1998 was 1.3% of the Nova Scotia population as a whole. The current registered population, on and off reserve is about 13,259 (8762 and 4497 respectively) and the total band membership, on and off reserve, is roughly 10% more, so the total band population is about 14,500. Given the Nova Scotian population of 930,000, the current Mi’kmaq registered and total band populations would constitute 1.5 % and 1.6% of the provincial population respectively. The overall Nova Scotian population is declining while the Mi’kmaq population is increasing (though at a declining rate) so the proportion Mi’kmaq will increase modestly in the short-term at least. It increased by some 250% since 1976 but such an increase appears unlikely over the next thirty years. Still, the combination of a smaller Mi’kmaq increase and a declining mainstream population suggests that in 2025 the total registered Mi’kmaq population would constitute almost 2% of the provincial population.

Table A provides the population data for all Nova Scotian bands (i.e., INAC registered population) by the age category 17 years of age and younger, and for the total population, whether on or off reserve. Comparison with previous years indicates that the Mi'kmaq population in Nova Scotia has grown at a rate of roughly 1% per year since 1998 and at a slightly lower rate in recent years. The percentage of the Mi'kmaq population 17 years of age and under remains at the 40% level, more than double the counterpart percentage for Nova Scotia as a whole which was about 18% in 2006 (Can Mac, 2006). A deduction from this pattern is that, at least in the short-run, any decline in the involvement of Mi'kmaq youths in the criminal justice system will not be the result of population decline, as it is the case for courts and mainstream restorative justice programs outside Halifax Regional Municipality.

Looking at the on and off reserve populations by bands indicates quite clearly that the demographic patterns vary profoundly by region. The five Cape Breton bands account for roughly 65% of registered reserve population and 52% of the total band population in Nova Scotia. In the Annapolis Valley and South-West Nova Scotia regions, there are far more band members living off reserve (1326 to 474) while for the other five mainland bands, the ratio is 60% on reserve and 40% off reserve. In Cape Breton, the median percentage living off reserve among the five bands is only 12%. The diverse distribution raises issues for the efficient and effective delivery of MLSN programs on the mainland. Another socio-demographic implication is the potentially positive impact for lower rates of crime and social disorder incidents. Studies have established a strong correlation between better economic opportunities and lower levels of such incidents. The declining Nova Scotian population effects a declining labour supply and is seen by many authorities and experts to be creating a looming crisis for the economy; the demand for labour could mean greater economic opportunity for Mi'kmaq persons who currently have higher levels of average underemployment (CanMac, 2006).

Other socio-demographic patterns that could bear directly on Mi'kmaq justice issues would include patterns of family formation and dissolution. Generally it is assumed that the higher the levels of single parent families, early pregnancies, common-law and co-habitation arrangements, and "break-ups", the greater the likelihood in the communities of violence and social disorder. Forging the correlation are factors such as poverty and lack of social supports. It was impossible to collect statistical data directly on these issues but the overwhelming consensus among the Mi'kmaq opinion leaders interviewed was that recent years have witnessed a major increase in all the above patterns (not dissimilar from patterns in mainstream society). Insofar as this is indeed the case, one could expect that not only would crime levels remain high but that there would be a spike in the number of matters being dealt with in family court (e.g., child protection cases, custody and access, support).

**TABLE A****Registered Band Population On and Off Reserve, By Youth (0 – 17) and Total Population, 2004 and 2005**

	2004		2005		2004		2005	
BAND	0-17 On R	0-17 Off R	0- 17 On R	0-17 Off R	Total On R	Total Off R	Total On R	Total Off R
Acadia	43	105	41	119	199	809	181	850
Paq'tnkek	139	32	148	28	337	154	344	147
Annapolis	24	24	28	26	87	132	93	137
Bear River	36	23	35	26	103	173	100	175
Chapel Island	223	21	218	20	476	103	481	103
Eskasoni	1257	147	1301	139	3100	557	3183	569
PictouLanding	176	45	171	41	419	141	419	140
Shubenacadie	414	245	404	258	1147	974	1130	1019
Membertou	311	90	300	106	750	320	734	362
Millbrook	278	148	284	147	708	582	729	585
Wagmatcook	223	28	218	36	522	110	530	115
We'koqma'q	318	14	317	16	743	72	754	76
Glooscap	23	55	22	55	85	212	84	218
Totals	3475	977	3482	1014	8676	4339	8762	4497

Source: INAC, 2006

## **CONTEXT C: THE POLITICAL -ECONOMIC SITUATION**

The most significant political economy contextual consideration for Mi'kmaq justice and the MLSN since 2000 would appear to be the immediate consequences of the Supreme Court of Canada's Marshall decision (and subsequent specification) in 1999. Just as the 1990 Marshall Inquiry into the wrongful prosecution of Donald Marshall led to the Tripartite Forum and a host of justice initiatives including the creation of MLSM's predecessor, the Mi'kmaq Justice Institute, the SCC's decision on the legality of Marshall's fishing case has had profound ramifications for Mi'kmaq justice that have yet to be fully realized. The spike in economic development occasioned by programs and agreements in Marshall One (referring to agreements with the federal Department of Fisheries) and Marshall Two (more general economic programming spearheaded by INAC) appears to have significant implications for reducing crime and social disorder problems and also for altering the thrust of the Mi'kmaq justice focus, highlighting the area of regulatory justice and law-making. The political implications are linked to the kick-starting that the SCC decisions provided for tripartite treaty negotiations and the implication of that commonly labeled "Made in Nova Scotia" process for Mi'kmaq justice initiatives. Along with the greater focus on the regulatory justice area, a major implication appears to be the establishment of a template for community collaboration or, put otherwise, a definite "raising of the bar" for meaningful community consultation.

### **ECONOMY**

INAC has developed a community well-being index which takes into account income, education, housing and active labour force levels, and yields a composite score. The INAC well-being index based on 2001 census data indicated (a) significantly lower scores among the FN communities in Nova Scotia compared with other Nova Scotian communities; the average score for 2001 was 80 for the latter but only 69 for the former; (b) the scores for the FNs exhibited much variation as Membertou for example had a score of 74 while Waycobah's score was only 59. Developments since 2000-2001, noted below, could be expected to have raised the average FN score though perhaps not thereby reducing the variation among FNs.

It is clear that significant economic development has taken place in many FNs over the past decade and newspaper accounts have celebrated major economic growth in FNs such as Akwesasne, Six Nations of the Grand River, Membertou and Millbrook. Much entrepreneurial activity has occurred in a variety of sectors including resource development, tourism / hospitality and light manufacturing (Clairmont and Potts, 2006). Fisheries has been particularly highlighted in British Columbia, Ontario and Atlantic Canada (Coyle, 2005, DFO 2005). While aboriginal fisheries activities through Department of Fisheries and Oceans (DFO) programs may have preceded the SCC Marshall decision, there is little doubt that a qualitative change occurred as a result of it, especially in Atlantic Canada. Recently (Mail Star, February 27, 2006), a DFO official reported, "that [since 2000] more than 1000 FN people are employed in an orderly fishery and hundred more fisheries-related jobs have been created. Unemployment has dropped 4% (in absolute terms) from 2000 and fishing licences held by FN people have



generated economic return of roughly \$41 million in 2004 or \$4000 per household, an increase of more than 300% from the return generated from licenses held in 2000". A spokesperson for the Atlantic Policy Congress of FN Chiefs, interviewed on the same news item, noted that, despite inefficiencies in the way DFO paid out monies after the SCC decisions, "the money has had a positive effect on aboriginal communities. Our communities have a new sense of hope. It is not a money thing. It's a whole mindset. And it has fundamentally changed our communities forever and that is really good".

While the fisheries agreements signed with DFO did not live up to expectations in many FN communities and certainly did not yield the "moderate livelihood" that the SCC decision sanctioned, it has apparently often produced the changed mindset referred to by the APC spokesperson. Indeed, even in one of the FN which refused to sign a DFO agreement it is manifested – for example, a Paq'tnekek interviewee commented, "Right now we have 4 boats with 8 people on each and they fish for the band. We have communal licenses. The band creates employment, the profits from the catch go right back to the community and it creates programs, recreation. We have a councilor in charge of the fishing portfolio". Several FNs also have organized their fisheries in such a way as to distribute the work opportunities to fish, thereby spreading the benefits and E.I. eligibility.

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

The implications for Mi'kmaq justice are interesting. Improved economic well-being and an optimistic mindset about the future are usually associated with less crime and social disorder. At the same time, to the extent that the economic improvement and perceived future prospects are not well distributed, socio-economic disparities may set in which may marginalize offenders (i.e., offenders may be increasingly drawn from a decreasing pool of the socio-economic disadvantaged). Certainly, at the FN community level, there has been evidence of that. During the same week that newspaper accounts

reported Membertou officials announcing with pride their band's \$60 million budget, the same paper ran another story on Indian Brook, citing data provided by the chief that 700 of the 1300 Indian Brook residents were on welfare (Mail Star, February 25, 2006). Growing socio-economic differentiation coupled with a decline of communitarian sentiments (a strong correlate of modernization) could generate social problems and conflict, especially where there is no formal mechanism such as a taxation policy to attenuate the inequalities. Protests on behalf of the less advantaged could take many forms, including that of challenges in terms of individual versus collective aboriginal rights, a matter which federal and provincial governments may presume has been settled (Ontario Native Secretariat, 2005) but which, in the absence of treaty agreement and other FN-level consensus building may be quite controversial (see the divergent views on this issue articulated by prominent Mi'kmaq leaders prior to the anticipated 2006 SCC decision on logging).

Overall, the economic developments have reinforced the considerable expansion of FN government. Not only has there been devolution of budgeting and regulation making from INAC but also many FNs have entered into numerous agreements with other governmental agencies (DFO, MNR) as well as with private businesses. Here, too, a significant acceleration in the pace and the scope of FN regulatory governance can be noted (Avio, 1994; Coyle, 2005). There appears to be as well, much "downloading" (better, perhaps, co-management) by federal and provincial agencies to the FNs with respect to monitoring and enforcement in areas such as fisheries, forestry, parklands, and moose (and other game) hunting. This major social evolution in governance places the elected FN governments front and center in occupations and protests and, seen in the context of increasing social differentiation within FNs, would appear to bring to the fore issues such as the capacity at the band level to deal with disputes, and challenges to band policies from a variety of standpoints (e.g., native rights, equity). Co-partnering, whether with government agencies or increasingly with other FNs in economic development (as recommended by Mi'kmaq interviewees in the assessment of Marshall Phase 11 program) may require developing a Mi'kmaq approach to these conflict resolution issues. The Customary Law Program of MLSN could be valuable in these regards given the expertise built-up in that field.

## **POLITICAL**

Approximately twenty six years after their proposal for discussions on aboriginal title was rejected by government, the realities of court decisions (especially the SCC Marshall decision it appears) and other factors effected a new milieu and led to an umbrella agreement between Mi'kmaq leaders (the 13 chiefs) and federal and provincial officials (ministers of INAC and Aboriginal Affairs respectively) in 2002 to begin to address the larger Mi'kmaq concerns. The umbrella agreement commits all parties to "good faith negotiations" and has three central foci, namely aboriginal title, treaty rights and consultation. It was decided to take this entire process out of the on-going tripartite forum process established as a result of the Marshall Inquiry in 1991. A subsequent three-stage process has been envisaged, namely agreeing on the negotiations framework (a framework agreement), substantive negotiations / negotiating a draft agreement, and a

final formal sign-off / execution phase. This process is on-going and currently both the federal and provincial governments have agreed to the tentative framework agreement while Mi'kmaq leadership is working through community consultation seeking consensus among the thirteen bands, explaining the framework agreement and getting the input from communities before any framework agreement is signed. Interestingly this "KMK" process has apparently already resulted in incorporating recognition of the Mi'kmaq language into the framework agreement. It has been suggested by the key Mi'kmaq leaders engaged in the process that the framework agreement could be achieved within a year and then substantive negotiations perhaps within five to ten years and the final formal recognition several years after that.. There are diverse views among the key Mi'kmaq leaders as to the time frame; one leader commented "it will be at least 10 years before we come up with an agreement regarding the implementation of treaty rights and maybe another ten before the formal recognition and exercise of them. Since the format of this negotiation process differs from the treaty negotiations format followed by the federal government elsewhere, it has been dubbed the "Made in Nova Scotia" process. On their part, the Mi'kmaq term the mobilization of their communities and their own entailed work groups and activities as "kwilmuk Maw-klusuaqn" (KMK) which translates as "we are looking for consensus". Individual bands can opt out of the framework agreement and it is unclear what the consequences of such action would be for the entire negotiation process. Two prominent and very experienced Mi'kmaq leaders have the role of senior advisors liaising and "trouble shooting" between the communities and the chiefs and Mi'kmaq negotiators.

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

The tripartite negotiations and the KMK process as developed have important implications for Mi'kmaq justice. For one thing, it means that Mi'kmaq justice initiatives and the MLSN will remain in the Tripartite Forum context, featuring collaboration in the

Tripartite Working Committee and having significant new initiatives vetted through the “officials committee”, the committee of chiefs and government authorities which oversees all regular Tripartite Forum working committees. Undoubtedly as MLSN moves forward in the justice area, the challenge would be for it to secure multiyear transitional funding to make that progress possible pending the agreements reached by tripartite negotiations in justice and other areas. The very nature of the KMK process – its commitment to intensive community consultation and consensus – certainly appears to raise the bar for community collaboration for a province-wide organization such as MLSN, perhaps requiring a major re-focus on its community linkages. The KMK approach also provides opportunities for MLSN to explore its possible role in justice issues outside the criminal sphere. Mi’kmaq leaders have acknowledged that in the areas of moose harvesting and fisheries the issue of sanctions for violation of policies becomes very crucial. One leader, referring to the Mi’kmaq approach to justice, has commented “the goal of Mi’kmaq justice has been harmony in the community and the whole community was aware of that and involved with it ... the two major components of Mi’kmaq tradition are consensus and reconciliation”. It is unclear in the eyes of some Mi’kmaq leaders whether Mi’kmaq people, in dealing with violations, will opt for “the apiksetwan process” (forgiveness and reconciliation) or what some have described as “the compartmental way of the Canadian government justice system” (individualized and legalistic processes). MLSN through its customary law program and trained facilitators could be expected to contribute to the Mi’kmaq justice approach beyond the criminal justice area.

#### **CONTEXT D: THE EDUCATIONAL SITUATION**

Chief Fontaine of the AFN (2004) noted that in 1952 there were only two native university graduates in Canada whereas now there are thousands; he added, “for our youth the world is theirs to conquer”. With respect to Mi’kmaq people in Nova Scotia the 2001 monograph by Clairmont and McMillan indicated that Mi’kmaq post secondary enrollment in the late 1990s (essentially in degree granting colleges and universities) had reached levels proportionately superior to that of the mainstream Nova Scotian society. Graduation data were unavailable. An incongruous pattern was also noted, namely that a large number of Mi’kmaq students failed to graduate from high school. Overall, it was concluded that “this trend in post-secondary enrollments could impact on crime rate (typically higher education is associated with lower convention crime), increase the capacity of the FN communities to successfully carry out justice initiatives, and shore up the case for Mi’kmaq justice workers handling more conventional court work (i.e., there may be less need for clarification of court procedure).

What has happened since 2000? In education, the Mi’kmaw Kina’matnewey (MK) and CMM reports indicate much progress (e.g., less drop-out) since bands began taking more control over education and the positive results have been documented not only with reference to reserve-based education but also with respect to the improved educational services now offered by mainstream elementary and secondary schools attended by Mi’kmaw students (see MK’s Five Year Report, 1997-2002). Apart from the Shubenacadie FN with its large increase, elementary and secondary enrollments have

been rising quite modestly up to 2003. Post-secondary enrollment (PSE), according to MK and CMM reports, peaked in 1999-2000 at 492 and in 2004-05 was 424 (including 22 part-time students), a 14 % decline. All figures exclude Glooscap and Paq'tnkek which would add 30 to the respective totals. Including all the bands, the total PSEs as a percentage of the total band population was 3.5% in 2005 and as a percentage of the population aged eighteen years or more it was 5.3%; the latter figure, while a decline from the percentages in 2000, matches the counterpart percentage for Nova Scotia as a whole (1999 data).

The educational data, over the years, suggest an increase in educational attainment and increasing capacity for management of social services and other programs in Mi'kmaq communities. The recent decline in PSE enrollment could be worrisome in these regards. It is not known what the rates of college/university attendance and graduation are or how successful Mi'kmaq students have been when pursuing technical training. Similarly, data have not been available on aboriginal students attending and graduating from Dalhousie Law School but apparently only one IBM graduate in the fifteen year program is currently practicing criminal or family law in the Nova Scotia. She and another person of Mi'kmaq ancestry are both legal aid defense counsel, with Dalhousie Legal Aid and Nova Scotia Legal Aid respectively. A recent report indicated that over 90 persons, black and aboriginal, have graduated from program since its inception and that the black graduates have been far more likely to subsequently practice law. There were quite varied views expressed by knowledgeable Mi'kmaq persons about the causes of the difference. It was commonly observed that Mi'kmaq graduates had other opportunities to put their legal education to use, but it was also argued that FN leadership has not aggressively advanced a mentoring program among the major law firms. Whatever the reasons, it is also true that a very common critique of the current mainstream justice system is that there are too few Mi'kmaq professionals working within it and that paucity may act as a break on some possible Mi'kmaq justice initiatives (e.g., it is difficult to have Mi'kmaq judges when there are so few Mi'kmaq lawyers).

**TABLE B**

**Mi'kmaw Kina'matneway  
PSE Totals 1998-2005, MK Member Bands**

Post Secondary Nominal Roll Enrollment Statistics 1998-2005			MK Member Bands (Full Time/Part Time)																		
Band	1998-1999			1999-2000			2000-2001			2001-2002			2002-2003			2003-2004			2004-2005		
	FT	PT	TTL	FT	PT	TTL	FT	PT	TTL	FT	PT	TTL	FT	PT	TTL	FT	PT	TTL	FT	PT	TTL
Acadia			29			24	23	0	23	20	2	22	20	4	24	22	3	25	20	2	22
Annapolis. Valley**			4			5	2	0	4	5	0	5	5	0	5	4	0	4	6	0	6
Bear River**			10			9	*	*	*	*	*	*	*	*	*	*	*	*	11	1	12
Chapel Island			20			24	10	2	12	22	6	28	18	7	24	20	1	21	18	2	20
Eskasoni			159			161	131	11	142	115	40	155	109	27	136	106	25	131	114	11	125
Membertou			61			56	52	0	52	52	0	52	44	0	44	41	0	41	41	0	41
Pictou Landing**			11			12	12	0	12	13	0	13	17	1	18	20	2	22	17	6	23
Shubenacadie			70			77	62	8	70	65	7	72	61	8	69	89	2	91	83	0	83***
Wagmatcook			40			29	33	1	34	33	21	54	26	24	50	27	3	30	16	7	23
We'koqma'q			38			39	27	9	36	39	5	44	37	1	38	30	0	30	25	0	23
Millbrook**			53			56			44			39			72			48			46

\* Data unavailable for these particular years

\*\* These figures were obtained from the Confederation of Mainland Mi'kmaq (CMM)

\*\*\*This figure is an estimated one.

## CONTEXT E: CRIME AND OFFENDING PATTERNS

Another contextual factor of much relevance for MLSN given its focus on criminal justice and offenders is the **pattern of crime and other offenses**. In the 2001 Clairmont and McMillan monograph, RCMP and Unama'ki Tribal Police statistical data were analyzed. The data from police reports dealt with the years 1991 to 1999 inclusive, for ten of the thirteen FNs. There were so few reported offenses for Bear River, Annapolis and Glooscap (Horton) – basically one or two if not zero per year - that no data were presented for these three FNs. The data for the remaining ten FNs indicated that most of the violent, person offending and even the property offenses were concentrated in the two hubs of Indian Brook and Millbrook on the Mainland and Eskasoni and Membertou in Cape Breton. As indicated in Table C, the RCMP detachment statistics for 2004 indicate clearly that these four FNs continue to have a high level of offences and social disorder issues. All four FNs had significantly greater rates of person offenses, property offences, other criminal code offences and total criminal offenses than non-native communities. The comparisons referred to in the table were not ideal since the non-native communities had different demographics (i.e., older populations) but, even were demographic factors taken into account, the high rates of the four FNs would stand out. Social disorder issues may be reflected best in ‘other criminal code offenses’ which refer to trespassing, minor property damage (vandalism), disturbing the peace and breaches of bail, and in arrests made by police under the Mental Health Act (typically these incidents involved the threat of persons harming themselves). It is clear that here too the four FNs differed sharply from the non-native communities in having much higher rates. The table also indicates that Indian Brook and Eskasoni had higher rates across the categories while Membertou and Millbrook were similar save that Millbrook had more property offences and Membertou had more person offences. Aside from arrest under the Mental Health Act, where Indian Brook and Eskasoni had roughly equal high rates of approximately 500 per 10,000 population, Indian Brook stood out with very high comparative levels of person offences, property offenses, ‘other criminal code’ and total criminal code offenses.

Police officers, residents, and CJS officials (judges and prosecutors) agreed that crime and social disorder problems were at very high levels in Indian Brook. RCMP officers reported that the detachment there has the highest level of reported crime of all RCMP detachments in Nova Scotia, and all Indian Brook respondents indicated that in their view the crime level was very high compared to other areas. RCMP reports highlighted the high level of violent crime and drew attention to the assaults committed against the police (i.e., over 25 recorded instances in 2004). Virtually everyone reported that drug and alcohol abuse were at the heart of the offending and some suggested that behind that substance abuse lie the legacy of colonialism, the lack of economic opportunity, and ‘historical’ sexual abuse (i.e., officers suggested that there had been much sexual abuse committed by relatives which festered beneath the surface but occasionally came to light). The Shubenacadie band, according to the INAC index noted above, had the lowest community well-being score of any FN on the mainland of Nova

Scotia (i.e., 62). At the same time, there was little recorded youth offending in the Indian Brook community and police officers there advanced the view that, aside from very minor offenses where victims and others were satisfied with the youths receiving a verbal warning from police, young offenders were few and likely to be repeat offenders. In the case of Millbrook, RCMP data were also available for the years 2001 to 2005 (see table D). The data indicated that Millbrook has had a rather stable pattern of both person and property offenses which, given population growth, translates into a lower rate of offenses in recent years. The decline was more noticeable in two areas, namely person offenses and offenses attributed to youths. In both cases the peak year was 2002 and the number of offenses declined sharply since then, especially for youth. That trend is congruent with the comparative data for 2004 presented in table C. There it can be seen that person offenses in Millbrook were much less frequent than in Indian Brook, Eskasoni and Membertou.

Like Millbrook, the crime levels in Membertou reportedly have declined over the years though drug abuse and drug trafficking remain a significant issue according to Membertou interviewees. The 2004 data presented in Table C indicate that Membertou had roughly the same rates of person crime and property crime as Eskasoni but substantially less social disorder type offenses such as disturbing the peace, mental health act arrests and so on. The much lower level of offenses of these latter types, compared to Eskasoni, may reflect the significant economic and social services development in Membertou in recent years, a premise hard to prove but typically held by police and residents alike. RCMP data for Eskasoni (see table E) for the period 2002 through 2005 indicated that person offenses (primarily assault level one) declined steadily and significantly (over 30%) from 2002 to 2004 and leveled off since then. Property offences (e.g., theft, break and enter) and other criminal code offenses such as disturbing the peace and bail violations have varied somewhat with no discernible pattern number-wise, as have liquor violations. The 2005 Eskasoni RCMP occurrence statistics indicated youth offending was primarily violation of provincial statutes (liquor and trespassing violations) and of 'other criminal code' (over 90% involved disturbing or breaching the peace); overwhelmingly, these offenses did not result in charges being laid (basically one charge laid per 7.5 'not charged'). There were comparatively modest numbers of assaults and break and enters reported for youths and, not surprisingly, charges were more frequent for these offenses though, according to the statistical report, the majority did not result in charges being laid (basically one charge laid per 3 "not charged"). The Eskasoni RCMP data available did not allow for an assessment of trends in youth offending.

In Nova Scotia, youth charges have diminished considerably (roughly by one-third) between 1999 and 2004. Data from Corrections Nova Scotia for the period between 1999 and 2004-2005 point to significant decline in the number of youths charged for all general types of crime in North-Central region of Nova Scotia (where the Indian Brook and Millbrook FNs are located) save violent offences where the decline has been marginal. In Cape Breton youths charged with violent crime increased sharply while property offenses declined sharply over that five year period. Looking at 'youths in custody' data, the number of those designated aboriginal has fallen steadily from 23 in 2000/01 to 8 in 2004/05 though the percentage of total youth in custody who are



designated aboriginal remains at roughly 6%., indicating an even more profound decline among other youth. The number of aboriginal youth on probation in Nova Scotia did not decrease and indeed the highest yearly number was in the last year for which data were available, 2003-2004, when 59 aboriginal youths were in probation. Since probation numbers have fallen very dramatically for Caucasian youth between 2000 and 2004, the percentage of youth on probation who are aboriginal in fact doubled from 3.1% to 6.4% during that period. Clearly, aboriginal youth are over-represented in both custody and probation. It is not known whether a significant problem of 'repeat and / or chronic offenders' exist in the Mi'kmaq communities but that was the view expressed by police officers and many other respondents.

The level of adult aboriginal incarceration in the five federal prisons in the Maritimes is also reported to have declined appreciably in recent years. While data have not yet become available, informed respondents indicated that less than 3% of the inmates are aboriginal, still an overrepresentation but far under the 16% reported for all federal prisons in Canada (among females in federal prisons the aboriginal percentage is a whopping 33%). Data were analyzed concerning adult admissions to provincial custody. Table H indicate that native (aboriginal) admissions in 2004-2005 and 2005-2006 have accounted for roughly 7% of all province-wide custody and 17% of the admissions to the Cape Breton Correctional Center. Justice officials report that these patterns have been "fairly constant over the past 14 years" (personal communication). The proportion native has usually been higher for "remand" than for "sentenced", pointing to the tendency for native offenders to be less likely to receive bail. The factors responsible for this phenomenon are unclear but legitimately could include the type of offence involved, the lack of surety, previous "no show", bail revocation and so forth. The native level of either 'remand' or 'sentenced' for adults, whether for the province as a whole or just for Cape Breton, is roughly three and a half times the expected level based solely on population, so clearly there is a criminal justice problem here. The problem is most manifest in Cape Breton, especially at remand (to give an exact comparative level it would be necessary to take into account the proportions of the mainstream and Mi'kmaq population between the ages of 18 and 60). In 2005-2006, the number and percentage of aboriginal adults "sentenced" exceeded the corresponding figure for remand and represented a sharp increase to more than four times the expected level based on population size. Cape Breton Mi'kmaq persons accounted for 59% of all native remands and 48% of all natives sentenced to custody; however, since Cape Breton Mi'kmaq make up 65% of all registered on reserve persons in Nova Scotia, they do not seem to be overrepresented compared to their mainland Mi'kmaq counterparts.

In sum, these limited data, in conjunction with interview data, suggest that offenses are concentrated in certain FNs (especially Indian Brook and Eskasoni, and to a lesser extent Membertou and Millbrook), that, perhaps with the exception of Indian Brook, the crime rate among the FNs is declining, and that the decline is especially evident for Mi'kmaq youth. Among Mi'kmaq youth, the number admitted to custody has declined sharply in recent years while there is no clear trend with respect to probation. Among Mi'kmaq adults, there reportedly has been a decline in admissions to federal custody but the numbers admitted to provincial custody have been more constant and the

Mi'kmaq percentage of the total provincial custody admissions quite stable for the past fourteen years. There is some indication that economic development as in Millbrook and Membertou may be associated with declining crime and social disorder problems. There is also some indication that the young offender problem may increasingly be a problem of a small aggregate of chronic offenders; if so, that fact in conjunction with overall declining youth crime numbers, could suggest a different challenge mix for the restorative justice program (MCLP) namely fewer referrals but more difficult ones. The pattern noted with respect to adult admissions to provincial custody on remand could be salient for the court worker program.

**TABLE C**

**RCMP Offence Statistics By Selected First Nation and Other Detachments, 2004**

Detachment	Offence Type (Rate Per 10, 000 Population)				
	Person Offences	Property Offences	Other Criminal Code	Total Criminal Code	Mental Health Act Arrests
Indian Brook	1368	1548	4923	7839	504
Millbrook	696	1212	2325	4260	276
Membertou	1200	690	2220	4110	285
Eskasoni	1136	676	3952	5764	508
Digby Municipality	395	445	930	2300	115
Guysborough	98	119	388	661	66

Source: Indian Brook RCMP Detachment, 2005

**TABLE D****RCMP Statistics: Millbrook Offenses, 2001-2005**

<b>Actual Offenses</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
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 E****RCMP Statistics: Eskasoni Offenses, 2002-2005**

<b>‘ACTUAL’ OFFENSES</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Common Assault	223	178	153	176
Total Assault	281	257	204	220
Total Person	282	258	206	283*
Total Theft Under	65	78	82	110
Total B&E	37	46	32	92*
Total Property	124	145	137	Not Available
Total Weapon Offenses	11	5	5	7
Disturbing Peace	298	294	291	395
Bail Violation	53	97	88	Not Available
Total Other criminal Code	697	866	743	Not Available
Total Criminal Code	1251	1524	1315	Not Available
Total Drugs	28	39	14	11
Mental Health Act	93	128	111	4 + 129*
Total Liquor	222	208	273	102 + 153*

Source: RCMP Eskasoni, “Mayor’s Reports.

- As noted in the previous table the RCMP adopted a new recording procedure in 2005 and comparison with earlier years needs caution. In the case of total person offenses, uttering threats became included in ‘total person offenses’ where in the previous years the roughly 60 such actual threats were coded as “other criminal code”; accordingly, the 2005 figure for total person offenses does not represent a spike. In the case of total break and enter figures for 2005, being unlawfully in a residence is included where in previous years that category is not listed under break and enter. Also, beginning in 2005 the RCMP report differentiated between “offenses only” and “other activities” with respect to liquor and mental health act incidents.

**TABLE F**  
**Youth in Sentenced Custody by Ethnicity, 2000 to 2005**

	2000/01		2001/02		2002/03		2003/04		2004/05	
	#	%	#	%	#	%	#	%	#	%
Afro-Canadian	52	14.1%	50	15.8%	47	14.9%	33	20.6%	32	24.2%
Aboriginal	23	6.2%	10	3.2%	14	4.4%	9	5.6%	8	6.1%
White	279	75.6%	246	77.6%	236	74.9%	114	71.3%	91	68.9%
Other	8	2.2%	6	1.9%	6	1.9%	2	1.3%	0	0.0%
Unknown	7	1.9%	5	1.6%	12	3.8%	2	1.3%	1	0.8%
Total	369	100%	317	100%	315	100%	160	100%	132	100%
Change (# and %)	-	-	-52	14.1%	-2	-0.6%	-155	49.2%	-28	17.5%

	#	%
Total Change	-237	64.2%

Source: DOJ Policy and Planning

**TABLE G**  
**Youth in Probation by Ethnicity, 2000 to 2004, Nova Scotia**

	2000/01		2001/02		2002/03		2003/04	
	#	%	#	%	#	%	#	%
Afro-Canadian	108	8.0%	97	8.1%	106	9.4%	110	11.9%
Aboriginal	42	3.1%	48	4.0%	42	3.7%	59	6.4%
White	1163	86.0%	1033	86.2%	947	84.0%	721	78.0%
Other	16	1.2%	5	0.4%	7	0.6%	10	1.1%
Unknown	23	1.7%	15	1.3%	25	2.2%	24	2.6%
Total	1352	100%	1198	100%	1127	100%	924	100%
Change (# and %)	-	-	-154	-11.4%	-71	-5.9%	-203	-18.0%

	#	%
Total Change	-428	-31.7%

Source: DOJ Policy and Planning, 2006

**Table H**

**Admissions to Adult Custody, Nova Scotia Corrections, By Admission Status and Ethnicity, 2004-2005 and 2005-2006.**

	2004-2005		2005-2006	
	Remand	Sentence	Remand	Sentence
Caucasian	972 (74%)	1159 (81%)	905 (73%)	1095 (76%)
Black	168 (13%)	119 (8%)	154 (13%)	184 (13%)
Aboriginal	92 (7%)	92 (6%)	95 (8%)	101 (7%)
Other	44 (3%)	27 (2%)	31 (3%)	23 (2%)
Unknown	35 (3%)	40 (3%)	51 (4%)	34 (2%)

**Cape Breton Correctional Centre**

	2004-2005		2005-2006	
	Remand	Sentence	Remand	Sentence
Caucasian	203 (75%)	258 (82%)	202 (77%)	213 (76%)
Black	7 (3%)	10 (3%)	11 (4%)	9 (3%)
Aboriginal	54 (20%)	44 (14%)	47 (18%)	59 (21%)
Other	4 (2%)	2 (1%)	1 (1%)	0 (0%)
Unknown	3 (1%)	0 (0%)	0 (0%)	1 (1%)

*Source:* Nova Scotia Department of Justice, 2006



## PRELUDE TO MLSN

There are two major benchmark documents on the basis of which Mi'kmaq justice initiatives in Nova Scotia usually are and should be assessed. These are (a) the report of the Royal Commission on the Donald Marshall Jr. Prosecution, ( a report filed in 1989 and promulgated in 1990), and (b) the Royal Commission on Aboriginal Peoples, Bridging the Cultural Divide; a Report on Aboriginal People and Criminal Justice in Canada, (1996). After several years of meetings and negotiations, the MJI began operations in January 1997 just months after the release of the latter document. Looking first at the Marshall report, aside from recommendations concerning Donald Marshall Jr. and his family, it produced 11 recommendations specific and exclusive to Mi'kmaq people in Nova Scotia plus others of relevance (e.g., #18 calling for the federal government to enact legislation for diversion programs for Native and Black communities and #19 urging that Correctional programs take backgrounds and needs into account and emphasize educational, cultural and religious needs of Native and Black offenders). Below, the eleven recommendations are described and, in bold and bracketed, the Nova Scotia Government's response is indicated.

1. A Native Criminal Court (#20) incorporating diversion and ADR, aftercare services on reserve, court worker services and community input into sentencing should be established. **(The NS Government accepted the recommendation making it clear that, like the Commissioners, no autonomous Native legal system was favored but, rather, different processes for administering justice directing impacting on FN communities. The 1992 NS Government update cited the adult diversion program being approved for Indian Brook in keeping with recommendations #22, #29 and #18. Most aspects of this recommendation have now been implemented but there is no native criminal court. There is of course a provincial criminal court sitting at Eskasoni).**
2. A Native Justice Institute (#21) feeding Mi'kmaq needs and concerns into the above court, researching possibilities regarding native customary law impacting on criminal and civil law, training court workers and consulting with Government on native justice issues as well as with Public Legal Information and the Barristers Society should be established. **(The NS Government accepted the intent of this recommendation, adding that it believed that the Tripartite Forum (recommendation #22) could provide the necessary coordination. Subsequently, the MJI was established and did engage in the recommended activities).**
3. A Tripartite Forum on Native Issues should be established “to mediate and resolve outstanding issues between the Micmac and Government including Native justice issues” (#22). **(The NS Government accepted and there was almost immediate implementation. In an August 1990 Progress Report the NS Government described the Tripartite Forum on Native Issues as**

**the cornerstone for addressing all the initiatives and expressed the hope that its mandate will go beyond the limits of the Marshall Commission's recommendations. In its May 1992 update the NS Government noted that federal and provincial funding had been obtained and in March 1991 the first Tripartite Forum meeting was held and that justice and policing had been subcommittees established).**

- 4. It was recommended that a program for Micmac interpreters in provincial courts be given priority (#23) (The Government accepted. In February 1997 MJI took over administrative responsibility for the Mi'kmaq Translation Service).**
- 5. A Native court workers program should be established in Nova Scotia as exists in partnership with the Federal Government elsewhere in Canada (#24). (The NS Government accepted the recommendation but expressed the view that legal information and so forth for Mi'kmaq people might be better carried out via NSLA, and initially deferred consideration pending research on the topic being undertaken for the Tripartite Forum. A court worker program, under MJI 's direction, was established in 1997).**
- 6. There should be some sitting of Provincial Courts on reserves (#25). (The NS Government endorsed that recommendation and in the late 1990s provincial court did begin to sit at Eskasoni one day a week (it now sits there two days a week occasionally).**
- 7. Legal Aid funding (#26) should be provided to enable NSLA to specifically assign lawyers to work with native clients (# 26). (The NS Government took that recommendation under advisement. There is one native NSLA legal aid staff person in Halifax but none in the Truro / Shubenacadie or the Membertou / Eskasoni areas nor any Mi'kmaq para-professional or liaison workers. There is one Mi'kmaq lawyer employed with Dalhousie Legal Aid in Halifax).**
- 8. There should be liaison structured between the Mi'kmaq and the Bar society (#27) and through the Bar to defense counsel, NLSA and prosecutors. (The NS Government endorsed this recommendation but it is unclear exactly what has been done).**
- 9. Native constables should be hired by RCMP and MPDs (#28). (This recommendation was accomplished in the RCMP which has employed dozens of Mi'kmaq officers in the years since and spawned an aboriginal constable development program. It has been less achieved in the municipal police services; indeed recent statistics indicate that no band members are employed in these police services apart from Cape Breton Regional. In the mid-1990s, influenced by the Mi'kmaq leadership there, the Solicitor General Nova Scotia agreed to the formation of a self-**

**administered regional native police service in Cape Breton ('Unama'ki'). The service last until 2002 when it was disbanded and RCMP took over policing duties on all Unama'ki reserves).**

10. Native Justice Committees should be established basically in the format of such committees consulting on sentencing (#29). **(The NS Government endorsed this recommendation and in 1992 a diversion project was established at Indian Brook based on a band council approved membership. Once its federal funding was exhausted (a three year project) it ceased to exist. There are currently no formalized, native justice committees in Nova Scotia though the CLP's justice circles and sentencing circles do always attempt to incorporate community members).**
  
11. Probation and Aftercare should be a priority (#30); basically the imperative was to see natives hired in probation and also more community-based after-care on reserve. **(The NS Government also endorsed this recommendation. In the late 1990s a Mi'kmaq woman was hired as a para-professional liaison worker by Correction Nova Scotia in the Cape Breton area. In the early 2000s a Mi'kmaq person was employed full-time in the Truro region and a Membertou native was engaged to do pre-sentence reports. Currently only the liaison person is still employed in probation services. Within the past year and a half there has been a new partnership formed between Corrections and MLSN which has led to protocols and cultural gatherings in Cape Breton and other custodial facilities. MLSN's new "section 84" project will impact on federal inmates (parole release and possibly on aftercare services)**

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

The Marshall Inquiry report was generally seen as progressive by FN's and the mainstream media and a good number of its recommendations were adopted by the NS Government and subsequently implemented – ultimately - as noted above. The two areas

of notable shortfall were (a) the native criminal court, and (b) the community justice committees, both of which were identified by UNSI as pivotal with respect to Mi'kmaq capacity and to its community-based justice approach. Both appear to be relevant in present conditions as will be discussed below at many points in the text. The native criminal court was advanced as something other than a provincial court sitting on reserve. Presumably, a native criminal court would focus on central issues of crime and disorder in Mi'kmaq communities and be informed by a Mi'kmaq approach to dealing with them. The modern day concept in aboriginal society of a wellness court would seem to be a valuable way to conceive of such a court. As the Commissioners suggested and as the UNSI report highlights, community justice committees are crucial if Mi'kmaq justice capacity is to develop and justice initiatives advance beyond current levels of Mi'kmaq ownership and administration. Another area of shortfall from the Marshall recommendations but one that appears to be now being addressed concerns probation, incarceration programs and aftercare. It can also be observed that the Marshall inquiry recommendations focus on the criminal justice sector which is perfectly congruent with its mandate but there are aspects of its recommendations that refer to family justice issues and general use of alternative dispute resolution – ADR – in civil and regulatory (band bylaws) matters; clearly these justice issues have become more salient in Mi'kmaq society over the past fifteen years.

The underlying ethos of the Marshall Inquiry and its recommendations might well be captured by describing it as focused on “fairness and integration”. The vision and the accompanying agenda were to eliminate racism and secure the more satisfactory inclusion of Mi'kmaq people in mainstream society. The RCAP report, in 1996, while also dealing with the criminal justice system, set in train a somewhat different agenda. Having an ethos of “difference and autonomy”, here the focus appeared to be more on considering areas where constitutional rights, cultural differences and circumstances could lead to aboriginal administration and jurisdiction in justice matters. The enclosed brief overview of RCAP premises on aboriginal justice underlines this position. A distinction is drawn between ‘core’ and ‘periphery’ justice concerns and it is argued that in the core sphere -a limited sphere as can be seen – aboriginal society should be able to act unilaterally. Interestingly, the RCAP commissioners expected that whatever the level of parallelism, there would only be minor differences in the criminal justice field were the RCAP position to be accepted by Government and aboriginal peoples. There is a suggestion here that in other justice spheres, especially the family, cultural and other factors would make a greater difference. It can be observed too that RCAP acknowledged that standards of effectiveness, efficiency and equity may require a stronger cohesion of FN identity that transcends band affiliation; many times below, that position will be regurgitated in discussing the value of the province-wide MLSN.

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

1. Mainstream Criminal Justice System: Imposed, Alien, Does a Poor Job.
2. Treaty rights to develop alternatives exist
3. There are profound cultural differences between the Canadian and the Aboriginal approaches

CJS: Punishment vs. restoration and balance

AJS: Noninterference and individual autonomy.

4. Community control are appropriate given treaties, cultural differences, and pragmatic imperatives (e.g., identifying with justice, shaming effectiveness)
5. Core and Peripheral foci (qualifications for and especially for the criminal law).

Core if: Of vital concern to culture/identity and no major impact on adjacent jurisdictions.

And if not otherwise the object of transcendent federal or provincial concern

6. Aboriginal society can act unilaterally with respect to core foci but if a matter is peripheral, it needs the agreement of other relevant orders of government before jurisdiction can be exercised.
7. Posits wide autonomy, but actually expects minor differences on the whole in the criminal justice field.
8. Standards of efficiency, effectiveness and equity may require a stronger cohesion of FN identity that transcends band affiliation.

## **THE EMERGENCE OF THE MLSN: GOVERNANCE**

With the demise of MJI, the TWC, a mix of Mi'kmaq and governmental representatives, continued to exist as did MYOP which returned to the UNSI organization. It has to be emphasized that the demise of MJI had nothing to do with the programs that had been delivered under that umbrella justice organization. The three basic programs – court (justice) workers, MYOP and court interpretive / translator services – had functioned well and were well regarded in the Mi'kmaq community and by mainstream justice officials. The problems of MJI had basically to do with management, financial accountability and governance in general. Subsequent to the demise of MJI, the TWC remained committed to re-establishing the programs and umbrella organization. Research was contracted and legal opinion sought. Then in 2002 a special team of government officials and CMM officials was spawned by the TWC to create framework models and protocols for a replacement body, the MLSN, and funds were found to employ a full-time coordinator to head up that exercise. The result was agreement on a plan to advance a model entailing the format of an umbrella organization, funded in its own right, managing Mi'kmaq justice programs and services province-wide. The first target for MLSN attention would be the resurrection of the court worker program. It was anticipated that – subject to the approval of course of the Officials Committee - MYOP would leave UNSI and become part of MLSN once the latter was formally created. In the governance model advanced, CMM would co-manage MLSN, taking responsibility for financial and personnel matters (MLSN staffers would be CMM employees) and leaving the management and operational service delivery of programs to MLSN management. The importance of the CMM role for the emergence of MLSN can hardly be overstated; as one well-placed Cape Breton Mi'kmaq person commented, “CMM, they have been tremendously supportive and they have provided the structure and the accountability that was needed in light of the past disasters, the dark days [of MJI], particularly with the system and the funders, strong accountability, not so much in programming, but for a strong financial agency”.

The MLSN foundation documents also called for the creation of an Advisory Committee. It was to be drawn from both representatives of the major Mi'kmaq organizations and include federal and provincial government representative. The AC was charged with the responsibility of providing vision and direction for MLSN, for supervision of it, and was expected to meet bi-monthly and, at the least, six times per year. The TWC of course remained a vital player since Mi'kmaq justice initiatives were envisaged in the Tripartite Forum context. The role of the TWC was largely a collaborative one, discussing and advancing worthwhile and feasible Mi'kmaq justice initiatives – essentially the role set out for the TF in the 1990 recommendations of the Marshall Commission noted earlier. All major initiatives advanced within the TWC format, whether for MLSN or otherwise, were to be approved by the Officials Committee consisting of the 13 chiefs and federal and provincial representative. That governance framework is depicted in Model B.\*

Over time, the governance model evolved into a somewhat different entity than originally envisaged. It became more a system as depicted in Model A. The TWC became, as attested to by virtually all its interviewed members as well as MLSN

managers, a de facto board for MLSN. CMM's role remained essentially as originally defined though it provided more, at least in the TWC context, of both the supervisory and visionary functions vis-a vis MLSN. The AC did not realize its functions as set forth in the founding documents. Its meetings were few and the attendees generally constituted a sub-grouping of the TWC (see minutes). It became basically redundant. It is unclear why this development occurred. There certainly was no power play by the TWC or CMM and their enhanced role with respect to MLSN was largely a function of their filling gaps left by a redundant AC and a very thin MLSN management. The shortfall of the AC by the end of 2004 was reinforced by MLSN's financial pressures which reportedly caused it to limit severely the number of future AC meetings.

The governance framework for MLSN as depicted in Model A has served MLSN well. From the disarray and low spirits of 2000, MLSN has emerged into a credible and much appreciated organization in the eyes of the vast majority of Mi'kmaq and mainstream justice people. The TWC has fully identified with MLSN, taking on its objectives as its own, working hard to find the always precarious funding, and even usually contributing its own annual budget surplus to MLSN. CMM has provided solid financial and personnel management and, while having, as an organization, responsibility for a specific grouping of mainland FNs, there has not been any hint of political interference or favoritism on its part vis-a-vis the programs and services delivered by MLSN. In the tripartite context, too, as noted, key policies and initiatives are expected to be vetted by the Officials Committee which includes all thirteen FN chiefs.

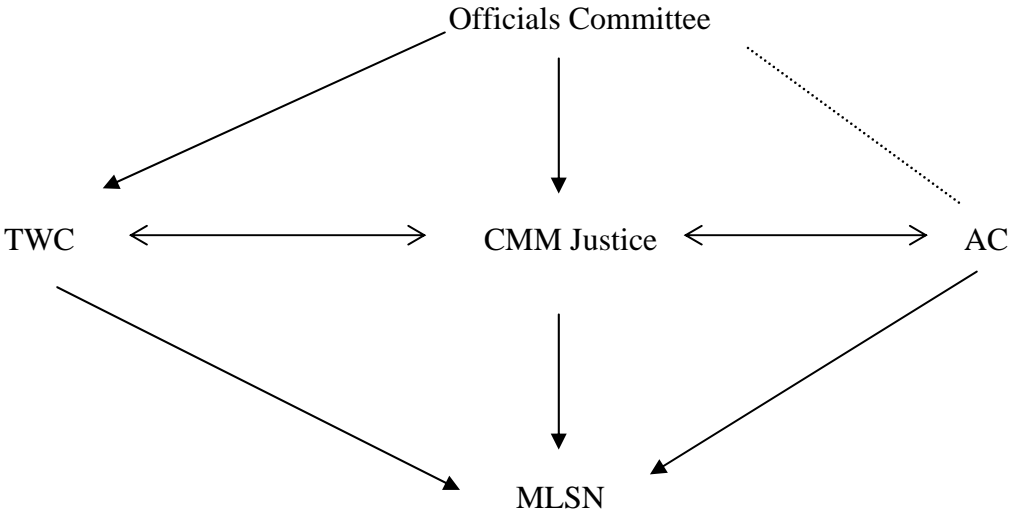
The founding documentation in 2000 indicated that in four or five years time there should be a review of the governance structure of MLSN. Clearly the AC has been one area of shortfall. Its resuscitation, perhaps with a different set of members, into a more clearly Mi'kmaq-dominant body representative of Mi'kmaq standpoints and interests on the Mainland and in Cape Breton, would appear to be especially crucial now that the MLSN is in place and has to consider its future justice trajectories at a time when Mi'kmaq society is evolving so dramatically. Another shortfall, perhaps the inevitable consequence of the challenges of re-establishing a province-wide umbrella organization with limited financial resources, is that the governance structure could be defined, and generally has been by almost all interviewees, as a "top down" initiative. Efforts have been made by MLSN leaders to establish ad hoc community committees and to meet with band councils but they have largely been fruitless despite their best intentions. If MLSN is to advance more on its accomplishments and explore new trajectories, it would seem necessary that it create has more solid community linkages; these might well involve community justice committees authorized by band council resolutions to collaborate with MLSN. Securing a mandate for evolution requires developing a vision and in Mi'kmaq society that would appear to require in turn a vital AC and engaged communities. There are other reasons to consider attention to governance including perhaps the need for personnel policies adapted more to the particular features of MLSN programs and services. Assuming that the TWC will be a continuing collaborator along the lines specified in the original governance model and that CMM would continue to exercise at least an important financial management role, this amended governance would be as

depicted in Model C. We will return to this topic in the section on future directions below.

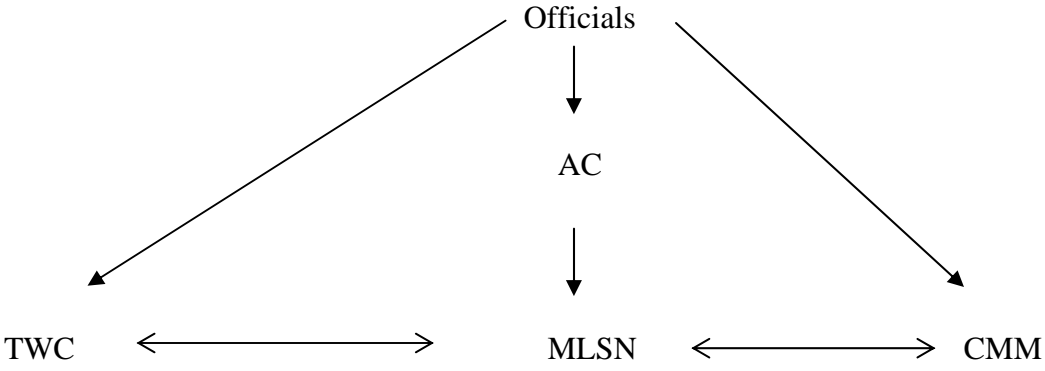
\*In the graphs included here, a single headed arrow indicates the line of direction and authority; a two-headed arrow indicates co-partnership, collaboration. A dotted line indicates uncertainty on the researchers' part about the relationship. Model A depicts the current situation. Model B depicts the governance set out in the MLSN draft in 2002 (the latest such document that was found). Model C depicts the recommended transitional model.



**Model A: CURRENT GOVERNANCE**



**Model B: FORMAL GOVERNANCE**



Where:

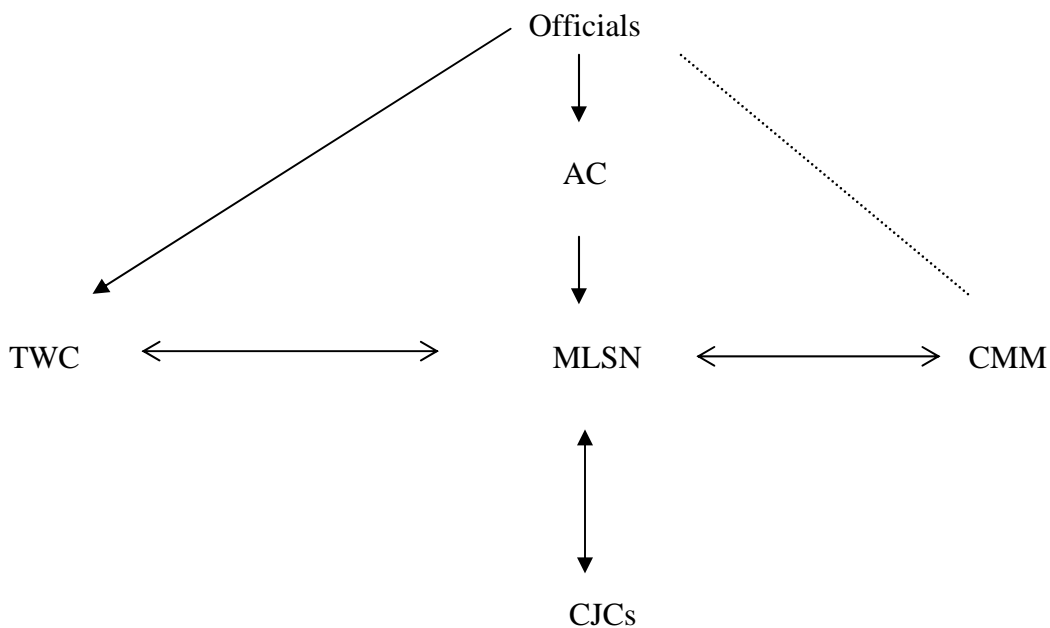
Officials Committee = 13 Chiefs and Federal & Provincial Government Representatives

TWC = Tripartite Working Committee in Justice

CMM = Confederacy of Mainland Mi'kmaq

AC = Advisory Council

## Model C: FUTURE GOVERNANCE?



### Where:

Officials Committee = 13 Chiefs and Federal & Provincial Government Representatives

TWC = Tripartite Working Committee in Justice

CMM = Confederacy of Mainland Mi'kmaq

AC = Advisory Council

CJC = Community Justice Committees

## **THE EVOLUTION OF MLSN: THE UMBRELLA ORGANIZATION**

The chief recommendations of the Clairmont and McMillan report (2001) on the future of Mi'kmaq Justice in the wake of the demise of Mi'kmaq Justice Institute (MJI) were (a) that an umbrella organization for Mi'kmaq justice initiatives, with separate secure funding, be re-established; (b) that the central programs of court work, alternative justice and interpreter service be re-vitalized and united and (c) that the evolution of justice services be incremental, avoiding overload and building upon successes in implementation and service delivery. These recommendations, save for the interpretation service, have been realized over the past three and a half years. In the 2002 MLSN Framework document, it was stated that "the short term direction is to develop a sustainable justice support system that will address inequalities experienced by Mi'kmaq FN peoples within the mainstream justice system and to build strong partnerships with all levels of government". That basic objective has been significantly accomplished. Clearly not all specific projects advanced in the 2002 document have been delivered but MLSN has delivered well on the offender-oriented projections – CWP, CLP, Custodial services, Offender reintegration, Fine Options, and is making progress on still other related matters such as facilitating access to legal aid.

The first full year budget for MLSN was 2003-2004. The progress since then has been notable and certainly abetted by the sponsorship of the CMM acting on behalf of all thirteen chiefs, and the championing by the TWC which has acted as advocate for MLSN and located the funds necessary for the specific programs, CWP and CLP, as well as for the umbrella organization in its own right. The funding for the CWP and CLP – roughly comparable in the \$225,000 range - has become quite secure. The former is associated with Canada's only aboriginal justice program (program as opposed to a project), namely the Native Court Workers program where federal and provincial governments equally co-share (50% each) the costs. The CLP has been associated with the Nova Scotia Department of Justice's NSRJ program and is also co-funded by the two levels of government (on a 60% to 40% basis). Both programs typically have multi-year contracts and appear to have long-term financial stability. As in the case of its MJI predecessor, there has been uncertainty from the start in the funding for the core MLSN itself, in large measure because its funding does not fall neatly into any on-going governmental program. There is a strong commitment from the province for roughly \$50,000 and a similar though more diffuse buy-in at the federal level (e.g., INAC, Department of Justice). Generally, thanks to the efforts of the TWC members, the federal and provincial governments one way or another have come up with the base funding for a modest core staffing (roughly \$140, 000 annually) but each year much effort has to be expended – and much anxiety experienced - securing the funds and that usually has entailed the TWC assisting MLSN in securing one time grants from other governmental agencies, usually at the last moment, to cover potential shortfalls; for example, in March 2003, TWC minutes indicate that the MLSN budget was short \$75, 000 for fiscal 2003-2004, in February 2004 the minutes indicated there was still a shortfall of \$92,000 for fiscal 2004-2005 and in February 2005 the shortfall was projected at \$50,000 for fiscal 2005-2006. MLSN funding for 2007-2008 appears to be as uncertain as ever.

The CWP program was re-established as a CMM program in the summer of 2003. The MYOP youth justice program, subsequently renamed the Customary law Program, as noted, had continued to exist under the sponsorship of UNSI and had a collaborative relationship with the provincial restorative justice program. It was agreed by an all chiefs' resolution that in the new fiscal year (beginning April 2004) it too would come under the CMM authority while retaining its association with the provincial NSRJ program. Extensive training, drawing on materials from several sources including the earlier UCCB program for court workers and the NSRJ program for restorative justice, was provided to the court workers and the justice workers in early summer 2003 and in September 2003 the CWP/CLP team was formally introduced to the TWC. The MLSN complement at that time included a director (75% time), a coordinator for each of the two programs, three court workers (a fourth dropped out before graduation) and three justice workers; additional staff included an administrator in Eskasoni and CMM administrative assistance in Millbrook. There has been significant turnover among MLSN staff over the subsequent three years. At present the MLSN regular complement is of slightly less size though differently arrayed. The founding director resigned to take on a key role in the KMK/MRI treaty process and her position has been divided into two roles, one managing the substantive MLSN activity (on a two day per week basis) and one dealing with financial and personnel matters. There is now one coordinator (who herself continues to be a busy facilitator) serving both CWP and CLP programs, plus three court workers, two justice workers and two staff persons who combine both CWP and CLP responsibilities; in addition the administrative support workers continue in the Eskasoni and Millbrook offices. It is clear that MLSN has what has been described frequently as a "thin management" from an operational perspective.

Despite the funding uncertainties and the turnover of staff, MLSN and its constituent programs have evolved steadily. The court worker program has functioned well in three of the four targeted zones (see below) and the staff recently became more engaged in cultural activities for inmates as well as in the preparation of Gladue reports. The CLP program has provided justice circles for youth in all regions of the province and its employees have facilitated several sentencing circles and restorative justice circles for adults (see below) as well as being involved in the "cultural gatherings" in custodial facilities. Taking full advantage of the opportunities presented by having programs together under the same direction, CWP and CLP workers share in many tasks, and, to align resources better with demand (one decision essentially shifting a staff member to Cape Breton from the less busy Halifax area), two staff persons are now designated as available for both kinds of service in their area. An important growth area for MLSN has been the expansion of service to incarcerated offenders and in arranging for, and having CLP staff facilitate, "Section 84" parole releases where parole release conditions are developed and agreed upon through discussions among the an array of people - inmate, community people, support service personnel and so on. The latter initiative basically has just begun so the impact is unknown but multiyear funding has been secured (enabling the hiring of additional staff), a highly successful informational workshop held to inform Mi'kmaq communities about the Section 84 possibilities (some 70 persons attended the two day meeting) and two inmate cases have been processed. The byproducts of the cultural gatherings are more evident. They have been well-received by inmates (whether

aboriginal or not) and the custodians who have praised them for reducing tensions in the facility; indeed, one Mi'kmaq inmate was cited as noting "how important it was for him and made him want to be home and not return here". (Mail Star, September 25, 2006). There is now a much closer collaboration between Corrections and MLSN and a greater sensitivity in the institutions to Mi'kmaq traditions, reflected, for example, in new undertakings regarding temporary release for funerals of extended family members and so on. Clearly, MLSN is increasingly able to provide "full service" to offenders, ranging from justice circles to court workers to cultural gatherings and parole release arrangements. Given the continuing overrepresentation of Mi'kmaq in terms of arrests, convictions and incarceration, the MLSN programs are salient and valuable.

Other justice activities engaged in by MLSN include discussion with provincial government officials concerning the possibility of a circuit court in Indian Brook, cultural orientation sessions for judges and others provided by CWP and CLP staff, and promoting the hiring of Mi'kmaq people in the justice system. MLSN has invested significantly in upgrading for staff, providing opportunities for their attending conferences and workshops on restorative justice, family violence, aboriginal justice (e.g., the status of RCAP recommendations), and interesting transformative approaches such as "the Virtues" program). The expertise and experience of MLSN, particularly in its CLP guise, has been sought out for dispute resolution matters by organizations such as DFO, the RCMP, Mi'kmaq Education (i.e., MK) and by a working committee of the Tripartite Forum itself.

MLSN faces a number of challenges. Perhaps the major one has been the continuing frustration over core funding which deflects TWC members and MLSN's managers from strategic planning. As noted, there has also been a turnover problem. The majority of departures have been occasioned by staff members leaving for better opportunities. Like many non-profit organizations, MLSN employees, while participating in CMM's employee benefit package (health, pension etc), receive modest salaries and have little opportunity for promotion, and as several members of the TWC reported, young semi-professional Mi'kmaq persons are at a premium in the evolving Mi'kmaq society. Moreover, the work environment can be quite stressful as staff members have to be "self-starters", networking with justice officials, persuading offenders and victims (and their parents) to collaborate, and dealing sometimes with unpleasant situations and troubled clients (e.g., MLSN staff members report a high level of suicide among their clients). TWC (including CMM of course) and MLSN coordinators have sponsored several team building meetings to abate such stressors. A significant minority of MLSN departures have apparently been due to dissatisfaction with the policies and procedures of the employment contract. Given the difficulty of altering dramatically the factors that determine extrinsic job satisfaction – money, promotion opportunities, uncertain environmental factors – internal intrinsic job satisfaction considerations (the challenge and accomplishment of the job, having the resources to do it well, the clarity of the responsibilities etc) become very significant in retaining personnel. Nevertheless, one should well expect turnover, perhaps even celebrate in it if it is positive for the individual and Mi'kmaq society, but also plan for it so that any destabilization is minimized.

Two other major challenges for MLSN involve linkages to Mi'kmaq communities and direction of its future growth. MLSN managers have found it difficult to engage volunteers in their programs (though there are some very dedicated ones as noted below in the section on opinion leaders) and to get the attention of band councils. The MLSN program, as they attest, is "a top down one". That model has served well in the emergence phase but is increasingly questioned now that MLSN is in place and moving forward on other justice initiatives. Issues of getting more deeply involved in justice circles for serious repeat offenders, dealing routinely with adult offenders, possibly expanding into family and regulatory justice matters (the former being especially in demand), or partnering with local services in areas such as victim services, demand more attention to vision, accountability to the FNs, and strong community linkages in order to develop a strategic action plan that is feasible. Other challenges related to the service delivery model utilized in the specific programs and the continuous need to network with justice officials are discussed below in relation to the CWP and CLP programs.

Review of the minutes of the TWC is revealing since they speak to the issues facing MLSN and Mi'kmaq justice and to the value of the TWC. Certainly the TWC members have nurtured the MLSN development. In December 2004 it was reported that "It was decided to add MLSN objectives into the justice working committee's work plan". Since the former cited commitment to RCAP principles as discussed above, that represents a significant commitment. The considerable anxiety about and effort expended on core funding for MLSN is quite evident in the minutes. The TWC also worked at funding special projects such as 'cultural gatherings' in institutions, and team building exercises for MLSN, and each year directed any surplus in its small working budget to MLSN coffers. Regular issues raised at the TWC meetings included the problems of inadequate interpreter service (see below), possibilities for getting more involved in band bylaws issues (apparently there was little enthusiasm by the chiefs and the matter was dropped for the nonce), the demands for some MLSN engagement in family court issues (as noted below CWP workers do help out in providing some information to litigants here but on a very limited basis), access to legal aid on reserves (reportedly office hours have now been arranged for NSLA in Eskasoni), and cultural orientation activity (conveying "aboriginal perceptions" as one RCMP attendee stated). The TWC basically has had more of a support role than a directing or assessing one, regularly praising MLSN programs and staff and empathizing with their concerns.

The function of the TWC as a forum for considering justice issues (e.g., policing) brought forward by MLSN people where there was no direct program activity on MLSN's part was also interesting. Here the Marshall Inquiry's focus on the TWC as a sounding board and possible advocate for justice initiatives was realized. The TWC has been largely reactive to MLSN concerns, an approach quite befitting a de facto board which appreciates that it could not advance a vision for Mi'kmaq justice, but this TWC function as vetting ideas and collaborating with advocacy is a dimension of the MLSN-TWC that could be much more developed in the future. For example, the suggestions elaborated upon below concerning a wellness court to deal with offenders with alcohol and drug addictions, could represent such a TWC-MLSN partnering since any such court would be the responsibility of the government, not be something managed by MLSN.

Senior MLSN coordinators were very positive about the TWC linkages (“yes, it is like our board”) and viewed that relationship as crucial and on-going. They appreciated the CMM contribution and the stability and credibility it has provided. At the same time they were very sensitive to the standpoint that MLSN is “top down” and in need of both greater Mi’kmaq input into its vision (current and future) and stronger identification with the communities. They were proud of the progress that MLSN has made and wary about getting involved in justice initiatives without having the requisite resources (e.g., doing time consuming Gladue reports). Some activities such as opportunities to have sentencing circles and cultural gatherings were seen as so symbolic of Mi’kmaq justice that they responded without seeking additional funding (some funding was later received for the cultural gatherings). They acknowledged that perceptions of MLSN as offender-oriented were valid and were concerned about how to respond better to victims’ needs. They showed an awareness of the need to shore up intrinsic work satisfaction on the part of staff by encouraging a more participatory meeting format over the past year. The coordinators of MLSN were fully committed to the province-wide, umbrella MLSN structure and appreciative of its strengths and challenges. One respondent commented,

Being a provincial organization carries more weight than if we were just a smaller program of something else. Being MLSN there is more accountability to the Mi’kmaq community and we seem to be getting more response from the system. The mainstream justice system ... it might have something to do with accountability wise, but I think is just has to do with the reputation of the programs [customary law and court worker]. That people are seeing MLSN as a viable resource to go to. A lot of these issues have been there. The mainstream system as being challenged with these issues for so many years and they have never had a venue where they could bring these issues forward to have them addressed. Such as the correctional institution here, they have always had those same issues but they did not know where to go. So now having this broader provincial organization it is sort of opening the door.

Asked what MLSN required to progress further, one coordinator responded “secure multiyear, core funding enabling it to have a full-time director, community coordinator, a modest research capacity and appropriate administrative assistance”, pretty much what the researchers had recommended in the 2001 assessment.

## **THE COURT WORKER PROGRAM**

The assessment as noted earlier was not asked to review the specific programs, CWP and CLP, so there was no direct examination of their activities nor any recourse to the views of those who used the services. Also, in discussing MLSN and its programs with mainstream justice officials, contact was limited to three areas, namely Membertou / Eskasoni, Truro / Indian Brook and Halifax Regional Municipality (HRM). In the annual report for 2005-2006, it was noted that the CWP had a budget of \$220,000 and dealt with 1162 adult referrals and 174 youth referrals. According to the reports, as well as the court worker interviews, the clients were predominantly male and there were many repeat

users. The main charges faced were assaults and breaches. “No shows” were identified as a key court issue by the court workers as well as by mainstream justice officials (see below). Sentences of two months or so were common, sometimes for numerous breaches and sometimes apparently because the offender did not pay a fine (it was unclear from the court worker interviews whether or not the individual could have paid the fine). The reports did not indicate much about what the CWP employees did nor provide any analyses of the caseload features but in the Advisory Committee minutes (July 2004) it was reported that the federal official who liaised with the project commented, “MLSN is in very good standing and progressing well. She is also impressed with the court workers’ reports”. The reports did indicate that CWP workers had experienced some opportunities for upgrading, attending conferences and workshops, most notably one on Gladue assessments in Toronto.

The busiest court worker posts were in the Membertou / Eskasoni (covering the courts at Sydney, Eskasoni and Baddeck) and the Strait area (serving the FNs of Paq’tnekek, Chapel Island and Whcocomagh and covering the four courts in that region). In the Membertou / Eskasoni area the court worker indicated that he provided service to as many as 100 persons per month in the September to June period. The court workers in these two areas have been in their posts since the re-emergence of the program in 2003 while there has been one turnover in the Truro / Indian Brook area and several in HRM. Whatever the reason - the court on reserve, the collaboration of justice officials, the personal style of the court worker - it appears that the relationship between court worker and court officials and between court worker and community identification are very strong and intensive (and positive) in Membertou / Eskasoni and weaken as one approaches HRM where they are almost non-existent. The limited information available suggests that would be the situation also in South and Western Nova Scotia. The HRM situation is a result of several factors, including the few aboriginal accuseds in HRM courts, the transient characteristic of many who are defendants (according to an aboriginal legal aid lawyer) and the turnover of staff. The recent move of the HRM court worker from an office building in Dartmouth to the Friendship Centre located in the “Uptown” of Halifax will undoubtedly increase the court worker’s exposure to the aboriginal court cases that do arise.

The strains of court work have been noted above but it is useful to recognize the extent to which court workers in the Cape Breton / Strait region experience day to day pressures whether that be in the grocery store or calls and visits to their homes. For example, one of these workers related a not uncommon incident which captures both the pressures of the job as well as the need for court workers to exercise discipline in response,

I was in Waterville Youth centre doing a gathering and could not make it back. Cop on the phone called, asked if I was a court worker and said [x] is here and we will release her to your custody, but I was not home and I could not do that. Her family was upset she was in jail but I told them it was the safest place for her. That night I came home there was a note on my door from her mother, her mother was all over the community crying and going to the elders and they said you’ve



got to do something. I said I will do something. I will be there when she is in court.

A major strain and “professional” challenge for court workers concerns their role vis-à-vis victims, especially in serious cases where the offender and the victim were from the community where the court worker resided. One worker describes the considerable feelings she had to control when faced with such situation, as follows,

I see a position like mine as victim services. I work along with the aboriginal accused. I work along with the man that beat up mom and mom is on the other side, black eye and kids and no one is with her. Next court date comes up and mom's on that side because they apprehended their children because she put them in danger. So mom then comes to me and becomes my client because 'I need my kids back. I got them taken away because of him, he did this to me and they took away the kids because they watched and when they interview the kids they say 'dad makes mom cry' 'and what does mom do?' 'Mom puts us in a room and locks the door'. She is helping them through her eyes. I sit there tearing up inside and she says how can you sit with that bastard and I know, I just want to tell her I want to be there for you.

Such pressures and strains exist for the other court workers too but are less “in your face” if one does not reside in a high crime / social problems area. Despite the strains and pressures all three full-time court workers from Sydney to Truro reported that they liked their job and believed that they were providing a valuable service to individuals as well as representing and advancing a Mi'kmaq perspective in the court process. One court worker, for example, reported that conveying basic aboriginal perceptions to court officials, such as that a native's aversion of eye contact should not be misconstrued as an expression of guilt, have made a difference. The extension of their work to cultural gatherings in custodial facilities was also viewed in positive terms. Court workers generally do not participate in the CLP's justice circles, basically because their caseload is heavy enough as it is. One veteran court worker commented,

Did you facilitate circles?

CW: Yes. I have done 4 but our case load is so high with the court worker program they don't want to lay all that responsibility on us. I only do circles in an emergency because I serve more people in court. When someone needs a co-facilitator they call and I will go if they need someone to witness that the circle took place, in case someone else says no one was there. I can sign off on the papers.

In adjusting human resources to demand, and also for job diversification in at least one instance, MLSN has recently been experimenting with “combo” responsibility positions (doing both CWP and CLP tasks) in both Cape Breton and HRM.

All the court workers indicated that they have received virtually constant requests for information and support with respect to family court matters. Here is one exchange on that issue,

Are you asked for advice about family law?

CW: That is another issue. For one we are not allowed to get involved with any family law; according to MLSN we are strictly criminal. We deal with criminal court. Now people come to me with some stuff with family division and I assist them in filling legal aid. They come to me with questions about getting custody of their kids. I hang out in the courthouse 80% of the time and I tell them what they have to do for divorce, maintenance, custody and I will help them fill out the forms but that is as far as I can go.

Is there a need for a position like yours in family court?

CW: I was just talking about it this morning. There were two ladies at the court this morning offering to talk about intake support for family court and if MLSN would like some training in it. I said we are not involved in family, but it would be a good tool for us to have, if in the future we were to have a family court worker. I think they were involved with FLIC, the family law [sic] information centre. I do see a demand. There are an increasing number of Mi'kmaq people in the family division; people are going to court more to solve family disputes.

Another court worker commented,

[In case where child protection is involved] at that point the social worker will be working with the parents but the parents don't want to work with the social workers because they are apprehending your children, so who do they look for, for help; chief and council will ask me to help them fill out the legal forms, but that is as far as I go because we don't do family court.

Are you getting many of these requests? Increasing numbers?

CW: Yes, yes.

Do you see a need for a position like yours that deals with family court?

CW: I very do.

The court workers' responses are interesting for several additional reasons. First, there is the question of the court worker role where there is a real or perceived void to fill. In the case of family court matters, court workers, giving ad hoc advice (they have received no training / orientation here) that might be inappropriate and based more on good will and empathy than on solid knowledge, could be very problematic. For example, in all child protection cases, legal aid is available to the caregiver being challenged for custody and in HRM and Sydney there is also free summary advice counsel available. In the criminal court there could be issues were the court workers under present conditions (i.e., no training in this area) to "speak to the sentencing" where no defense counsel is present. A second issue is the possibility that Mi'kmaq alternatives to formal institutional responses may be valuable in family justice matters and whether MLSN could and should provide it. A veteran court worker commented on this in the following exchange,

Any thoughts why people might turn to family court rather than turning to the community to solve their problems?

CW: I think there is a new program [in MCSF] involving reconciliation, family conciliation it is almost like restorative justice. I have talked with a few lawyers about this and there is a need because the Mi'kmaq traditional life versus the main system is a lot different. I believe that if the problems are dealt with here in the community a lot of the problems would not have to go to court.

Do you see MLSN as finding a space to handle that?

CW: I do believe they could. We already have a foundation here; we understand the process. We may need a little more training but not too much because we are already trained in the justice field. MLSN, we have a good reputation of assisting people. I do get phone calls from people crying, wanting help to get custody. I get three intakes a month average looking for information. I help them fill legal aid, custody, divorce. I get them to take it to the court house.

Do you ever say I cannot help you?

CW: It is really hard for me to say that.

Overall, there are some service delivery issues in the western half of the mainland and court workers reported several issues for attention, namely the need to improve interpreters' service (in the Strait and Cape Breton area in particular), how to respond to victims, and the growing demand concerning family justice issues. One veteran court worker, noting most of these issues, put them in perspective with the following comment, "we've done well and can expand further".

## **THE CUSTOMARY LAW PROGRAM**

As with the CWP, direct assessment of the CLP was not part of the assessment mandate. A few CLP workers did contact justice circle participants (offenders and victims) on our behalf and their findings reflected the general patterns found in the mainstream restorative justice programs, namely that offenders and their parents were quite satisfied with the processes and outcomes of the justice circles, whereas victims more so with the process than the outcomes. It was also found that if victims attended a justice circle they were satisfied whereas those who did not were more critical. The CLP, as a restorative justice type approach to young Mi'kmaq offenders, has roots going back to the mid-1990s (then known as MYOP) and its coordinator, who has been associated with the program since that time, is well-regarded as an expert facilitator throughout the Atlantic region and beyond. In 2006 the CLP had a complement of the coordinator, one and half position on the mainland and two positions in Cape Breton. Its budget in 2005-2006 was some \$237,000, roughly 15% of which went into travel costs. The program has a partnership relationship with NSRJ and, like the eight regional non-profit restorative justice agencies funded by NSRJ, its focus has been on all offenses committed by youth, save for spousal/partner violence and sexual assault. All aboriginal young offenders directed to restorative justice by police or other justice officials anywhere in the province are channeled through the CLP though they can opt out. Like the other agencies, it also

handles the assignment and monitoring of community services orders on a contractual basis with Corrections Nova Scotia. Unlike the other agencies, there is an understanding that the CLP, while adhering to NSRJ standards, has certain functional autonomy and can respond to Mi'kmaq interests. Accordingly, the CLP can also do occasional justice circles and sentencing circles with aboriginal adult offenders. It is understood as well that the CLP has an important mandate to advance cultural awareness / aboriginal perceptions in the criminal justice system.

The annual CLP report for 2005-2006 indicates that the CLP received 74 referrals to its youth justice circles. The bulk of these referrals (70%) were from the police for minor offenses but it is notable that the percentage of post-charge referrals was the highest in Nova Scotia outside HRM. These essentially crown-level referrals came from both Cape Breton and the Mainland, indicating a high level of cooperation throughout the justice system. The offenses entailed were typical for restorative justice programming, namely "theft under", mischief, trespassing and, much less frequently, threats and break and enter. The agreed undertakings that resulted from the justice circles were also quite typical, usually apology and/or community service work. Cape Breton justice officials accounted for the majority of the referrals (60%). The youths referred were, as elsewhere, overwhelmingly male and while the data did not permit an examination of repeat referrals, personal communication indicated there were a number of youth who had been referred to the program on more than one occasion. Like most restorative agencies in Nova Scotia outside HRM, CLP referrals had declined, here about 14%, from the previous fiscal year. Factors behind this decline appear to have been the impact of the YCJA implementation (encouraging police to resort more to informal warnings) and a decline in youth crime. In addition to the justice circles for youth, the report indicates that the CLP was involved in several "community justice forums" (i.e., adults referred under the RCMP format of restorative justice) and several sentencing circles (three of each).

Given that an assessment of the CLP was not part of the assessment mandate, there is little that can be said with respect to the quality and success of the CLP justice circles. According to the CLP 2005-2006 report, there were a number of cases where the referred youth was apparently unwilling to participate or where jurisdiction lapsed; as well, there were a few cases where the file was returned to the referral source because of a youth's failure to comply with the justice circle agreement. Putting a precise figure or percentage to the unsuccessful cases is unwise since there was a significant amount of missing information in the report and also since there were inconsistencies between the report and the provincial data management system in terms of compliance; for example the provincial data system (the RJIS) showed a higher percentage of successful completions than the CLP report did. Data were unavailable on the percentage of cases where the victim was present at the justice circle but the provincial data did indicate that in 2005-2006 70% of the referrals that the CLP received did involve a person victim, well above the provincial average for all restorative justice cases of approximately 56%. The adult justice circles and the sentencing circles (also involving all adult cases) were too few to deduce any patterns since, of the handful, one or two were apparently still open. Testimonial data from the participants in this study's sample of opinion leaders, who

were involved in justice circles or sentencing circles, as well as from the CLP workers, indicated that the processes if not always the outcomes of the circles were highly valued.

The CLP program arguably has been the “lead” MLSN source for cultural activity. Its staffers have been the most involved in the cultural gatherings, the most called upon to promote (orient) others on the Mi’kmaq approach, on the basis of early beginnings, appear most likely to facilitate the release agreements in the section 84 project, and have received and responded to the requests from other organizations to facilitate disputes. The staff members have taken on these activities with enthusiasm and success. The tasks have provided a meaningful and enriching job diversification. The CLP members, on the basis of the interviews, would also appear to have been the most likely to attend conferences and workshops. Clearly, a significant amount of experience and expertise has been developed. That is perhaps why the turnover problem in MLSN has to be seriously considered since it has been the greatest in this program; four and perhaps five CLP employees have resigned since 2003. The fact that all known cases have involved the staff member moving on to higher paying employment with local Mi’kmaq agencies or better opportunities outside the province underscores both the quality of the CLP persons hired and the need for a “turnover strategy”.

As the 2005-2006 CLP report notes, there have been some service delivery issues in the CLP program. The referrals have been low on the mainland and, given their dispersal over a wide area, have been costly to process. The use of volunteers has taken place (e.g., Bear River cases) but often two staff members have been involved in the justice circles no matter how minor the offence. Servicing the dispersed cases has been demanding of staff in terms of travel demands, and travel costs have been high (an issue cropping up several times in the TWC minutes). It may well be that there are other service delivery models that could be instituted, especially if effective and well-rooted community justice committees were established, which might permit the CLP staff persons to coordinate more justice circles and husband their own time more fruitfully (see Future Directions below).

The CLP, especially but not only on the Mainland, also appears to have two problems concerning referrals that are common to other restorative justice agencies in Nova Scotia, namely a declining and changing pool of young offenders, and a continuing, significant demand to network with the justice officials who control the referral process. In the central Nova Scotia region, for example, the police officials have referred very few cases over the previous six months (none from the Truro police or Bible Hill RCMP and Millbrook RCMP and only one or two from the Indian Brook RCMP). When asked about this situation police have generally said simply that there have been few young offenders and the few have been repeat offenders, not good candidates in their view for referral to restorative justice. Sometimes, there was mention of the YCJA impact – one officer commented for example that, given the paperwork requisite before a referral is made, police would lean towards an informal cautioning (empowered by the YCJA) in simple cases and charges in more serious ones. Clearly, if the eligible pool of referrals is changing dramatically as it might well be, a premium may have to be accorded to networking with police and other officials to optimize the referrals, encouraging police

perhaps to be supportive in advocating referrals for more serious cases at the crown prosecutor level. Such a development has occurred in HRM where police may consider a charge necessary to underline the seriousness of a youth's action but also routinely support a subsequent restorative justice referral by prosecutors.

Networking with justice officials has been a major demand in most restorative justice programs since police and crown essentially control the referral process. There appears to be much confusion and certainly significant ambivalence on the part of police services with respect to referral policy and process. The NSRJ office did engage in significant orientation at the onset of the program and when new agencies came on stream but that was several years ago and most agency directors have called for a major new provincial initiative in this regard, a call that has been endorsed by the NSRJ program management team (September, 2006). Networking for a small province-wide body such as the CLP, and one with a Mi'kmaq perspective, can be daunting so the CLP could well profit from such a provincial initiative. It is interesting that the judge who has referred the most sentencing circles and ones where the judge attends and issues a decision on site, the "full monty" as it were, is also the only one judge in the province who has attended workshops (outside Nova Scotia too) on the sentencing circles. One CLP worker captured the importance of networking in the following remarks,

There is a high turnover [among police] and we have young recruits that don't know about our program or have sergeants that don't know so we need to bridge those gaps. We are all over the place all the time, so just building the network is what I am starting now ... We encourage police to come [to the justice circles] without uniforms so the person can see them as human beings not as police officers ... I want to bridge that gap between youth and police, and between community and police ... We have a lot of members that will not bother to go through the circle but we have regulars that do care.

One area where there does appear to be genuine confusion is whether the RCMP services in their "community justice forum" guise (their own restorative justice approach wherein they can handle adult as well as youth referrals) can refer adult cases to the CLP. Agreements with the NSRJ and internal organizational developments have apparently led the RCMP to refer the youth cases to the NSRJ-affiliated agencies (including the CLP) and to diminish their own separate handling of adult cases as well. The RCMP detachments contacted did indicate that they had more adult cases that could be referred to the Mi'kmaq CLP if that were accepted policy. Some CLP workers indicated that they believed the CLP approach was to focus on youth and basically only work on adult cases in healing circles and sentencing circles, a position that is congruent with the data in the CLP annual report. There does appear then to be room for expansion if adult referrals were added routinely to the CLP eligibility pool.

The CLP employees interviewed exhibited a high level of satisfaction with their work. They appreciated the diversification of their activities and the opportunities to take the lead on a number of initiatives (e.g., one CLP staff person proudly noted his successful coordination of the major conference / workshop on the section 84 initiative

held in Membertou). They clearly believed that their work was important; as one employee noted, “with the Mi’kmaq justice circles we were able to implement some of the Mi’kmaq self-identity”. They expressed some concern about the modest wages compared to other Mi’kmaq job opportunities and some highlighted the very limited possibilities for career advancement. There was ambivalence concerning the travel demands and associated workplace policies for travel, expressed by some respondents. The CLP respondents appeared to look forward to the CLP deepening its criminal justice thrusts, moving on into adult cases, exit circles for inmates about to be released from custody, and so on, as well as widening its mandate to more generic dispute resolution activity whether in the family or regulatory justice area. One respondent commented on the growing need for some effective dispute resolution capacity to back up the increased Mi’kmaq responsibilities in fishing, forestry and others areas, “We have to uphold our policies”. Generally, the CLP workers held that the MLSN should move to a more independent status if it is to respond effectively to these opportunities and to be perceived as above politics by the larger Mi’kmaq community, but there were diverse views on how quickly such a transformation should take place.

## STANDPOINTS: OPINION LEADERS AND LOCAL SERVICE PROVIDERS

While resources did not permit an extensive survey of Mi'kmaq community residents throughout Nova Scotia, and, arguably, little change would have been found in perceptions and assessments since the major survey undertaken five years ago concerning justice issues (Clairmont and McMillan, 2001), it was considered important to examine how opinion leaders (e.g., elders, teachers, activists) and service providers (e.g., Alcohol and Drugs, Children and Family Services, Health officials) viewed MLSN programs and services and the priorities they had for Mi'kmaq justice. As indicated above, roughly 60 such persons were interviewed, all but one of whom were Mi'kmaq. In examining the interview data, it was considered heuristic to group them by location into two categories, namely the Cape Breton and the Strait areas (hereafter the CBS category) and the rest of mainland Nova Scotia, namely the Central, Western, Northern and South area (hereafter CWNS category). The two broad areas presumably differ significantly in terms of retention and use of Mi'kmaq language and culture so it might be expected that the views on MLSN and justice issues would also differ. The postulate of such sharp overall differences by that regional breakdown was often articulated by the respondents. One MLSN employee commented,

“It was a challenge for me [doing justice circles]... because I am from Cape Breton, to go into an area where there is low language and low culture. It was like having to teach people about their culture, who they were and where they came from. And being a voluntary program, they had the option of going through the program as an aboriginal person or to go into the non-aboriginal process. It was a lot of extra work just to talk about who we are, what the organization is, bringing back the holistic approach of mutual forgiveness. In that area the communities ... it is almost like walking into Sydney ... it is very non-aboriginal out there. With the Mi'kmaq justice circles we were able to implement some of the Mi'kmaq self-identity”.

A young mainland-based Mi'kmaq woman quite immersed in the language and culture and an expert in Mi'kmaq customs commented,

I think another problem we are seeing in the communities is you have some people that cry for Mi'kmaq justice –“I want a justice circle, I want diversion – then they get it and once they are in it they are not comfortable with the process. They are not comfortable with the fact that there has to be a responsibility for actions, a dialogue and interdependence with the people involved in the circle. And many times it almost seems like the issues they are yelling about are issues for the mainstream court system ... their value systems are so non-Mi'kmaq based that it became problematic in implanting the process ... one MLSN person told me how the further south in the mainland she went the more difficult it became with having successful justice circles and the more she went toward Unama'ki (Cape Breton) the easier it was. It scares me because it is almost like we are crying for our Mi'kmaq justice system but when we get it, there is going to be no Mi'kmaq left”.



## PERCEIVED PROBLEMS IN JUSTICE

Respondents in the CWNS differed significantly in terms of their perceptions of crime levels as the major justice problem. In the smaller reserves crime was deemed a minor issue while in the larger ones such as Millbrook, and especially Indian Brook, crime levels were seen as quite high and the central justice issue. Whatever the perception of crime levels, alcohol and drug abuse and trafficking were seen by opinion leaders throughout the region as a major problem. Several Indian Brook opinion leaders commented that the drug problem brought considerable violence, much of it generated by fighting among the drug 'gangs'; another respondent observed that "illegal drugs and trafficking are causing community fall-out and rise in dysfunctions". Hard drugs and prescription drugs were seen by most opinion leaders to be on the rise even on reserves where all informants thought crime problems were very minor. Typically the explanations provided for crime and/or alcohol and drug issues were low socio-economic status, lack of employment, poor housing and the colonialist legacy (e.g., one NADACA worker commented, "Years of abuse and the breakdown of Mi'kmaq culture and traditions").

Family justice issues were also frequently perceived as a central justice problem. Here the concerns ranged from family violence to child custody and access cases and here, too, the concerns seemed equally common in both large and small reserves. Frequently it was suggested that "family issues get swept under the rug". An MCFS employee, on a small reserve, indicated that in her area family justice problems were more crucial than crime and added that "people don't know their rights or the legal procedures to follow". Civil disputes, especially conventional neighbour-neighbour disputes were cited as justice issues by a significant minority of opinion leaders. Those who discussed civil disputes usually echoed the views of one former chief, namely "the court system is not being used by our people or is seldom used". Regulatory issues whether with reference to band bylaws, conflicts of interest or fishing and resource violations were much less commonly cited as major justice problems; the most commonly raised issue here involved traffic violations such as speeding on reserve and not having automobile insurance. In the case of band bylaws, one well-informed opinion leader contended that "there is no clear idea what power band bylaws have"; several other opinion leaders reported that band policies and practices are often, if not usually, flouted.

The general consensus among the opinion leaders was that the mainstream justice system "does not serve us well". Legal services, apart from Legal Aid, were seen as out of reach for most Mi'kmaq people. Alcohol and drug problems were seen to be not addressed effectively. It was with reference to family justice issues however that respondents were most likely not only to criticize the conventional justice response but also to suggest that there may be a better Mi'kmaq approach to consider. A young woman echoed the assessment of dealing with domestic violence that is common in mainstream society too, namely "It's too time-consuming a process. Police don't want to charge due to time wasted". One very knowledgeable female activist commented, "It's not the Mi'kmaq way to order custody and child support through the courts". Indeed, especially

in the family justice area, the opinion leaders were more likely to talk of preferred alternatives than to decry unfairness in treatment by the mainstream system.

With the exception of a few opinion leaders in the smaller reserves, generally the CWNS opinion leaders considered that the justice system does not serve Mi'kmaq well because they have no influence there. A handful of respondents specifically referred to the key factor being "lack of recognition of treaty rights" but most commonly the respondents echoed the remarks of one senior male, namely "we need Mi'kmaq judges and lawyers". Also commonly reiterated was the need to educate mainstream justice officials about aboriginal perceptions and reserve realities (i.e., cultural awareness orientation). Several respondents emphasized the desirability of ADR processes for dealing with local conflict issues; as one legally trained female respondent observed, "I would think that this is all we need in most cases as people get mad at one another today and then things settle down. Credibility, the right people [as facilitators / mediators], would be a major factor here".

In the Cape Breton / Strait region (CBS) crime was considered to be the major justice problem in the Membertou / Eskasoni hub but less so in the smaller reserves of Waycobah and Paq'tnekek where most respondents considered crime levels to be "average". Still, the major justice issue specified by the sample of opinion leaders throughout the area was again alcohol and drugs, whether abuse or "dealing". As one education counselor outside the Membertou / Eskasoni hub commented, "A lot of our issues are alcohol-related, in turn, alcohol related offenses, domestic violent assaults, vandalism, all come from alcohol. No jobs, poverty, lack of housing [these are the root causes]". In some instances the drug and alcohol problem was highlighted for itself (e.g., Membertou) whereas in others (e.g., Eskasoni) it was highlighted in the context of perceived serious problems of family violence and sexual assault. There was a frequent reference to the growing availability of hard drugs; indeed, one NADACA worker referred to the "arrival of crystal meth" and predicted "It will be an epidemic in no time". One former chief of a small reserve commented, "The general thought out there is drugs are not as harmful as alcohol. This may have been true when the drug of choice was marijuana, but now hard drugs, like crystal meth and crack are seeping into our communities". A handful of opinion leaders, especially in Membertou, reported that the crime problem largely features repeat offenders. In this connection it is interesting that some opinion leaders identified crime as increasing concentrated in a small segment of the population. Respondents, in both Membertou and Eskasoni, referred to growing socio-economic differentiation; as one stated, "usually the kids involved in recreation and healthy activities are from the well off families".

There was a widely shared view across the CBS region that family violence, including child neglect, may be either becoming more frequent or at least less effectively responded to. In Eskasoni, in particular, fears were expressed by some opinion leaders about a perceived spike in family violence and sexual assaults and particularly with the lack of support for victims which allegedly keeps the incidents unreported to police. One respondent suggested that "You've got gang rape that is normalized, becoming a rite of passage in our high schools". Asked, are there no consequences, the response was,

“There are no consequences for the actions, no consequences for the talk. The other thing that happens is if I rape somebody, and my victim says they are going to charge me, my sisters and my mother will go after that victim because she is the bad person. That is the way it goes. It is very much the victim blaming and the victim is responsible. That is big. Women are just as violent as the guys in a lot of cases. That is the fear. Usually one of the fears is the consequences for the community is that one of the sisters or whatever, are going to get you if you go through with court”.

There was much reference by opinion leaders to family justice problems outside the criminal sphere too. An elder from the Strait area commented, “There is nothing put in place to help the women. When people separate or divorce, the majority of the time the woman and her children are thrown out of the house. The man gets to stay and carry on like nothing happened. The woman and her children are homeless, our housing situation is bad”. Several opinion leaders in both small and larger CBS reserves claimed that ‘no one is getting married so child maintenance is a problem’. Others emphasized related concerns about “deadbeat dads” and the disincentives of the social assistance system.

There was little reference to regulatory justice issues as major justice problems but when prodded about the desired way to respond to breaches of communal agreements with respect to resources, several opinion leaders shared the view of one who stated, “Of course [my preference] would be a resolution from the community such as a circle. I think there is some mistrust of the legal system. Most definitely the chief and council would support that initiative. There is a need”. A few opinion leaders indicated that there was much abusing of band bylaws and treaty rights (especially those in environmental protection). However, a view expressed by a number of opinion leaders was that “fishing and hunting policies, the agreements are not all settled yet so many people do not think they are violating them”. Civil disputes were identified as a major justice problem by a few respondents and they generally suggested that such matters should be dealt with at the community level. One opinion leader noted that Legal Aid is just for the criminal matters so “a lot of times it is frontier justice in civil matters”.

Overall, the CBS respondents cited problems with the justice system such as language barriers, lack of cultural sensitivity, costly legal services (apart from legal aid) and few Mi’kmaq persons anywhere in the justice system. Still, somewhat surprisingly, the CBS opinion leaders in the different communities also frequently expressed the view that the criminal justice system “serves us well”, particularly with respect to policing and handling serious offenses. There were also positive assessments – and no negative ones - of the provincial criminal court sitting regularly at Eskasoni, especially its informal atmosphere and the opportunity provided to talk out differences with court officials and get respect for Mi’kmaq positions and recommendations; as one NADACA employee noted, “we have a good working relationship with those guys [court officials]”. There was more concern expressed about the inadequacies of the conventional justice system with respect to family justice issues, whether of a criminal sort (e.g., spousal violence) or of family court relevance (e.g., child protection, custody) and an advocacy for a different, more proactive approach. One MCFS employee noted that his study of customary

practices revealed that, in the 40s and 50s, respected elders were more involved in family violence cases, visiting homes, mediating and having “a say on what punishments should be taken”. Another respondent discussed the different values and traditions of the Mi’kmaq people and added “the Mi’kmaq extended family system is something that is not ingrained in the white society”. A few opinion leaders held that a major problem was that residents were not taking advantage of that justice programs that do exist in this court area.

### **Perceptions of Mi’kmaq Capacity and Desirability of Mi’kmaq Control**

Interviewees were asked their views about the capacity in their area to take on more justice initiatives and also whether more Mi’kmaq control over their justice issues would be desirable. There was much diversity and ambivalence in their response and, given this as well as the limits of the sample (i.e., small numbers, usually limited depth), it was not possible to deduce firm, clear patterns. In the mainland CWNS the sample was fairly even divided on the capacity question. About half, pointing to the growth of local services and the increased educational attainment in their community, suggested capacity was there, while about equal numbers, pointing to the lack of Mi’kmaq in the various court systems (criminal, family and civil) and to factionalism on reserve, considered that the capacity was not there, many adding that it should be in the future. One woman, residing on a small reserve, thought capacity had to reinforced by actions; she commented,

“I believe we do have the capacity to be further ahead than we are now. We may not be in a position to have full control of our justice system but we do have more Mi’kmaq graduating. I think that if we had our own start of a Mi’kmaq justice system this would give our people the motivation to enter the field of justice”.

Usually the respondents, whatever their views on capacity, discussed formidable external and internal obstacles. The former were deemed to be lack of resources to do the job, and the latter, community conflict or lack of leadership. The bottom line appeared to be that there is presently limited capacity for community engagement in the face of the obstacles. One longtime band manager commented on the latter as follows, “The major obstacle is that we have a system that is not working for First Nations people. Thus we have to overcome internal obstacles as well as external ones”. Among some respondents a differentiation was drawn between criminal justice and family justice matters with the view being that capacity to mount Mi’kmaq justice initiatives might be much less in the criminal sphere; one prominent Indian Brook woman commented, “Ownership in the criminal justice system is a long way off. Outsiders may be necessary since there are so much drugs around here and so much politics going on, it would run the risk of these types of issues being mixed up”

There was ambivalence concerning the desirability of more Mi’kmaq control over justice issues. Here it is important to differentiate between influence and control vis-à-vis justice administration since the former was almost always deemed to be important. More control was seen by most opinion leaders as desirable but far off and contingent on

more community development as much as on more highly educated residents. One opinion leader desirous of more Mi'kmaq influence if not control in justice matters, in articulating a fairly common view point, commented, "We need additional people in all areas of the criminal justice system – clerks, officers, lawyers, legal aid. One or two Mi'kmaq court workers just doesn't cut it. They also have great limitations in the scope of their jobs because they lack legal education".

In light of the above postulate concerning regional differences, it was anticipated that the small sample of CBS opinion leaders might have quite different views on questions of Mi'kmaq capacity and control in justice administration. There were differences overall in the expected direction but not the sharp differences anticipated. The CBS respondents in the Membertou / Eskasoni area usually considered that capacity was less a problem than the resources to utilize it fully. One Membertou opinion leader cited "lots of professionals here" and also pointed to the use of elder panels to deal with regulatory justice matters in Unama'ki natural resources sector. A handful of the Membertou opinion leaders exuded much confidence in their community's capacity to take on new justice initiatives if it desired but questioned the capacity on most other reserves. An Eskasoni-based leader commented, "We have the raw materials, the people with desire, but we need more skill development". It was pointed out in Membertou and Eskasoni that interagency initiatives have contributed much to capacity for justice matters.. Resources were deemed more problematic even in the bigger reserves. Several local agency staffers pointed out that funding issues for their organizations (e.g., Mental Health, NADACA) were weakening that capacity. Others indicated that for some justice issues such as corruption, family ties and politics weaken capacity, and so these may require "INAC should step in but they have been silent, too silent for too long".

Virtually all respondents readily called for more Mi'kmaq influence in the various justice systems but there was some ambivalence about exercising control in justice matters and whether the communities are ready for it. A fairly common view was expressed by one Membertou opinion leader, namely

"Yes I would like to have Mikmaq control or influence in justice issues, especially if natural resources are violated, like cutting down trees, polluting water and burning garbage and other substances. For serious crimes, like murder, families that are directly affected, should have some input ...the whole community is affected, and therefore I think they owe the community something and it should be up to them to decide, to have some say in the punishment".

One elder in the Strait area advised focusing on values and "a start small" approach, while another traditionalist in that area emphasized the need for recapturing the essence of Mi'kmaq values first and then going from there; he discussed several traditional ceremonies which long undergirded the Mi'kmaq way of reconciliation (i.e., "killing the enemy" and "forgiving"). The cultural requisites for exercising meaningful control were discussed by one respondent in Eskasoni as well; noting that some Mi'kmaq have rejected the option of going to justice circles on the grounds that "I don't want my people judging me", he commented,

“A lot of times we are our own worst enemies because we have that built-in conflict within ourselves. Because we are growing up bi-culturally. You don’t see on television, the Mi’kmaq language being reflected back. You see a bunch of white guys. We get a mixed message. So people that internalize mixed messages, become mixed up people. This influence makes this a problem now internal to the Mi’kmaq people.

A number of respondents were wary of more Mi’kmaq control at present because they worried it might just either mean “mimicking white ways or floundering in the face of a disunited community. One Strait respondent commented, “It would be tricky because we are so related and interrelated and that would affect the support system that would be put in place. Sometimes it would work and sometimes it wouldn’t”. Several respondents especially in the smaller reserves considered that there was no need for more Mi’kmaq control in justice (“I don’t think it should be different for anyone”). Generally in the larger reserves, the opinion leaders were more inclined to claim that the capacity is there and that more control would be a desirable goal.

### **Views about MLSN**

In the interviews, the opinion leaders were asked about their familiarity with MLSN and its programs, their assessment of same, and the issues and challenges they might identify for them. The majority of the respondents on the mainland CWNS had heard of MLSN though a sizeable minority professed to being quite unaware. Those who were involved in one way or another in MLSN programs, whether workshops on themes such as sentencing circles, through participation in a justice circle or through contact with a court worker servicing a relative, appreciated the service. One elder, earlier involved in a MLSN workshop, commented, “I know they are very valuable. I think we should have the right to manage our own justice issues”. Even where their sympathy or loyalties rested with a victim and they decried MLSN’s perceived focus on the offender, they were still positive; for example, one such Millbrook woman commented, “I like what they’re doing for what is in place. I don’t like what is not in place [programs for the victims]”. And those who professed to have little awareness of MLSN and its programs nevertheless appreciated the service; one such person commented, “Such programs are always valuable even if I don’t use their services” while another such respondent stated, “on a scale of 1 to 10 I would rate MLSN at a 10+. Clearly the respondents, with only one or two exceptions, considered that MLSN had improved the justice experience for Mi’kmaq people, providing support and some alternatives to the mainstream system. The CWNS opinion leaders highlighted various MLSN initiatives in their personal assessments, usually the justice circles and the sentencing circles. A fewer number stressed the value of the court worker program perhaps because it was less familiar to them. Despite the positive assessments, the general viewpoint was that MLSN was marginal in their communities and most residents would probably not have heard of it.

Asked about possible shortfalls or gaps in justice services that MLSN might respond to, the opinion leaders most often referred to the need for victim services. There

was a widely held view that the services provided were focused on offenders. On that score, while still holding to the view that MLSN is valuable, there were a few criticisms, namely that MLSN should do more proactive crime prevention and that the circles may be not demanding enough on the offender; for example, a director of one local agency commented, “I am sure the MLSN program is valuable but I think the circles are too easy on the people who do the crime”. One legally trained agency woman observed that MLSM risks being marginalized if it just focused on offenders who are unpopular in the community. A number of opinion leaders called for the expansion of MLSN services. Several Indian Brook women considered that dispute resolution should be a high priority while a Bear River agency staffer contended that “MLSN needs to branch out because there is such a need for their services in all levels of the justice system”; an elder from the same community suggested that MLSN get more involved in civil and family justice matters. The several MCFS employees and several other respondents in this sample suggested a closer collaboration between MLSN and MCFS. One of the former, observed,

“I believe that MFCS and MLSN should work together on family case conferences. At the present time we have one worker, in the province, who is trying to set up family conferencing all on her own. With all the workers working towards the best interest of the children and family, this collaboration would also ensure that the extended family be concerned in the care of a family member before they are sent to a Non-native foster home”. Another MCFS employee, very familiar with MLSN and justice circles, commented, “I believe that the MLSN workers should expand into other justice areas. It would be nice to have the MLSN and Mi’Kmaq Family and Children Service workers working together on family conference circles. When a case conference is set up all parties agree to contribute to the families’ best interest. With MLSN expanding into family matters a lot of cases may not need to go through the courts. This would free up court time, and hopefully long unnecessary periods where the children are out of the home. With both parties working together this may create a better atmosphere for the parents that may just need the support”.

Respondents also generally replied in the affirmative when specifically asked whether they thought a wellness court (which was unknown to them though briefly explained by the interviewer) and programs on offender reintegration should be developed.

In offering suggestions for the possible evolution of MLSN justice programming, most opinion leaders emphasized that, as one put it, “there is insufficient community identification with MLSN and it has little visibility either to the local band administration or to the community at large. There was a widespread view that MLSN could be the building block for more Mi’kmaq justice initiatives but that this would require stronger ties to the communities and more accountability to the First Nations. For example, a Bear River agency head commented, “yes it could be the building block but one of the challenges for achieving these new Mi’kmaq justice initiatives would be to get the support not only of the funders ... you need the support of the community”. Another respondent noted, “If MLSN were to expand into more serious offences or community

justice agreements I believe the 13 Chiefs should meet and sign an agreement because at least then there is something in writing. As well, it should be directed by the Chiefs to form a broad for support”. Most respondents shared the view of a longtime band manager who held expansion of MLSN would be supported by the political leaders if it were more community-based. More promotion of the Mi’kmaq approach through presentations to council, workshops etc were seen as important but a firm linkage to communities was considered crucial. Virtually none of the opinion leaders appeared to be well informed of the existing MLSN governance arrangements but a few stressed it should be an independent body.

The opinion leaders interviewed in the Cape Breton / Strait region were generally much more knowledgeable of the MLSN and its programs. The familiarity appeared to be due to more collaboration on interagency activities as well as greater participation in MLSN’s justice circles and workshops and in routine relationships with the court worker program. Generally the respondents considered that MLSN was “doing a good job” in both its CLP and CWP programs. Those who participated in the justice circles reported themselves very impressed with the process and outcomes and those who dealt with the court worker thought highly of that person. One elder, for example, said she participated in a circle, really liked it and found it a good way to develop consensus. Another respondent participated in a circle and she said that has whetted her appetite for more circles. Interestingly, a number of respondents identified as their justice priority cultural awareness with respect to the mainstream justice system but were unaware of the initiatives being carried out in that regard by MLSN. Offender reintegration initiatives too would meet with widespread approval and here there was some awareness of recent MLSN thrusts. Overall, the respondents reported that MLSN was doing well and there is a need for the programs. A few opinion leaders commented as well on the value of their being, as in MLSN, a province-wide organization and the availability of disinterestedness conflict resolution expertise and experience. Unlike the CWNS region, there was some pointed criticism but it was directed more at the organizational aspects than at the specific MLSN programs in themselves.

With regards to shortcomings or gaps in the justice services provided, there were, as in the CWNS region, concerns about MLSN not being as involved as desired in proactive and crime prevention approaches. An educational leader in Membertou / Eskasoni while allowing that the resources to do so were probably not there, held that MLSN should be doing more in the schools using the circle techniques and family group conferencing; in her view, there were many problems in the schools, especially at Eskasoni, that could be targeted. Again though, the central shortfall raised concerned victim services. One Eskasoni respondent observed “MLSN is perceived as offender-oriented” and considered it to be a valid claim at least in the CWP program since the court worker provides support for the offender in cases of violence crime but cannot for good reasons support and inform the victim as well. A MCFS person in the Strait area thought there should be no problem with MLSN working more with victims “I believe we are all victims”. As in the CWNS grouping, there was very frequent mention that MLSN is “top-down” and sorely lacking in community linkages. Respondents repeatedly pointed to the lack of information about MLSN activities, the inadequate public relations and,



less frequently but more intensely expressed when rendered, shortfall in accountability to the First Nations. This latter view was especially found among the respondents in Membertou where ISO quality of service is a band council objective. One prominent Membertou leader said of MLSN, “there is very little community identification with MLSN. It’s almost non-existent”. A culture and educational leader highlighted another theme that cropped up several times among CBS respondents, namely traditional values. In her view the main shortfall in justice as it pertains to Mi’kmaw - and mainstream society as well - was that they did not reach into the last two of the five stages of traditional Mi’kmaq reconciliation, namely healing and then spirituality. Healing in her view involved a lot more than just a muffled apology.

There were a number of interesting suggestions advanced by the opinion leaders in the Cape Breton / Strait area. Local agency representatives (e.g., MCFS, NADAC, Mental Health, UINR) expressed a desire to work more closely with MLSN, whether it be with justice and healing circles, Mi’kmaq dispute regulation in the regulatory area or collaborating in providing services to victims or family group conferencing in family matters. One interesting idea was the suggestion that MLSN become more engaged in coordinating a victim services program where it would provide information and support to victims in all matters save serious personal violence; in the latter instances, the victim services would be referred to willing staff in organizations such as Eskasoni Mental Health or the Treatment Centres in Millbrook and Waycobah, thereby avoiding significant conflict of interest issues. .

While the majority of opinion leaders in the CBS region envisaged MLSN as a major building block for future Mi’kmaq justice initiatives, there was some skepticism and concern that was not much evident in the CWNS region. There was general agreement that MLSN had to be more rooted in the communities and more accountable to the FNs. But there was also more concern expressed about the governance issues, namely to whom would MLSN be responsible in a direct and routine manner. Some opinion leaders advanced the concept of a board independent of all political organizations and political authorities; for example, a well-respected Strait leader suggested, “the board should consist of elders, not politically-tied elders, grass root people, youth, men and women”. Other opinion leaders suggested an MCFS type board; for example, one education leaders observed. “I think they should be a separate identity consisting of their own board of governors. It should not be a program under the umbrella of another program. Have the chiefs as the board of directors, all 13 chiefs. If you have the support of the chiefs, you have the support of the federal government”.

### **Views on the Future for Mi’kmaq Justice**

In completing each interview respondents were asked about where MLSN might fit in with future scenarios concerning Mi’kmaq justice. Typically they reiterated the points described above. Most respondents envisage more Mi’kmaq justice initiatives, whether along the lines of community courts or offender reintegration or victim services or family justice or general dispute resolution (Mi’kmaq ADR). In some communities the idea of an ombudsman service was advanced. Another frequent comment was that MLSN

or some Mi'kmaq body should be research oriented and informational "showing us the alternatives, the different roads to take in advancing justice initiatives". A few opinion leaders in the CBS region talked of a Mi'kmaq Justice Centre, a facility that would house all of the justice programs in one place. Generally though, the opinion leaders appeared to be thinking of a centralized service administering an array of services and achieving both economies of scale and interactive enrichment. In that sense, many, but not all opinion leaders, envisage MLSN as being a building block for the generation and administration of justice initiatives. But, whether the service provider of justice initiatives be MLSN or some other body, the widespread view was that community ties are crucial and the programs have to be strongly rooted and supported there. Respondents realized the benefits of having a province-wide organization (e.g., limiting conflicts of interests, providing a greater range of services) so one challenge is how to retain the benefits of a province-wide structure while also being firmly rooted in the different communities. Another basic challenge that emerged was that respondents often talked simultaneously of the desirability of a politically independent justice service and of the necessity to be accountable to the chiefs and councils. Governance concerns as noted above also differed somewhat by region. The effective evolution of MLSN as a major building block for more justice initiatives – were that to be an objective – would require a strategic plan to deal with those two challenges. Apart from Mi'kmaq justice initiatives per se, the opinion leaders indicated clearly in their interviews that priorities, maybe their highest short-term priorities, were having more Mi'kmaq presence in the mainstream justice system and achieving a greater awareness and sensitivity there to Mi'kmaq people and their values and life situations. There was no awareness of the MLSN activities in this area (e.g., the cultural gatherings).

Overall, opinion leaders across the province shared many views such as (a) the centrality of the alcohol and drug abuse problem; (b) a sense that the existing justice systems do not often serve Mi'kmaq people well; (c) ambivalence about the exercise of Mi'kmaq administrative and policy control of the criminal justice system for the near future; (d) a priority on more Mi'kmaq presence throughout the justice system and for much more cultural sensitivity orientation; (e) a high regard for MLSN's justice circles and court worker programs; (f) a widespread agreement that the key shortfalls of MLSN are the limited attention to victim services and the insufficient community identification with it. The postulate of regional differences appeared to be manifested in two ways, namely a greater concern in Cape Breton / Strait for (1) MLSN incorporating emphasis on traditional values and spirituality, and (2) governance and the board structure of MLSN.

## **STANDPOINTS: MI'KMAQ POLITICAL LEADERS**

Approximately nineteen Mi'kmaq political leaders were interviewed about Mi'kmaq justice and the role of MLSN. Political leaders were defined as chiefs, councilors and leaders of political organizations plus, in three cases, Mi'kmaq persons who were specifically interviewed about “the big picture in Mi'kmaq justice. The sample is a convenience sample but key leaders were interviewed and the sample includes equal number of persons from the Mainland and from Cape Breton. In the first section the emphasis is on the implications for justice initiative of the current treaty negotiations process. In the second section there is discussion of the political leaders' views on MLSN and its role in the development of justice initiatives.

## **THE MADE IN NOVA SCOTIA PROCESS AND MI'KMAQ JUSTICE**

Clearly the life of the law is writ large in Indigenous politics and as we have seen in Mi'kmaq country, attitudes toward mainstream governance and justice tend to be framed as resistance against further colonization, anger over inadequate responses in the recognition and implementation treaties, and frustration over the failure to realize constitutional arrangements protecting Aboriginal title and rights and acceptance of self-determination. For many years resistance to colonization was shaped by politics of difference. The wrongful conviction of Donald Marshall Jr. was one of the key contemporary juridical events that contributed to a major shift in the ways Mi'kmaq people encountered mainstream justice and the reformalization of justice ideologies and practices locally. Marshall's wrongful conviction epitomizes most of what is wrong with the mainstream justice system for the Mi'kmaq and concretized abstract experiences of racism, inequality and colonial consequences. The Royal Commission provided a sound platform for politics of embarrassment and the recommendations were strategically used by the Mi'kmaq as a powerful negotiating tool to bring about much needed social change. Marshall's case provided at least partial justification for Mi'kmaq demands for recognition by the state of their right to control their own justice processes and to govern themselves. The implementation of the recommendations (or the failure to implement) provided a means by which Mi'kmaq could measure their legal entitlements against those imposed upon them or removed from their control through colonial processes, a history of discriminatory legislation and coercive assimilation.

Cultural production in justice fields increased in Mi'kma'ki after the Marshall Inquiry and critical issues regarding how various competing groups mobilize their legal consciousness and to what effect, particularly in asymmetrical fields of power were evident as political organizations vied for their desired strategies to be employed to answer the problems of justice. Recall the Mi'kmaq response to Marshall Inquiry, “to this day the Mi'kmaq continue to abide by a system of social control that is unique in their communities. It operates upon different principles of fairness and justice. The key question is not whether it exists but rather how do we harness these Mi'kmaq concepts of

justice to design and to develop an acceptable and an effective justice system on Mi'kmaq communities?"

Out of the recommendations there were a number of justice initiatives undertaken by the Mi'kmaq – indigenization of mainstream, diversion programs, youth options, court worker programs, translation and so on. The Mi'kmaq wanted to create and control an institution that could over see all of these programs as well as conduct research on treaty rights, human rights, governance and self determination. The idea was to develop programs in customary, criminal, civil, family, resource and treaty law. In 1996 the Mi'kmaq Justice Institute [MJI] came into being as a result of a series very hard fought negotiations and appeals to provincial and federal governments for the development of an administrative body to promote and facilitate Mi'kmaq controlled justice programs and to assist Mi'kmaq persons in mainstream justice. It was hoped that this institute could frame self determination for the Mi'kmaq. The MJI represented an opportunity to challenge historical inequalities and offered hope for significant social change in terms of employment, local empowerment, cultural protection and community building with designs toward self-determination. From the failings of MJI emerged MLSN, a clear indication of the political will of the chiefs and tribal councils to continue pursuing the goals of community driven justice processes, and support for Mi'kmaq persons who encounter the mainstream justice system.

A second juridical event, the SCC *Marshall Decision* has significantly influenced the relationships between Mi'kmaq and both the provincial and federal governments. This case too has remarkable consequences for justice as the Mi'kmaq work to construct their valued components of their legal culture in ways that will facilitate the full implementation of their treaty rights. These are exciting times as the Mi'kmaq move from strategies of survival to strategies of development, sustainability and cultural revitalization. While the politics of difference discourses were salient in the 1980s and 90s, they are no longer as pertinent today because it is clear Mi'kmaq have particular rights and the time and resources spent on defining and defending those rights in the past are now focused the processes of applying of those rights and on discourses of responsibility and local empowerment.

There is a general sense of cautious optimism regarding increased control over justice processes by Mi'kmaq leadership. While the overwhelming majority express desire for community controlled justice in all disputes as a natural progression toward treaty implementation and self governance, how to support the expansion of justice into family, civil and regulatory law is less clear. The general priorities among political leadership are the framework agreement and the content of the negotiating tables. For some leaders that puts justice on 'the backburner' and for others justice is a necessary development toward self determination that must be looked at simultaneously with all other major developments. "Justice is still at the tripartite forum, but it is going to be one of the issues that will be talked about. It is in the framework agreement. It will be one of the substantive issues that are going to be negotiated. I guess nothing is stopping us from moving it over to the negotiation tables and setting up a justice working group."

Another political leader shares this view:

I guess on services and programming the understanding is that the tripartite forum will handle those issues but still, having said that there is still a view held by some out there that justice is an integral part of self governance and that of itself is an aboriginal treaty right and it belongs on the KMK table at some point. But at this point just because of the overwhelming number of agenda items that will probably be low on the list and deal with the more difficult issues first and that issue later.

The complexity of the framework agreement and the made-in-Nova Scotia process requires careful steps and a number of significant governance issues will be worked out over time, such as Mi'kmaq concerns over jurisdiction and beneficiaries, which have obvious implications for justice.

Jurisdiction with everything; how much they really see themselves as having. How much jurisdiction and all the rest of it, they have never really had the chance. Everything else has been piled on the table in front of them, immediate things. Concerns that are day-to-day. But whenever they get the opportunity to look at jurisdiction and you hear them say we have to look at jurisdiction, one time we had the jurisdiction over our own people, our own lands, everything and somehow, someday we are going to get part of it or all of it all back, but then it ends there. There is no brainstorming. I guess it is not being seen as something that is needed right now. They are allowing jurisdiction to be in the hands of other governments for now, it has been there for years and they won't tell you we have done well under it. They will tell you we've been screwed around with from the beginning and that was because they took jurisdiction.

Another perspective illustrates the challenges faced by Mi'kmaq governance:

I think the Mi'kmaq Nation and Grand Council should be taking a stronger role in areas that are not determined to be jurisdiction issues under the Indian Act or chief's issues. For example the duty to consult and treaty rights are held by the nation and the nation needs to develop some protocols and establish some jurisdiction over areas that there is no known authority. Another instance is aboriginal traditional knowledge and intellectual property issues. Unless the nation has some sort of protocol or boundaries than we are sort of sitting ducks and it is free for all to kind of access and violate. There are issues of domestic property, matrimony property, domestic violence; those are issues, especially property issues with core fundamental values that the nation can speak on because each community isn't developed in those laws. So there are areas that the communities are not taking authority over or aren't able to put their minds, energy and resources to those areas, so the broader principles issues should be dealt with at the nation level, at least even to come up with guidelines on consultation and guidelines on matrimonial property values. You know the Mi'kmaq values for the communities to look at, to try to develop. There is so much that is being missed, a lot of issues being missed by communities and the non-native government

Negotiation is a key word in Mi'kmaq country these days as is the concept of kwilmuk Maw-klusuaqn "we are looking for consensus" which is the strategy framing Mi'kmaq politics and policy development. Much of the energy and resources in Mi'kmaq polity are involved in shaping the articles of the framework agreement. Unlike the politics of difference platforms used in creation of earlier justice programs, the kwilmuk Maw-klusuaqn [KMK] or looking for consensus strategy goes directly to the communities and community voices and opinions are gathered and then taken to the chiefs to direct them to the issues critical to their membership. This process is triggering a greater sense of collective involvement in capacity building after years of divisive struggles brought about in part by the structure of the negotiations between the state and individual bands after *Marshall*. There is also an articulated concern for the value of holistic approaches to community building.

I think people know that, the other thing is and I guess that is what a lot of people are looking at is that things were not compartmentalized and people lived all of those things that were in compartment form, justice for example had to do with harmony in the community, will all people. The basis of it all was how a person was raised from childhood how to get along with other people in that community. Raised to understand that the goal of community is harmony, always, with all members. So you have things like no individual property, no claims things, on this is mine, that is yours, you stay away from my stuff. None of that. It was always the harmony thing but you have to go way back before the Europeans got here. But it still exists in our people.

The priority in governance is the establishment of the framework agreements.

People are more interested now in getting the framework agreement signed because once the agreement is signed then we can get into the substantive negotiations. Negotiations about treaties; again there is going to have to be prioritizing at the main table about all of those issues. The way things have been going it is going to be the chiefs and their communities that decide what's going to go first.

*Do you have any sense of what those trends look like? What will go first?*

I guess probably everything if you ask people in the communities. Without giving preferential treatment, everything, some people want justice, some people want land claims, some want this, that.

The "looking for consensus" model appears to reflect commonly held principles identified as Mi'kmaq ways of life. The importance of community involvement in decision making and capacity development was reiterated throughout the interviews. As one leader suggests:

The goal of Mi'kmaq justice traditionally has been harmony in the community. And the whole community was aware of that and involved with it ...It is that harmony that is coming into play and they are being taught that you have to get along with everybody. If they have done something wrong in the process they are

taught to apologize – apiksetwan, always. And that is the first thing a child is taught, reconciliation and this idea of apologizing. This kwilmuk Maw-klusuaqn process, this made-in-Nova Scotia process is an attempt at reconciliation process with Canada and Nova Scotia both. I guess the reason that it's so far working so well is because it is founded on Mi'kmaq culture: consensus and reconciliation, the two major components of Mi'kmaq tradition.

There is still widespread mistrust of the state in the Mi'kmaq political milieu. A Cape Breton political figure sees the obstacles to the expansion of justice capacity for the Mi'kmaq nation as a power struggle.

*Do you see any obstacles to the expansion of justice capacity for the Mi'kmaq Nation?*

Yeah, the Canadian justice system, the provincial group. When you talk about the expansion of the justice system, you are also talking about the empowerment of the Mi'kmaq people and you are talking about taking away jurisdiction from either the province or the federal government or both of them and putting it back in the hands of the Mi'kmaq and they do not like that, they hate that.

Another Cape Breton member voices a widely shared perception that the Canadian governments are not interested in supporting treaty recognition and implementation to their fullest extent.

So the political will isn't there to really recognize and support this issue, I think what the government policy is trying to do, this is my opinion, that the government is just trying to give First Nations the minimum of what is there just to satisfy them so they wouldn't pursue the issue, but that minimum now is so poor that I think it is only inevitable that Mi'kmaq people are going to raise the issue again.

*Do you envision a Mi'kmaq justice system?*

Sure, I think that people who talked about in the 1980s a third order to government, were looking at things like that and I am hoping that enough of our culture has survived and been allowed to survive for us to go into that kind of thing. There are allowances within the present system of justice for some things. When I looked at it, I think some of the things that are being adopted by the mainstream justice system, although they don't want to admit it, are things that they found high favour with, they have looked at them and seen that those things are more community related than the way that they handle their justice system. Right now in the Canadian justice system and court system one person sits at the highest table in the room and judges everyone, but I guess their goal is justice and to achieve justice they incarcerate people, the goals are different.

Clearly justice is a relevant component to the made-in-Nova Scotia process and to self-determination. When discussing priorities for justice expansion people tend to most readily support expansion into regulatory fields, which makes sense given the current climate vis-à-vis natural resources. Mi'kmaq polity wants successes in the steps taken to

self determination and tends to view regulatory issues as the manageable, logical, culturally appropriate next step.

I would say fishing and forestry, the natural resource priorities. The moose is a big priority at the moment so I would say those three items will dominate the agenda over the next little while rather than issues like self government, social and health and justice. Justice is important but the top of the agenda is getting pretty crowded.

Others suggest the natural resources as a regulatory component of justice are less controversial areas for expansion, but also best play to the discourses of responsibility that are framing Mi'kmaq relations with the environment.

There are things we can do that won't be so offensive and we should do that. Now the environment side, the reason I even got into the environment it because I have always said there is the right to harvest, but there is also the right to manage and responsibility to manage that right, and in order for our right to be recognized and for us to have the authority we want, we really have to take up the task of managing the resource and having a say in it and everybody is silent on that when it comes to environmental stuff. It is the last on the community's agenda, they don't really have the time, money or concern. But we have to get involved and make sure we are heard and manage that, have a voice in that.

## **VIEWS ON THE MLSN'S ROLE IN MI'KMAQ JUSTICE**

The political leaders on the Mainland sometimes articulated the main justice issue in a broad way. As one stated, "[The central problem is] the lack of First Nations [people] in the provincial and federal justice systems as well as the lack of understanding of the Mi'kmaq by the federal and provincial governments". An ex-chief on a reserve with a high crime level (and perceived to be so by the ex-chief) stressed that the central justice problem was socio-economic, namely unemployment and poor housing, which generated a milieu for crime. Still, alcohol and drug abuse were virtually always identified as a central crime / social disorder issue. And family justice issues were identified as well, especially for causing confusion on reserve. Regulatory justice issues were raised though not as frequently as family issues, and when they were raised it was to refer to conflict between individual and collective rights. The political leaders did not think that the mainstream justice systems served the Mi'kmaq people well and particularly highlighted the need for great Mi'kmaq presence in mainstream justice roles. There was diversity concerning perceived capacity for greater Mi'kmaq control over justice matters. One former chief, now councilor, stressed the need for a return to Mi'kmaq values as a prerequisite to exercising control, while another chief commented, "Our FNs would not have the capacity to undertake more management [justice issues], however, there are no initiatives anyways for Mi'kmaq to get involved".

Generally, the Mainland political leaders claimed to have a good sense of MLSN and its programs and expressed favourable views of it and them, especially the justice



circles; as one chief observed, “I have not heard anything bad and MLSN is valuable and meeting needs”. Most respondents saw a significant role in future justice initiatives for MLSN but added qualifications, such one chief’s comment that ““Yes the MLSN organizational structure is a good way to create Mi’kmaq direction over justice matters as long as it does not put members of the community in jeopardy and disrupt the work that already has been done to make the community a healthy and safe community” (a reference, it would appear, to effecting too lenient or ineffective a response to offenders). They also always reiterated that MLSN had to be better rooted in Mi’kmaq communities (stressing that the linkage had to be significant and that each Mi’kmaq FN is different in some ways) and be more accountable and driven by Mi’kmaq interests; as one chief noted, “It is not just going to speak to them once a year. I think for anything to grow, there needs to be ownership”. Other political leaders made the same point in slightly different ways, but underlining that there was little community identification with MLSN. Interestingly, while a few political leaders did refer to the need for accountability and direction from chiefs and council, it was not evident that they envisaged a board of chiefs closely directing an enhanced MLSN. One political leader pointed to potential conflicts of interest if that were the case (noting that some chiefs had been involved in justice circles as offenders) while others pointed to the high costs of such a board given the apparent necessity of providing honoraria to the chiefs. Interestingly, one chief himself said that the chiefs’ plate is already full and he would not recommend adding to it; he commented,

“Yes, I anticipate more Mi’kmaq control over justice matters but I don’t want it to fall in the laps of chief and council. I think chief and council should be only a component and not have all the onus on them”.

Three major political leaders who were very familiar with MLSN, its programs and indeed the governance structure itself, were also quite positive about the MLSN program and its accomplishments. They held that the current organizational structure and governance has been very effective in steering MLSN in a precarious funding situation. The leadership of the TWC was acknowledged and CMM was deemed to be a fine, solid carrier agency. As one of the leaders commented, “the reporting of MLSN to the Tripartite Forum subcommittee is okay for now and I’m reluctant to disrupt something that is working well”. Our model is great ... we’re getting the job done”. All of these respondents were quite familiar with the MLSN’s predecessor and the consequences of its demise, and, with that as a point of reference, were wary of any major new justice initiatives that might overload the MLSN and leave its financial standing even more precarious. They also all highlighted the need for stable and adequate three to five year funding, one respondent articulating it as “transition funding” pending the outcome of the Made in Nova Scotia process. One leader, urban-based, while supportive of the MLSN, decried the two solitudes he believes exists with respect to reserve and off- reserve residents in all Mi’kmaq service delivery, including justice.

Overall, the central themes among Mainland-base Mi’kmaq leaders included,

1. MLSN is fine, heading in the right direction and can be a building block for more extensive justice initiatives but it needs to expand whether with respect to victim's services, more serious youth offending, and or family / civil issues. There was no profound urgency expressed for any new justice initiatives.
2. MLSN has not had enough public relations or community-oriented liaison.
3. MLSN needs to be more Mi'kmaq – driven but most respondents were very wary of a board consisting of political leaders (e.g., expensive, conflicts of interest, chiefs are overloaded already etc), especially given the current requirement to have the 'officials committee' formally approve any new initiative.)
4. MLSN cannot amplify its mandate and get into more controversial justice areas whether in criminal justice or other areas without being more community-rooted and mandated.
5. Respondents stressed incremental growth within the present governance arrangement and MLSN not getting overloaded or expanding without funding in place.
6. The tripartite forum framework is very important and progressive

Cape Breton leaders also referred to alcohol and drug abuse as a major social problem and to there being a significant amount of crime in their communities but, unlike the Mainland group, a number spontaneously referred to these in the context of a problem of repeat offenders and socio-economic variation on the reserve (“we know the people who are going to be problems, early on”). Family and civil justice issues were also articulated (e.g., “Families need help navigating the system”; “We should be able to deal with civil issues outside the court through alternative ways, community forums”). A few respondents were uncertain however whether people would use these alternative justice paths, suggesting that there is an increasingly legalistic mindset on reserve. As with the Mainland political leaders, those in Cape Breton were generally of the view that that the justice system did not serve the Mi'kmaq people well but, as found in the section above on “Opinion Leaders”, there was a sizeable minority in the Cape Breton grouping who expressed positive views, especially about certain aspects, such as the criminal justice system's response to serious adult offenders. There were mixed views as well about capacity and control, again with the Membertou / Eskasoni respondents being the more confident that the capacity for greater Mi'kmaq control of justice matters on reserve was quite adequate (“we've got a lot of professionals around here”).

Among Cape Breton political leaders there was diversity in the assessments of MLSN, especially between those in Membertou / Eskasoni and those associated with the other reserves but again we caution the reader our sample is small and a convenience not representative sample (e.g., no political leader from Chapel island was interviewed).. Outside the Membertou / Eskasoni area there was less familiarity with MLSN as an organization. More of that subsample claimed not to be very knowledgeable about MLSN and its origins and structures; nevertheless the MLSN programs were generally seen to be valuable. A few Membertou respondents considered that the MLSN programs were valuable and that MLSN could indeed be the building for more expansive justice

programming. Other respondents in the Membertou / Eskasoni area, while acknowledging the value of the justice circles and especially the court worker's activities, expressed some sharp criticism about the manner in which MLSN operates organizationally; for example, a very prominent and active political leader in Membertou commented, in the following exchange,

I think the status quo is clearly inadequate, you have a program out there that is supposed to be for the benefit of Mi'kmaq and aboriginal people of Nova Scotia, it is supposed to be for the benefit of all 13 First Nations. In my view that program is to be unaccountable, that program is unaccountable to Membertou chief and council; we have no say on how that program is operated, on its staff, its priorities, on how its programs are delivered; we have no idea how it is being operated on behalf of Membertou's benefit and I think that is totally unacceptable; that program has to be accountable to each of the 13 First Nations, not just the CMM bands. Even though CMM is the administrator, it does not relieve them of the responsibility of being accountable in Membertou. In Membertou we believe strongly in accountability and if the program reports it is serving on our behalf then I think we deserve to be reported to and at least the courtesy of being informed about the program, which they have not done that at all.

We would like one, to be informed about the program. We have never had one information session or briefing session; we never had any informational material sent to us advising us of the program. We don't know who the staff members are, where their offices are located, what their contact numbers are, we don't know what their roles are and we have no idea of what their plans are for next year or the year after. I couldn't even tell you who the director is. So at least information and secondly periodic reporting and third if there are major decisions to be made, that at least chief and council should be consulted; if not, then we should at least be given the ability to approve or not approve decisions.

Interviewer: What major undertakings?

Respondent: New programs and services. If they are going to get into sentencing circles, legal aid services, parole and probation services or even providing enhanced language services in the court rooms. All of those services, we should be involved in the development of that decision making and we are excluded. Maybe CMM bands are fully involved.

Interviewer: I would have thought their annual reports would be seen by all the bands.

Respondent: I have never seen any report. It shocks me but it disappoints me even more. I have heavily been [earlier] involved with the program as an advisor and obviously in my eyes it is non-existent.

As in the mainland, virtually everyone held that much more community engagement would be necessary as MLSN continues on and especially if it evolves in terms of being engaged in more justice issues. Most respondents held that expansion could only be successful if there was more out-reach, the presentation of strategic plans to band councils and "strong Mi'kmaq leaders behind it". As noted in the above quote, several

respondents raised the issue that “the CMM link was supposed to be temporary” and that “we should try to be more independent”.

There were clearly, unlike in the Mainland, some strong doubts about the role of MLSN as a building block for justice services and even about the priority to be given criminal justice matters. One leader commented, “There is no money in First Nations to do any kind of development of a justice system. Secondly, I think it is not really an issue yet. If it is not really an issue then why do something about it”. There was more often a view expressed that MLSN was not asking the big questions, but was too focused on criminal side. The regulatory sphere was referred to more often, and, with respect to that, some doubt expressed about a role for MLSN. One leader commented, “My personal view is when it comes to dealing with an aboriginal and treaty right issue and when it comes to whether to be enforcing, permitting, regulating, those kinds of powers, and I think the only place you can have that kind of power, is with the First Nations themselves”. In instances such as the above, the ambiguity about any MLSN role appears to have been exacerbated by lack of contact.

Overall, the central themes that emerged from the small sample of Mi’kmaq political leaders in Cape Breton were:

1. Respondents were positive about the CWP and CLP programs but were more critical of MLSN than their mainland counterparts with respect to community identification and accountability, and being too reactive.
2. There was more reference to the regulatory justice sphere than among the mainland subsample, especially to issues of collective versus individual rights and the priority of former. Still, there was acknowledgement of much “contested terrain” because of the unsettled treaty situation and cultural assimilation (making Mi’kmaq approaches to conflict both valuable and challenging).
3. Most respondents, but not all, expressed more confidence than their mainland counterparts regarding Mi’kmaq people’s capacity to manage their own justice programming.
4. Respondents were unsure about MLSN as a building block for extensive Mi’kmaq justice activity as they perceived it not rooted well enough at the community level and not an independent organization.
5. Most but not all respondents expressed the view that they would want a more independent MLSN if it is to be building block for more justice programming.

## **STANDPOINTS: MAINSTREAM JUSTICE VIEWS**

There were 33 interviews conducted with mainstream justice officials; in addition there were a number of more casual contacts, especially among police and court staff. Twelve judges were interviewed and roughly seven each among prosecutors, defense counsel and police officers. The sample is primarily constituted of persons in three areas, namely HRM, Truro / Shubenacadie, and Membertou / Eskasoni (Sydney). There were eight Mi'kmaq persons in this grouping, located in the defense counsel, police and "other" categories. Standpoints will be reviewed by role but the main emphasis is on the judges' standpoint.

### **JUDGES**

Among the dozen judges who were interviewed were several of the most senior judiciary members in Nova Scotia and all the judges who have had and continue to have the most extensive and intensive engagement with Mi'kmaq people, whether in Criminal court or Family Division court.

In the HRM area the judges reported that they could recall few if any aboriginal litigants / defendants over the past year. They were not familiar with the CWP or any Mi'kmaq court worker though most knew the Mi'kmaq legal aid lawyer employed by NSLA. There was a consensus view that, were there to be aboriginal defendants, they could be channeled by NSLA to the Mi'kmaq lawyer and also that, given that HRM now has free duty counsel services for both cell (custody) and non-cell (walk-in) cases, there would seem to be less need anyway for a Mi'kmaq CWP service. The judges typically indicated that they would be open to, some enthusiastically and some with modest reservations, requests for Gladue assessments and sentencing circles. All the judges noted that there is a requirement in the criminal code for judges to consider the special case of aboriginal offenders in sentencing. Several respondents read out the text, "all available sanctions other than imprisonment that are reasonable should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders" (c.c. 718.2(e)). One judge – who was enthusiastic about the provincial court sitting at Eskasoni and especially the informal, productive interaction there at lunch and other breaks among judges, prosecutor counsel, Mi'kmaq court worker and other agency role players – commented that "I would be willing to do the sentencing circles but was never asked. I like the format and I like seeing what others think". This "openness" by HRM judges to collaborating with Mi'kmaq representatives was also cited by the CLP employee who had put in the longest stint thus far in HRM.

The HRM judges noted that the Department of Justice had no protocol about Gladue assessments nor had there been in-depth discussions on the topic among the judges. Generally they commented that the initiative should come from the prosecutor and / or defense counsel and thus far they have not had such a request. The judges did think that requests for Gladue assessments would likely be more common in the future, now that several had been carried out in the Truro court. In the judges' view, a Gladue

assessment would have two main features, namely that the offending behaviour could be seen as linked to special aboriginal circumstance (e.g., residential school impact) and that detailed reference would be made to some programs or services specifically targeting the aboriginal dimension of rehabilitation. There was a common view, too, that Gladue assessments could be comfortably included in the conventional pre-sentence report but as several judges added, “it’s hard to know what to make of them at this point”. One judge observed that Gladue assessments and sentencing circles might well be linked in that “perhaps the Gladue would call for a sentencing circle”.

All the judges perceived sentencing circles as requiring significant resources (judges’ and others’ time, a recording system perhaps, space outside the courtroom though nothing exceptional). They were less certain about the circle sentencing process itself. The only HRM judge in the sample who had been involved in sentencing circles (“two, a few years back, held at the Friendship Centre ... neither of the cases was particularly serious”, he said) reported that he took the comments and suggestions made there under advisement and sentenced the individual(s) later in court. He indicated that he did not envisage what was described to him as “the full monty model” (i.e., rendering the sentence then and there, taking into account the consensus if there was consensus) for two basic reasons, namely (a) while people there might have an assumption of framing the sentence, sentencing is the judge’s responsibility; and (b) more resources would have to be tied-up including a crown prosecutor, court recording and so on, for proper procedure and in the event of appeals. There was a consensus position that, given the perceived “cumbersome”, resource-demanding character of sentencing circles, they would not be common in Mi’kmaq cases and also that they would unlikely ever be carried out in mainstream society since there is no legislative basis and no special congruence with mainstream culture.

The several provincial criminal court judges interviewed in Sydney and Truro included the two senior judges having the most experience with Mi’kmaq defendants and justice initiatives in Nova Scotia. One veteran judge has been heading up the court sitting at Eskasoni since its inception over seven years ago while the other, for decades handling criminal court duties in Shubenacadie and Truro, has been a pioneer among the judiciary in initiatives such as sentencing circles and Gladue assessments. These judges also exhibited significant awareness of aboriginal justice developments beyond the province whether this be manifested in contacts with major aboriginal justice leaders (e.g., Murray Sinclair in Manitoba), familiarity with position papers developed by other judicial bodies (e.g., the Newfoundland and Labrador Court of Appeals’ position regarding the criteria for having a sentencing circle) or training / orientation sessions outside Nova Scotia focused on sentencing circles. The judges did have a broader vision of Mi’kmaq justice, as is evidenced in the following comments re-phrased by the interviewer,

“In his view the key to native justice expansion is community involvement. He referred to the 1960s as getting the vote, the 70s and 80s as learning, and from the 90s on as getting power. In his view, to go beyond where they are, Mi’kmaq leaders need to develop community support more”.

The judges reported different trends among the FNs in their area. They cited lower levels of court cases in Millbrook (“it’s more the transients now attending special events there”) than in Indian Brook (“still high levels of crime”), and declining court cases in Membertou but not in Eskasoni. They acknowledged that the different trajectories here might well be related to political economy factors (e.g., band leadership, economic development). Alcohol and drug abuse / addiction and “dealing”, increasingly the drugs, were seen as the major proximate causes of crime and social disorder issues; one judge in the Sydney area claimed, “Take away the substance abuse and the court would only have to sit at Eskasoni once every couple of months”. Family violence was cited as significant in the Indian Brook / Millbrook area while court officials bemoaned the serious problem of “lates and no-shows” in the Eskasoni court despite the fact that the court convenes on reserve. The interpreter service was also deemed to be a problem in Eskasoni and, aside from the quality of interpretation, a few times a case reportedly has had to be re-scheduled because no interpreter was available. The judges considered that cultural considerations were important; one observed that the stereotype of the intimidated, subdued, native defendant self-pressured into pleading guilty, remained somewhat valid.

Not surprisingly, these veteran, informed judges were quite well aware of the CWL and the CLP, knew most program employees by name and had significant contact with them. Particular praise was heaped upon the Sydney area CWP worker for assisting clients well and helping the court system flow better. Apparently though, the judges, perhaps true to their role as they perceive it, have been reactive; for example, no judge has utilized the ‘conference’ option advanced in the YCJA. Overall, they were quite supportive of MLSN and the two programs though they did have specific criticisms. These perceived shortfalls included the view that the court worker program should do a better job training staff to understand the role of the judge. It has to be appreciated, one noted, that the judge is “like a referee where the company (i.e., government) pays for everything including his salary and the accused is the visiting team”, so the judge is limited in what he or she can say to the defendant prior to and during the court process and perhaps, even more important, does not want to hear things that he should not be told. Moreover, court proceedings are public and may be recorded (in one instance a hand-held recorder was passed around in the circle, along with a feather), even when transplanted in the sentencing circle format, so introducing a circle by suggesting that everything will be private and confidential is misleading at the least in their view.

These senior judges were involved always in “full monty” sentencing circles, where the objective is to render a decision on-the spot, subsequent to the sentencing circle’s discussions and deliberation about recommendations, and usually after a short respite followed by a formal “reconvening” of the court. One judge commented, “I listen, like a juror would, to comments and suggestions, then convene the court and render a sentence”. The judges reported mixed experiences with respect to sentencing circles. There were not many even on their part; in the Shubenacadie / Truro area the veteran judge had participated in only six sentencing circles over the past decade while his counterpart, responsible for the Eskasoni court (in addition to court duties in Sydney), had participated in but one, cancelling another at the last moment when the victim and /

or the victim's mother refused to participate and decried the whole exercise. Both judges reported having had one quite satisfactory sentencing circle and one judge may well have had a few other "acceptable" ones where the shortfalls were primarily with the lack of compliance with the sentencing orders on the part of the defendant. The judges did highlight a number of issues concerning the sentencing circles, especially disagreements with CLP facilitators over the criteria for having a sentencing circle (e.g., should there be one if the victim is opposed?), concerns about the attendees (both judges placed some emphasis on respected community representatives being present as well as supporters for the offender and the victim), and misunderstandings about the public nature of the proceedings (e.g., it was noted that defense counsel may insist on this as well since the record can be referred to in possible appeals). Despite the disagreements and very few actual sentencing circles, the judges indicated that they were still open to requests for them, essentially viewing the sentencing circle phenomenon as "a work in progress". One judge almost proudly stated, "I have held one every time I was asked". Clearly they did not envisage a large number of sentencing circles since they were seen as quite demanding of court officials' time as well as requiring significant preparatory effort on the part of the CLP staff; one judge observed that "as judge Hamilton told me, you can only go back to the well so many times". Like their HRM counterparts, the criminal court judges in Truro and Sydney did not anticipate ever doing sentencing circles for mainstream defendants or communities, acknowledging both the cultural difference of Mi'kmaq communities and the legislative imperative of alternative sentencing for aboriginal persons.

The judges were ambivalent at best about there being more Gladue assessments. Their views were similar to the HRM judges, indicating that the information and recommendations could be accommodated in aboriginally-sensitive pre-sentence reports (PSRs). The few Gladue assessments that were completed apparently did not win over any converts among the judiciary. One of the judges noted that a PSR is virtually always requested if a jail term is envisaged and he routinely asks the defense to indicate whether there is anything that is special to take into account about his or her client. Another judge commented, "Good quality PSRs should take Gladue issues into account and that should be Corrections' policy". The judges were, on the other hand, quite open to the concept of a native criminal court, under the guise of a wellness court focused on offenders with serious alcohol and drug issues. They had identified these latter issues as major priority concerns and after discussions about mainstream drug and alcohol treatment courts' foci and procedures (e.g., the voluntary option, the accused signing a waiver to allow for deferred sentencing) they appeared to warm to the possibility. Indeed, both veteran judges allowed that they themselves would consider such a posting – a judge dedicated to the court for a day or two a week - if certain conditions were met, such as funds being available for rehabilitation initiatives and replacement for the judiciary unless the position were filled by a retired judge.

The views of the four Family court judges can be presented more succinctly since their engagement with Mi'kmaq people and communities was apparently much less and also their standpoint concerning Mi'kmaq and family justice issues is detailed below in the section, "MLSN Mandate: Others Areas of Justice". Suffice it to note here that these



judges indicated that Mi'kmaq cases account for large proportion of the total child protection cases and other family court cases in Truro and Sydney (most coming from especially Indian Brook and Membertou / Eskasoni), that Mi'kmaq persons are often without legal counsel and exhibit little knowledge of the salient family law issues, and that there may be significant discomfort and alienation on their part vis-à-vis the family court. The judges generally believed that that there should be more outreach of family court services, and even Mi'kmaq family court workers. Several judges reported that there were significant cultural differences and sensitivities that had to be taken into account in the Mi'kmaq family court cases. As noted elsewhere, the Family Division judges frequently expressed frustration at jurisdictional and other limitations on court orders (e.g., the ineffectiveness of Matrimonial Real Property law) of virtually any kind on reserves and decried the perceived arbitrariness and lack of rules for property division, support and so on. Under the circumstances, they supported the development of Mi'kmaq alternative approaches.

The views of the field-level judges were strongly underlined by one of most senior members of the Nova Scotia judiciary. He was positive about the emergence of MLSN and the CWP and CLP programs and suggested that now that they are successfully in place, “they will be able to grow and expand”. He expressed support for sentencing circles and Gladue assessments while noting that there may be a need for some protocols to be established and more discussion among the judges. Calling attention to the time and resources required, he suggested there would have to be selectivity with respect to having sentencing circles and protocols established to set out the criteria for holding them and the ground rules, adding, “They can't be just for the powerful”. As for the Gladue assessments, he was open but cautious, stating “let's see how it works out”. The high-ranking judge also looked favorably upon the idea of a native criminal court in the wellness mode analogous to mainstream society's drug and alcohol treatment courts. The scattered distribution of the Mi'kmaq population could create operational challenges for such a court but he commented, “Here if the First Nations develop an infrastructure, advance the video technology say, then they could open doors for others”. The respondent was also sensitive to both cultural differences (“social context” considerations in his words) and to the complexity of collective and individual aboriginal rights (“it remains a live issue”, he opined).

Overall, there were many points of consensus, including,

1. An openness to the argument that Mi'kmaq culture is different and that the differences have salience for both criminal and family court.
2. A willingness to respond to requests for sentencing circles despite their perceived considerable demands and despite occasional problems in successfully achieving the results hopes for, whether in process or in outcomes.
3. A conviction that sentencing circles are not especially appropriate outside the aboriginal community, a view related to legislative policy (i.e., section 718) and a belief that aboriginal communities are different (e.g., feature more communitarianism, more overlapping and intensive relationships)

4. The view that Mi'kmaq alternatives to conventional court processing, whether justice circles, family group conferencing or alternative dispute resolution should be encouraged, and an accompanying view that Mi'kmaq capacity along these lines needs to be nurtured since it is limited at this time.
5. The assessment that MLSN and its programming should be expanded, in particular with respect to the family justice services such as court workers and FLIC.
6. A view that the Gladue reports have value but can be accommodated within the format of pre-sentence reports.
7. An openness to the idea of a provincially administered native criminal court along the lines of a wellness court, especially since alcohol and drug abuse and addiction remain considerable and underlay high levels of crime, family dysfunction and general social disorder in Mi'kmaq communities.

## **CROWN PROSECUTORS**

Several crown prosecutors were interviewed in each of the three regions and their standpoints proved to be quite different by region. All the respondents were veterans in their role. The HRM prosecutors had slight if any experience with aboriginal defendants and knew little of the CWP and CLP programs. A senior HRM prosecutor recalled a native court worker spending a short time “shadowing” a crown as part of her CWP training and considered it “a wonderful exercise” but otherwise had no dealing with any native court worker. Another respondent recalled an occasion when the coordinator of the CLP addressed a grouping of Public Prosecution Service (PPS) lawyers. The HRM “crowns” had never participated in a sentencing circle (a CLP worker did report a different “crown” having attended one and indicating that he was positively impressed with it). They were also not aware of Gladue assessments – though they reportedly would not oppose one, they saw any initiative in that regard as coming from defense counsel. The Truro area crown prosecutors interviewed were more familiar with the CWP and the CLP and one had attended a sentencing circle (one where the judge observed and listened and a week later, in the courtroom, rendered a sentencing decision). The Truro crowns indicated that they were not impressed with either the CWP or justice circles or, for that matter, the sentencing circles. In their view the CWP did not help reduce the ‘no-show’ problem and had no discernible impact on the court process. It was argued that having a Mi'kmaq lawyer providing legal aid in the area – a legal aid position dedicated for Mi'kmaq defendants – would be “the way to go”. The criticism of the justice circles was a muted one as the respondents here preferred a Mi'kmaq approach that might be effective in getting at deeper problems such as sexual abuse. The PPS lawyers were divided over whether cultural differences were significant but in agreement that Mi'kmaq people should “march through the mainstream justice institutions” (i.e., be lawyers etc in the system) rather than be involved in hived-off, separate aboriginal justice programs.

In the Sydney area, the crown prosecutors serving Membertou and Eskasoni were quite familiar with both MLSN's programs, especially the CWP which they judged to be very beneficial for Mi'kmaq clients and for the court process. They emphasized too that Mi'kmaq cultural heritage and possibilities were important to take into account. Unlike

their mainland counterparts, they of course were more likely to encounter that cultural difference in their work, most obviously in that the Mi'kmaq language was part of their milieu. Indeed, the crown prosecutors indicated that a significant shortcoming in MLSN justice services was that the MJI-managed interpreters' service had gone by the boards with the demise of that organization and not been resurrected by MLSN. The "crowns" considered that the interpreters' service was better five years ago than it is now. One crown commented that the interpreters' service for Mi'kmaq has been less well done than that provided for immigrants of different languages; apparently much is not recorded and the interpretation leaves much to be desired as Mi'kmaq police frequently comment in asides, "that's not what he said". Asked about other shortcomings or needed Mi'kmaq justice programming, one respondent wryly commented, "How about a drive-me-to-the-court program", noting that no-shows remain a major problem for the court despite the move to Eskasoni.

The Cape Breton prosecutors were positive about the CLP justice circles and idea of the sentencing circles ("they are appropriate for Mi'kmaq since they have a much tighter sense of community so the impact could be significant") but there has been only one of the latter held in the last seven years. They also could see the value of Mi'kmaq alternatives in the matter of civil cases ("there is very little use of civil courts by Mi'kmaq in this area") and the regulatory justice sphere. The "crowns", like their mainland counterparts and the judges, envisaged Gladue assessments as basically more extensive PSRs, one adding "You could count on less than one hand the number of times that [the defense counsel in Eskasoni] has made any reference to a particular native legacy". There was some support for a wellness court focused on alcohol and drug abuse and addiction. One prosecutor observed that there were no treatment facilities for youth in Nova Scotia (they may be sent to Labrador) and scarcely any for adults in Cape Breton; further he contended that there has been no significant practice in the Eskasoni court of deferring sentence for treatment objectives.

In sum, then, the crown prosecutors' standpoints on justice initiatives among the Mi'kmaq people varied sharply by region and it was in the Cape Breton region where there was the greatest support for MLSN and the CWP and CLP, and greatest advocacy for more Mi'kmaq justice initiatives.

## **DEFENCE COUNSEL**

Only seven defense counsels were interviewed, all but one associated with NSLA. These respondents acknowledged inadequacies with the provision of legal services for Mi'kmaq persons in both criminal and family court. They were aware of the court worker program but of mixed minds about its value. As could be expected, the NSLA lawyers observed that there was a large percentage of "repeaters" among their clients. Those respondents in Cape Breton noted that, like the other court officials, they too had a problem with Mi'kmaq no-shows and delays. They could appreciate however that outside of court there could occasionally be problems for clients to travel to Sydney from Eskasoni and other reserves, and in that regard there was some frustration expressed over the difficulty in NSLA's obtaining access to any facility on reserve – presumably free

access – for meeting with clients before court appearance. The defense counsel, with one exception noted below, did not see the Gladue assessment as much more than a PSR to be carried out by Probation as is the usual case. The defense counsel usually held that the native communities did not exhibit much capacity to informally resolve conflict but that any developments along these lines could be very beneficial for the communities. Several expressed their disappointment that, “despite NSLA encouragement”, Dalhousie University’s IBM law graduates have not gone on to practice law. They also saw value in a wellness court format, one quoting a judge’s comment that “take away substance abuse and you eliminate crime there”.

The two Mi’kmaq women who were defense counsel considered that MLSN had done a good job getting things back on track after the collapse of its predecessor. They did not perceive – nor themselves attend to – much native court involvement in HRM but they did readily identify challenges in the Truro area (Indian Brook and Millbrook) and elsewhere in both criminal and family justice issues. Both held that MLSN priorities should be more cultural awareness and orientation in the mainstream justice systems and more promotion work in the FN communities. While appreciating the MLSN focus on the criminal justice system and encouraging more activity regarding Gladue assessments and sentencing circles, they also held that some extension to the family court sphere would be desirable.

## **THE POLICE**

Interviewed police officers were all RCMP members and were stationed in The Truro – Shubenacadie area (Indian Brook, Millbrook and Bible Hill) and in Eskasoni, Membertou and Waycobah. The former attested to the crime patterns noted earlier with respect to Indian Brook and Millbrook, namely that the Indian Brook area featured a very high crime rate including drug related crimes and assaults whereas Millbrook had a declining crime rate, though experiencing a recent spike in property crime and a continuing problem with substance abuse and drug dealing. In Indian Brook police officers identified a serious, under-the-surface problem of sexual assaults on children and youth while Millbrook officers considered that spousal and partner violence – more of a subtle middle class variety – was more problematic than reported. In both Indian Brook and Millbrook (as well as Bible Hill where there is no reserve), the RCMP officers reported that youth crime had declined sharply, to the point where the activity was largely confined to a small group of repeat offenders, and that decline and characteristic of the offenders, have been responsible for their referring few if any cases to the CLP justice circles. A few officers observed that there were a number of minor incidents where the victims stressed that a warning to the youth is all they wanted. Other factors for low referrals included the “paper-saving / less administrative bother” option now sanctioned in the YCJA to handle minor youth offenses via an informal caution. The RCMP officers in the Central Nova region did report a significant number of young adult offenders but did not believe that such persons could be referred to the youth-oriented CLP. They were perplexed about these offenders; for example, one officer commented that the young adult males bother him since many have dropped out early from school, are unemployed

and have low esteem from others or themselves, adding “I don’t know what can be done. There is a need for some kind of program and intervention but what?”

The police officers had little experience with sentencing circles or with CWP staff and did not express strong opinions one way or the other about the CLP’s youth justice circles. In light of the problems they did mention – serious offending, repeat offending, alcohol and drug abuse, young adult offending – it was as if the CLP was of little relevance. Sentencing circles for adults were too few and their results deemed too mixed to make much of an impact. There were only two sentencing circles in Indian Brook in recent years (attested too by the judge) and only one in Millbrook where the outcome was considered by the police officers to be unsatisfactory (i.e., lack of compliance by the adult offender). Generally, the police considered that they were providing a service consistent with the three central policing service objectives of the First Nations Policing Policy (Aboriginal policing Directorate, 1996), namely culturally sensitive (e.g., attend community cultural events, have an elder abuse program, go moose hunting with youth), comparable, if not superior to nearby non-FN communities (e.g., 24/7 fast response, a high ratio of police per population), and FN ownership or partnership (e.g., participate fully in inter-agency meetings, have a community policing plan). Still, in Indian Brook, much less so in Millbrook, the problems of factionalism, drug and alcohol abuse and social order issues (e.g., having to arrest under the Mental Health Act) were seen as formidable.

The police also reported that disputes and ineffective band bylaws (“I’m not sure what standing they have” said one officer, articulating a common police position) fester since there appears to be little community capacity to resolve conflict. Several officers commented that one possible cultural impasse is that residents may want more of a capacity for family and police to do early intervention but “in our system you have to respect individual rights”. Asked specifically about the role of elders in dispute resolution, a Millbrook officer summed up the more general police view as follows: “the elders are hardly influential and resort to their advice by residents is largely mythical”. Justice initiatives that were directed to the problems of drug and alcohol abuse, young adult offenders, community conflict resolution and offender reintegration presumably would be well-received by the police. Officers, both in this region (Indian Brook, Millbrook) and in Cape Breton (Eskasoni and Membertou), expressed an interest in the idea of “exit circles” which might facilitate the successful reintegration of inmates, noting for example that “almost everyone [released from prison] is re-arrested within a short while of being released”.

The crime patterns reported by police for Membertou and Eskasoni were summarized earlier so suffice it here to note that the RCMP officers reported much more crime and social disorder in Eskasoni, along with more factionalism (e.g., conflict between factions on band council). Membertou was seen as having strong leadership, a growth economy, and an improving crime situation; substance abuse and drug trafficking were considered to be still significant in Membertou but more because of its central location, and the traffickers were identified as mainly non-natives. In Eskasoni, depicted as featuring little economic development and inadequate facilities (e.g., “there is no youth

center and the school facilities do not stay open”), the major crime issues were drug and alcohol abuse and addiction, personal assaults, social disorder offenses and little serious property crime – this is the pattern that has characterized many reserves across Canada over past decades (Clairmont, 2006). In both communities there was the suggestion by police that the offenders tend to be repeaters and to have relatively low socio-economic status in the community; though no data were available to back up their perceptions it can be recalled that some Mi’kmaq opinion leaders and local agency staff made similar observations.

Police in Eskasoni were somewhat guarded in their assessments of the CLP program, unlike, for example, their unqualified, favorable view of the court worker initiative and staff person. It was mentioned by several officers that issues such as literacy, language familiarity and cultural legacy make the CWP quite relevant. As regards the CLP, there seemed to be acknowledgement that, as one officer put it, “first time offenders can benefit from the CLP”. A Mi’kmaq member allowed that he found the justice circles interesting and was happy to participate in them. A drawback with the CLP activity was identified by the officers (Mi’kmaq and others) as the difficulty that the CLP appears to have in securing the cooperation (especially the timely cooperation) of the referred youth which occasionally results in the police losing jurisdiction over these cases, cases that usually would proceed in court as summary charges. The view here, as in the Indian Brook / Millbrook area, also was that referred cases involve “lower end offenses” and that CLP is not especially salient for the major policing problems. The Eskasoni officers interviewed shared the view of their central Nova counterparts that disputes and conflicts, criminal or otherwise, are not being resolved at the community level. They suggested that assisting in the development of such community capacity – in all spheres including the regulatory – would be a very worthwhile MLSN contribution. There were hints from the interviews that Mi’kmaq and Mainstream officers might have different views on expanding justice initiatives since most of the latter appeared to share the view offered by one, namely “I don’t think it should be different for anyone”; however the interview did not pursue that trajectory and also the sample was small.

Overall, then, among the police officers the following central themes were found

1. The major immediate policing issue is the alcohol and drug abuse / addiction (and trafficking) problem.
2. There has been a decline in youth crime and much of what remains is carried out by repeat offenders.
3. There is a very troublesome and seemingly intractable problem of offending among young adult males.
4. Police, with the modest exception perhaps of those in Cape Breton, have not had deep contact with MLSN, the CWP or even CLP, and while positive in a general sense, do not see these initiatives as particularly salient for the problems they have identified.
5. Police could readily identify areas where more justice initiative could be directed such as improving community efficacy with respect to conflict and

dispute resolution, focusing on more serious and adult offenders, exit circles for inmates and so on.

## **OTHER JUSTICE ROLES**

Two Mi'kmaq persons engaged in other roles in the justice system in Cape Breton were also interviewed. Both highlighted the continuing need for dealing with cultural differences and racism within the mainstream justice system. The shortcomings of the latter were seen as “language barriers, education barriers, and lack of knowledge of our culture”. Both cited the need for more Mi'kmaq people within the mainstream justice system; one respondent noted that opportunities are going unanswered,

“The Equality Committee [has] posted jobs and no one seems to apply for them in this field. One job posted was Corrections, and no one applied. We have no Natives in [Corrections] in all of Nova Scotia. We need to try to encourage our people to take more interest in the Justice field. Right now we only have 3 Natives working for the Department of Justice. I think the obstacles are internal, because the government seems to want to offer these programs, but it is up to the reserves, whether they want to take them on or not”.

These respondents – one much more so than the other - were familiar with MLSN and the CWP and CLP initiatives and believed them to be valuable. They were critical concerning the perceived lack of attention to victims. They shared the view of other Mi'kmaq opinion leaders and local agency personnel that there was insufficient community identification with MLSN and a need for more regular communication and promotion. One respondent commented.

“No I don't think that there is sufficient community identification with MLSN because there are still a lot of people who are unsure of what it is and what it has to offer. Yes, I do think that the MLSN is the building blocks for a new needed justice initiative, but I think it's just the beginning. It's only a baby yet, but there seems to be a missing link somewhere”.

## **STANDPOINTS: TRIPARTITE AND ADVISORY MEMBERS**

Ten members of these two committees (whose memberships overlap) were interviewed, two of who were from Cape Breton. In addition three other persons, all Mi'kmaq and familiar with the history of the board structure for MJI and MLSN were interviewed. Three of the committee interviewees were non-native, government officials. Eight of the Mi'kmaq respondents had graduated from the Dalhousie Law School; because of overlapping roles, some of their views have been discussed in other sections. In presenting a brief overview of the standpoints, we will discuss first the views of government officials, then the views of the other members.

### **GOVERNMENTAL MEMBERS**

The four government officials shared the view that MLSN has emerged as a stable umbrella organization for significant Mi'kmaq justice initiatives and operates within a workable governance system. Like virtually all other members of the TWC and AC committees, they held that the MLSN has essentially accomplished its 2002 objectives following the strategy outlined at that time – putting a solid organizational structure in place, having well managed and effective programs and engaging a good staff. It was considered that the MLSN not only has credibility but that it is unique in Canada in that it is a province-wide organization delivering significant justice programs and from that vantage point being able to effect cross-fertilization among the programs and see and respond to the larger picture of justice issues in the evolving Mi'kmaq society. The advantages of MLSN being a one-stop base for funding for Mi'kmaq justice programming, as it were, was appreciated by government officials. One such official, reflecting the consensus, observed,

From my perspective, the strides forward have been quite monumental, particularly considering this program started with virtually nothing in September of 2002. The accomplishments of MLSN [can be seen] particularly in the area of establishing practice standards, developing service delivery capacity and establishing a place for a Mi'kmaq voice at the justice table on a number of levels, never mind the operational accomplishments of designing a multi- region service on such a tight budget etc.

The government members held that the governance model, the embeddedness of MLSN within the Tripartite Forum and its co-management whereby CMM handles financial and personnel matters, has been an important part of the MLSN success. There was consensus that TWC over time has become the de facto board for MLSN. As one such respondent said, “We are the board of directors”. Another official observed, “The Tripartite subcommittee functions as a board and there is representation there from CMM, UNSI, and Native Women [plus the government officials]. It is a fairly large group. MLSN is basically its exclusive focus and the activity is basically that, MLSN activity”. Several members noted their extensive efforts each year to secure the core funding for MLSN and to provide support for MLSN staff through encouragement and financial assistance for morale and team building “get-aways”. The government officials



considered that the CMM co-management has provided much stability with its credibility and “emphasis on a well-run organization and transparent accountability”, and thus enabled MLSN staff to get on with their substantive justice work. There was some ambiguity in the views of government officials concerning the role of the Advisory Committee. One respondent, for example, held that the AC’s role essentially is to advise the MLSN regarding justice initiatives, a separate but equally valuable activity from that done by the TWC, but he was uncertain about the AC achievement, while another member observed that “any accountability to the AC has pretty much ceased”. There was an implicit realization, at the least, that the TWC’s role vis-à-vis MLSN had altered owing to the continuing need for its members to assist in securing the annual budget and to the inactivity of the AC (TWC minutes indicated that budgetary pressures were cited by MLSN as the main reason for not holding AC meetings). There was consensus in the interviews, and clear statements in the TWC minutes that the TWC reports to the Tripartite Forum’s Officials Committee consisting of senior government leaders and the thirteen Mi’kmaq chiefs; the implication was that any new direction in MLSN management or substantive justice programming would have to be approved by the Officials Committee.

The government officials noted several challenges for MLSN, the most fundamental of which has been securing long-term core funding. All the officials emphasized how precarious the MLSN funding is, save for the two programs, CWP and CLP, which they saw as quite securely funded. From the very beginning of the MLSN the TWC minutes regularly identified the core funding as problematic and it appears to have been the hope of some TWC members (government persons included) that MLSN would attain more financial stability by having the two specific programs under its umbrella. The core funding issue however remained problematic and is seen by governmental officials as a major brake on MLSN’s response to more intensive and extensive Mi’kmaq justice work. For example, while intrigued by the opportunities and demands that MLSN has in the family and regulatory justice spheres, they worried considerably about overloading MLSN and where the funding would come from for such new initiatives. The general view was that major expansion would have to come via band governance funds (i.e., arrangements between the chiefs and INAC) and they were skeptical that band councils would want to agree to anything like that. Indeed, their hopes for continuing with the level of core funding received for 2006-2007 appear to hinge on continuance of a non-governmental, foundation grant received for that fiscal year. The basic standpoint of the government officials was summed up by one who wrote, “It is unlikely that MLSN will receive additional funding from the Feds or the Province. We need to confirm the existing level for the long term. The key issue, then, is to determine what we need to do to make MLSN as meaningful, effective and efficient as possible within the existing funding framework”.

While all officials agreed on the importance of multi-year core funding (funding apart from that provided to manage and deliver the specific programs) it was less clear whether they agreed on likelihood of such commitments being made, even at current levels, by the federal and provincial governments. There were similar views about what would constitute an adequate core MLSN staffing, apart from the CWP and CLP staff.

Beyond shoring up the existing MLSN management by having a full-time manager or CEO, and perhaps a greater community liaison capacity, it was considered that other useful roles to add to the MLSN complement should be considered as special, additional project funding permits.

There were few other problems or challenges for MLSN reported by the government officials. Turnover among MLSN staff was noted but the general view was that, while morale and team-building exercises should be emphasized given the pressures of the CWP and CLP work and the modest compensation provided to staff, turnover could be expected given the current premium for young bright semi-professional Mi'kmaq persons and the demands of the work. Several officials observed that it would be wise for MLSN to have in place an effective and truncated training / orientation module to lessen transition disruption as well as other strategies (e.g., developing a pool of volunteers from which replacements might be sought?). The respondents were also cognizant of the need for better promotion and community liaison on the part of MLSN; several specifically pointed to recent TWC discussions on a communications strategy and one respondent suggested a special and separately funded project entailing a fulltime community outreach worker may be required.

The government officials also appreciated the challenges of expansion that MLSN could face. One official acknowledged that the Tripartite Working Committee is on record for MLSN "moving towards" the RCAP justice objectives. He foresaw some expansion in the criminal area, taking note of the offender reintegration grant and the possibilities of a Mi'kmaq criminal court (i.e., a wellness court directed at the alcohol and drug addiction). He was positive too about MLSN initiatives in the family/civil law area, arguing that would give the MLSN more balance and agreed "absolutely" that the cultural dimension may be more salient there. Another respondent agreed that recent developments with respect to governance issues (e.g., partnering agreements) mean that justice initiatives in the family and regulatory areas could be a growth area, perhaps even greater than the criminal side, and expressed surprise that MLSN focus has been on the criminal side, in corrections and so forth. On the other hand, the elephant in the room as it were, funding resources, suggested to the respondents that, for the nonce at least, new initiatives should be where MLSN currently is, in the criminal justice box; one respondent wrote, "The contractual framework within which MCLP exists under the AJS and the RJ program contracts is very specific to criminal justice service delivery so why not go deeper there instead of spreading out".

## **NON-GOVERNMENTAL RESPONDENTS**

Like the governmental members, these respondents, all of whom were Mi'kmaq, considered that the MLSN has been a significant success and is delivering valuable programs to Mi'kmaq people in Nova Scotia. One HRM lawyer, recalling that the predecessor MJI had been fractious and highly polarized, noted that MLSN has done a good job getting the programs such as CWP and CLP back on track. A Cape Breton member commented that "If you ask me, the MLSN is doing the best possible job it can

do with the resources they are getting”. A senior member of the TWC commented that “the Tripartite Forum on Justice has been quite successful and, even from an RCAP position, I’m pleased with the progress. It’s more a matter of commitment, of positive collaboration, of being open to new initiatives from the Mi’kmaq. [I am ] fully aware of the modest nature of the MLSN but still the new attitude and relationship trumps this”. The respondents frequently emphasized the evolution of MLSN as featuring incremental steady growth and pointed to the program development within the CWP and CLP (e.g., the cultural gatherings for inmates and the section 84 project). As one member commented, “the important matter is not to rush off in all directions but to steadily and carefully build on what is done”. Another key member re-stated this view in a slightly different way, “It’s not so much a new vision but, as the Clairmont and McMillan 2001 report recommended, a slow evolution”.

The respondents were generally of the view that this assessment marked the end of the first phase of the MLSN, one where the basic Mi’kmaq programs in the criminal justice field had been re-established and a credible, well-functioning umbrella organization put into place. The consensus was that this first phase accomplishment had been very much the result of the governance arrangement, namely the co-management with CMM and the embeddedness of MLSN within the Tripartite Forum framework. There was more diversity on the issue of whether the governance arrangement in place should continue on. The two most senior respondents believed that it should. One commented, “It’s going well so why change it! [The board-like status of the TWC and the administrative direction by CMM] is okay for now. I don’t want to disrupt something that is working well ... Our model is great ... We’re getting the job done”. Both these respondents were not in principle opposed to MLSN becoming a more independent entity but thought that any transition should be pursued cautiously, one suggesting that, pending possible agreements within the Made in Nova Scotia treaty negotiations, the present governance framework should be retained , while the other suggested that perhaps a revitalized and more Mi’kmaq-representative Advisory Committee could be envisaged as a working committee, addressing such issues for subsequent presentation to the Mi’kmaq leadership and communities for ratification. Underlying these views was the position that the existing governance arrangement and important developments such as the CLP transferring from UNSI to MLSN and the co-management of CMM, had been approved by the Officials Committee of the Tripartite Forum on which all thirteen Mi’kmaq FN chiefs sat.

The views of the other non-governmental members (or former AC / Board members) typically placed more emphasis on the value of MLSN becoming an independent body with its own separate board of directors. Usually the argument was that “the current organizational structure would not do much in implementing the RCAP agenda”. Variants of this standpoint included views such as “We are pretty much at the mercy of the mainstream system”, “Independent justice is not a focus of CMM. To grow you need to have the thirteen chiefs”, and “The TWC as the board has been okay but if we walked the talk, we’d be much further ahead than we are”. Several of these respondents echoed the comment of one person that “the CMM link was supposed to be temporary so we should try to be more independent”. Among those adopting the view

that a more independent MLSN is needed, there was significant variation as to the appropriate governance, some respondents calling for a board of chiefs and others stressing that any new board should be apolitical. Interestingly, too, a number of this grouping of respondents also qualified their comments by suggesting a slow transition to a new governance arrangement (i.e. an independent MLSN with its own board) taking as much as five to ten years. Overall, then, the majority view on governance, among this grouping, was somewhat more insistent for an independent MLSN, presumably largely to better advance a Mi'kmaq vision of justice and to effect more transparent accountability to all the Mi'kmaq FNs, but not much different from that of the senior non-governmental members cited above, in terms of time projections for realization of that independent status. On the issue of Mi'kmaq governance the divergence principally involved the location of the chiefs' oversight role, whether it be in the Officials Committee or in a separate board format.

Like the governmental members, the non-governmental respondents highlighted the central problem of the MLSN as being the year to year struggle to secure the funding required for core MLSN "umbrella" activity. Several members cited the need for secure transitional core funding pending on-going treaty agreements. One senior member expressed a widely shared view when he wrote,

"The MLSN was intended to pursue further opportunities for expansion as well as a stable, multi-year funding base for the initiative. Both have, in large part, been impossible as focus has been on running after small pots of funding to stay viable. The foundation entity (MLSN) was never fully funded by the partners at the time, nor since. The MLSN was constantly in the position of "tweaking" numerous funding proposals to try to make ends meet... still never meeting the core funding required for the entity. The MLSN was also never fully staffed as proposed due to funding restrictions. I maintain that, if the MLSN had been resourced and staffed as intended in the founding proposal, many of the ideas and concerns would have been addressed. The Mi'kmaw would be much closer to the goal of transition to an independent entity".

Other problems, or better, challenges for MLSN were seen as especially (a) the need for building stronger community linkages and creating more identification with MLSN, and a two-way flow of information between MLSN and the FNs; (b) expanding the mandate of MLSN to do more for victims of crime and to respond to the growing need for legal support in the family justice area (e.g., a family court worker, family group conferencing). While both these themes were quite common in the interviews, the latter – (b) - was particularly emphasized by the respondents in the HRM area while the former – (a) - was emphasized most by those living in or officially responsible to the Mi'kmaq communities. Overall, the respondents considered that MLSN was poised to expand and should move forward outside the criminal justice box even while retaining its emphasis there. There was also a common view that cultural awareness orientation and a greater presence of Mi'kmaq persons in the mainstream justice systems should be much encouraged though no specific strategies were advanced to that end.

## **THE MLSN MANDATE: BEYOND THE CRIMINAL JUSTICE SYSTEM**

The emphasis on criminal justice system (CJS) issues is understandable given the origins of MJJ and MLSN, the funding mandates, and perhaps the recentness of the spike in family / civil justice issues and certainly of regulatory jurisdiction. Within the extant framework, MLSN has been successful and certainly there are needs still to be met there and potential additional valuable contributions still to make to Mi'kmaq justice such as an enhanced CLP (e.g., dealing with repeat and adult offenders, exit circles for custody cases), advocacy of a wellness court (native criminal court) and cultural awareness / aboriginal perceptions orientation throughout the justice system. Funding remains problematic even for the current criminal justice and offender focus. Still, the criminal justice thrust may be too restrictive and marginalizing. Respondents, both Mi'kmaq local leaders and justice role players (police officers and defense counsel), suggest that offenders are often repeaters and have low status in their community (i.e., the "have-nots", the "zero-status") and under these conditions it may not be surprising if justice has low priority among Mi'kmaq leaders. Also, as will be discussed below, the needs and opportunities for alternative justice and dispute resolution are quite evident in these other justice sectors and may even be more appropriate justice milieus for the application of a distinctive Mi'kmaq approach.

## **ISSUES IN FAMILY AND CIVIL JUSTICE**

There is a concentration of Mi'kmaq people in the CBRM area (roughly 4% to 5% of the area's population) and the family court there is, as in Halifax, a unified family court handling the full spectrum of family justice issues (divorce, matrimonial property, support, child protection, custody and access). This combination makes the situation there quite unique since, for example, the Truro area does not have the unified family court model and the Halifax area does not have a visible Mi'kmaq client presence. There do appear to be some serious issues concerning the Family Court and the services provided Mi'kmaq people in Cape Breton that could have implications for the MLSN initiative. The high costs of legal services have resulted in a large proportion of persons in family court being unrepresented (Clairmont, 2006). Access to legal aid is income-based but recently, free, limited, duty counsel service has been made available at the Sydney and Halifax family courts. Several judges in Cape Breton have indicated that Mi'kmaq people constitute a high and quite disproportionate percentage of the Court's clients, especially, but not only, in child protection cases (in these cases legal aid is always provided to the caregiver, the respondent); the estimates provided ranged from about half to 80% of all child protection cases. Several court officials there, such as conciliators and also the summary advice or duty counsel lawyer, have indicated that there is also a significant problem of "no shows" among the Mi'kmaq clients or putative clients. Court interviewees suggested hesitancy among Mi'kmaq persons to use the Family Court services, an ambivalence, that might well account for the fact that only 2% of the duty counsel contacts in 2005-2006 were Mi'kmaq people. Some officials (judges and others)

have noted that enforcement orders in custody / access and support cases are frequently of limited value on reserve for a variety of reasons (e.g., jurisdictional issues since only INAC and the band council have authority with respect to band property). There were some suggestions that “gender imbalance” could be a problem for Mi’kmaq females with respect to matrimonial property and maintenance support. One judge indicated that the Matrimonial Real property Act can only be indirectly applied on reserves through the new Aboriginal Land Act or through clauses included in new treaty agreements. Other judges commented on the difficulty of garnisheeing wages on reserve.

These observations tally well with the views of local Mi’kmaq knowledgeable (officials in Mi’kmaq Children and Family Services and others) who were interviewed. There is a widespread view among them that family court issues are many and growing among the Mi’kmaq but that networks with the Family Court are problematic. There was much consensus that information and support services were insufficient. Staff members with the Mi’kmaq Legal Support Network, especially court workers, have reported receiving frequent requests for assistance (largely requests for information, filling out complicated forms, and procedure) in dealing with Family Court issues but, while they may help if they can, their mandate is the criminal justice system and they are not well-informed about SAC initiative (free summary advice or duty counsel), FLIC (the Family Legal Information Centre) or other programs at Family Court. Of course, there is also virtually zero presence of Mi’kmaq persons among court staff, lawyers of any sort, and the judiciary, a factor which enhances the hesitancy and ambivalence frequently reported. There does seem to be much goodwill and interest in building up networks and a better “comfort level” for Mi’kmaq clients among conciliators and judges as well as NSLA and the SAC lawyer. In interviews there have been references to the need for more cultural awareness exposure, for the desirability of a sub-office for legal aid on reserve (in particular at Eskasoni which has a population of about 3500 and where transportation issues to Family Division court in Sydney may be significant) and for a similar arrangement for FLIC which now is located at the courthouse in Sydney. At present none of these suggestions have been implemented though such proposals would apparently be well-received by Mi’kmaq leaders. It was also suggested that more collaboration with Mi’kmaq communities could lead to inventive solutions; for example, with regards to some SAC delivery problems, one official noted that the “first past the post” service delivery approach of duty counsel services (the SAC counsel can only deal with the first party who comes seeking help and the respondent (the other stakeholders / family members) must seek NSLA or private counsel) could be less among Mi’kmaq people since he noted, “surely if any people could support SAC providing legal advice to both parties, it would be the Mi’kmaq with their ‘healing circles’”.

While the family justice issues appear especially critical in the Cape Breton area, they are certainly not limited to that region. As noted in the section “Opinion Leaders and Local Service Providers”, Mi’kmaq people throughout Nova Scotia emphasized the demand for family justice services, many according it as high if not higher priority than the criminal justice sphere, MLSN’s current focus. Justice officials in the Truro / Shubenacadie region indicated that in their more traditional family court system (where the issues dealt with are basically child protection, custody and access) similar problems

exist, namely Mi'kmaq people are over-represented in child protection cases, "native people are not well informed concerning their rights to legal support from partners since the house, welfare and child care is arranged through the bands", and sometimes, even in child protection / permanent care applications, they are without legal representation since the party not with legal aid may not find a private lawyer willing to work for the certificate stipend. It was also reported that there have been sharp differences between Indian Brook and Millbrook, with a decline in recent years in the number of cases from Millbrook but not from Indian Brook, and also in the adequacy of placements (better in Millbrook). One very experienced judicial respondent held that a Mi'kmaq family group conferencing approach could be very helpful, if done well and free of conflict-of-interest, since "there are family relationships and native sensitivities that are real and different [from mainstream society]". The same judge also called attention to the value of a native court worker and argued that funding for family group conferencing and a family court worker "should be no problem as child care is the number one priority for Government and Justice".

In the HRM area, Mi'kmaq cases in either criminal or family division court were quite uncommon, according to three legally credentialized, Mi'kmaq women, two of whom are practicing defense counsel. All noted a need for Mi'kmaq justice or legal support to extend to the family area, both in the sense of a family court worker and in a way that brought cultural differences into child protection / custody decision-making. The family area was one, they suggested, where cultural differences with mainstream society might well be deep. It was also suggested that while alternatives to court processing such as family group conferencing would be valuable, it would be preferable for MCFS, insofar as it is one of the parties in child protection and other matters, to contract out the facilitation to a body such as MLSN. The most-informed respondent, on this specific matter, reported that she does see a number of family justice cases happening in Shubenacadie and Truro but does not herself get involved there, adding that she found it troubling that in the family area when a native person asks for a native lawyer they cannot get one. MLSN staff in the Mainland also reported demand for family justice services, both court assistance and legal information, and help in filling out rather complex forms (court officials in both Halifax and Sydney reported that forms and procedures in family legal cases have become much more plentiful and complex over the years). Interestingly, the gender imbalance and other pressing justice issues, associated with dissolution of spousal / partnership relationships and support claims for both parents and children, have been a growing, major Canada-wide policy issue in Aboriginal society, as was evidenced in the recent conference on Matrimonial Real Property held in Halifax (November, 2006).

After conducting a variety of interviews for this assessment of MLSN, one researcher commented,

I was surprised at the number of people who raised the (family justice) issue or were very interested in the issue. In recent conversations people who are most in need of FGCs and other family mediation, particularly around custody and adoption have no idea of the options offered by MFCS. These are people least

likely to use of courts, even though their situations are dreadful, but they are often the most poor and therefore have no way of getting to court, or accessing legal advice. Another issue is Mi'kmaq females having children with non-Mi'kmaq males and then ending up in custody disputes where the Mi'kmaq female feels at a distinct disadvantage because of systemic factors that favour non-Indigenous in court - whether real or perceived. Additionally, issues of adoption by extended family members in these situations where father, [or potentially mother - but I have yet to come across this] is non-Mi'kmaq but the mother's family is able and willing to take children.

Certainly it would appear important for some Mi'kmaq agency such as MLSN to respond to family court justice issues. Dealing with family issues, if possible outside the mainstream court, as well as sometimes in conjunction with it, was emphasized by many Mi'kmaq respondents (see the Standpoint analyses above) who suggested that customary practices and Mi'kmaq values may be more different from mainstream counterparts in this justice sphere than they are in the criminal justice sphere. In particular the respondents pointed to the Mi'kmaq extended family culture in suggesting that Mi'kmaq ways of dealing with family justice issues would be quite different. To that end, they advocated alternatives such as family group conferencing. Others, pointing to an increased “legalistic” mindset on reserve, emphasized family court workers and FLIC-type services for information and assistance with preparation for court. Of course, most respondents emphasized both kinds of initiatives. Currently, an MCFS employee does family group conferencing (FGC), bringing together and facilitating sessions with agency staff, social workers, the caregivers and his/her supporters and others. The FGC format is a variation of the justice circles approach delivered by CLP staff and, not surprisingly the MCFS employee formerly worked in MLSN's CLP where she received the formal training she now has. A few interviewees – including local MCFS employees - suggested that it is unfortunate that MCFS and MLSN do not collaborate with respect to the delivery of FGC since MLSN provides a cadre of similarly trained people to share and learn from related experience and thereby achieve the requisite conditions for the growth of effective Mi'kmaq response; arguably, too, such collaboration could better avoid a conflict of interest situation since currently an MCFS employee may facilitate sessions between her employer and the caregiver respondent (and / or other related parties).

Overall, then, the interviews and other data yielded seven key points bearing on the family justice area,

1. Family justice issues constitute growing problems for Mi'kmaq people according to court officials, local opinion leaders and Mi'kmaq political leaders.
2. The gaps in family justice services to Mi'kmaq effect demand pressures on MLSN and CWP and could be generating problematic by-products if these demand pressures are not attended to properly.
3. There is a need for balance in the delivery of justice services and MLSN should focus on more than solely the criminal justice system.



4. Family justice may be an area where, even more than criminal justice perhaps, Mi'kmaq customs (e.g., extended family, etc) and approaches to conflict may be very different than the mainstream values and preferred approaches
5. MLSN getting referrals from MFCS and coordinating family group conferencing, and also providing a family court worker in the Truro/Shubenacadie and Membertou / Eskasoni areas could be valuable and represent significant movement toward Mi'kmaq ownership of their justice problems.
6. Staff persons in MCFS point to the value of closer collaboration in the provision of a Mi'kmaq approach similar to family group conferencing, thereby also avoiding possible conflicts of interests and nurturing a cadre of experienced creative facilitators.
7. Initiatives in the family justice area may be feasible from the perspective of funding – there are possibilities here since MCFS currently funds a FGC position, child issues are presumably a priority of government, and MRP developments are apparently making funding available.

Civil justice issues such as torts, neighbour-neighbour disputes, represent another justice area where alternative approaches to small claims court and other civil contests might be developed further. There is, at present, nothing like the demand pressures in the family justice sphere but, as indicated in the Standpoint interviews, many Mi'kmaq local officials and opinion leaders have noted an increase in this civil justice activity in recent years and held that Mi'kmaq ADR alternatives should be developed. The high costs reportedly entailed by civil court actions are said to result in conflicts not being resolved but festering. Court officials reported little use of civil courts by Mi'kmaq persons and some Mi'kmaq respondents indicated that “small claims court is not our way”. Police in particular in Cape Breton and the Mainland contend that there is no informal resolution of such conflict going on and that elders are hardly influential and resort to their advice by residents is largely mythical. There is a need expressed by many respondents for greater community capacity in dispute resolution. Cases may involve band and community members, two or more community members in dispute and so on. MLSN is well-positioned to expand into this area (i.e., has capacity, is province-wide and can deliver a disinterested but Mi'kmaq approach). Feasibility factors may be high since there may be cost-recovery (see the experience of other FNs such as Akwesasne). The biggest challenge could well be, as in the regulatory field to which we now turn, whether Mi'kmaq people would use such a service.

## **REGULATORY JUSTICE AND MLSN**

This area of justice was explored through interviews with enforcement officials for the most salient governmental bodies, namely DFO and EC at the federal level and MNR provincially, and with a host of Mi'kmaq policy leaders, resource managers, persons responsible for environmental issues and one person engaged full-time in

enforcing band bylaws. Only a brief overview is presented here, first providing a detailed illustration of the emerging issues in the area of moose harvesting where a template for Mi'kmaq regulation may be emerging and then discussing the views on regulatory justice of the persons interviewed.

## **THE REGULATORY JUSTICE TEMPLATE**

In 2001 a member of the Pictou Landing First Nation violated his community's fishing agreement by fishing too many lobster traps and was charged by DFO. He pleaded guilty to the offence and the Chief of the community approached DFO to ask for a sentencing circle. DFO went to the Crown, crown and defense met with the judge then they approached the MLSN. This was the first time a sentencing circle was to be held for a federal regulatory offence. The circle was entered into without prejudice to future discussions for treaty rights or fishing agreements. Correspondence went on for months, the director of the program went on maternity leave etc. there was a long consultation process with the 17 people who sat on the circle – DFO officers, Chief, offender, elders, fishery liaison persons, community support people. It was determined that in this case the victim was the resource. The Mi'kmaq innovatively identified the community of harm in ways that fit with their legal consciousness and the concepts of *koqqwaja'ltimk* (to treat justly) and *netukulimk* by addressing the resource as victim and establishing mechanisms to repair the harm. According to Mi'kmaq views *netukulimk* are the principles of harvesting resources without jeopardizing the integrity, diversity or productivity of the environment in order to preserve, protect and promote Mi'kmaq knowledge and devotion to the land, sea and air.

There was much concern that the circle would be volatile – that is could “turn Jerry Springer” given the media attention turned to the fishery disputes taking place at the time in Burnt Church and elsewhere. The DFO officer was at first vilified as he represented the government and all of the historic wrongs perpetrated against the Mi'kmaq particularly in their alienation, criminalization and marginalization in the fishery, in spite of treaty rights. The offender was almost canonized at first as he was seen as a victim of state policies. But he was not the victim and had knowingly committed the offence and he accepted responsibility for his actions which he knew to be wrong. It was a challenging circle but successful in that it allowed everyone to share their pain in a constructive way and each participant had a voice. The wrong doer and the DFO officer had an opportunity to rebuild a friendship damaged by the incident – one of the key goals of restorative justice is to address ways to improve ongoing relationships. When it came to the sentencing plan there was no consensus about the specifics each community wanting different outcomes. However, a general agreement was proposed and the judge accepted and the conditions were met, thus it was a success. The circle provided an excellent opportunity for communicating management strategies and demonstrating community accountability in terms of resource extractions and it allowed for the expansion of Mi'kmaq legal infrastructure – it entrenched Mi'kmaq ownership over the implementation and management of those rights.

The Mi'kmaq leadership continues to strategize ways in which to implement, regulate and control their treaty rights. The Mi'kmaq people have a moose harvest that stems from political activism and litigation that took place in the 1980s. As part of the Marshall Phase 2 governance strategies including the Mi'kmaq Rights Initiative KMK [kwilmuk Maw-klusuaqn], part of the made-in-Nova Scotia framework agreement the "coming to consensus" process has conducted a series of community forums. Learning from the past the Mi'kmaq are talking to the community first in order to figure out ways to expand Mi'kmaq control and regulation of the moose hunt in ways that are meaningful to the communities that will protect the herd but also facilitate the hunt in ways that are ethical and sustainable according to Mi'kmaq perceptions and science. The initiative is a partnership, under the Mi'kmaq Rights Initiative mandate, between Unama'ki Institute of Natural Resources (UINR), which has represented Cape Breton's First Nations voice on environmental concerns since 1999, and Parks Canada. UINR representing the five Mi'kmaq communities of Unama'ki was formed to address First Nation's concerns regarding natural resources and their sustainability.

- To provide resources for First Nation's equal participation in natural resource management in Unama'ki and its traditional territory.
- To strengthen First Nations' research and natural resource management while maintaining our traditions and world views.
- To partner with other groups sharing the same desire to protect and preserve our resources for future generations.

The UINR now province-wide in its approach, consulting with all the Mi'kmaq communities. It is a very interesting time. Tensions around Mi'kmaq resource access and utilization, of which commerciality and food extraction are a part, are high both internally and externally. Internally the meetings consistently point to the complexity of creating a self governing system. Four central issues frame a myriad of opinions about how to conduct the hunt, sustain the herd, and the create rules and sanctions that have meaning and are legitimate in Mi'kmaq world views. The discourse is one of responsibility, a discourse that was not often heard prior to the Marshall Decision. There is a perception that the Mi'kmaq fought hard to prove their treaty rights existed. The courts did not give anything to the Mi'kmaq they just affirmed that the rights existed – which they are already knew, but responsibility for the resources over the years was denied. Now the focus has shifted to how do we increase responsibility?

The four key issues coming from communities are

1. Seasonality – they want a closed season to ensure stock protection
2. Safety – attached to regular hunter safety is ethical and traditional knowledge teachings from elders
3. Non-Aboriginal accompaniment – spousal access, what happens in divorce, children without status, off reserve access, "rent a status card" friends – all involved very complex membership issues.
4. Economic – currently in NS a policy was created that Mi'kmaq sellers of moose meat would no longer be prosecuted (under Marshall) but in order to

control resource a policy was implemented that non-Aboriginal households may have up to 100 lbs of meat per year and require a certificate saying where they got it as a way of monitoring the resource.

Among hunters and fishers there is still a strong sense that the province is just waiting to get them. So this process is trying to come up with community driven mechanisms to determine who can have access to the right, what constitutes abuses of those rights and what strategies can be legitimated in the protection of the rights. The moose initiative is very exciting as it looks like the first real chance to expand Mi'kmaq justice processes outside of the criminal realm. The primary approach thus far is to develop community advisory panels to oversee these self determining processes, a strategy that is being looked into in terms of all other areas of justice such as criminal, family and civil matters.

The moose initiative is being held as a potential template for Mi'kmaq control over other regulatory processes, as noted in the following exchange between the interviewer and a leading Mi'kmaq spokesperson,

*In regulatory processes within the moose hunt, the band sign the agreements and say someone from the community breaches that agreement, what good is that agreement if there are not any community based processes to sanction it?*

That is the kind of thing that is going to be dealt with that committee with the moose hunt. In our shop it is a good typical example for a template for the future, later on, this is how we handled the moose issue and we came up with these kinds of things to deal with it, and at least they will have that under their belt.

Some of the strategies being considered in the moose management initiative include education and the development of community agreements to manage and monitor the hunt and sanctioning processes in the event of a breach of those agreements. This indicates that authority structures do exist in Mi'kmaq communities and point to a potentially effective dispute management mechanism. As in criminal justice there may be community members who find it preferable to go to court rather than taking responsibility for their wrongdoings by facing their community members. A key element to encourage community members to utilize community processes may be the necessity of greater community control over the making of the rules and the 'charging' of an offender when he or she break community rules. Currently the management team envisions a relationship with Mi'kmaq Legal Support Network to help in these developments. Note the following exchange with one of the UINR employees which spells out the possible model including an anticipated role for MLSN,

*What are you going to do when you get breaches of these agreements?*

That is where we would like to work closely with Mi'kmaq Legal Support Network staff. We want to establish an alternative justice system. Something like how they envision it [in their justice circles] but with our elders here from

Unama'ki because it is Unama'ki and we have a Unama'ki Council of Elders and we want them to sit on that justice circle with the support people they have.

*Who are they – this council of elders? Are they active?*

Oh yeah! There are 5 members from each community – so like 25. A good example is a couple of years ago 3 individuals from Waycobah were charged fishing oysters in a shellfish closed area. It was a safety issue. They were selling into the open market. They were charged by DFO. They went through a process in the court system, but the judge wanted an alternative court decision, before the court, an alternative way of punishing these people, our people. So he contacted us and what we recommended was that these 3 individuals will go in front of the council of elders and both sides would hear their stories or go to the regular court system. A couple of days or a week before they were supposed to meet with the elders they rejected the idea. They were scared of the elders. So they faced the judge and the judge threw the book at them.

*What was the outcome?*

They were all fined. And they lost their equipment. It is an example of what could happen.

Subsequently, an interview with a leading Mi'kmaq policy maker explored the issue further, resulting in the following exchange,

*In your opinion, with KMK and that process and if the priority is around natural resource, I was talking with UINR about the moose initiative and the idea of working in a partnership with DNR and their guardians and thinking of ways to sanction breaches of their agreements. They are looking at MLSN as the vehicle to develop community based justice program that could deal with those kinds of charges, and would entail the community enforcing them, any thoughts about that?*

That is a real cutting edge issue. It would be the first instance where an Aboriginal and treaty right is regulated by the Mi'kmaq themselves. That is the first time I have seen that happen. UINR have obviously all these conservation species information, they are studying the species they are like the science part of the whole thing and they are well respected, so if UINR tells a community you have to restrict your hunt because of conservation purposes I think it would carry a lot of credibility and the people would listen. What is missing obviously is the enforcement part of it.

Although still in the early stages there appears to widespread support for community based resource management to reconcile disputes and activities that are contrary to Mi'kmaq management strategies and *netukulimk*. Here, for example, is an exchange between the interviewer and a Mi'kmaq band councilor,

*Under KMK, they are developing strategies to regulate the moose hunt and develop guardianships and if people breach, if your band signs and someone breaches, what would your community like to do?*

I like the idea of regulating the hunt, especially at Hunter's mountain, it is a big issue, too many moose are taken down and it is depleting our resources. All bands should be members of regulating the hunts and enforcement by guardians. Two people are not enough to guard the whole mountain and safety issues, you need a guardian from every community to go up there and monitor the hunt. If someone breaches, again I don't think it should go to court; it should be resolved at the community level.

## **VIEWS ON REGULATORY JUSTICE AND THE POSSIBLE ROLE OF MLSN**

As noted in the previous section, UINR employees and other Mi'kmaq leaders perceived the growth of Mi'kmaq regulatory responsibilities to impact across a spectrum of resources in the first instance, and expressed an interest in how MLSN's justice circles and the expertise and experience of the CLP staff could be utilized in the inevitable need to have an effective sanctioning system. As one current Mi'kmaq resource manager (formerly associated with the CLP) observed, "We have to uphold our policies". Several enforcement officials with the major governmental bodies dealing with the environment and natural resources, namely DFO, Environment Canada, and the provincial Ministry of Natural Resources, expressed much interest in the emergence of a Mi'kmaq alternative to court processing of regulatory violations.

Enforcement officials indicated that there are many problems and issues in the regulatory field. One official observed that Environment Canada (EC) is doing virtually nothing with respect to monitoring and responding to pollution and other environmental hazards on reserve – in his view, reserve residents have little protection now. Environment Canada can and does lay criminal charges for pollution and creating other environmental hazards (as a result of a SCC ruling in a Hydro Quebec case, pollution law is criminal law and is both federal and provincial, that is provincial prosecutors can be used); however, the senior enforcement official commented that he could not recall any instance of EC laying charges for violations on native lands against natives. Asked why not, he reported that "There is too much confusion, uncertainty about jurisdiction and so forth". If Mi'kmaq FNs did have some capacity to enforce pollution standards on reserve – through, for example, EC-trained band members funded by the band – a senior Atlantic EC enforcement official suggested that the agency would likely be willing to make post-charge referrals to a Mi'kmaq alternative justice program and, under the circumstances, held that would be the most effective way to protect the Mi'kmaq community.

Another enforcement official, at the provincial resource management level (the key provincial acts here are the Wildlife Act and the Crown Land Act) was also quite positive about making referrals, for violations (everything from ATV offenses on Crown lands, such as not wearing a helmet, to firearms), to a Mi'kmaq alternative justice program. He indicated that two referrals to Mi'kmaq "circles" for firearm violations had

been made in recent years and that they appeared to have been quite successful. He expressed high regard for the elders associated with the UINR program. At the same time, he observed that the major impediment to further referrals has been the reluctance of Mi'kmaq regulatory offenders to take up that option; rather, they opt for the conventional process which usually involves a fine ("they simply wanted to pay the fine and get it over with"). He expressed the view, shared by some Mi'kmaq opinion leaders as well, namely that perhaps it should be mandatory for Mi'kmaq violators to be dealt with, at the least as a first sanctioning response, by Mi'kmaq panels or circles. In his view any revenue obtained through fines could be kept by the First Nation. He commented that fines collected on minor infractions, such as not wearing a helmet, could go to the Mi'kmaq organization, if the chiefs agree, in return for it dealing via talking circles with more serious infractions. MNR does employ one Mi'kmaq person full-time in Cape Breton and another on the Mainland, but, under current circumstances, as with EC enforcement, there has been reportedly a significant pullback by MNR which may have negative implications for natural resources and for the quality of Mi'kmaq life now and in the future. Regarding the pullback, the official stated,

"There are issues about individual versus communal rights and of course some accused people might well use the distinction to generate controversy. It's easy perhaps for a blowup to occur and there are a lot of nuances to consider. We've pulled back a bit on aboriginal enforcement over the last few years since we did not want an Ipperwash or a Burnt Church situation, someone getting shot over a few moose".

The DFO enforcement official indicated that regulatory enforcement in the fisheries involving Mi'kmaq fishers continues to be very troublesome. It was reported that many assaults on DFO officers occurred in Nova Scotia in the last season and that every indication is that the upcoming season will be as bad ("Last year in the St. Mary's Bay area there was much violence directed at DFO officers but it was not publicized. There were 130 charges laid."). It was also reported that strife between Mi'kmaq and mainstream fishers remains close to the boiling point. Reportedly, an enforcement strategy has been in place for at least fifteen years. The respondent noted, "In 1990 and 1991 there was an aboriginal fishing strategy and also the introduction of the 'guardian' concept. The latter were to monitor and do soft enforcement. Guardians were funded through DFO but hired and directed by the bands. It had been an expectation that some guardians would graduate to become DFO officers but actually few did". The respondent considered that the DFO-funded guardian program (which has funded as many as nineteen Mi'kmaq guardians in a given year but is now down to ten persons) has not been successful in its "soft enforcement" mandate and also that, despite DFO having aboriginal persons constituting 15% its own full-time staff, that too has not been the basis for effective regulatory enforcement, reportedly because these officers usually do not want to police their home reserve's fishery or other aboriginal ones for that matter, for a variety of reasons. The current situation then, according to the senior DFO enforcement official, is very unsatisfactory, namely, on the one hand, excessively expensive court processing ("Usually a person gets a fine and generally can't pay it so nothing much happens. The cost of prosecuting a case can be as high as a million dollars - because of

possible constitutional issues - and this is overkill for a hundred lobsters) and, on the other, the failure of extant alternatives involving aboriginal enforcers (in his view, the whole area of native co-partnering in 'soft enforcement' is confusing in almost all respects). The concept of a Mi'kmaq alternative justice program, particularly a more centralized one that would engage the community, be based on a different Mi'kmaq approach, and could lessen the reluctance to sanction, would be quite attractive to DFO, again as, at least, a first response. Failing something like that, strife, resource abuse and ultimately a decline in economic and consumptive potential in the fishery seem likely in his view.

Overall, then, the enforcement officials indicated that major problems existed with respect to regulatory justice concerning pollution, wildlife resource management and the fishery that could be having major negative implications for Mi'kmaq people and their quality of life. It was noted that increasingly the federal and provincial regulators have pulled back in the case of dealing with Mi'kmaq violators for a variety of constitutional and policy reasons. The standpoint of these governmental enforcement officials was that Mi'kmaq rights in these areas are collective not individual rights and that Mi'kmaq solutions have to be sought. The enforcement officials strongly supported the idea of Mi'kmaq alternative conflict resolution (e.g., justice circles, elder panels). It was suggested that the Mi'kmaq alternative should be mandatory at least as a first response (if the violator rejected the process or did not comply with the agreed undertaking then perhaps the matter could then be dealt with through court processing, the same format as now exists in CLP cases). They also held that such alternatives in order to secure funding and be effective would require the support of the chiefs and councils.

Mi'kmaq leaders and employees in the regulatory field whether, resource management, fisheries, water quality, or band bylaw enforcement, interviewed in the assessment, emphasized the considerable, new developments in Mi'kmaq political economy that have been occurring. In resource management they reported a new era of partnership with government, federal and provincial, and a major role for Mi'kmaq direction and for all species from oysters to moose harvesting. The major government players have been DFO, EC and MNR and the evidence is that, post key court decisions with respect to the need for government to consult aboriginal peoples over resource issues, the relationships have improved considerable and now there is reportedly much partnering and funding opportunities for regulatory justice initiatives (e.g. for guardians and the enhancement of their role); one Mi'kmaq leader in the resource sector commented,

“Certainly we are getting a lot of cooperation from government on this document that was signed by the deputy ministers, chiefs and wardens. It is a powerful document. All the support we are getting. INAC is really involved. I was really surprised with the province – with the 5 deputy ministers. DFO has always been good, Environment Canada, and the last few years the province. Anything that we have done they support us.



The improved relations and effective partnerships with government and government agencies has had reciprocal impact on Mi'kmaq standpoints as well, generally resulting in a discourse that integrates both rights and responsibilities. One Mi'kmaq resource official stated that "we've been good on stressing rights and now we have to do the same for responsibilities". A knowledgeable Mi'kmaq woman commented,

"We will have people saying, oh, I don't have to listen to you, I have my treaty ... this [negotiating and partnering with government] is a big sellout ... I say no and they say 'yeah we already have our treaty rights we won in the court' and I say the only thing that the damn court said was that you have a right but what that means in 2006 is anybody's game so why don't you start telling me what that means".

There is recognition that treaty rights and band bylaws are being abused and that with Mi'kmaq regulatory power and control expanding rapidly comes the increasing need to monitor and respond to the responsibilities entailed. The Mi'kmaq discourse carried on by councilors, environmental officials and others in the regulatory field (e.g., band bylaws enforcement) is laced with references to "our responsibilities". And, as these Mi'kmaq leaders consider how to carry out the responsibilities, they often ponder what would be the appropriate and effective Mi'kmaq response. Generally the persons interviewed in this field were interested in exploring Mi'kmaq alternatives to charging and court prosecution, alternatives envisaged as justice circles, elder panels and the like. A Mi'kmaq environmental employee, for example, acknowledged that it would be quite important to have inspections regularly for pollution and related hazards on reserve and it would be helpful and desirable to have a "made in Mi'kmaw" solution to respond to "violations". She warmed to the possibility that local Mi'kmaq persons might be trained to do EC-type monitoring and that charges are laid but with the proviso that there would be a strong emphasis on Mi'kmaw sanctioning process (i.e., alternative justice). It is clear from the spontaneous developments reported earlier in the contextual analyses that in PEI, New Brunswick and the rest of Canada, similar political economic developments have spawned similar discourse and led to a sharp interest in aboriginal dispute resolution; thus far, however, there has been more talking and training than implementation. The UINR officials expressed their interest in what MLSN might be able to contribute in the regulatory field One simply stated about MLSN that "We need to talk" (interestingly, he noted that while his efforts have been in the past largely focused on Unama'ki (Cape Breton) and his dealings mostly with UNSI, he had no problem collaborating with a more engaged MLSN remaining embedded in CMM).

Many interviewees in the regulatory field indicated that the issue of collective vs individual rights is still not settled and may well await the outcomes of the Made in Nova Scotia treaty negotiations. At the same time, virtually all of the sample's respondents emphasized that in their view Mi'kmaq rights were collective rights. One Mi'kmaq woman, well-informed on the early treaties and the Mi'kmaq milieu in which they were generated, commented, "I started to recognize that there were no individual rights. There were collective rights always. There is no doubt in my mind. I have yet to see anything that showed an individual's went before everyone else's; it was so interconnected. It was

only through time where we started to have this conflict, which is where the debate is now”. That general view is reiterated in the following exchange.

Respondent: That is exactly what is at issue here. A lot of people have the belief that the Mi’kmaq right is an individual right and that they can solely benefit from the hunt, but actually our rights are collective. Just like the right to harvest timber.

Interviewer: How do they react when you suggest it is a collective right?

Respondent: Well it depends on who you talk to. The ethical person will say yeah, you are right, that I what I do, I hunt for myself but I feed my family and I feed my community members. Then the unethical person goes, no it is my right, I can do whatever I want with it. If I want to sell a moose I could. And they will say look at the Marshall decision. And technically he is partly right. He is right in a certain sense that he can make money off his catch. But at the same time it is a collective right”.

On the whole, the respondents in this small sample appeared uncertain as to the effectiveness of a Mi’kmaq approach in dealing with regulatory violations. One prominent leader, however, was confident that collective rights will prevail in this sphere of justice, as indicated in the following exchange:

Interviewer: Is there a reconciliation that needs to happen within communities as well. You see a lot of individualistic territory and property issues; can that coexist with the idea of the collectivity?

Respondent: I don’t think it can coexist, I think it will be overruled by reconciliation, and by this apiksetwan process. Our people who are individualistic, who are hoarding, will look at the rest of the community and see how things are happening there and will come out and be part of all of that. I mean that has always been the way in Mi’kmaq society, they are pushing themselves out there; it is not the communities that are pushing them out. The goal is always harmony in the community as whole. In the collective mind of the Mi’kmaq, the goal is always harmony and that is why people have misjudged that over the years, especially Europeans who say these Mi’kmaq, no matter what you do wrong to them they will forgive you. Stu Killam used to say that to us years ago, he used to laugh and say you Mi’kmaq are so forgiving. But I guess that is the nature of the beast. What was most important in Mi’kmaq society, what the hell was the thing that was so important, the one thing that was most important to any individual? Harmony in the community, each other.

It is clear that many Mi’kmaq leaders, considering the ever-expanding Mi’kmaq regulatory field, see the need for a Mi’kmaq enforcement strategy based on a different approach to justice. At the same time, experience already has taught them that there are challenges here (e.g. the “oyster case” where violators of oyster regulations opted not to face a community circle and, facing a judge, received a very stiff fine and property seizure). Mi’kmaq violators may not opt for a Mi’kmaq approach and many might challenge the collective rights premise at least when it is operationalized in terms of specific rules (see, for example, one prominent Mi’kmaq entrepreneur’s rejection of the

band's exclusive right to organize forestry on the eve of the SCC logging decision in 2006 – Mail Star, 2006). A full-time band bylaw officer (one of the very few full-time such officers in Nova Scotia) stated that he definitely believed that band bylaws and agreement enforcement plus natural resource management would raise the demand for band level enforcement. Quite harried in his everyday work, he was not entirely sold on alternative justice and whether it would work, but having never been invited to talk with MLSN or to observe a circle, he was reserving judgment.

Some Mi'kmaq spokespersons in this regulatory area linked a capacity to sanction, preferably in a Mi'kmaq way, with self-government, echoing the views of a senior agency head who commented, "We want to establish an alternative justice system, something like MLSN envision but with our elders here from Unama'ki because it is Unama'ki and we have an Unama'ki Council of Elders and we want them to sit on that justice circle with the support people they have". In musing about a Mi'kmaq sanctioning process and the possible value of collaboration with MLSN, he noted that "their (MLSN) growth is important to us ... they've got a director [that is only part-time] ... they don't have the facilities". Others were wary of any significant MLSN role for a variety of reasons, including a limited conception of what MLSN might be able to do (one prominent leader commented, "I see them still very much as a service that helps the accused in a very general system") and because under the current governance structure MLSN was depicted as a CMM program and not accountable to all FN communities. Still, even sharp critics allowed that, to quote one, "I would like to see them [MLSN] working with First Nations to develop their own capacity to do that kind of work [facilitate justice circles and the like]".

Overall, in the regulatory sphere, there are, then, the following key themes

1. It is a burgeoning area for Mi'kmaq justice (e.g., band bylaws, "Nation" policies, Unama'ki policies).
2. The mainstream governments have increasingly pulled back from or offloaded regulatory responsibilities and encouraged co-partnering models of enforcement.
3. Increasingly, attention is being given by Mi'kmaq leaders to how to carry out these enforcement responsibilities and whether and how Mi'kmaq approaches to justice and conflict resolution might be utilized.
4. There have been similar developments elsewhere in the Atlantic region and throughout Canada.
5. Demand for justice services in the regulatory field is not yet as pressing as in the case of family justice issues and perhaps not as clearly conceptualized at present but it is definitely growing.
6. Collective and individual rights issues are still unresolved adding to the need for and potential value of the Mi'kmaq alternative to court action in the response to regulatory violations.
7. There is an expressed need among Mi'kmaq regulatory officials to back up increased Unama'ki responsibilities with a capacity to effect an adequate level of consensus and commitment: ("We have to uphold our policies").

8. Developing a response alternative to the courts, at least as a first response option, is widely favoured by both Mi'kmaq and mainstream regulatory officials.
9. MLSN is well-positioned to expand into this area of justice (e.g., experienced, capacity, province-wide, can avoid conflicts of interests etc).
10. There is a role for MLSN as sharing expertise, perhaps coordinating circles referred by UINR and so forth.
11. Staff persons in UINR and other regulatory roles see the value of closer collaboration with MLSN with respect to avoiding conflicts of interests and nurturing a cadre of experienced, creative facilitators.
12. Feasibility factors are high (MLSN capacity, clear need, funding prospects good)
13. Depending on how MLSN were to be engaged in this regulatory justice field, there could be implication for its governance model (e.g., a requirement to be fully appreciated as accountable to all Mi'kmaq FNs).

## SUMMARY OF KEY POINTS

1. The MLSN has accomplished its objectives (From “Nadir” in 2000 to “Solidity” in 2006).
2. There has been incremental solid growth for MLSN from the merger of MYOP/CLP and the CWP to the “section 84” project on parole releases.
3. The focus has clearly remained on the criminal justice system (CJS) and the offender. The MLSN can be said to provide, in general, full service to the offenders (diversion, court worker assistance, custodial work and release)
4. The objective of separate, adequate funding for the umbrella MLSN has been achieved for the nonce but remains a considerable challenge.
5. The organizational and governance model adopted at the onset was necessary and appropriate and has served MLSN well in its first phase.
6. The strengths of the co-management model with CMM and the Tri-partite Working Committee “de facto board” role have been stability, funding and collaboration in justice considerations beyond the specific MLSN programs.
7. The weakness of the organizational structure and governance has been the lack of community identification with it and the modest extent of accountability to Mi’kmaq FNs. The absence of formal community justice committees and the weak development of a Mi’kmaq Advisory Committee (apart from the Tripartite Subcommittee) have been significant causal factors for the disadvantages.
8. Key areas of challenge for MLSN have been thin management structure, staff turnover, and the service delivery model (SDM) used on the mainland.
9. Respondents in the interviews, especially the Mi’kmaq respondents, considered the justice programming to be valuable, almost independent of the level of their involvement with or knowledge of the MLSN programs.
10. The chief concerns expressed reflected the features of the MLSN well, namely that there has been little outreach so little community identification, little accountability to FNs, focus on the offender not the victim and community, and that the programs do not substitute for the need for greater Mi’kmaq presence in the mainstream justice system.
11. MLSN has significant challenges left if it stayed focused on the criminal justice system, and the offender, especially the organizational and governance ones cited, the service delivery model on the mainland, securing post-charge referrals and CLP developing a strategy for “repeat offenders” referrals. As well, there are new trajectories there that could be developed such as mobilization and advocacy for a wellness court to respond more effectively to offenders with alcohol and drug addictions, and Mi’kmaq programs for rehabilitating offenders; these latter initiatives would require significant resources and planning.
12. At the same time, such a CJS focus risks marginality and does not respond to other justice concerns that are increasing central to the evolving Mi’kmaq society such as family justice issues (ranging from alternatives to court-imposed settlements, such as family group conferencing (FGC) to information centers, to a family court worker program) and regulatory justice issues (alternative dispute

- resolution as a first response to intra-band and inter-band disputes and violations). Alternative developments are occurring, such as MCFS's family group conferencing, UINR's elder panels and Tuma Young's Mi'kmaq ADR. How should MLSN respond? What is feasible? What is best for Mi'kmaq people?
13. If MLSN were to expand its mandate, certainly if beyond the CJS and the offender, it would be crucial to establish formal community justice committees and a governance structure more accountable to FNs, both for legitimacy and for funding purposes. It would also be crucial to engage in strategic planning and to enter into discussions (perhaps establish working communities too) with MCFS, UINR and so on.
  14. The bottom line is that MLSN, thanks to its staff and to the collaboration and leadership from the Tripartite Forum and CMM, has re-established the MJI framework and programs on a solid basis. It is now in a good position to determine its future directions. Our recommendation is that it remain within the same organizational and governance structure but with increased operational management capacity for two years (**Phase One**) focusing on dealing with issues such as the SDM and turnover issues, the CLP concerns noted, the community justice committees and strengthening Mi'kmaq accountability by developing a more effective advisory committee. **Phase Two** could bring proposals for a wellness court, moving towards a different governance model involving a changed relationship with CMM (contracting financial management and perhaps other personnel responsibility to it), and determining how it will respond to demands and opportunities issues with respect to family / civil and regulatory justice.

## **FUTURE DIRECTIONS**

Here the researchers suggest some recommendations and possible options for the future evolution of MLSN. We stress that these are advanced in the hope of contributing to the discussions planned for reviewing MLSN, its mandate and future growth, and no special claims are being made for the researchers' standpoints, other than to note that they are empirically grounded in Mi'kmaq views and feasibility considerations as we have interpreted them. Hopefully they will contribute to fruitful strategic planning by all stakeholders.

## **A STRATEGIC PLAN**

A strategic plan has to be rooted in a vision and a set of principles. As the biblical admonition asserts, without a vision we are lost. The vision advanced here is one that is congruent with the agenda recommended by the Royal Commission on Aboriginal Peoples, namely that aboriginal societies, by dint of constitutional rights and cultural tradition, should be encouraged to develop justice systems in which they exercise substantial autonomy and where their cultural perspectives and preferences are meaningfully incorporated. Like other Canadians, native persons should expect fair and culturally sensitive treatment within the mainstream justice system, but, unlike other Canadians, constitutionally they can legitimately "move outside the box" whether in an administrative or a policy sense. While the contours of the "outside the box" path are always impossible to fully specify or grasp since social circumstances and cultural styles are inherently dynamic and subject to evolution and occasionally dramatic change, such a vision sets the agenda for many First Nations people in justice matters today. The vision suggests a continuum where one end is basic "integration and fairness" within the mainstream justice system and the other end is a more parallel First Nations justice system. Different First Nations may have different views on where they want to position themselves on this continuum regarding justice considerations now and in the future. What is feasible certainly will affect that positioning too, and feasibility is also subject to change.

A strategic plan involves articulating priorities, feasibilities, responsibilities, timing, and anticipated challenges and positive outcomes. Rough ideas are advanced here. Guiding the strategic plan are several key themes, namely (a) the concept of building upon, not jeopardizing, what has been accomplished and is working well (as exemplified in the CMM approach and in its accountability framework adopted by MLSN); (b) the patient perspective of Mi'kmaq political leaders which emphasizes getting it right rather than getting it quickly; (c) the concept of a continuum of Mi'kmaq justice from the perspectives of management, ownership and values. Such a continuum, as noted above, would be anchored at one end by the standpoint of "integration and fairness" as exemplified in most inquiries and commissions on aboriginal justice since the late 1980s and, at the other end, "autonomy and control" as exemplified in the recommendations of the Royal Commission on Aboriginal Peoples. It seems fair to say that currently MLSN is more at the "integration and fairness" end of the continuum since its programs are principally reactive to CJS referrals (providing restorative justice

alternatives in cases of minor crime) and court charges (providing information and support to defendants). Movement along the continuum has explicitly been adopted by the Tripartite Forum's Justice Working Committee in its 2005-2006 Operational Plan (i.e., "Incorporate the spirit and intent of the 1996 report of the Royal Commission on Aboriginal People, Bridging the Cultural Divide, in the work of the Justice Committee"). The strategic planning encouraged by this report would be incremental, starting with feasible changes in Mi'kmaw involvement within the mainstream justice system, and with the support of Mi'kmaq leaders and FN members and, in collaboration with the governmental partnerships that have been nurtured and should continue to be nurtured, evolving into a more Mi'kmaw system for Mi'kmaq communities in Nova Scotia.

The principles that underline the strategic plan are at least three-fold, namely (a), Do not jeopardize the significant MLSN achievements. Overloading MLSN staff, and not tailoring MLSN's evolution to management capacity and funding feasibility, factors which contributed significantly to MLSN's predecessor's demise, has to be always guarded against since the demands for more justice initiatives are considerable; (b) Moving along the continuum toward the RCAP pole requires both province-wide organization and Mi'kmaq direction and vision sustained by community linkages and accountability to Mi'kmaq FNs. Given the powerful centrifugal forces inherent in construct of independent FNs and particularly now that the bar for consultative policy formation has been raised by KMK practices, this principle is crucial and applies even if short and mid-term MLSN evolution will be largely in the criminal justice sphere (e.g., getting more engaged routinely in serious offending); (c) Evolution will require some institutionalization of MLSN, manifested in longer term core funding so that such planning and strategizing for the future can occur and virtually all management energies not be focused on survival of the existing state of affairs. It would appear that significant growth would require a three to five year core budget, apart from CWP and CLP funding, of roughly \$235,000 annually (sufficient to maintain a full-time managing director, a full-time community liaison person, ad hoc consultancy, adequate administrative support, and modest honoraria for the chairs of the proposed CJC). The current level of MLSN management, altered only by the replacement of a part-time manager with a full-time manager, would mean limited growth potential for MLSN.

There are several assumptions which undergird this strategic plan. The most basic is that there is a three-fold way by which MLSN may advance the justice agenda along the direction envisaged, namely (a) through direct program development, management and direction, (b) through coordination and partnering with other Mi'kmaq and perhaps mainstream agencies, and (c) through advocacy with its collaborators in the Tripartite Working Committee. Thus far, it would appear that MLSN's thrust has been to mount programs such as CWP and CLP. There may well be further such initiatives in the future but funding constraints and management capacity suggest that, in areas such as interpreters' service, victim services and conflict resolution, the short and mid-term strategy might be to find partners to co-deliver such services, whether these be with MCFS, UINR and so forth. For example, there is much demand among Mi'kmaq people for more balance in MLSN services by having it provide more information and support for victims, largely though not limited to the court process. A victims' services unit along



the lines of the CWP does not seem feasible and having the CWP serve both offenders and victims in cases of violent offending does not seem manageable. Solutions may be found in partnering with the provincial Victim Services for modest “para-legal” funding (as is the case in New Brunswick among a handful of FNs) and simultaneously partnering with bodies such as Eskasoni Mental Health and the two Mi’kmaq transition / safe houses (in Millbrook and Waycobah) for their provision of support to victims of violence. In these latter cases, there could be a necessity to do more for the victims than just providing information and help with compensation forms etc).

The third role for MLSN relates back to the purpose of the TWC to discuss Mi’kmaq justice issues and assist in their advocacy. There is some of that going on at present (e.g., the cultural gatherings in Corrections) but much more might be done. It is clear from the Mi’kmaq interviews with opinion leaders, local agency personnel and political leaders that the two consensus justice priorities are more cultural awareness, visibility and presence of Mi’kmaq persons in the mainstream justice systems and dealing more effectively with the matter of alcohol and drug abuse and addiction. The TWC seems to be a very appropriate and effective forum to consider possible initiatives along these lines, some of which could bring funding for services (aboriginal perceptions orientation), involve identifying other service deliverers, or encouraging proposals submitted by other bodies. For example, a wellness court is a provincial criminal court and leadership on such a proposal would have to come from judges and provincial officials as well as Mi’kmaq advocates. Interestingly, there are senior judges in both the Truro / Shubenacadie and Membertou / Eskasoni areas who have indicated that they might be willing to head up such a native criminal court and who also have much credibility in the Mi’kmaq society. The TWC would be an appropriate body to discuss with Dalhousie University’s IBM officials and with Mi’kmaq law graduates the issue of why virtually no graduates become practitioners in mainstream justice systems.

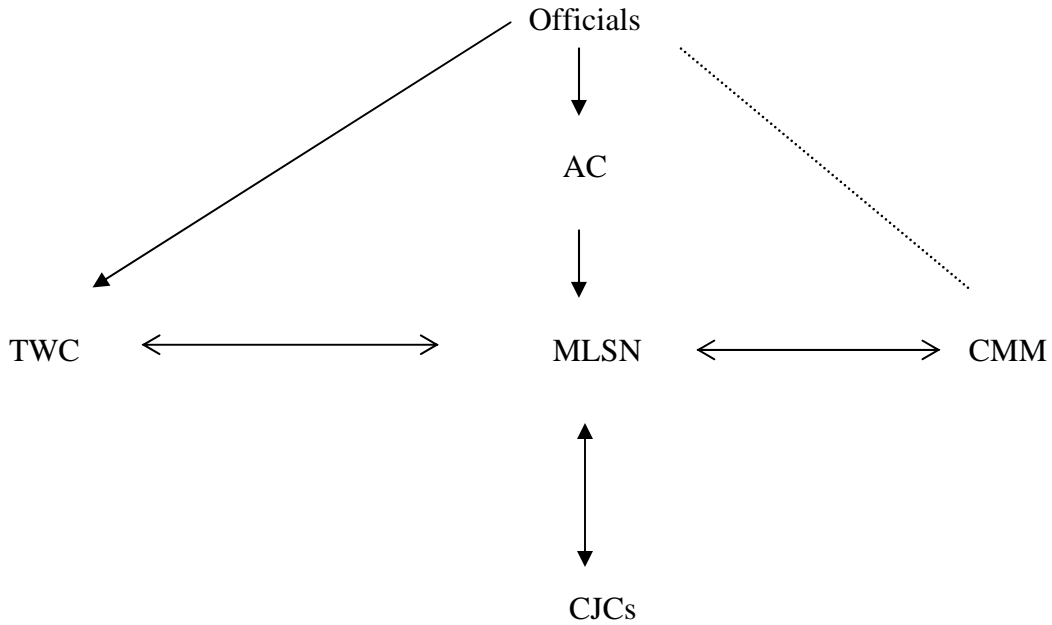
The MLSN may have a role funneling justice issues such as the above from the revitalized Advisory Committee and the CJsCs to the Tripartite forum and getting the support and advocacy of the TWC to push for their realization but they need never result in specific programs that would be managed by MLSN. It would seem that this way through which MLSN might advance the Mi’kmaq justice vision has largely been side-tracked by the pressing quest for survival (i.e., securing the core annual budget). There is little doubt that the federal and provincial governments will be hesitant to respond to any suggestions that involve substantially new monies and limited pressures would likely come from Mi’kmaq political leaders in that regard. It is argued here that any additional monies or re-shuffling of existing MLSN monies should be directed to securing the staff complement identified above and facilitating the development of strong, formal CJsCs and a revitalized AC.

A second assumption behind the proposed strategic plan is that “justice”, for the nonce anyway, will remain in the regular Tripartite Forum context where presumably all significant new initiatives will continue to have to be approved by the Officials’ Committee on which sit all thirteen Mi’kmaq chiefs. The large majority of interviewees did envisage some movement toward a more independent MLSN which would be more

transparently pan-tribal and accountable. This research has found sharply divergent views about future governance models for MLSN, with some persons advocating that MLSN, like MCFS, should be directed by the chiefs (e.g., it would ensure the government's attention, it would facilitate growth in other areas of justice) and others offering equally salient reasons for having a board arms-length from political leaders (e.g., conflict of interest, the chiefs' plate may already be overloaded). There may be no need to belabor the creation of a new board, pending the Made in Nova Scotia (MINS) framework agreement or interim agreements if political leaders decide to take "justice" out of the regular Tripartite Forum and into the MINS work table format. It seems reasonable then to continue with the governance structure, altering it slightly to be congruent with the originally proposed governance model for MLSN (e.g., revitalizing the AC but maintaining its delineated role) and structuring in the important layer of community justice committees.

In line with this assumption, and the principle of moving cautiously, the diagram, Model C, is advanced as a possible governance system two or three years "down the road". The thin management structure and staff turnover issues make it crucial for MLSN to continue to draw upon the TWC with its senior and committed government officials and CMM with its solid financial accountability and tested management practices. While retaining these relationships, the model reflects a more independent MLSN collaborating with the TWC (on justice policy formation) and CMM (at the minimum, contracting financial administration with CMM), where oversight and vision is provided by a strong Advisory Group drawing upon Mi'kmaq justice stakeholders throughout Nova Scotia, and linked with formally constituted CJs. The tasks over the next few years would be to move forward toward the Model C format (or some preferred alternative), devising the specifics and securing the approval for same in the current fashion which is via the Officials' Committee. While mobilizing effective CJs may not be an easy job, more formally constituted but still basically volunteer committees, where a number of members and a chair and proposed work plan - liaison (two way information flow) and other tasks (e.g., assisting in 'justice circles', monitoring court dockets for the CWP) - are submitted to the band council for endorsement, have been successfully implemented elsewhere. The Advisory Committee, now largely dormant, might have to be revitalized with additional temporary members in order to generate subcommittees to examine the options of that body and MLSN's other relationships and future program thrusts. The 2002 document on the role of and procedures for the Advisory Committee (included replacement of members and other considerations) could be usefully consulted. Over time, as indicated in Model C the role of TWC – if the institutionalization regarding funding and time frame suggested above were realized – would become more that which was presumably envisaged in the Marshall Inquiry recommendations, namely discussing, suggesting and advocating valuable Mi'kmaq justice initiatives in concert with Mi'kmaq representatives. MLSN has done very well but it is unlikely, we assume, to move much further along the continuum defined above, even in the CJS trajectory, without a stronger Mi'kmaq mandate. At the very minimum there should be more community outreach and an enlargement of the advisory group to include more Cape Breton Mi'kmaq participants.

## Model C: FUTURE GOVERNANCE?



### Where:

Officials Committee = 13 Chiefs and Federal & Provincial Government Representatives

TWC = Tripartite Working Committee in Justice

CMM = Confederacy of Mainland Mi'kmaq

AC = Advisory Council

CJC = Community Justice Committees

## **SPECIFIC ISSUES**

The Tripartite Working Committee has been essential to the re-emergence and continuance of MLSN. At the same time, if MLSN funding was secure, the TWC could be able to concentrate on issues of the kind the Marshall Commission and Government initially envisaged (see Prelude), two of which are (a) the issue of more Mi'kmaq visibility in mainstream justice systems (leading discussions concerning the possibilities, encouraging cultural awareness or aboriginal perceptions orientation at all levels and systems of mainstream justice work, examining why so few IBM graduates assume posts as lawyers); (b) exploring prospects for the recommended Native Criminal Court (presumably in its current "wellness court" guise). These two thrusts correspond to the two most widely held and deeply experienced Mi'kmaq concerns, namely the visibility/presence issue and the alcohol and drug addiction issue.

MLSN clearly has been a significant success story. Just as clearly, it is in need of a full-time manager who can spend much more time on guiding the organization in the three roles described above. The current part-time manager would be, according to virtually all MLSN staff and TWC members, an excellent choice were he available. He is well regarded by MLSN staff for his competence, participatory democratic approach to leadership and his vision for Mi'kmaq justice. Given the fact that MLSN remains in a precarious budget situation, one always has to be looking for economies in order to husband well the scarce resources. The management level is not the place to look as it is already too thin. There may be saving in reorganizing the administrative work if, as we have been led to believe, there are office workers (not managers) in both Eskasoni and Millbrook.

Clearly a central problem for MLSN has been staff turnover, particularly in the CLP program. Turnover can be discussed in terms of external and internal job satisfaction. The key factors in external satisfaction are compensation, conditions of work, career opportunities and environmental control factors (such as employees being able to exercise some control over the determinants of caseload and so forth). The compensation in MLSN is in the "fair to middling" range but reportedly below the premium for young well-educated para-professionals in the burgeoning Mi'kmaq service sector. The career prospects of MLSN staff are quite limited as there are few promotion opportunities. The MLSN program is essentially reactive so, to that extent, there is little control to be exercised on supply and demand and so forth by MLSN staff. It is unclear whether the conditions of work can be altered so as to generate more satisfaction and less turnover. Most MLSN turnover appears to have been related to better pay and career opportunities elsewhere, but some has been related to dissatisfaction with the working conditions. MLSN staff members are engaged in work that involves them in situations of strain (e.g., client suicides and problem life styles) and, in the case especially of CLP staff, experience considerable travel demands. Given the understandable need of CMM to have consistent personnel policies across a mélange of programs, it is unclear whether it can accommodate to these special work roles (e.g., having a flex-time arrangement) but there should be some discussion of the possibility. There should also be regular modest salary increments for MLSN staff as found in the rest of the government-related, working

world. Internal satisfaction involves considerations such as clarity of job expectations, job complexity which is usually associated with job diversity, having the resources to do the job well, knowing whether you have done the job well, and being allowed to do the job. Since this assessment did not, by mandate, focus on the MLSN programs little can be said about whether the internal job satisfaction factors were adequate. The efforts of the TWC, CMM and MLSN management to encourage team building “get-aways” and the open, consultative MLSN management style have reportedly been well-received by staff and should be continued. It may well be that job diversity can be strengthened as well through cross-training between CWP and CLP and in other ways (e.g., the cultural gatherings); some of this has also been done in the last year and a half and should be encouraged. There is no magic answer to the turnover problem but the above suggestions could help. Given the total set of factors it is likely that turnover will continue to be an irritant at the least and perhaps the MLSN management can prepare for turnover by engaging more volunteers and also draw satisfaction from the fact that its members went on to serve the Mi’kmaq community in other ways.

The CWP and CLP programs were not under review in this assessment but some comments and suggestions for their operation have been made above. Both programs have a service delivery problem on the mainland, especially west of Shubenacadie to HRM and Yarmouth. The problem has at its roots the challenge of responding to small widely scattered populations. Meeting that challenge has been a hallmark of MLSN as a province-wide organization and is something that should be maintained. It would appear that the best way to accomplish that would be to link some CWP and CLP activities to the proposed community justice committees; through these CJsCs, volunteers would liaise with CWP and CLP staff to ensure that routine salient justice matters in the areas are well attended to and that when more serious matters or cases crop up, staff would become involved. There may be a need to be clearer concerning what the court workers’ mandate is in court. If the court workers are encouraged to “speak to the sentence” when a defendant is unrepresented by counsel, it might be wise to have some orientation on this intervention provided by the Bar and NSLA (recall from the Prelude that such liaison was a basic Marshall Inquiry recommendation so there should be little problem obtaining cooperation). Another concern that might be addressed is CWP assistance in matters of family justice since they apparently have had no training in this area and any help / advice rendered could be problematic. It seems very crucial that MLSN in its advocacy role collaborate with TWC members to bring the FLIC program to Eskasoni and to facilitate better access to family court services (e.g., assistance in completing forms, use of the free summary advice counsel or family court duty counsel). Elsewhere, suggestions have been made for CWP becoming engaged in victim services, collaborating with other local agencies in instances of violent offences to ensure, at least in these cases, some support is provided to victims. The CLP has been the leading edge culturally of MLSN and usually its most celebrated program. Aside from the service delivery problem already referred to, caseload and future population projections, as well as crime trends, suggest that the CLP should be expanding into cases of more serious youth offending (developing a strategy for dealing with serious and chronic offenders) and, more cautiously perhaps, into adult referrals – in both instances perhaps on a project basis seeking additional funding from NSRJ and NCPC). Networking with the referral sources remains a major

and time consuming activity and here the CLP should collaborate with its NSRJ partners to seek NSRJ assistance. In the larger picture and the near future, serious consideration should be given to how CLP's facilitation and conflict resolution capacity can be enhanced and the role it might assume with respect to other kindred Mi'kmaq initiatives (e.g., UINR's elder panels. MCFS' family group conferencing etc). There is a case to be made for a leadership role for CLP in coordinating a centralized conflict resolution / facilitation Mi'kmaq capacity.

## **PHASES**

Some brief suggestions are noted below. They hinge on the institutionalization of MLSN as discussed above, namely multiyear funding with an annual budget of approximately \$235,000. If such funding is not forthcoming, nothing more than "same old", "same old", then "regular" funding presumably can still yield at least a full-time director and a community liaison person along with administrative assistance and travel expenses and other modest operational budget items. There is still growth that could be accomplished with respect to the MLSN programs and the AC, the CJsCs and planning for the future even with such limited and precarious funding. The prerequisites for moving along the vision continuum are community engagement and Mi'kmaq accountability and vision – this does not require a new board but does require a clear sign that MLSN is accountable to and led by all Mi'kmaq interests.

Phase A: Improving and expanding the current MLSN programs. Crucial here are a variety of considerations, all premised on MLSN continuing its current activities and operating within the same organizational and governance structure. The end of the phase in two or three years could be symbolized by the adoption of governance framework referred to in Model C. Key themes in Phase A include,

1. Expand CLP to adults at least on a project basis and secure more post charge referrals in the case of youth (more than is currently the case). Note the strategies followed in HRM and in Elsipogtog (Big Cove, New Brunswick) to secure post-charge referrals, namely soliciting police advocacy for a wider reaching referral net (i.e., subsequent to laying charges). With the CLP it is possible to build on current successes in getting crown-level referrals.
2. Consider a different service delivery model for both CLP and CWP on the Mainland, one linked perhaps to the development of community justice committees.
3. Develop a strategy to respond to repeat offenders in the CLP.
4. Deal more effectively with the turnover problem especially for CLP staff.
5. Put in place the community justice committees. Formalize the arrangement if possible through band endorsements or band council resolutions.
6. Strengthen the Advisory Committee component of MLSN governance as suggested above.
7. Thicken MLSN operational management (a full-time manager / director, full-time community liaison, half-time researcher / policy consultant plus volunteer subcommittees for special issues).

8. Define key issues for advocacy within the TWC as noted above (e.g., the feasibility of a wellness court, an examination of the issues that result in so few Mi'kmaq Law graduates practicing in the criminal and family/civil court systems (meeting with Law School. Mi'kmaq graduates and so on to develop a plan of action if deemed necessary) etc.
9. Consider strategies to coordinate / partner with other agencies with respect to victim services and justice areas beyond the criminal.

Phase B: Expanding the MLSN mandate and moving along the continuum towards a more Mi'kmaq administrative control and a Mi'kmaq approach to justice in Mi'kmaq communities. Key themes in Phase B include

1. As a collaborator within TWC, proposing solutions with respect to the possibilities of a wellness court for Mi'kmaq in Nova Scotia, visibility and present shortfalls in the mainstream justice system and other initiatives in the mainstream justice systems.
2. Getting engaged in the family/civil justice sphere via a family court worker project at least in Cape Breton if not also in the Truro / Shubenacadie area and pursue collaboration with MCFS regarding family group conferencing.
3. Exploring collaborative relationships in the field of Mi'kmaq regulatory justice.
4. With a strong base in Mi'kmaq communities and a revitalized AC, establish a more independent MLSN (e.g., moving from a co-management model (a CMM program) to a contract relationship with CMM on financial and perhaps personnel relations).
5. Expansion of MLSN capacity with respect to conflict / dispute resolution and also developing a research capacity
6. Other initiatives would depend upon the achievements in Phase A. (for example, MLSN might consider the coordination of offender reintegration rehabilitation project (“coming home in a good way”) or a special project for serious offending and chronic offending among youth.
7. Organize largely volunteer subcommittees of Mi'kmaq local leaders and justice experts to consider strategies for new directions and to distill justice ideas and demands channeled through the AC and the CJs.

## FEASIBILITY CONSIDERATIONS

Throughout this assessment the researchers have paid close attention to questions of feasibility. It is relatively easy to suggest this or that justice initiative given the many issues and great demands concerning justice in Mi'kmaq society. There is little enough that is Mi'kmaq influenced even in the criminal justice system, let alone in the virgin territories of Mi'kmaq family and regulatory justice. There is also the continuing lack of stable core funding which inhibits strategic planning for MLSN and its TWC “de facto” board. Initially, this concern helped focus the assessment on the three ways MSLN can advance the Mi'kmaq justice agenda, going beyond its own programs and highlighting (a) the prerequisites for a greater Mi'kmaq mandate and vision that could ultimately yield sustainable MLSN funding (whether through band budgeting, as a byproduct of the Made in Nova Scotia process or otherwise) and (b) coordinating and partnering with other agencies in responding to Mi'kmaq justice needs and challenges. The funding that could result from the latter activities is not clear but there certainly appear to be opportunities there with respect to MCFS, UINR and so forth. Some initiatives suggested above, such as a family court worker have funding prospects according to the key authorities in those areas. In the text we have endeavored to draw out such implications where appropriate. The advocacy role of MLSN could be substantial without much additional direct funding, provided that MLSN management was “thick” enough in resources to pursue issues and confident enough of its mandate from the larger Mi'kmaq community. Here, too, opportunities may develop in association with the TWC support. Based on our reading of the interviews and other data, we have noted frequently that the requisites for a “minimalist” growth in MLSN’s justice reach – building upon what has been characterized as a very significant advance from the doldrums of its predecessor’s demise - include a need to at least liaise better with the Mi'kmaq communities and to have more Cape Breton involvement in the AC, feasible developments even if the budgetary constraints remain formidable. In the minimalist option, developments in the substantive MLSN programming would of course have to be within the criminal justice system since that is where the funding is principally available (i.e., criminal court work, justice circles, possibly something in interpreters’ service).



## APPENDIX

### INTERVIEW GUIDE FOR MI'KMAW LEGAL SUPPORT NETWORK AND PROGRAMS: SEVEN CORE TOPICS TO EXPLORE WITH STAKEHOLDERS

#### A. MAIN JUSTICE ISSUES FOR MI'KMAQ PEOPLE IN NOVA SCOTIA

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? (2) What are the major **civil** (e.g., neighbour-neighbour disputes) and **family** justice issues (divorce, access)? (3) What about violations of **band policies/agreements** in areas such as fisheries - is this a problem area?

#### B. THE CURRENT MAINSTREAM JUSTICE SYSTEMS

(1) Does the current **criminal justice system** serve Mi'kmaq people well? Are there some justice matters handled well there for Mi'kmaq people? What are the shortcomings for Mi'kmaq people? What would be your **major priorities** for change in the criminal justice system?

(2) What about the **civil justice system** (small claims court etc) and the **family** court (issues such as maintenance, divorce)? Are there some justice matters handled well there for Mi'kmaq people? What are the shortcomings for Mi'kmaq people? What would be your **major priorities** for change in the civil and family justice systems?

#### C. CURRENT MI'KMAQ POSSIBILITIES AND CAPACITY

Do you anticipate and/or want **more Mi'kmaq control or influence in justice matters**? (1) In the criminal justice system? (2) What about in the civil and family justice systems? (PROBE FOR SPECIFICS)

(1) Does the Mi'kmaq community in Nova Scotia have the **capacity** to undertake more management and direction of criminal and civil justice matters? (2) What **resources** are needed (education? financial? Organizational? other)? (3) Are there **major obstacles** that would have to be overcome? Are these obstacles internal to the Mi'kmaq community (not enough consensus)? Are the obstacles external (resistance from federal and provincial governments)?

D. FAMILIARITY WITH MLSN AND THE PROGRAMS

(1) How **well informed** are you about the MLSN and its chief programs, court workers and justice circles? (2) Do you know about the **origin** of, and the need for, such initiatives? (3) Do you know about the MLSN mandate, its **organizational structure and its funding**?

E. ASSESSMENT OF THE MLSN ORGANIZATION AND THE PROGRAMS

What is your assessment of the specific programs and of the MLSN overall? Do you think that the organization and the programs are **valuable**? Is MLSN doing the right things in the right way? **Should MLSN do 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? (PROBES: 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? (PROBES: IS THERE COMMUNITY SUPPORT FOR THEM?) (3) Should these desired changes be done **through the MLSN**? Are the MLSN and its programs the building blocks for new needed justice initiatives?

G SUGGESTIONS FOR STRUCTURE AND SERVICE DELIVERY

MLSN is a **province-wide Mi'kmaq organization** providing justice programs. Is that organizational structure or service delivery model the best way to create Mi'kmaq direction over justice matters? What are the **advantages** of that model? Are there any **disadvantages** or challenges for it? Is there sufficient community identification with MLSN? Any **suggestions for change**?

(2) **If MLSN 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** among the Mi'kmaq political leaders? among community members in general? How might the MLSN advance that **agenda** in these constituencies? What **strategies** might be usefully employed? (PROBES: PRESENTATIONS OF STRATEGIC PLANS TO ALL CHIEFS COUNCIL? COMMUNITY MEETINGS, INTERAGENCY MEETINGS).

**INTERVIEWER'S COMMENTS:**

## BIBLIOGRAPHICAL CITATIONS

Acorn, Annalise. 2004. *Compulsory Compassion: A Critique of Restorative Justice*. Vancouver: UBC Press.

Agrawal, Arun. 1995. Dismantling the Divide Between Indigenous and Scientific Knowledge. *Development and Change*. 26:413.

AJLN, LINK, Vol. 1 (8). Ottawa: Department of Justice, Summer 2000

Alfred, Taiaiake. 1999. *Peace, Power, Righteousness: An Indigenous Manifesto*. Oxford: University Press.

Alfred, Taiaiake. 2005. *Wasase: Indigenous Pathway of Action and Freedom*. Peterborough: Broadview Press.

Atlantic Policy Congress of First National Chiefs, MI'KMAQ AND MALISEET YOUTH SPEAK OUT, Moncton: 1999

Atlantic Policy Congress of First National Chiefs, MI'KMAQ AND MALISEET ELDERS SPEAK OUT, Dartmouth: 1999

Atlantic Policy Congress of First Nations Chiefs, MI'KMAQ AND MALISEET RESPONSE TO THE ROYAL COMMISSION OF ABORIGINAL PEOPLES FINAL REPORT, 1998

Asch, Michael (ed). 1997. *Aboriginal and Treaty Rights in Canada*. Vancouver: UBC Press.

Barsh, R. and J. S. Henderson. 1997. Marshalling the Rule of Law in Canada: Of Eels and Honour, *Canadian Native Law Reporter*. 1 C.N.L.R.: 1-50.

Battiste, Marie. 2000. *Reclaiming Indigenous Voice and Vision*. Vancouver: UBC Press.

Battiste, M. and J. Henderson. 2000. *Protecting Indigenous Knowledge and Heritage: A Global Challenge*. Saskatoon: Purich.

Bell, Catherine and David Kahane (eds.). 2004. *Intercultural Dispute Resolution in Aboriginal Contexts*. Vancouver: UBC Press.

Berkes, F., J. Colding, and C. Folke. 2000. Rediscovery of Traditional Ecological Knowledge as Adaptive Management. *Ecological Applications*. 10(5):1251-62.

- Blaser, M., H. Feit, G. McRae. 2004. *In the Way of Development: Indigenous Peoples, Life Projects and Globalization*. London: Zed Books.
- Bohannon, Paul (ed.). 1967. *Law and Warfare: Studies in the Anthropology of Conflict*. Austin: University of Texas Press.
- Borrows, John. 2002. *Recovering Canada: The Resurgence of Indigenous Law*. Toronto: University of Toronto Press.
- Bourdieu, Pierre. 1991. *Language and Symbolic Power*. Cambridge: Harvard University Press.
- Boxberger, Daniel. 1989. *To Fish in Common: The Ethnohistory of Lummi Indian Salmon Fishing*. Lincoln: University of Nebraska Press.
- Braithwaite, John, CRIME, SHAME AND INTEGRATION. New York: Cambridge University Press, 1989
- Braithwaite, John and Heather Strang (eds.). 2001. *Restorative Justice and Civil Society*. Cambridge: University Press.
- Canada, Royal Commission on Aboriginal Peoples, BRIDGING THE CULTURAL DIVIDE: A REPORT ON ABORIGINAL PEOPLE AND CRIMINAL JUSTICE IN CANADA. Ottawa: Supply and Services, 1996
- Chan, Janet, "Governing Police Practice: Limits of the New Accountability", BRITISH JOURNAL OF SOCIOLOGY, Vol. 50 (2), June 1999
- Chartrand, Paul (ed.). 2002. *Who Are Canada's Aboriginal Peoples?* Saskatoon: Purich Press
- Clairmont, Don, COMMUNITY ASSESSMENTS OF CRIME, JUSTICE AND DIVERSION: VIEWS OF INDIAN BROOK ADULTS AND YOUTHS. Halifax: Tripartite Forum on Native Justice, 1994
- Clairmont, Don, CRIME, POLICE AND JUSTICE IN INDIAN BROOK: 1991-92. Halifax: Atlantic Institute of Criminology, 1993
- Clairmont, Don, NATIVE JUSTICE IN NOVA SCOTIA. 3 Volumes Halifax: Queen's Printer, 1992
- Clairmont, Don, THE INDIAN BROOK DIVERSION PROGRAM. Halifax: The Tripartite Forum on Native Justice, 1995

Clairmont, Don, THE SHUBENACADIE BAND DIVERSION PROGRAMME: AN EVALUATION OF THE FINAL YEAR AND AN OVERALL ASSESSMENT. Halifax: Atlantic Institute of Criminology, 1996

Clairmont, Don and Rick Linden, DEVELOPING AND EVALUATING JUSTICE PROJECTS IN ABORIGINAL COMMUNITIES: A REVIEW OF THE LITERATURE. Ottawa: Solicitor General of Canada, 1998

Clairmont, Don and Chris Murphy, SELF-ADMINISTERED FIRST NATIONS' POLICING: AN OVERVIEW OF ORGANIZATIONAL AND MANAGERIAL ISSUES. Ottawa: Solicitor General Canada, 2000

Clairmont, Don and Jane McMillan, Future Directions in Mi'kmaq Justice, Halifax: The Tripartite Forum, 2001

Clairmont, Don, The Evolution Of Policing in Aboriginal Communities in Canada. Toronto: The Ipperwash Inquiry, 2006

Coflin, Jim, REVIEW: MI'KMAQ JUSTICE WORKER'S PROGRAM. March 1998  
Coates, Ken. 2000. *The Marshall Decision and Native Rights*. Montreal: McGill-Queen's University Press.

Comack, Elizabeth (ed). 1999. *Locating Law: Race, Class, Gender Connections*. Halifax: Fernwood Press.

Conley, John and William O'Barr. 1998. *Just Words: Law, Language and Power*. Chicago: University of Chicago Press.

Conley and O'Barr, 1990. *Rules Versus Relationships: The Ethnography of Legal Discourse*. Chicago: University of Chicago Press.

Cruikshank, Julie. 1998. *The Social Life of Stories: Narrative and Knowledge in the Yukon Territory*. Lincoln: University of Nebraska Press.

Culhane, Dara. 1998. *The Pleasure of the Crown: Anthropology, Law and First Nations*. Vancouver: Talon Books.

Darnell, Regna. 2001. *Invisible Genealogies: A History of Americanist Anthropology*. Lincoln: University of Nebraska Press.

Davis, A and J. Wagner. 2003. Who Knows? On the Importance of Identifying 'Experts' When Researching Local Ecological Knowledge. *Human Ecology*. 31:463-489.

- Dickson-Gilmore, Jane and Carol LaPrairie. 2005. *Will the Circle Be Unbroken? Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change*. Toronto: Toronto University Press.
- Dombrowsik, Kirk. 2001. *Against Culture: Development, Politics and Religion in Indian Alaska*. Lincoln: Nebraska University Press.
- Feit, Harvey. 2001. Voices from a Disappearing Forest: Government, Corporate and Cree Participatory Forestry Management Practices. In *Aboriginal Autonomy and Development in Northern Quebec and Labrador*. Colin Scott (ed.). Vancouver: UBC Press (119-148).
- Fienup-Riordan, ESKIMO ESSAYS: YUP-IK LIVES AND HOW WE SEE THEM. New Brunswick: Reutgers University Press, 1990
- Fiske, Jo-Anne and Betty Patrick. 2000. *Cis Dideen Kat: When the Plumes Rise*. Vancouver: UBC Press.
- Fowler, Loretta. 1987. *Shared Symbols, Contested Meanings*. Ithaca: Cornell University Press
- Frideres, James, NATIVE PEOPLES IN CANADA. Scarborough: Prentice-Hall, 1993
- Furniss, Elizabeth. 1999. *The Burden of History: Colonialism and the Frontier Myth in a Rural Canadian Community*. Vancouver: UBC Press.
- Geertz, Clifford. 1983. *Local Knowledge*. Princeton: Basic Books.
- Gledhill, John. 1994. *Power and Its Disguises: Anthropological Perspectives on Politics*. London: Pluto Press
- Green, Ross Gordon, JUSTICE IN ABORIGINAL COMMUNITIES: SENTENCING ALTERNATIVES. Saskatoon: Purich Press, 1998
- Grenier, Louise. 1998. *Working with Indigenous Knowledge: A Guide for Researchers*. Ottawa: International Development Research Centre ( IDRC).
- Havemann, Paul, THE INDIGENIZATION OF SOCIAL CONTROL IN CANADA. In *Indigenous Law and the State*. Morse, Bradfor and Gordon Woodman (eds). Holland: Foris Press, 1988
- Head, Robert, POLICING FOR ABORIGINAL CANADIANS: THE RCMP ROLE. Ottawa: Royal Canadian Mounted Police. 1989
- Henderson, James (Sakej). 1997. *The Mi'kmaw Concordant*. Halifax: Fernwood.

Hickman, A., REPORT OF THE ROYAL COMMISSION ON THE DONALD MARSHALL Jr PROSECUTION. Halifax: Province of Nova Scotia, Queen's Printer, 1989

Hocking, Barbara (ed). 2005. *Unfinished Constitutional Business? Rethinking Indigenous Self-determination*. Canberra: Aboriginal Studies Press.

Hoffman, Bernard. 1955. *Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries*. Unpublished Ph.D. Dissertation, Department of Anthropology, University of California, Berkeley.

Isaac, Thomas. 2004. *Aboriginal Law*. Saskatoon: Purich Press

Johnson, Darlene. 1989. *The Taking of Indian Lands in Canada: Consent or Coercion*. Saskatoon: Native Law Centre Publishing.

Keating, Colin, "Judicial Functions On Marae", Address by the Secretary for Justice to the Conference on Indigenous Peoples and Justice, Wellington New Zealand, June 1999

La Prairie, Carol, SEEN BUT NOT HEARD: NATIVE PEOPLE IN THE INNER CITY. Ottawa: Department of Justice, 1994

Law Reform Commission of Canada, ABORIGINAL PEOPLES AND CRIMINAL JUSTICE: MINISTER'S REFERENCE. Ottawa: Law Reform Commission of Canada, 1991

Lawrence, Bonita. 2004. *"Real" Indians and Others: Mixed-Blood Urban Native People and Indigenous Nationhood*. Vancouver: UBC Press.

Lazarus-Black, Mindie and Susan Hirsch (eds.). 1994. *Contested States: Law, Hegemony and Resistance*. New York: Routledge.

Llewellyn, Karl and E. A. Hoebel. 1941. *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence*. Norman: University of Oklahoma.

Mainville, Robert. 2001. *An Overview of Aboriginal and Treaty Rights and Compensation for their Breach*. Saskatoon: Purich.

Mannette, Joy (ed.) 1992. *Elusive Justice: Beyond the Marshall Inquiry*. Halifax: Fernwood.

Mastrofski, Stephen, "Policing for People", IDEAS IN AMERICAN POLICING. Washington: Police Foundation, 1999



- Mauze, Marie, PRESENT IS PAST: SOME USES OF TRADITIONAL NATIVE SOCIETIES. New York: University Press of America, 1997
- McNeil, Kent. 2001. *Emerging Justice? Essays on Indigenous Rights in Canada and Australia*. Saskatoon: Native Law Publishing Centre.
- Menzies, Charles. 2004. Putting Words into Action: Negotiating Collaborative Research in Gitxaala. *Canadian Journal of Native Education*. Vol. 28 (1 & 2).
- Menzies, Charles (ed.). 2006. *Traditional Ecological Knowledge and Natural Resource Management*. Lincoln: University of Nebraska Press.
- Merry, Sally. 2000. *Colonizing Hawai'i: The Cultural Power of Law*. Princeton: Princeton University Press.
- Merry, 1990. *Getting Justice and Getting Even: Legal Consciousness among Working Class Americans*. Chicago: University of Chicago Press.
- Merry, Sally Engle, CULTURE, POWER, AND THE DISCOURSE OF LAW.  
In *New York Law Review*, 1992 (37) 209-225
- Miller, Bruce G. 2001. *The Problem of Justice: Tradition and Law in the Coast Salish World*. Lincoln: Nebraska University Press.
- Miller, Bruce, THE INDIVIDUAL, THE COLLECTIVE, AND TRIBAL CODE.  
In *American Indian Culture and Research Journal*, 1997 21(1) 107-129.
- Monture, Patricia. 1999. *Journeying Forward: Dreaming First Nation's Independence*. Halifax: Fernwood.
- Moore, Sally Falk (ed.). 2005. *Law and Anthropology*. Malden: Blackwell Publishing.
- Morrison, Andrea (ed.). 1997. *Justice for Natives: Searching for Common Ground*. Montreal: McGill-Queen's University Press.
- Murbach, Ruth (ed.), Cross-Cultural Jurisprudence, *Canadian Journal of Law and Society*, Volume 20, No. 1, 2005
- Murphy, Chris and Don Clairmont, FIRST NATIONS POLICE: A SURVEY OF POLICE OFFICERS IN FIRST NATIONS COMMUNITIES. Ottawa: Solicitor General Canada, 1996
- Nader, Laura. 2002. *The Life of the Law*. Berkeley: University of California Press.
- Nader, 1990. *Harmony Ideology: Justice and Control in a Zapotec Mountain Village*. Stanford: Stanford University Press.

Native Council of Nova Scotia. 1993. *Mi'kmaq Fisheries: Netukulimk-Towards a Better Understanding*. Truro: Native Council of Nova Scotia.

Niezen, Ronald. 1998. *Defending the Land: Sovereignty and Forest Life in James Bay Cree Society*. Boston: Allyn and Bacon.

Niezen, Ronald. 2003. *The Origins of Indigenism: Human Rights and the Politics of Identity*. Berkeley: University of California Press.

Nova Scotia Working Committee On The Constitution, CANADA: A COUNTRY FOR ALL. Halifax: Province of Nova Scotia, 1991

Palys, Ted, PROSPECTS FOR ABORIGINAL JUSTICE IN CANADA. Vancouver: Simon Fraser University, 1993

Paul, Daniel, We Were Not The Savages. Halifax, Nimbus Press, 1993

Pommersheim, Frank, BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRIBAL LIFE. Berkeley: University of California, 1995

Prins, Harold. 1996. *The Mi'kmaq: Resistance, Accommodation and Cultural Survival*. Fort Worth: Harcourt Brace.

Proulx, Craig. 2003. *Reclaiming Aboriginal Justice, Identity, and Community*. Saskatoon: Purich.

Razack, Sherene (ed). 2002. *Race, Space, and the Law: Unmapping a White Settler Society*. Toronto: Between the Lines.

Rendell, Brian, HISTORICAL AND CONSTITUTIONAL FOUNDATIONS OF ABORIGINAL JUSTICE: AN OVERVIEW OF THE UNIQUE STATUS OF ABORIGINAL PEOPLES IN CANADA. In *Aboriginal Justice Handbook: A Resource for Crown Counsel*. British Columbia: Criminal Justice Branch Ministry of Attorney General, 2000

Ross, Rupert, RETURNING TO THE TEACHINGS: EXPLORING ABORIGINAL JUSTICE. Toronto: Penguin Press, 1996

Royal Canadian Mounted Police, COMMISSIONER'S DIRECTIONAL STATEMENT. Ottawa: Royal Canadian Mounted Police, 1990

Royal Canadian Mounted Police, NOVA SCOTIA "H" DIVISION RCMP RESPONDS TO THE ROYAL COMMISSION ON THE DONALD MARSHALL Jr PROSECUTION. Halifax: RCMP News Release, 1990.

Ryan, Joan, DOING THINGS THE RIGHT WAY: DENE TRADITIONAL JUSTICE IN LAC LA MARTRE, NWT. Calgary: University of Calgary Press, 1995

Salisbury, Richard. 1986. *A Homeland for the Cree: Regional Development in James Bay, 1971-1981*. Montreal: McGill-Queen's Press.

Sarat, Austin (ed.). 2004. *The Blackwell Companion to Law and Society*. Malden: Blackwell Publishing.

Sider, Gerald. 1993. *Lumbee Indian Histories: Race, Ethnicity, and Indian Identity in the Southern United States*. Cambridge: Cambridge University Press.

Six Nations Geo Systems, FIRST NATIONS POLICING SECTOR STUDY: CURRENT AND FUTURE DIRECTION AND CURRENT RESOURCES. Ottawa: First Nations Chiefs of Police Association, 1999

Smith, Gavin. 1999. *Confronting the Present: Towards A Politically Engaged Anthropology*. Oxford: Berg Publishing.

Smith, Linda Tuhiwai. 1999. *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Book.

Solicitor General Canada, FIRST NATIONS POLICING POLICY. Ottawa: Supply and Services, 1992

Starr, June and Jane Collier (eds.). 1989. *History and Power in the Study of Law: New Directions in Legal Anthropology*. Ithaca: Cornell University Press.

Starr, June and Mark Goodale (eds.). 2002. *Practicing Ethnography in Law*. New York: Palgrave MacMillan.

Strang, Heather and John Braithwaite (eds.). 2001. *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press.

Strathern, Marilyn. 2005. *Kinship, Law and the Unexpected*. Cambridge: Cambridge University Press.

Trigger, Bruce. 1985. *Natives and Newcomers: Canada's Heroic Age Reconsidered*. Montreal: McGill-Queen's Press.

Union of Nova Scotia Indians. 1987. *The Mi'kmaq Treaty Handbook*. Sydney: Native Communications Society of Nova Scotia.

Valentine, Lisa Philips and Regan Darnell. 1999. *Theorizing the Americanist Tradition*. Toronto: University of Toronto Press.

Waldram, James. 1997. *The Way of the Pipe: Aboriginal Spirituality and Symbolic Healing in Canadian Prisons*. Peterborough: Broadview Press.

Warry, Wayne. 1998. *Unfinished Dreams: Community Healing and the Reality of Aboriginal Self-Government*. Toronto: University Press.

Wachtel, Ted, SAFERSANERSCHOOLS: RESTORING COMMUNITY IN A DISCONNECTED WORLD. In *Restorative Justice in Everyday Life: Beyond the Formal Ritual*. Canberra: Australian National University, 1999

Wicken, William. 2002. *Mi'kmaq Treaties on Trial: History, Land and Donald Marshall Jr.* Toronto: University Press.

Wildsmith, Bruce. 1988. *Aboriginal Peoples and Section 25 of the Canadian Charter of Rights and Freedoms*. Saskatoon: Native Law Centre Publishing.

Wolf, Eric. 1982. *Europe and the People without History*. Berkeley: University of California Press.

Wolf, Eric. 1999. *Envisioning Power: Ideologies of Dominance and Crisis*. Berkeley: University of California Press.

Woolford, Andrew. 2005. *Between Justice and Certainty: Treaty Making in British Columbia*. Vancouver: UBC Press.

Wotherspoon, T. and V. Satzewich. 1993. *First Nations: Race, Class and Gender Relations*. Scarborough: Nelson Press.

Wright, Mr. Justice David. 2004. *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild*. Province of Saskatchewan.