DIRECTIONS IN MI'KMAQ JUSTICE:

AN EVALUATION OF THE MI'KMAQ JUSTICE INSTITUTE

AND ITS AFTERMATH

PRESENTED TO

THE TRIPARTITE FORUM: JUSTICE SUBCOMMITTEE

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TABLED MAY, 2001

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INTRODUCTION: OBJECTIVES AND METHODS

EVALUATION OBJECTIVES

The Mi'kmaq Justice Institute (MJI) has been established since November 1996. Its primary stimulus was the Royal Commission on the Wrongful Prosecution of Donald Marshall Jr. Recommendations from that inquiry were adopted by the Mi'kmaq leaders and the governments of Nova Scotia and Canada. The specifics for the MJI were developed within the Tripartite Forum drawing upon research and policy directions advanced in the Forum reports produced by Clairmont and Christmas. Several years of negotiations among the diverse Mi'kmaq political interests preceded the final organizational formula developed in 1996. The centrepiece of the MJI initially was the 'justice worker' program, wherein three justice workers were hired and trained to serve the Mi'kmaq communities throughout Nova Scotia. In addition to performing conventional native court worker duties, the justice workers had other responsibilities, including criminal justice system (CJS) liaison and public legal education. Within a few months of its creation, the MJI began to become more clearly an umbrella organization for certain Mi'kmaq justice programming. Other services provided under the rubric of the MJI have included the Mi'kmaq Translator service (ENTS), and, since June 1997, the Mi'kmaq Young Offender Project (MYOP); the latter delivers young offender justice programming through two programs, namely the justice circles (i.e., Mi'kmaq Justice Circles) and the administration of community service orders (CSOs). The MJI has had a small central staff, consisting of an executive director and part-time secretarial assistance, which has co-ordinated and given direction to the above programs and also engaged in related activities such as arranging and attending conferences on justice issues, training, networking among Mi'kmaq communities, liaison to governmental programs such as the Aboriginal Learning Network of the Department of Justice, and exploring new programs of research and administration in areas such as band governance and wills and estates. The MJI has itself been directed by a board of directors drawn from the Mi'kmaq community. The central, explicit mandate of the MJI was "to act on behalf of Mi'kmaq/Aboriginal people for the promotion, facilitation, advancement, and improvement of justice as it affects Mi'kmaq/Aboriginal people". The core funding for the MJI - the funding for the justice workers and the central staff - has come from the long-standing, federal-provincial, cost-sharing arrangement under the Native Court Worker Program.

The MJI operation is clearly now at the cross-roads. While the MJI board struggles on, its central management staff and core justice workers are no longer in business, and other MJI services (i.e., ENTS, MYOP) have reverted back to previous organizational arrangements. But, this crisis aside, it would seem quite appropriate now that three years have passed to evaluate how well the MJI has fulfilled its mandate and to identify and examine major challenging issues with respect to organizational framework, program delivery, mandate and resources. Even more importantly, it would be appropriate to look forward to new possibilities and to meld visions of the future with lessons from the past. What have been the successes and the shortfalls, and what accounts for these? What opportunities and challenges now shape the MJI environment? What are the views of the Mi'kmaq leaders and communities concerning what has happened and what might be or should be? Certainly, some problems have emerged and, just as certainly, some new opportunities have come to the fore. Is the mandate, as operationalized, still appropriate? How successful have the key programs dealing with the justice / court worker role and the young offenders been? What other issues might be significant foci for MJI? Other justice services that might be considered could include victim services, Legal Aid liaison (a recommendation of both the Marshall Commission and the Tripartite Forum's Clairmont report), public legal education work in the Mi'kmaq communities, more court and processing services on reserve, and perhaps a major instrumental role in the development of a formal regulatory capacity within the Mi'kmaq community (e.g.,resource regulations, band bylaws). Does the current situation and immediate future - as regards Mi'kmaq views, availability of resources etc - call for selective expansion or retrenchment of the MJI mandate? What organizational changes might be required in either of these contingencies?

THE EVALUATION PLAN

A. CHIEF OBJECTIVES

There were three chief objectives for the evaluation, namely (a) an assessment of the MJI to date; (b) an assessment of how the Mi'kmaq community wishes the MJI or some analogous organization to serve their justice concerns and interests; (c) an examination of pertinent contextual issues such as salient views and developments in the Nova Scotian and Canada criminal justice systems, the justice experiences in other Canadian aboriginal communities, and funding issues.

Concerning the assessment of MJI, it was considered important to explore how the MJI mandate was developed and implemented over the past several years. What opportunities, problems and challenges have been responded to, and what resources and constraints have affected its accomplishments? The organizational structure, including operational strategies (e.g., communication within the Mi'kmaq community, networking with the extant criminal justice system), and the accountability mechanisms put in place, was a major focal point. It was deemed necessary to describe and evaluate the programs operated under the MJI umbrella, and the other activities (e.g., liaison, developing proposals) carried out by MJI. What has been the impact to date of these MJI programs and activities? Here the evaluation would examine successes as well as shortfalls and opportunities for further MJI initiative. Among the questions that to be examined, the following would be highlighted:

1. Has the MJI lived up to its mandate and to its potential? What factors have affected these considerations?

2. Does an environmental scan indicate current opportunities and challenges different from those to which MJI has responded in the past?

3. To what extent have the programs and activities been characterized by efficiency, effectiveness, and equity; and, to what extent have they, in part and in whole, contributed to effecting more Mi'kmaq control over justice in their communities and a justice philosophy and delivery that reflects Mi'kmaq cultural traditions, concerns and social realities?

4. What organizational forms or structures can best deliver programs and activities that respond well to the concerns identified in point 3 above? What new or different programs and activities would be valuable in those regards?

Concerning the second major objective, it was deemed important to determine not only how Mi'kmaq leaders, organizational representatives and community residents view the MJI programs and activities to date, but also where they want it to go in the future. What programs and activities would they suggest as priorities? How should MJI or some analogous Mi'kmaq-directed, umbrella organization be structured? What ideas and issues are there for realizing a perhaps more extensive, if not more focused, vision of an MJI? Among the questions that were examined were the following:

1. What opportunities and challenges do the above Mi'kmaq persons and organizations identify for Mi'kmaq justice? For example, is there a role for an MJI type organization in assisting in the regulation of internal Mi'kmaq policies?

2. What mandate, format and operational strategies should be put in place? Is the umbrella organization model the most effective way to advance Mi'kmaq justice concerns, and, if not, what else may be required?

3. What priorities should there be for Mi'kmaq justice and how do these relate to (i.e., what do they imply about) the programs and activities of MJI over the past three years and to the way it operated? In other words, what lessons can be drawn for future initiatives?

The third major objective was to explore the context within which MJI has and might continue to operate, searching for salient issues to relate to past MJI experience and future Mi'kmaq justice initiatives. What is the response of the CJS officials and MJI collaborators to past MJI practices and future possibilities? What has happened and is happening elsewhere in Canada's First Nation communities that could be of especial significance to a revitalized MJI? What are the funding possibilities for MJI-type programs and activities? Among the specific questions examined were the following:

1. Are there reasonably long-term funding arrangements available beyond the cost-shared court worker program? What funding is possible, directly or indirectly, through the Tripartite Forum?

2. What are the recommendations, and implications of the recommendations, of Royal Commission On Aboriginal Peoples (RCAP) that bear on the conception of a revitalized MJI? What structural arrangements and justice programs have been developed by other multi-band First Nations to deliver justice services that could be of value for Mi'kmaq people?

3. What suggestions and issues are held by CJS collaborators and partners concerning MJI-type initiatives in Nova Scotia? What is the level of awareness and knowledge associated with these views (e.g., any awareness of the RCAP distinction between core and peripheral justice issues for First Nations?)? What kinds of collaboration are envisaged between the justice system and Mi'kmaq justice initiatives?

B. 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 of 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. 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.

5. 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.

C. STRATEGIC PLAN FOR THE EVALUATION

The following was basically the tentative strategic plan for proceeding with the evaluation that was presented to the Tripartite Forum and MJI Board of Directors (i.e., Commissioners). Upon acceptance of the evaluation proposal, the first step was to meet with the evaluation advisory subcommittee, or a committee of primary stakeholders, to discuss the strategic plan, and work towards having an accepted evaluation framework. Several modifications emerged from that process (e.g., the value of interviewing certain government officials, the desirability of doing more research at Indian Brook). The chief components of the final evaluation strategy were identified as follows:

(a) meet with the advisory subcommittee to develop the evaluation framework

(b) review available materials, whether academic studies, commission reports, government documents etc pertinent to the MJI, Mi'kmaq justice, and contextual concerns such as recent governmental initiatives (e.g., restorative justice in Nova Scotia) and First Nations justice experiences of particular relevance for this focus on MJI and Mi'kmaq justice.

(c) interview the board, staff and program personnel associated with MJI and its various programs and activities.

(d) interview a reasonable sample of Mi'kmaq elected leaders, officials from the founding five native organizations for MJI, namely CMM (Confederation of Mainland Mi'kmaw), UNSI (Union of Nova Scotian Indians), NCNS (Native Council of Nova Scotia), MNFC (Mi'kmaq Native Friendship Centre) and NSNWA (Nova Scotia Native Women Association).

(e) interview, and perhaps have focus groups in collaboration with, the major community organizations such as NADACA (Native Alcohol and Drug Association), MFCS (Mi'kmaq Family and Children Services), Native Women, Seniors, and local Community Justice Committees.

(f) consider the feasibility of having focus groups at the community level arranged in collaboration with justice workers, MYOP volunteers, community justice committee members and so forth.

(g) interview CJS officials at the different 'entry levels' (police, court, corrections) who network and collaborate with respect to Mi'kmaq justice

(h) interview key government officials at the federal and provincial levels who have responsibilities, either through the Tripartite Forum or in conjunction with specific justice programs, with MJI.

EVALUATION METHODS: WHAT WAS ACTUALLY 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: A comprehensive examination was completed of academic and policy materials dealing with native justice issues and/or of relevance to the justice programs delivered by MJI.

(a) examination of appropriate secondary materials: Secondary data were obtained from several sources, such as DIAND, Indian Affairs (population and educational data), RCMP (Royal Canadian Mounted Police) and Canadian Centre for Justice Statistics (crime data), and a number of other, specific government departments at the federal and provincial levels (i.e., program information).

(c) examination of minutes, records and reports relating to MJI and its constituent programs.

(d) community surveys of Mi'kmaq people: A survey instrument was developed and utilized based partly on content and format utilized in previous Mi'kmaq community surveys on justice carried out by the principal investigator in 1998/98 for communities served by the Unama'ki Tribal Police (UTPS), and in 1991/92 for the Tripartite Forum, among all Mi'kmaq people throughout Nova Scotia. Building on these successful precedents yields confidence in the appropriateness of the questions and provides the bases for comparisons which are found throughout this text. In addition, the survey instrument used here examines new issues as specified in the objectives above. The survey obtained information on perceptions of crime, fear and worry about victimization, community responses to crime, personal experience with MJI, its programs and with the CJS in general, viewpoints on the needs and priorities for Mi'kmaq justice and suggestions for change; socio-demographic information (i.e., age, gender, education, marital status and employment) was also gathered to facilitate the identification of patterns of consensus and variation.

The survey specifications are provides in Table One in the chapter on the community surveys. A sample of 102 adults was drawn from the three communities of Waycobah, Eskasoni and Membertou and one of 132 adults from Indian Brook. Smaller and less adequate sampling was done in the Other Mainland (i.e., South Shore and Millbrook) where a total of 45 adults were interviewed.

(e) one-on-one, in-depth interviews: These were carried out with a large number of Mi'kmaq leaders and community activists, government officials and CJS role players (i.e., police, prosecutors, judges, lawyers, correctional staff). Interview guides, advancing themes rather than detailed, specific questions, were developed for these interviews. In all cases, core themes were explored (e.g., experience with MJI and its programs) and then supplemented by themes especially salient to the person being identified (e.g., funding possibilities with government officials).

Twenty-two Mi'kmaq political leaders, eleven from Cape Breton and eleven from the Mainland were interviewed, some several times. Representatives from all the major native political organizations as well as nine elected leaders were interviewed. Fifteen CJS role players and eight government officials were interviewed at least once; in the former case, priority was given to contacting CJS personnel operating in the Membertou-Eskasoni and Indian Brook-Millbrook areas, while in the latter case, federal and provincial officials were interviewed who were on the Tripartite Forum's Justice Committee or involved in specific MJI programming. In addition, sixteen persons attached to local service agencies (e.g., MFCS) or otherwise well known community activists were interviewed. All these persons were band members and eleven resided in Cape Breton.

(f) one-on-one interviews with MJI board and staff: Almost all MJI board members and program staffers were interviewed, a few several times.

Overall, then, the actual methodology followed closely the strategic plan for the evaluation. Literature and secondary data were available. There was a shortfall with respect to the minutes, reports and statistical data available through MJI, simply because much relevant statistical information was unavailable, that is, it was not systematically gathered in the first place. These shortfalls will be discussed in relation to the evaluation of specific MJI activity in subsequent sections of this report. The community surveys from Cape Breton and Indian Brook were well done and can be taken as representative of the perceptions and views of adults in those FN communities. These questionnaires also yielded many useful comments which were incorporated in the survey write up. All interviewers were competent, local Mi'kmaq people hired and trained for this task. The "Other Mainland" (essentially Millbrook and the South Shore) questionnaires were adequately completed but too few and too unrepresentative of the populations in question to be accorded the same level of confidence. The one-on-one, in-depth interviews were excellent. The evaluation team received full cooperation from the respondents,

all of whom expressed deep commitment and concern about Mi'kmaq justice issues. The major shortfall, here, was the lack of success in arranging an interview with the former Executive Director of MJI. All told, there were seventy-nine different individuals interviewed in-depth; additionally, a score of people were interviewed on specific issues (e.g., experience in the Court Worker Certificate program). The researchers were unable to arrange all the focus group discussions anticipated in the strategic plan. Several sessions were held with multiple informants in Cape Breton where a few elders participated and there was knowledge of the Amikijuaq (grandmothers) grouping on the Mainland. There were many individual interviews with elders, women and local activists, and contacts were made with others informed on specific groups (e.g., inmates); as well, the evaluators examined available literature on the views of Mi'kmaq elders and youth (see Review of Literature).

DEVELOPMENTS AND THEMES IN ABORIGINAL JUSTICE

INTRODUCTION

In this section there is first a discussion of the context for aboriginal justice initiatives which provides historical background and describes the evolution of the issues and focal points. Most attention is directed to the aftermath of the spate of commissions and inquiries that occurred in the late 1980s and early 1990s. Subsequently, there is a discussion of the innovations in thinking, research and policy that have followed the recommendations of the Royal Commission on Aboriginal Peoples. In conclusion, there is an analysis of the key dimensions or concepts of aboriginal justice and their practical implications for the development of justice initiatives in FN communities. Throughout the sections there is reference to the particular developments that took place in Nova Scotia.

THE CONTEXT FOR ABORIGINAL JUSTICE INITIATIVES

Aboriginal wishes and governmental policy are in apparent unison concerning the desirability of greater aboriginal self-government and autonomy. As the latter development evolves, entailed changes regarding the direction of policies and programs, resource allocation, and administrative structures and procedures, require that mechanisms be put in place so that native leaders and others can assess whether change is proceeding in an efficient, effective and equitable manner. This may be particularly required in a 'small community' situation, given the realities of small scattered populations with limited resources and increasing internal differentiation, and the dangers of cliques exercising excessive control, and of dependence upon informal processes alone. In addition to issues of self-control and autonomy, there is also the question of the extent to which aboriginal systems will be different in principle, reflecting different values, priorities and worldviews. It is not surprising then that in all institutional sectors attention is increasingly being paid to mission statements, objectives, performance indicators, outcomes, monitoring and evaluation feedback.

The justice system has considerable symbolic importance in discussions of aboriginal self-government. There is a widespread view, among both governmental officials (especially in the justice system) and aboriginal leaders, that the field of justice is a centrepiece, if not the leading edge, in the development of greater aboriginal self-government and autonomy. A common position appears to be that significant changes can and should be readily made with regard to how justice is organized and delivered in native communities. Moreover, there seems to be considerable agreement that the conventional justice system has failed aboriginal people, and that alternative and innovative practices, rooted in native traditions and experience, should be encouraged. Accordingly, there is widespread enthusiasm about the prospect of aboriginal justice moving beyond the present state with its legacy of over-representation (as regards offenders, victims, and incarcerates), minimal aboriginal participation in the determination of justice, and general estrangement. A future state is envisaged where aboriginal justice furthers other aboriginal collective objectives, incorporates traditions and experiences, manifests aboriginal control, and deals effectively with the harm that crime and social disorder have wrought for all parties (i.e., victim, offender, community).

From the point of view of styles of governmental approach to "aboriginal people and the criminal justice system", there has been three major policy era (McNamara, 1995), namely

(a) pre-1975 where little attention was paid in any official or programmatic way to the distinctive distinctive problems, needs and participation of aboriginal people in the criminal justice system.

(b) 1975 to 1990 where, following the 1975 National Conference on Native People sponsored by the Solicitor General Canada, an agenda was set forth calling for the provision of better access to all facets of the justice system, more equitable treatment, greater native control over service delivery, recruitment of native personnel, cross-cultural sensitivity training for non-natives, and more emphasis on alternatives to incarceration and crime prevention. Between 1975 and 1990 more than twenty government reports reiterated these types of recommendations.

(c) 1991 to the present: In 1991 two major reports set the stage for the development of a new agenda, one emphasizing the establishment of aboriginal justice systems where aboriginal peoples would presumably exercise control over the administration of their governing justice systems and also over how justice would be defined in those systems. These two reports were the Law Reform Commission's 1991 report, Aboriginal Peoples and Criminal

> Justice, and the 1991 report of the Aboriginal Justice Inquiry of Manitoba, The Justice System and Aboriginal People. At about the same time the federal government re-organized its administrative structures and delivery systems for native justice. Responsibilities were transferred from Indian Affairs to other departments. In the Solicitor General, Canada the Aboriginal Policing Directorate and the Aboriginal Corrections Policy Unit were formed, and in Justice Canada the Aboriginal Justice Directorate came into being. The mandates of the new bureaucracies were to advance aboriginal justice interests, improving the response of the conventional justice system and facilitating greater aboriginal direction of, and innovation in, justice in aboriginal communities. The 1997 report of the Royal Commission on Aboriginal Peoples (RCAP) emphasized the need to develop further the new agenda of autonomy and legal pluralism.

Since the early 1970s Justice Canada has had two regularly funded programs relating specifically to aboriginal people, namely a Native Legal Studies Program, particularly for Metis and non-status natives, and the Native Court Worker Program. The latter is a federal-provincial, cost-shared program which has been slightly modified over the years (e.g., to include applicability to young offenders) and which has been the subject of considerable policy deliberation over the past decade. The discussions have largely centred around expanding the authorized areas for funding (i.e., expanding the role of the court worker to include other justice activities such as public legal education, and general justice work in the community).

In 1991 the Aboriginal Justice Directorate's five-year program was established in Justice Canada. Titled the Aboriginal Justice Initiative, it provided funding for a large number of aboriginal justice initiatives (e.g., diversion projects) across Canada on a pilot project basis. Renewed in 1996 for a further five years, the Aboriginal Justice Initiative has reduced significantly its funding of pilot projects and focused its thrusts on establishing a new venture, The Aboriginal Justice Learning Network. The Network project aims at mobilizing materials and expertise, in an aboriginal / non-aboriginal partnership, for utilization by those aboriginal communities across the country who want to develop new justice ventures. The major emphasis of the Network has been on restorative justice, linking aboriginal traditions and preferences (e.g., circle sentencing) with new developments such as family group conferencing. There has also been an emphasis on mobilizing community justice committees and encouraging voluntary activity. An underlying assumption appears to be that neither constitutional nor especially major financial resources are required for effective change.

A major thrust of the Solicitor General Canada's (S.G.C.) aboriginal policing policy has been the development of tripartite agreements (federal and provincial governments and aboriginal communities). Since 1991 the number of such agreements has increased more than fifty-fold and they now cover about two-thirds of the targeted population. A recent study (Murphy and Clairmont, 1996) has indicated that the large majority of front-line officers in aboriginal communities across Canada are themselves aboriginal, and that the fastest growing type of police organization is the self-administered, First Nations police service. The latter is popularly called 'stand alone policing'. None of these police services is fully autonomous and all have established protocols with the R.C.M.P. and/or provincial police organizations; nevertheless, the trend towards increased autonomy is unmistakable. Fuelled by an important national conference on aboriginal people and corrections in the late 1980s, under the sponsorship of the S.G.C., important developments have also been occurring in the Solicitor General's aboriginal corrections policy. New aboriginal-based penitentiaries have been constructed for female and male inmates in western Canada, supplementing extant policies and programs of penitentiary liaison, and native counselling and spirituality. Both the Aboriginal Policing Directorate and the Aboriginal Corrections Unit have in recent years funded justice initiatives, in their authorized areas of responsibility, on a project basis.

There are some special circumstances that are especially relevant to the development of aboriginal justice initiatives, and especially to restorative justice initiatives. As Turpel (1993) has observed, aboriginal communities have seen their societies and cultures destroyed in large measure by European colonization but there remains, certainly among some aboriginal peoples in the highly diversified Canadian aboriginal community, both a difference in world view vis-a-vis the larger Canadian society, and a desire to implement a different kind of justice system. It is also important to appreciate the pattern of crime and social disorder that characterize many aboriginal communities, namely a pattern emphasizing personal assault and public disorder (LaPrairie.1994; 1996). The level of these latter offences appear to reflect sometimes a community breakdown, and certainly suggest the need for justice initiatives that reconcile people and facilitate community development. At the same time aboriginal community justice has to contend with the not uncommon pattern of a small group of recidivists (usually young adult males), and the less common pattern of extensive female crime, both of which present challenging rehabilitative problems.

The small size of many aboriginal communities raises issues of adequate resources to sustain justice initiatives (e.g., avoiding burnout among volunteers), and of bias and cliques in enforcing social disorder. At the same time, these small communities, as Depew (1996) has observed, have an ability to "reproduce themselves as a community of relatives and friends", to reproduce communitarianism which can be an effective underpinning for restorative justice programming. With increasing education, and the development of regional networks (linking small communities in a tribal or multi-tribal system), the strengths of small communities may be harnessed to effectively serve justice objectives. The lack of resources for many communities also can create what LaPrairie (1994) has termed "funding dependency", where available funding rather than community needs and preferences shape aboriginal justice initiatives. Clearly, there is a challenge for aboriginal peoples to forcefully advocate their own solutions, and a challenge for governments to respect aboriginal differences.

There are several recurring themes in the literature concerning aboriginal justice initiatives. As noted above, many aboriginal and non-aboriginal leaders consider aboriginal justice as the leading edge in the movement towards aboriginal self-government. These initiatives may have considerable symbolic significance for successful native stewardship of native life, as well as for their inherent rehabilitative and healing potential. It is generally held that there are no profound legal or constitutional obstacles to the creation of quite different aboriginal justice programs and practices (e.g., Hunt, 1991; Macklem, 1992; Royal Commission on Aboriginal Peoples, 1996). Many commentators have emphasized that for a variety of reasons, some intrinsic such as the strategies for healing, and some extrinsic such as the band organization imposed by the Indian Act, aboriginal justice initiatives have to be community-based. In light of the social disorder circumstances noted above, justice initiatives are seen as both requiring, and impacting upon, community development (LaPrairie, 1996; Stuart, 1997). Commentators such as McDonnell, 1995; Fitzpatrick, 1992; and Monture, 1995), referring to the significant internal differentiation that exists and the competing extant alternative justice strategies, have stressed the need for widespread "community conversations", involving all sectors of the community. Another important theme has been that aboriginal communities may well be at the forefront of the increasingly popular restorative justice

movement, because the failure of the conventional justice system has been so evident in relation to native peoples, because aboriginal emphases on healing and holistic approaches are so compatible with restorative justice principles, and because both aboriginal and restorative perspectives emphasize rebuilding communities. At the same time, as Jackson (1992) and others have observed, aboriginal justice thinking appears often to differ from restorative justice in the larger society in that, in the aboriginal instances, there is more emphasis on collective responsibility, greater community involvement and more explicit spirituality.

Overall then, it can be argued that the main push factor for the proliferation of aboriginal justice initiatives has been the consensus, among aboriginal peoples and justice officials, that the conventional justice system has not worked well for aboriginal people. The main pull factor has been the congruence of aboriginal aspirations and governmental policy with respect to greater autonomy and self-government for aboriginal peoples. There is scant, quality material available on the extent to which aboriginal justice initiatives are, in fact, any more effective, efficient, and equitable than the justice provided by the mainstream system. There is little information on the actual implementation of programs, on the treatments called for, or on the intermediate or long-term impact for victims, offenders, and communities. To the extent that aboriginal justice initiatives mirror in all respects the ideas and methods of restorative justice, there would be reason for scepticism. The diversion, mediation and other restorative justice programs, extensively implemented in North America in the 1960s' and 1970s', proved to be relatively ineffective and inefficient (Feeley, 1983; Nuffield, 1997). Still, the restorative justice movement has been resurrected through North America (Braithwaite, 1996), testimony both to the flaws of the conventional justice system, and to the potential of restorative justice. And aboriginal communities with their traditions, socio-demographics, and potential for communitarianism might well lead the way. If that is to happen then well developed, well-implemented projects, and quality evaluations will be required.

RECENT DEVELOPMENTS IN FIRST NATION JUSTICE

In its report, Bridging The Gap, RCAP made the point that previous commissions and inquiries have not been acted upon in any dramatic or comprehensive way. It is appropriate then to ask what is emerging in the post-RCAP period. While the conventional conditions of over-representation as offenders and victims, and of personal violence and social disorder fuelled by poverty, substance abuse and the legacy of colonialism, continue to be significant problems for many FN communities, there does appear to have been change in the causal discourse. Increasingly, attention has been directed to the cultural and spiritual impact of colonialism and the need for native people to have the authority and resources to adapt the mainstream system to their traditions and circumstances. For example, high levels of recidivism, interpersonal violence and social disorder are seen as corollaries of an externally imposed, mainstream justice system which does not yield accountability, healing, and family and community reconciliation. There is greater acceptance, it would appear, at official levels, of the urgent need for power-sharing and exploration of alternatives in order to come to grips with these problems, and of course, to satisfy treaty and constitutional rights of native peoples. Native leaders have increasingly advanced this argument. Researchers in aboriginal law have strongly supported the development of more informal, flexible, community-based, community-owned justice systems which are achieved by applying considered traditional aboriginal folk law within contemporary contexts.

It is unclear what the implications of this new development will ultimately be. RCAP advanced three major ideas concerning the level of legal pluralism or degree of 'justice system difference' that could result, namely (a) that FN justice alternatives should be justified and impact most evidently in relation to core issues of native culture and identity; (b) that the differences on many levels (e.g., definitions of crime, sanction employed) between mainstream and native alternatives would probably be rather modest; and, (c) that efficiency, effectiveness and equity standards may require a stronger cohesion of First Nation identity that transcends band affiliation. There has been very little research or writing elaborating on these and other RCAP issues, although there have been several major books recently published dealing with the very general issues of the

grounds for and desirability of separate native justice systems (Flanagan, 1999; Cairns, 1999; Miller, 2000). Recent research literature on aboriginal justice has largely dealt with specific styles or justice processes, such as circle sentencing, and how the themes of healing, harmony and spirituality are understood in aboriginal communities. There has been some reference to constraints, such as how funding dependency limits the creativity of aboriginal justice initiatives and compels them to replicate mainstream concerns and processes (e.g., La Prairie, 1994). There has been some "flagging" of issues of gender and victim concerns within community-based justice programs but little detailed research on these topics.

There does appear to be considerable stirring regarding aboriginal justice in several Canadian provinces. The Aboriginal Justice Inquiry of Manitoba had urged the establishment of an aboriginal justice commission and an aboriginal justice college, among other things, to explore adapting aboriginal traditions and current realities and preferences to the mainstream system (i.e., finding an appropriate niche). After considerable delay and governmental reluctance, the new Manitoba government has begun to advance on these and other recommendations of the 1991/92 Commission. In Alberta, the Tsuu T'ina, with provincial government support, inaugurated a comprehensive aboriginal justice system in 1999. It is a partnership that blends aboriginal justice traditions, including the office of peacemaker, with the provincial court of Alberta. The Tsuu T'ina court has jurisdiction over offences that take place on reserve (i.e., the full range of jurisdictional authority associated with provincial court). It is anticipated that all staff, judge, prosecutor and peacemaker, will be qualified and members of FNs. The peacemaker role will include active promotion and teaching of traditional values and restoring harmony within the community. Funding for the initiative is cost-shared between the provincial and federal government, with the federal government accounting for 100% of the 'peacemaker' component under the federal Aboriginal Justice Strategy. In Saskatchewan, the Federation of Saskatchewan Indian Nations, has developed a strategic plan which it is negotiating with the provincial and federal governments calling for the creation of a justice system which is rooted in FN values, culture and spirituality and represents a community-driven process. In addition to these developments, which aim to generate a justice

system, there have been several significant justice initiatives which focus on particular aspects or segments of a justice system; these would include the Okimaw Ohci Healing Lodge in Saskatchewan (a federal corrections facility for women) and the well-known Hollow Water justice circles to deal with interpersonal abuse in Hollow Water Manitoba. There are many other initiatives going on across the country, both on reserves and in urban areas.

Nova Scotia, with its speedy adoption in principle of the Marshall Inquiry's recommendations, and through the establishment in 1991 of the Tripartite Forum on justice and other major policy issues, has been in the vanguard of this change according to one informed RCAP commissioner. Some Mi'kmaq leaders have reported that the Marshall recommendations, which essentially reflected an integrationist ethos, have been largely achieved and that the current agenda for justice development (and of course for other institutional change as well) can be related to the RCAP vision of autonomy and difference. There has been some exploration of traditional justice concepts by Mi'kmaq intellectuals (Francis, 1997; M. Marshall, n.d.) and some enthusiasm among others for looking into the Mi'kmaq folk law and traditional justice processes (e.g., band governance) for guidance in constructing their own justice systems. In that context, the MJI and its programs have been significant developments even while modest in scope and relatively conventional in practice. It has been an umbrella organization serving all Mi'kmaq people (i.e., all thirteen bands and others) and has both delivered valuable programs and explored alternative justice possibilities.

ABORIGINAL JUSTICE: KEY CONCEPTS AND THEIR PRACTICAL IMPLICATIONS

Aboriginal culture groups generally employed a holistic approach to justice based on efforts to maintain a balanced society. Law and justice were integrated with other institutions like kinship, government, and religion. Fundamentally there are underlying social beliefs that everything and everyone are connected. In most Aboriginal societies, laws are spoken of as the principles that govern human relations with each other, with the land, animals and spirit world.

This approach is different than the codification of offences as used by mainstream justice, because the emphasis is on behaviour as it affects relations within a community, rather than on the punishment of offences against the state. Thus, using European-based notions of law as the analytical basis for understanding Aboriginal justice is problematic, as most indigenous cultures have alternate and often non-comparable concepts of justice.

Aboriginal cultures have many diverse practices and beliefs of what constitutes 'right relations and their restoration once broken. First Nation communities have within them social laws and practices that involve both complex and common sense ways of interacting with one another to prevent and correct inappropriate behaviour. Justice practices traditionally were part of everyday life, rather than a separate and self-contained system of laws differentiated from other social systems and processes. Ideas and practices of justice were evidenced in spiritual values and principles within the political, economic, and social interaction of individuals and communities.

Appealing to Tradition:

Numerous Aboriginal traditions form the basis of Aboriginal justice systems. Traditions are continually modified, created, invented, debated and destroyed in all cultures. Insisting that Native cultures and traditions are static perpetuates stereotypes of First Nations as backward or childlike, and often acts as justification for further assimilative and colonial processes. The idea that Native societies must be changeless or non-evolving in order to be considered authentic must be rigorously challenged. Traditions applicable to Aboriginal justice are valuable for today, providing that their authenticity rests within the communities in which they are validated.

The concept of tradition may be better understood if considered as part of the creative process of identity formation. First Nations often appeal to tradition as a means of creating identities to empower themselves in opposition to dominant cultures. Traditions and cultures are constantly negotiated, invented and often contested. Traditional justice practices can and are

made relevant for contemporary usage through adaptive processes. How and why certain practices are used or discarded depends on the historical, economic, political, spiritual and social power structures within each community.

Community Justice – Laws of Social Relations:

Generally, Aboriginal justice is about relationships. The social rules within Aboriginal groups define relations and control how people get along. Wrong-doings upset the balance or disturb social harmony. The goal is to restore the balance through repairing or making right the relations harmed by the wrong-doings. What constitutes a wrong-doing or how relations are restored depends on the specific community and its cultural infrastructure. Cultural infrastructure is the relationship between kinship patterns, spiritual beliefs, traditions, justice, political, economic and social processes that maintain and change those relations. How justice is conceptualized and the ways it is dealt with are ongoing creative processes that are always modified in accordance with continual culture change. While some practices may seem steeped in enduring tradition, these traditions are often modified to make them relevant for today's societies.

Kinship, Teaching and Oral Traditions:

The family is the foundation for community law. Each family had their own laws that provided the basis for a way of living that was passed on through the teaching of oral traditions. Many of these teaching are embedded within indigenous languages, and are not easily translatable into English. Family law often became community law. The fundamental guidelines for preserving and following community laws emerge from 'the teachings' which are tools for instilling socially acceptable behaviour and for helping to maintain or restore social balance. Key themes of the teachings in Mi'kmaw society often include forgiveness, sharing, respect, responsibility and interdependency, and are emphasized in public and private rituals, ceremonies, education processes and oral traditions. Many people consider returning to the teachings as a way of bringing about

community-based justice that will be effective, efficient and fair, because they are inclusive, holistic, healing and practical (Ross 1996, Green 1998).

Current authors look to alienation and loss of community as key factors contributing to wrong-doings. By not feeling connected to their community and its values, an individual is more likely to act out against the social norms (Braithwaite 1989, Wachtel 1999). First Nation communities are in particularly unique situations. On one hand reservations often foster close ties, extended families continue to interact, often to a greater degree than in non-Aboriginal communities. However on the other hand, there are numerous tensions as more traditional extended networks break down and as First Nations peoples continue to be marginalized by mainstream society in terms of economic, political and educational opportunities. Compounding the social and economic hardships are conflicts over identity, both within First Nations communities and within larger society. Yet First Nations levels of communitarianism may make them more suitable places for community-based and restorative programs, than the more individual-centred mainstream society.

Despite the breakdown of traditional family structures on many First Nations, the family remains a major determinant of dispute resolution and social control (Green 1998, Miller 1997). In almost all dispute management methods utilized by Aboriginal communities, extended families and clans play key roles in communication, negotiation, adjudication and re-integration processes. This reflects the notion that the offender and victim are not the only parities involved in a dispute. Effective resolutions come only when the broader society is also considered. In this way harmony and social balance may be achieved. By excluding the family and larger community from the justice process, healing is unlikely to occur.

The Holistic Approach – Finding a Balance:

Aboriginal communities tend to be holistically integrated and thus principles of justice are found in all aspects of culture. By examining political organization, family structures, religious systems, economic practices, ritual and ceremonial forms, we can then understand how First Nations laws are made meaningful for each community. How justice is manifested in a community is not static, nor is it based on strict adherence to precedence. Juridical ideologies and practices change over time and are influenced by changing environments, and are thus flexible. In the conversations that were part of this research, many participants emphasized a holistic approach to justice as important to them, because in order to find out the root causes for wrong-doings, the entire lived experiences of the people involved must be considered. Once these are considered, then appropriate remedies may be deliberated to manage disputes and attempt to restore balance not only between offended and offender, but also the entire affected community on a case-by-case basis.

Healing, Reintegration and Harmony:

Aboriginal cultures tend to operate as collectives, particularly on reserves, with conciliatory rather than punitive approaches to justice. Aboriginal justice practices tend to be more therapeutic than rule-based in their processes (See Merry 190, Conley and O'Barr 1990). When wrong-doings occur everyone is affected, directly or indirectly, and some form of healing process is recommended for all. Thus, practices of restorative justice may be most successful in reflecting Aboriginal emphases on healing and holistic approaches to community development.

There is a diverse and expanding body of literature concerned with the notion of Aboriginal justice as healing (for example Waldram 1997, Warry 1998). Healing processes are at the crux of rehabilitation. The ideal of healing as justice sets Aboriginal approaches apart from the more punitive style of mainstream justice. Healing is often considered in a holistic sense. In order to right wrongs there need to be opportunities for healing. Many processes

relating to dispute management involve some kind of healing process, such as circles, instruction in traditional cleansing, sweat lodge ceremonies, cultural camps, Sun Dances, adherence to the teachings of Medicine Wheels, and healing lodges, to mention only a few. Increasingly these methods are being utilized in First Nation communities and in correctional institutions where there are cultural programs for Aboriginal inmates.

A primary goal for many Aboriginal justice practices is reinstatement of wrongdoers into the community. There are many different processes and practices to reintegrate wrong-doers and make peace between disputing parties and communities at large. Most reintegration practices involve reconciliation between offender and victims, compensation through feasting, services or payment, spiritual cleansing and instruction by way of the teachings.

One of the problems of removing offenders from the communities, other than in situations of mutually agreed banishment, is that the opportunity for healing is also removed or significantly delayed. When offenders return after doing their time, problems are more likely to continue unless some sort of healing process occurs. Healing may also be considered as part of the reintegration process that would traditionally have taken place in order to restore balance. Healing processes do not have set time lines, and thus must be part of a flexible justice plan.

Consensus:

The concept of consensus is a significant principle of Aboriginal justice. Consensus is often the goal when deciding what is the proper action for restoring relations (Fienup-Riordan, Green). Consensus comes from the offended and the offenders and their support networks collaborating to ensure that community relations may be healed to everyone's satisfaction. This collaboration involves establishing protocols for the public rituals and ceremonies that may accompany the restorative process in Aboriginal communities. Consensus strategies are also prevalent in other community-based justice processes such as talking and sentencing circles and healing plans.

Consensus may be impossible, particularly in situations where there is an imbalance of power within a community or family. Appropriate precautions must be taken in order to limit or neutralize these imbalances. Consensus can also take different forms and what is considered to be consensual will necessarily reflect the cultural infrastructure of a given community. In stratified or class-based communities consensus may be limited to those with political, social and economic power.

Unlike non-Native judiciary, for whom neutrality is an ideal goal, Native practitioners may neither be concerned with neutrality nor independence. They may have a vested interest in a case, particularly if the parties involved are relatives (as may often be the case in small scale communities). In some Aboriginal mediation the leaders may be interventionist in their approaches to dispute management. They may use prayer, give lecture on indigenous values to address problems, apply moral sanctions to practical solutions and, as such, provide assessments of the positions and values of the parties involved. This is a pragmatic approach to law. The focus is on restoring relations and problem-solving, rather than punishment. In small communities people are either related or live in continuing relationships. By identifying those relationships, their strength can be used to restore harmony within the community through the persuasive authority of justice leaders, be they elders or community leaders.

Informal Sanctions:

Many Aboriginal communities practice informal sanctions. Non-interventionist and non-confrontational ethos exist in some communities as underlying principles of justice due to strong beliefs in spiritual sanctions. If a person commits a wrong or persists in bad behaviour they may be seen as suffering from spiritual sickness or a broken spirit and must be healed in order to correct the behaviour. Others believe wrong-doers will be sanctioned by spirits, regardless of human intervention, and thus choose not to do anything, leaving it to the spirit world to resolve.

Avoidance relates to principles of non-confrontation and non-intervention. Disputes not settled through other mechanisms may dissipate over time through avoidance of further hostilities. Occasionally, through avoidance and ostracization, community pressure is strong enough to cause offenders to reform their behaviour or move away.

In many Aboriginal communities there is a shaming ethic. This ethic is considered effective because the individual must be made accountable for his / her actions as a member of the community. This form of shaming is re-integrative than ostracizing, because it allows for the offender to alter behaviour and make amends to the community rather than being shunned completely. Threats of being ostracized are strong sanctions employed by many First Nations for purposes of behaviour modification, social control and prevention of future wrong-doings. In close-knit Mi'kmaw communities threat of social isolation remains a strong sanction.

Finally, reciprocity and restitution are often central principles in indigenous justice and are common ways to settle disputes traditionally. Within processes of restitution are important reciprocity practices emphasizing the exchange of respect and gifts that underlie human relations of all kinds, including those between spiritual beings and between families of wrong-doers and families of those transgressed. Reciprocity often acts as an agent of reintegration, and enables communities to return to a balanced state.

Conclusion:

Aboriginal justice practices and processes, both contemporary and traditional, are transmitted through the teachings, customs and rituals and are reinforced in cultural structures. Underlying principles of restoration of relations through counselling, consensus, restitution, and re-integration are carried out through a variety of mechanisms that are culturally specific and emanate from community-based values. These mechanisms are reinforced and legitimated by traditional practices and beliefs; they are also challenged by the need to change to meet new requirements that come from within communities and from outside.

While it is impossible to return to the old ways, there is a sense in most communities of a need to establish mechanisms to manage disputes and to address problems in ways that are culturally and community appropriate. Important is the issue of legitimacy. Legitimacy is created when the justice system, its rules and methods to manage problems, have value within the community. If the community owns the justice process, created from their stock of beliefs about right and wrong, then the processes to correct wrongs will be meaningful. Thus, Aboriginal justice is not about specific rules; rather it is about core values.

Long-term colonization of First Nations peoples has contributed to the deterioration of traditional local authority and has facilitated the removal of responsibility and accountability from Aboriginal communities (Fiske 1998). This breakdown has been one of the basic causes of current crises of individual, family and community dysfunction in First Nations. Implementation and support of traditionally-based, culturally appropriate justice systems can assist in a reversal of fortune (Warhaft and Palys 1998).

Power relations must be considered within the context of community-based program development. As several diversion programs have demonstrated (i.e., Shubenacadie and South Vancouver Island Justice), lack of community consultation and conferring status on leaders without grassroots consensus undermines program accountability, authority and legitimacy. Implementation of traditional ideologies and practices is not a straightforward process. What are considered appropriate traditions for some, are not necessarily adhered to by others. Political interference, lack of public interest, confidentiality issues, criteria for candidacy, compliance supervision, record keeping, conflicts of interest, abuses of power, training, knowledge and acceptance of traditional ways must be reflected upon by Aboriginal communities in order that these issues do not undermine the much needed implementation of culturally appropriate justice systems and practices.

CONTEXTUAL CHANGES SINCE 1990

INTRODUCTION

In 1992, in a major study for the Nova Scotia Tripartite Forum, a set of recommendations were advanced calling for the re-establishment of the native court worker program in the form of justice workers, and for the creation of an independent and apolitical organization, Mi'kmaq Legal Services, to administer this program and other justice services such as Mi'kmaq interpretation services (Clairmont, 1992). In this section there is a discussion of changes that have occurred since that time and what, if any, impact they might have on such a set of recommendations today. Four areas of possible changes are examined here, namely, population growth and educational achievement, crime statistics, the Native Court Worker Program, and new social movements. Contextual changes associated with RCAP, the self-government movement, federal government policies (i.e., Aboriginal Justice Learning Network) and development among other FNs have been discussed above.

POPULATION AND EDUCATIONAL DATA

Tables A, B and C present data on population and education for the Mi'kmaq band members in Nova Scotia. In 1998, according to DIAND, there were 7796 such band members living on reserve and another 3673 off reserve for a total of 11,469 persons (see Table B). Some twenty years earlier, in 1976, the comparable figures were 3941 band members living on reserve, 1428 living off reserve and a total band population of 5369 (Clairmont. 1992). Band membership, then, has doubled over the two decades and the increase has been greatest among those living off reserve. For several decades the proportion of band members 17 years of age and under has been far in excess of the comparable Nova Scotian figure. That remains true today, as the latest figures indicate that roughly 40% of the band membership is in that age group while, for Nova Scotia as a whole, the corresponding figure is approximately 23%; the comparable figures in 1976 were 38% for the band population and 25% for Nova Scotia as a whole. In sum, the band population has been steadily growing and is posed for more growth as it is largely a young population. A growing, young

population could be expected to impact on crime rates and especially the type of offences - more property crime - in the immediate future. Still, the total band population is just 1.3% of the Nova Scotia population. Of course, there are other native persons in Nova Scotia who are not band members but, of the approximately additional ten thousand who claim some native ancestry in the census, well less than a thousand identify themselves as primarily native or participate in any native social network (Clairmont, 1992).

TABLE A

TOTAL POST SECONDARY ENROLLMENTS (1993 – 1999)
NOVA SCOTIA FIRST NATIONS

	1993	1994	1995	1996	1997	1998	1999
Acadia	19	26	23	29	26	29	24
Afton	16	11	12	16	16	17	17
Annapolis Valley	6	7	6	7	6	4	5
Bear River	6	7	10	10	6	10	9
Chapel Island	32	29	17	20	22	20	24
Eskasoni	121	119	143	155	144	149	160
Pictou Landing	12	14	14	19	15	11	12
Shubenacadie	75	85	81	61	58	70	78
Membertou	56	71	48	58	68	61	56
Millbrook	80	69	54	48	76	53	56
Wagmatcook	36	32	26	40	26	40	29
Whycocomagh	53	54	38	38	43	37	39
Horton	13	20	19	18	13	9	10
Total:	**525**	**544**	**491**	**519**	**519**	**510**	**519**

TABLE B

POPULATION OF 17 AND UNDER - 1998
NOVA SCOTIA FIRST NATIONS

	On Reserve 17 & Under	On Reserve Total	% On Reserve 17 & Under	Total Band
Acadia	36	177	20%	863
Afton	139	296	47	441
Annapolis Valley	26	78	33	193
Bear River	25	85	29	254
Chapel Island	188	405	46	496
Eskasoni	1213	2737	44	3250
Pictou Landing	144	343	42	481
Shubenacadie	397	1096	36	1949
Membertou	294	696	42	904
Millbrook	246	620	40	1095
Wagmatcook	227	546	42	591
Whycocomagh	262	622	42	688
Horton	29	95	30	264
Total:	**3226**	**7796**	**Median: 42**	**11469**

TABLE C

POPULATION AND POST-SECONDARY ENROLLMENTS:
PROVINCIAL AND MI'KMAQ COMPARISONS

	1997-98	1998-99
Nova Scotia Province [(a)]		
Total Population	936,089	939,791
Population 17 Years of Age and Under	215,264	212,665
Post-Secondary Enrollees (PSEs)	37,773	38,840
PSEs as % of Total N.S. Population	4.0%	4.1%
PSEs as a % of Population Over 17 Years of Age	5.2%	5.3%
Mi'kmaq Band Members in Nova Scotia [(b)]		
Total Population on Reserve	7,796	7,967
Total Band Population	11,469	11,790
Total Band Population 17 Years of Age and Under	4,588	4,716
Total Post-Secondary Enrollees (PSEs)	510	519
PSEs as % of Total Band Population	4.5%	4.4%
PSEs as a % of Population Over 17 Years of Age	7.4%	7.3%

(a) These data were provided by the N.S. Department of Finance.
(b) These data were provide by the Department of Indian Affairs, Amherst, N.S.

Tables A and C provide information on educational attainment. It is clear from Table A that enrolment of band members in post-secondary institutions has remained quite stable in the 1990s at roughly 500 or so; of these, about 12% have been part-time students. The post-secondary institutions in which band members enrolled were, with few exceptions, degree-granting colleges and universities. Interestingly, the proportion of band members enrolled in post-secondary institutions is now greater than that of the Nova Scotian population as a whole; indeed, among the eligible population (i.e., the population older than seventeen) the difference is quite pronounced as roughly 7.3% of eligible band members are in post-secondary institutions while for Nova Scotia as a whole the figure is roughly 5.3%.

These data on educational attainment would suggest a band membership which is increasingly able to deal with mainstream institutions, and an increasing capacity for leadership and institutional development at the reserve level. At the same time there are some educational data seemingly inconsistent with that presumption, namely that a large number of native students in grade twelve fail to graduate (DIAND, personal communication 2000). While DIAND's post-secondary education budget has been capped for several years, officials there report no evidence exists that band members desiring such education are prevented from doing so through funding shortfalls. Some band leaders contest that position. In sum, educational data suggest that more and more band members have been exposed to post-secondary education. This trend could impact on the crime rate (typically high education is associated with low conventional crime), increase the capacity of the FN communities to successfully carry out justice initiative, and shore up the case for justice workers' handling more than conventional court work (i.e., perhaps less need for clarification of court procedure).

CRIME STATISTICS

Tables D to I present data on crime statistics on Mi'kmaq reserves in Nova Scotia. The RCMP statistics cited in Table D are somewhat complicated to appreciate because of the different systems of policing associated with the different reserves over the past ten years. Horton, Bear River and Annapolis Valley are not depicted in this table at all, basically because in most years there has

been few persons (often one or none) charged with criminal code violations there; a similar case might well have been made for eliminating Acadia FN from the table. Membertou and Eskasoni are not depicted because since 1994 they have been policed by UTPS and before that Membertou was policed by the Sydney Police Department. Trends in those communities and in Waycobah can best be seen in Table E which deal with the UTPS jurisdiction. Millbrook's RCMP statistics start in 1996 since prior to then it was policed by the Truro Police Service. Having made all these qualifications, it must be reported that no discernible trend can be readily identified in the table. The data do indicate that consistently, over the decade of the 1990s, there has been little violent or property crime outside the Central Nova area (Indian Brook and Millbrook) and the four Cape Breton FN communities of Eskasoni, Membertou, Wagmatcook and Waycobah; indeed, there is evidence that crime rates have fallen noticeable in the latter two communities. Such a pattern would suggest perhaps where priorities should be placed, in terms of allotted staff, for some justice programs.

TABLE D

RCMP OPERATIONAL STATISTICS REPORTING SYSTEM: DETAILED MAYOR'S REPORT (1991 – 1999)

1991

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook												
Indian Brook	98	55	82	45	18	64	211	78	60	7	90	26
Wagmatcook	45	19	87	14	1	36	48	10	58	-	145	8
Wycocomagh	25	11	96	29	13	55	37	8	65	4	65	13
Chapel Island	15	12	100	7	3	71	20	14	90	1	33	6
Afton	16	5	94	4	3	125	9	3	56	1	14	2
Pictou	12	8	142	3	1	67	32	12	63	1	18	4
Acadia	2	1	50	4	2	50	13	8	85	-	9	1

1992

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook												
Indian Brook	87	44	83	59	12	32	176	86	76	3	76	26
Wagmatcook	47	27	98	15	3	47	47	16	62	2	126	15
Wycocomagh	28	10	75	8	1	13	25	6	64	1	56	14
Chapel Island	23	12	91	11	5	45	24	11	67	1	22	7
Afton	13	5	77	7	1	14	26	6	54	-	8	3
Pictou	14	3	79	5	1	60	30	4	33	-	20	3
Acadia	3	4	133	3	-	-	6	4	83	1	8	-

(…Continued)

TABLE D

RCMP OPERATIONAL STATISTICS REPORTING SYSTEM: DETAILED MAYOR'S REPORT (1991 – 1999)
(…Continued)

1993

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook												
Indian Brook	75	36	101	68	16	63	158	67	73	4	96	38
Wagmatcook	38	12	63	17	3	41	56	21	63	3	110	17
Wycocomagh	26	9	69	16	5	50	39	5	64	2	54	24
Chapel Island	10	7	120	11	4	45	26	6	62	2	35	14
Afton	15	10	107	7	5	100	19	4	79	-	9	9
Pictou	20	6	50	12	-	25	38	2	32	2	31	10
Acadia	5	2	40	-	-	-	4	3	75	1	3	-

1994

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook												
Indian Brook	85	35	86	64	10	30	109	48	75	4	74	13
Wagmatcook	30	19	113	136	6	4	65	17	48	-	56	11
Wycocomagh	34	13	79	19	5	58	35	9	63	4	45	12
Chapel Island	17	10	100	7	4	86	26	18	88	4	51	22
Afton	18	5	89	3	3	133	16	4	81	-	17	7
Pictou	15	3	67	7	1	14	18	4	50	1	24	7
Acadia	2	2	100	2	1	100	7	2	29	-	7	1

(…Continued)

TABLE D

RCMP OPERATIONAL STATISTICS REPORTING SYSTEM: DETAILED MAYOR'S REPORT (1991 – 1999) (…Continued)

1995

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook												
Indian Brook	125	55	46	63	32	52	186	47	27	10	143	22
Wagmatcook												
Wycocomagh												
Chapel Island												
Afton	15	5	67	11	1	36	33	20	82	8	24	6
Pictou	16	11	133	7	-	-	33	8	55	1	9	-
Acadia	1	1	100	2	-	100	2	1	50	-	2	-

1996

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook	64	28	44	56	13	23	71	23	34	6	81	18
Indian Brook	134	46	34	68	7	10	186	26	16	4	82	37
Wagmatcook	26	9	81	10	1	40	61	13	68	3	225	14
Wycocomagh												
Chapel Island												
Afton	14	8	100	7	2	43	24	14	83	2	12	2
Pictou	21	8	76	20	4	30	53	14	60	1	4	6
Acadia	-	-	-	5	4	80	5	3	80	-	11	-

(…Continued)

TABLE D

RCMP OPERATIONAL STATISTICS REPORTING SYSTEM: DETAILED MAYOR'S REPORT (1991 – 1999) (…Continued)

1997

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook	72	28	64	63	3	25	137	21	47	6	154	33
Indian Brook	130	47	46	91	17	25	268	59	34	6	133	34
Wagmatcook	31	11	74	9	1	56	55	11	60	2	109	19
Wycocomagh												
Chapel Island												
Afton	18	13	94	7	1	71	17	4	59	-	15	1
Pictou	28	14	71	12	1	17	62	20	55	4	9	3
Acadia	3	2	67	6	1	50	8	5	75	-	5	-

1998

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook	69	24	57	84	5	19	199	27	38	7	143	36
Indian Brook	106	40	58	63	6	43	180	63	60	4	146	32
Wagmatcook	38	10	74	16	1	25	65	15	77	3	90	9
Wycocomagh												
Chapel Island												
Afton	16	8	81	6	2	83	16	6	63	1	18	4
Pictou	16	6	106	10	4	90	62	20	63	4	7	-
Acadia	1	-	-	1	-	-	3	-	33	-	2	-

(…Continued)

TABLE D

RCMP OPERATIONAL STATISTICS REPORTING SYSTEM: DETAILED MAYOR'S REPORT (1991 – 1999) (…Continued)

1999

First Nation	# Actual Person	'Person' Charges	Person % Cleared	# Actual Property	Property Charges	Property % Cleared	# Actual OCC	OCC Charges	OCC % Cleared	Fed. Actual	Prov. Actual	Traffic Actual
Millbrook	67	21	67	86	12	34	199	17	30	26	92	28
Indian Brook	82	35	73	118	17	30	270	47	47	6	114	11
Wagmatcook	29	8	62	17	3	35	74	14	47	-	340	18
Wycocomagh												
Chapel Island												
Afton	12	5	75	8	1	38	26	3	38	3	25	3
Pictou	20	12	80	13	5	54	58	20	64	2	18	4
Acadia	8	6	100	4	1	25	3	2	67	-	4	-

Table E depicts the four year trend in offences in the UTPS jurisdiction. Unfortunately, even here there are complications since Wagmatcook was under the UTPS for the first two years and, then returned to RCMP policing. Nevertheless, there are some clear patterns depicted in Table E. There has been a definite decline in the number of adults charged with person offences and with "other criminal code offences" such as mischief and public disturbance. Youth crime, especially property crime and "other criminal code" have increased. Overall, the UTPS data indicate that there are, on average, twelve persons charged per month over the four communities serviced, but it should be noted that in many cases the person charged is a repeat offender so the number of distinct individuals charged would clearly be less.

TABLE E

PERSONS CHARGED:
UNAMA'KI TRIBAL POLICE JURISDICTION[(a)]

Offence Type	1995	1996	1997	1998
'Person' Offences				
Adult	65	46	51	42
Youth	1	4	10	6
Property Offences				
Adult	11	9	10	8
Youth	6	5	14	10
'Other Criminal Code' [(b)]				
Adult	54	69	68	43
Youth	9	5	16	9
Total Persons Charged [(c)]				
Adult	130	124	121	93
Youth	16	14	30	25

(a) Canadian Centre for Justice Statistics.

(b) 'Other Criminal Code' refers basically to mischief, disturbing the peace, bail violation and other typically minor offences.

(c) In any given year, and certainly across years, a person could be charged more than once, so these figures do not refer to distinct persons.

These UTPS patterns can also be seen in Tables F to I which depict trends in offences for Indian Brook. Indian Brook has had, for two decades at least, very high levels of crime, especially violent crimes and offences involving social disorder. The incidence and rates of most crimes have increased over that time span. In the past two years, liquor act violations have been sharply reduced as have violent crimes. Increasingly, property and other criminal code offences, the crime most likely to be committed by teens and young adults have become more prominent. These patterns for Indian Brook and Cape Breton indicate that FN crime in Nova Scotia is increasingly mirroring the patterns of the larger society. The decline of person offences augurs well for new justice initiatives since there is usually greater willingness to refer disturbing the peace, mischief and property offences to alternative justice processes. The caseload, in terms of distinct person charged, does not appear to be too overwhelming in itself though the dispersion (i.e., the widely-spaced small reserves) might raise problems.

TABLE F

SPECIAL COMPARATIVE CRIME STATISTICS - SMALL URBAN AND RURAL NOVA SCOTIA, INDIAN BROOK, 1996*

	Small Urban Nova Scotia	Rural Nova Scotia	Indian Brook
Violent Crime as % of Total C.C.	13%	15%	34%
Property Crimes as % of Total C.C.	39	45	19
Other C.C. as % of Total C.C.	48	40	47
Rate per 10,000 Violent Crime	150	87	1083
Rate per 10,000 Property Crime	435	252	550
Rate per 10,000 Other C.C. Offences	544	226	1506

*** Source: Canadian Centre for Justice Statistics, Statistics Canada, 1998.**

TABLE G

TRENDS IN SELECTED OFFENCES, INDIAN BROOK, 1983 - 1990

Persons Charged (A)	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**	**Average**
# Charged with 'Person Offences'	29	20	28	24	34	32	44	42	30
% Adult Males	69%	85%	75%	79%	88%	62%	75%	67%	75%
# Charged with Property Offences	7	17	17	10	8	6	5	9	8
% Adult Males	100%	70%	88%	70%	50%	67%	20%	56%	68%
# Charged with Other C.C. Offences	19	10	26	21	16	11	14	22	17
% Adult Males	100%	60%	92%	90%	75%	82%	61%	82%	82%
# Charged under Provincial Liquor Act	27	14	23	25	28	21	26	14	24
% Adult Males	92%	93%	87%	88%	93%	90%	100%	78%	91%

Offences (B)

Total C.C. 'Persons'	43	47	51	44	55	59	87	98	53
Rate per 10,000	474	508	540	456	559	588	849	933	550
Total C.C. Property	21	25	37	20	35	24	40	48	30
Rate per 10,000	232	270	392	207	356	239	390	457	313
Total Other C.C.	65	49	65	59	65	83	108	154	65
Rate per 10,000	717	529	688	612	660	827	1054	1467	702
Total Liquor Act	32	22	43	42	60	52	46	36	42
Rate per 10,000	353	238	455	436	610	518	449	343	442
Grand Total:	204	191	258	261	298	267	336	396	264
Rate per 10,000:	2249	2063	2732	2707	3028	2659	3278	3771	2720

TABLE H

TRENDS IN SELECTED OFFENCES, INDIAN BROOK, 1990 - 1999*

Offence Category:	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Person, #Actual	101	98	87	75	85	125	134	130	106	82
Person, # Charges	53	55	44	36	35	55	46	47	40	35
Person, % Cleared	76	82	83	101	86	46	34	46	58	73
Property, # Actual	48	45	59	68	64	63	68	91	63	118
Property, # Charges	13	18	12	16	10	32	7	17	6	17
Property, % Cleared	48	64	32	63	30	52	10	25	43	30
Other Criminal, # Actual	157	211	176	158	109	186	186	268	180	270
Other Criminal, # Charges	51	78	86	67	48	47	26	59	63	47
Other Criminal, % Cleared	61	60	76	73	75	27	16	34	60	47
Federal, # Actual	4	7	3	4	4	10	4	6	4	6
Provincial, # Actual	60	90	76	96	74	143	82	133	146	114
Traffic, # Actual	27	26	26	38	13	22	37	34	32	11

*** R.C.M. Police Operational Statistics Reporting System: Detailed Mayor's Report**

TABLE I

TRENDS IN OFFENCES: INDIAN BROOK (1990 - 1999)
(Rates per 10,000)

	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**
Total per C.C. **'Persons'**	933	911	790	664	730	1042	1083	1022	815	612
Total C.C. Property	457	418	536	601	549	525	550	716	485	880
Total Other C.C.	1467	1962	1600	1398	944	1550	1506	2107	1385	2014

THE NATIVE COURT WORKER PROGRAM

Currently, and indeed for the last three decades, the only significant program, specifically designed for aboriginal justice, is the native court worker program (NCWP). Project funding has been possible under a variety of federal initiatives at the Department of Justice (e.g., the Aboriginal Justice Strategy) and DIAND but secure, long-term program funding has been basically just the NCWP. It is useful then to look at its development and the changes that appear to be imminent with respect to it.

Virtually all the evaluations of the native court worker, program stretching back for two decades, have assessed it as having positive impacts and suggested that its elimination would be a serious setback for native people being processed in mainstream courts (Havermann, 1984; SPR Associates, 1989). Having said that, it can also be noted that there have been distinct phases in the assessment characterizations. Initially, the NCWP was conceived in an "integrationist era" where the problem was defined as over-representation of native people as defendants in the criminal justice system, at least partly as a result of cultural factors (things like shyness and premature guilty pleas by natives and lack of understanding of natives' situations and needs, if not outright bias, on the part of justice officials). Accordingly, the objective was to reduce the level of incarceration by bridging the culture gap through the liaison and informational etc activity of a native court worker (see Gardiner, 1984; Hathaway, 1985).

The impact of the NCWP on this key objective has usually been significant according to key informants and the clients themselves, but ambiguous in terms of 'hard' statistical data on incarceration (contrast, for example, Co-West Associates, 1981 and Havermann, 1984, with Hathaway, 1985). Other programs developed in the 1980s, such as fine options, have perhaps had a much bigger effect with respect to provincial-level incarceration. Still, there was pervasive evidence that the culture gap was being bridged and that other, valuable objectives (e.g., access to legal services) were being accomplished (Owen, 1983; SPR Associates, 1989). Lessons were also learned concerning training, supervision and organizational considerations (e.g., selecting the appropriate carrier agency).

A second stage, still underpinned by the "integrationist" view saw an emphasis on equity and the quality of the service provided for the clients. There was a fine tuning of court worker specializations and a broadening of liaison with other social service agencies (Ference, 1989). Important issues emerging here concerned the problem of repeat offenders, the priority accorded proactive preventative work, and the professionalization of the native court worker role and its credibility within the mainstream justice system; for example, the repeater issue looms large when one reads that, in one region of British Columbia, according to a regional NCWP manager, only 10 of the 200 weekly clients are new clients. More recently, the NCWP has been assessed from the standpoint where issues of community input and native self-government are pivotal (Justice on Trial, Alberta, 1991). The allocation of scarce resources to in-court activity has been even more challenged from this perspective. A 1991 Department of Justice discussion paper, referring to the NCWP, stated: "it may be time ... to assess how it may better meet the diverse and changing needs of aboriginal people"; subsequently, after noting the broadened court worker in several jurisdictions, the paper refers to the "unexploited potential in areas such as crime prevention, public legal education and assistance to victims" (Aboriginal People and Justice Administration, 1991).

The evaluative literature on the NCWP over the past decade have usually recommended that a more expansive role be assumed but sometimes the direction emphasized is strengthening the in-court credibility and advocacy with respect to sentencing, while, on the other hand, sometimes the direction is to emphasize more linkages to the native community/band, (typically the linkages have been very weak indeed) and the development of alternatives to conventional charging and

sentencing practice. Native leaders, and, to a lesser extent, native court workers, have emphasized the latter option (i.e., more community liaison and proactive efforts), while CJS officials have emphasized the former option and expressed satisfaction with the in-court priority (Co-West, 1981; Owen, 1983; SPR Associates, 1989; Ference, 1989). The native perspective clearly draws the native court worker more into a 'justice worker' type of role.

The evaluation literature also indicates the conditions for a successful implementation of the NCWP. Generally, the importance of organization, of a structure within which the court worker operates, is clear. It seems to be a prerequisite for effective training and supervision and to ensure that idiosyncrasy does not reign. Also, it seems clear from the evaluation literature that the NCWP is more likely to be effective where there exist supporting networks of agencies and services; in provinces such as Ontario, Alberta and British Columbia, there are sophisticated systems of legal services and information available to reinforce and back-up the court work activity. That level of back-up appears still to be problematic in Nova Scotia. Supervision, organizational support, and back-up considerations, then, have implications for how court work activity should be perceived and implemented.

Another point to take into account is the nature of the demand for strictly court work service. In Nova Scotia native people are English-speaking and long familiar with mainstream society. Moreover, the numbers processed as offenders in the CJS are quite small, certainly well below the kinds of figures that court workers deal with on a regular basis in British Columbia and Ontario. In these provinces, and in Alberta, in the early 1990s, while there were regional variations, court workers often handled well over several hundred clients per year and had a monthly caseload of seventy-five 'clients'. These facts, along with others, such as the absence in Nova Scotia of a native-based or informed public legal education program (PLE officials in Nova Scotia and elsewhere acknowledged this shortfall in commissions and inquiries circa 1990), the modest development of native-based community service orders, and the virtual absence of victim services in the native milieu, suggest that there may be special opportunities, if not requirements, for a more innovative NCWP in Nova Scotia. A major drawback could be developing an efficient way to handle occasional court work needs in more distant, smaller reserves.

The Marshall Inquiry's 1989/90 recommendations called for a NCWP and gave it high priority. It referred to the program as " an immediate first step in making the criminal justice system more accessible to native people". It stressed, too, the development of a native criminal court, a justice institute and a tripartite forum (federal, provincial and native representatives) to provide an umbrella for specific programs such as NCWP, PLE, diversion and interpretation services. Subsequent work carried out on behalf of the Tripartite Forum (Clairmont, 1992) examined closely the history of various NCWP initiatives in Nova Scotia and why none survived for more than several years. Drawing upon that historical experience and the results of the literature review noted above, it also strongly recommended as priority, a well-managed, well-supervised NCWP in the context of an umbrella organization (i.e., Mi'kmaq Legal Services); it was further suggested that the court worker be considered more as "justice worker" with a broadened mandate to suit Nova Scotian conditions for Mi'kmaq people.

Since the early 1990s there has been much expectation that the NCWP would be considerably revamped by the federal government and that, the formal cost-sharable activities mandated in the NCWP would be considerably broadened, and indeed, that the concept 'justice worker' might well be substituted for 'court worker'. There has also been much speculation concerning the development of new, long-term Justice programs launched by the federal government. Nothing much has actually happened. The formal mandate of the NCWP has scarcely changed (i.e., restricted adult criminal court and family court activity for youth crime) though there has been, apparently, more informal acceptance of a broadened court worker role to include proactive community work and participation in community-based justice alternatives. The gap has grown between the official NCWP mandate and the actual work carried out in the field, and there has been much frustration over modernizing the NCWP. Numerous meetings have been held among government officials at different levels and native agencies and leaders responsible for implementation in the field. The NCWP is considered by some government officials as providing the native carrier agencies with considerable flexibility and authority to develop priorities and allocate funds but it is acknowledged that the program needs to be formally revamped and brought into this new era where so much emphasis is directed to alternative justice processes, community linkages and the needs of victims as well as offenders. While huge problems may exist concerning jurisdiction in the justice field, tentative agreement has been reached on a set of recommendations

which could go some way towards meeting these new emphases (Aboriginal Court work Program, Recommendations Paper, 1999, Department of Justice, Canada).

NEW SOCIAL MOVEMENTS

Two significant social movements have become prominent over the past decade and raise questions about an offender-centred justice system or justice process. The victims' movement has grown greatly in significance among the public at large and in justice policy and law. While it has had its own root sources, there has been some association with the women's movement. It has highlighted the needs and concerns of victims of crime and the necessity of justice programs and processes to respond to those rather than discount them and re-victimize the victims. There has been a clamour to involve victims more meaningfully in the justice system, at all levels but particularly in sentencing issues. Whether at the level of policing policy (e.g., zero tolerance, victims services), prosecution (e.g., stiffer penalties) or general government policy (Victims of Crime Act, 1996), the importance of responding better to victims has been emphasized. Such a viewpoint has also been seen in this evaluation where, in the survey data and in the interviews with Mi'kmaq leaders, the concern about victims was frequently raised. Indeed, some people have argued that a native justice philosophy, because it is holistic and concerned with "balance", would be more inclusive and less offender-centred than the mainstream, thereby dealing better with the plight of victims.

The other recent major social movement in justice philosophy and practice has been the restorative justice movement. It is discussed in-depth in the appendix where its modern evolution is described and its different perspective, vis-a-vis current justice philosophy and practice, delineated. Restorative justice with its emphasis on reconciliation, restoring relationships, and involving the offender, victim and the community, directly and together, is usually seen as quite compatible with certain traditional justice styles and folk law. There is a strong aboriginal connection with the contemporary restorative justice movement (see Appendix) and many of its advocates have drawn upon aboriginal imagery and concepts in advancing this perspective. Currently, the province of Nova Scotia is in the midst of launching a restorative justice initiative which is unique in Canada, allowing for restorative justice practices, for youths and adults, at all levels of the justice system and

in virtually all circumstances (i.e., from pre-charge diversion to restorative justice practices involving inmates). It has considerable implications for Mi'kmaq initiatives such as MYOP's justice circles which to date have largely followed a limited protocol (primarily first time youth offenders). Like the influence of the victims movement, restorative justice thinking underlines the tendency for holistic strategies of alternative justice and might well generate criticism of conventional offender-centred programming such as the standard court worker activity.

In conclusion, the contextual changes noted above would suggest that crime rates will continue to be high in the FN communities in Nova Scotia, especially concentrating even more in Central Nova (Indian Brook and Millbrook) and in Eskasoni - Membertou, and Waycobah and Wagmatcook in Cape Breton. The crime in the immediate future will likely be, increasingly, property crime committed by youth. Such crime is especially suited to MYOP-type alternatives, since there is a strong community consensus that property crimes be dealt with via alternative justice processes. This increased youth crime might also require more court worker activity directed at youth, depending on how extensive the reach of MYOP's justice circles may be. The changing context has also increased the exposure of band members to higher education, presumably better equipping them to deal with mainstream society, understand its court procedures and so forth; as well, one would presume that the greater educational attainment has been increasing the capacity of reserves to direct their own justice programming. The native court worker program is also changing and becoming more flexible in its mandate and protocol with FN communities. This is a timely development since new movements in society, such as the victims' movement and restorative justice, have discounted the value of and support for justice processes that are simply offender-oriented.

THE MI'KMAQ JUSTICE INSTITUTE

INTRODUCTION

In 1989/90 the Marshall Inquiry recommended the establishment of a Native Justice Institute, co-funded by the Nova Scotia and Canada, to take on a variety of tasks (e.g., coordination, consultation, research etc). The recommendation was accepted in principle by Nova Scotia. Another recommendation of the Inquiry or Royal Commission was the establishment of a Tripartite Forum "to mediate and resolve outstanding issues between the Micmac and Government including Native justice issues". The Tripartite Forum was established in 1991 and it sponsored a comprehensive study on native justice which recommended, among other things, that a new organization - Mi'kmaq Legal Services be created to deliver the NCWP and other justice services. It took a full three years of complex negotiations and the generation of four different organizational models, before a model for such an organization - the Mi'kmaq Justice Institute - was finally agreed upon by stakeholding Mi'kmaq organizations and accepted by the federal and provincial governments (see the appended Christmas Report for the history of this process). While the contentious issues of representation were being negotiated among the Mi'kmaq leaders, a number of interesting Mi'kmaq justice initiatives were launched, including MYOP, ENTS, the provincial court sitting at Eskasoni, and CLIF (see Christmas, ibid).

THE ESTABLISHMENT OF THE MI'KMAQ JUSTICE INSTITUTE

The MJI was formally established in November 1996 and incorporated as a non-profit organization representing the Mi'kmaq people and other aboriginals of Nova Scotia. Over the winter of 1997, an executive director and three justice workers or court workers were hired, a main office set up in Membertou, and two satellite offices created in Millbrook and Halifax. The sole funding base for this entire operation was the federal-provincial, cost-shared NCWP. There was no separate funding for the MJI as such, but only for the MJI as the carrier agency for NCWP. The mandate of MJI, however, was quite wide-ranging. The primary objective of MJI, as publicized, was to act as an administrative body on behalf of Mi'kmaq / Aboriginal peoples for the promotion, facilitation, advancement and improvement of the administration of justice as it affects these peoples. The MJI explicitly defined this as entailing activities to increase Mi'kmaq

control over justice compatible with increased self-government, and activities intended to make the mainstream justice system more equitable for native people and more responsive to Mi'kmaq culture and realities. In detailing particular objectives in the Memorandum of Association of the MJI, the directors included the specific thrusts recommended by the Marshall Commission and the 1992 Tripartite Report. Overall, then, MJI directors mapped out a formidable list of objectives covering the gamut of promotion, consultation, implementation and administration, training and research. The only secured funding for this ambitious program was the funding provided under NCWP to run a court worker program.

The Board of Commissioners for MJI was selected after lengthy negotiations among the Mi'kmaq chiefs, other Mi'kmaq organizations (CMM, UNSI, NCNS, MNFC, and NWNS), and the two senior levels of government. The main stumbling block was representation of the board (i.e., who and how to choose). It was finally decided to have an apolitical board, excluding direct participation by the chiefs, where the five organizations identified above would collaborate in nominating and selecting the board members. it was agreed to have a ten member board, with two alternates. Two members were to be selected from each of the five zones into which Nova Scotia had been divided to represent Mi'kmaq diverse groupings. The MJI sought members who were experienced in the legal / justice area, were well-respected in their zones, and could bring some kind of expertise to the Institute. The final composition was a group of prominent Mi'kmaq persons, roughly half of whom had law degrees (as did the executive director).

THE EVOLUTION OF THE MJI

Figure one provides a detailed chronology of the MJI from its establishment in the winter of 1997 till its demise as an operational organization in the spring of 1999. Specific MJI programs and activities, such as MYOP, ENTS, Band Governance, NCW, etc, are discussed in detail later in this section. Here there will be a general overview of MJI as an organization.

MJI got off the mark quite fast in attempting to achieve its many diverse objectives. Within the first six months of its operation, the court worker / justice worker program had been launched, and MJI became an umbrella organization administering two other programs - MYOP and ENTS - both of which brought their separate funding with them to MJI. While these programs had been successful programs on their own, their profiles increased noticeably under

the MJI umbrella, as did their caseloads (see below). By the time of the first annual general assembly in July 1997, MJI was delivering and coordinating those three major justice services, had co-designed and launched a Court Worker Training Certificate Program at UCCB which involved the hired justice workers plus trainees from many bands throughout Nova Scotia, had engaged in significant promotional activity in the CJS and among Mi'kmaq communities, and did much preliminary work researching issues and developing funding proposals for examining Mi'kmaq customary law and its continuing relevance in modern Mi'kmaq communities.

During the early stages of MJI, board members met frequently to construct the technical requirements of the Institute, and to advance ideas for MJI to pursue justice issues and funding possibilities. They created the MJI constitution which included a Memorandum of Association, various 'bylaws' and office policies. The documents were detailed and coherent but also lengthy and complex in their specification of MJI's tasks. Upon selecting an executive director, the focus of the board meetings, as evidenced in the minutes, turned to considering responses to pressing issues of the day (e.g.,resource issues) and locating funding for new justice activities. According to one board member:

> We thought it [MJI] had a lot of potential but we were held back from the beginning because of financing and lack of government commitment to see it through. There were a lot of things we wanted to do and we were wary of taking on too much in the beginning but the vision of it was exciting. We were hoping to establish a justice system that was more reflective of Mi'kmaq culture, values, language in areas beside the criminal system like treaties and natural resources.

Board members clearly were committed to the two broad objectives cited above, namely improving the mainstream CJS for Mi'kmaq people through the three major programs MJI delivered (i.e., ENTS, MYOP, NCWP), and, by research and advocacy, advancing through conversation and facilitation, Mi'kmaq community-based justice, following upon the recommendations of RCAP and recent developments regarding self-government. Most board members and the executive director wanted to be proactive and expand the scope of MJI well beyond the fairly conventional NCWP which provided the basis initially for MJI. The Board met regularly during the first year and a half. Board books documenting the progress of MJI, were put together by the executive director. These documents were very quite detailed and an examination of the content indicates quite clearly the problems presented to board members; three issues were recurrently advanced, namely lack of resources to engage in program development or effective program implementation, the increasing involvement of the executive

director in a range of diverse projects, and the growing demands on the basic services coordinated by MJI. Board subcommittees were formally structured to deal with these and other issues.

Board enthusiasm and morale appeared to decline significantly as time went on. The members were busy people with significant other commitments and, MJI received less of their effort in some cases. Attendance dropped off at board meetings and the MJI subcommittees hardly met and were apparently ineffective. A number of factors contributed to this state of affairs, according to the interviews of board members. Lack of funding for proposed projects dampened spirits. The board had little bargaining power with government, in part because it was apolitical and separated from the chiefs who collectively expressed little interest in securing funds for MJI. Increasingly, too, divisions surfaced and grew among board members, based largely on location (e.g., reserve / off-reserve, Cape Breton / Mainland), and 'philosophical' orientation (e.g., personal values, professionalism) and between some board members and the executive director. The MJI board, according to interviews, became operationally a small core of members largely, though not entirely, residing in the Membertou-Eskasoni area. Some board members indicated that they had become marginalized and were re-considering their involvement in MJI. There had been little discussion of mandate and direction and a deep common vision was never developed among the board members. Accordingly, when other problems set in, it did not respond well. Procedures to replace board members formally existed but for a variety of reasons - problems getting some of the founding five organizations to respond, inertia / inaction by the executive director and board itself, preoccupation with other pressing issues (especially financial crises) - these were not implemented effectively.

As will be discussed below, in depth, in the section of the views of board members, the members generally considered that the framework of MJI (constitution, structure, objectives) was appropriate and workable, and that with the right people in the right places a rejuvenated MJI could be successful; here they emphasized the need for an effective executive director. They continued to believe in the two broad objectives for an MJI that were cited above but indicated, on the whole, that the lesson learned is that a renewed MJI should spend more attention on its key programs, expect modest, incremental elaboration in terms of larger visions of Mi'kmaq justice, and strengthen greatly its community linkages.

There is little doubt that the MJI's agenda grew rapidly. Its involvement with the projects dealing with band governance and DIAND's Wills and Estates project (for details, see figure one, Chronology of MJI) illustrate the difficulties created by its understandable responsiveness to

referrals of Mi'kmaq political leaders and to opportunities presented by governmental funding bodies. These matters took much time and effort, diverting the attention of management from coordination of existing programs, and creating the potential for conflict of interest. The latter problem also surfaced in relation to the UCCB-based certificate program. Still, the initiatives which MJI pursued were reasonable pursuits given its objectives and the visions of the board members. The problems (from an analytical perspective) were that implementation almost always was poor, that initiatives were launched when funds and personnel were problematic, and that there was not an adequate strategic plan in place to guide MJI's actions. The MJI's performance illustrated that much could be accomplished with such an organization in place. The central organizational problems that caused its demise were identified in early evaluation by Redmond and Hillier in their audit of June 1997 and subsequently by Coflin & Associates in their review of March 1998. Both reports drew attention to problems of coordination and supervision, and the need for better basic management systems (financial, record-keeping) to be put in place.

MJI clearly failed as an organization and has left a serious credibility problem in its wake, as the following remarks of a key MJI staff person indicates:

> Question: Since the collapse of MJI is there a credibility issue?
>
> Answer: In the toilet. It is not just the communities; it is all the people you dealt with in the past. They are going to look at you and say, I wonder if they really mean business this time. What happens really reflects all of us. There is really no doubt. I think it will take some work to get the credibility back that we had.

Still, it achieved much and leaves the realization that with some strategic changes, such an organization could indeed advance the Mi'kmaq justice agenda on both general objectives of improving the mainstream and developing a Mi'kmaq justice vision for Mi'kmaq people.

A CHRONOLOGY OF THE MI'KMAQ JUSTICE INSTITUTE

1. After several years of contentious meetings and negotiations among Mi'kmaq political organizations, and meetings among Mi'kmaq political interests, the Province of Nova Scotia and the Government of Canada in a tripartite process, the design for the Mi'kmaq Justice Institute was developed most fully between 1994 and 1995. A great deal of early effort went into the design of the Memorandum of Association and the by-laws which specified definitions of rules and procedures, membership, powers of the board, fiscal years and audits for the institute. It took an additional year to establish a Board of Commissioners format acceptable to all the Mi'kmaq parties involved. Once formed, the Board of Commissioners of MJI met regularly and with great enthusiasm working toward implementing the goals of Mi'kmaq Justice as agreed on by the founding five organizations, namely UNSI, NCNS, CMM, MNFC, and NSNWA. IN NOVEMBER 1996 THE MJI WAS INCORPORATED UNDER THE SOCIETIES ACT of the Province of Nova Scotia. In JANUARY 1997 THE BOARD OF COMMISSIONERS SELECTED THE EXECUTIVE DIRECTOR from among several candidates.

2. IN FEBRUARY 1997 MJI TOOK OVER ADMINISTRATIVE RESPONSIBILITY FOR THE MI'KMAQ TRANSLATION SERVICE (ENTS).

3. IN FEBRUARY 1997, THE EXECUTIVE DIRECTOR AND OTHER MI'KMAQ LEADERS BEGAN DEVELOPING A PROPOSAL FOR RESEARCH ON MI'KMAW CUSTOMARY LAW.

4. IN MARCH 1997 the Executive Director attended a NATIONAL MEETING ON THE NATIVE COURT WORKER PROGRAM.

5. IN MARCH 1997 MJI BEGAN TO ADMINISTER THE NATIVE COURT WORKER PROGRAM. Subsequent to an interview process, three court workers were hired and court worker offices were established in Millbrook, Halifax, and Membertou.

6. During MARCH 1997 MJI explored staff expansion and training options with the development of the COURT WORKER TRAINING CERTIFICATE PROGRAM in conjunction with the University College of Cape Breton. The Board of Commissioners reluctantly decided that the Executive Director would take an active role in the instruction of the students beginning in May 1997, a task which took her away from some of her everyday administrative responsibilities.

7. Between March and June 1997 there were several BOARD MEETINGS.

8. IN March 1997 MJI WAS REQUESTED BY UNSI TO EXAMINE THE BAND BYLAW PROGRAM to determine the possibility of continuing research on that topic.

9. BETWEEN MARCH AND JUNE 1997 the Executive Director and several MJI Board members carried out PROMOTIONAL EFFORTS among Mi'kmaq and non-Mi'kmaq communities.

10. IN MAY 1997 THE COURT WORKER CERTIFICATE PROGRAM BEGINS AT UCCB.

11. IN JUNE 1997 an agreement was made between MJI and the Island Alternative Measures Society TRANSFERRING THE ADMINISTRATION OF THE MI'KMAQ YOUNG OFFENDERS PROJECT TO MJI. A Memorandum of Agreement was signed by MJI with the Minister of Justice and MJI for funding to defray costs associated with continuation of MYOP as a community-based justice initiative for the Cape Breton bands.

12. IN JUNE 1997 REDMOND AND HILLIER CONDUCTED THE ANNUAL AUDIT FOR MJI. They made several recommendations regarding financial and staffing operations and management functions. They noted a shortfall in MJI staffing, arguing that in order to achieve its desired mandate and to manage everyday business, additional staff needed to hired. Without additional staff, it was predicted that the appropriate amount of time needed for recording information and maintaining records would not be forthcoming. The audit also recommended an increased segregation of the duties of the Executive Director, who was overly involved in every project and quite pressed to find the time needed for effectively carrying out MJI administrative duties.

13. Between JUNE AND DECEMBER 1997 the Executive Director and several Board members engaged in PRELIMINARY WORK ON RESEARCHING ISSUES OF MI'KMAQ CUSTOMARY LAW. This task had been recommended by the Marshall Commission in its specifications for a native justice institute and it was seen as a major priority by the executive director and some board members. Ideas and strategies for proposals were discussed. In addition, the executive director and selected Board members travelled a great deal during this time period to meetings of the National Crime Prevention Association, Native Court Workers and the Aboriginal Justice Directorate. Board meetings were held sporadically.

14. IN JULY 1997 THE FIRST ANNUAL GENERAL ASSEMBLY FOR MJI WAS HELD, in Halifax Regional Municipality.

15. In WINTER 1998 the Court Worker Certificate Training program continued and efforts were made to secure other sources of funding for MJI programs. There was a strong desire on the part of some MJI leaders to expand MJI activity beyond conventional mainstream linkages. Increasingly, too, referrals were directed to the MJI by Mi'kmaq political interests (including the chiefs) to pursue areas of justice other than the court worker, translator and MYOP programs. Mi'kmaq political interests wanted MJI to develop a para-legal research service and to advance Band Governance projects, through enhancement of band by-laws, particularly in the area of FISH AND WILDLIFE PROTOCOLS AND ENFORCEMENT. A student and a consultant carried out research

on this project (concerning the moose harvest) and submitted a final report in July 1998 which recommended utilizing the Grand Council as a potential enforcement / adjudicatory body for offences within the context of resource utilization and treaty-based rights. MJI took up this recommendation by designing, and seeking funds for, a training program in mediation for members of the MI'KMAQ GRAND COUNCIL. Funds for the training were received from METS, but, despite this and despite the enthusiasm for this 'revitalization' of 'traditional justice' on the part of the executive director and some board members, the course was never held and the funds simply absorbed into general revenue.

16. IN FEBRUARY/MARCH 1998 DIAND funded MJI to take on WILLS AND ESTATES research, community information, and certain associated administrative tasks, as part of its mandate. MJI also received DIAND funds to develop a training package and curriculum which would allow it to provide expertise in the education and promotion of Mi'kmaq Wills and Estates. Subsequently, a person was hired to do some community research on concepts of property and inheritance among Mi'kmaq people, and a student conducted a small survey in Eskasoni. MJI sought a coordinator for this project; however, no one was hired and the Executive Director assumed that responsibility herself, but was unable to carry the task to successful completion.

17. In March 1998, through its partnership with the Aboriginal Justice Learning Network, MJI held a successful NATIONAL CONFERENCE called 'Aboriginal Peoples and the Justice System: Joining Forces' in Membertou on March 26-28, 1998.

18. In March 1998 A 'FIRST YEAR REVIEW' OF MJI was completed by COFLIN & ASSOCIATES of Ottawa. It was requested by Nova Scotia Aboriginal Affairs and the Department of Justice. Coflin recommended hiring additional staff and suggested an organizational structure featuring an executive director and a program administrator/supervisor. The review recommendations were similar to those made in the Redmond and Hillier audit of the previous year; as with the previous recommendations, they were not acted upon.

19. IN APRIL TO JUNE 1998, MJI staff and various board members attended a variety of workshops, conferences and seminars PROMOTING MJI PROGRAMS.

20. IN MAY 1998 THE MYOP PROGRAM MANAGEMENT COMMITTEE WAS ESTABLISHED and an Indian Brook woman was hired, under MYOP, to do justice circles and manage community service orders on the MAINLAND. There was a full board meeting.

21. IN JUNE 1998 MJI signed a MEMORANDUM OF UNDERSTANDING with the Provincial Department of Justice, authorizing it to delivery of young offender programs by MYOP; a full year had passed since MJI had began administrating MYOP.

22. IN JUNE/JULY 1998 MJI received the CANADA LAW DAY AWARD and also received a SALUTE from the National Strategy on Community Safety and Crime Prevention and Minister of Justice Anne McLellan.

23. JULY 1998 an AUDIT received by INAC showed that the funds sent to MJI during fiscal year 1997/1998 were reconciled to amounts reported in the audited financial statements without discrepancies. However, a review to ensure financial statements met DIAND's basic requirements stated that MJI did not submit the required management statement of responsibility; a summary of revenue and expenditures, and a summary statement for changes in financial position.

24. IN JULY 1998, THE SECOND ANNUAL GENERAL ASSEMBLY WAS HELD AT BEAR RIVER. The agenda for General Assembly included audited financial statements, the Executive Director's report, the Justice Workers' reports, MYOP reports, para-legal research report, Wills and Estates proposal, Band Governance updates, and nomination of new Commissioners.

25. IN JULY 1998 THE GRAND COUNCIL APPROVED PARTICIPATION IN the MJI Band Governance Project that proposed a follow-up to UNSI's band by-law work by training Grand Council members in mediation procedures. The project, as noted, did not materialize.

26. IN AUGUST 1998 a summer student who conducted a COMMUNITY SURVEY IN ESKASONI submitted a report on Wills and Estates. A PAMPHLET on Mi'kmaq concepts of property and inheritance in comparison with mainstream perspectives, was also produced for this project.

27. IN AUGUST 1998 PROPOSALS FOR FUNDING were submitted to the National Crime Prevention Investment fund and the Community Mobilization Program. It appears that in the spring of 1999, when MJI was in serious organizational floundering, a significant grant was obtained from National Crime Prevention.

28. FROM SEPTEMBER 1998 TO FEBRUARY 1999, the MYOP, ENTS and JUSTICE WORKER PROGRAMS CONTINUED TO EXPERIENCE INCREASING DEMAND FOR SERVICES. In addition, MJI staff and Board members attended numerous promotional events, training sessions, workshops and presentations, and worked on partnerships (e.g., with the Unama'ki Tribal Police Services in Cape Breton).

29. IN FEBRUARY 1999 there was a FULL BOARD MEETING during which a selection committee was struck to secure applicants for the Board. Over the past year participation and membership had declined as board members, reportedly, were finding it difficult to attend meetings due to short notices by the Executive Director. Board morale was also dwindling for a variety of reasons. REPLACEMENT OF BOARD MEMBERS was awkward, if not problematic, as the MJI constitution required representation and approval from the five founding Mi'kmaq political organizations. The replacement process was never accomplished.

30. IN MARCH 1999 the FINAL SEGMENT of the Court Worker Training Certificate program was completed with nine students finishing. In the last module there were organizational difficulties and it is unclear whether that segment of the program was fully completed. In any event, the nine students did not graduated due to outstanding fees owed to UCCB by MJI.

31. IN APRIL 1999 THE MJI PAYROLL BOUNCED. The translation services (ENTS) provided by MJI were temporarily suspended. By May of 1999 staff was laid off from MJI and the Mi'kmaq Justice Worker Program ceased operations.

32. IN MAY 1999 alternative funding arrangements were made, with the cooperation of Ulnooweg, in order to maintain MYOP. The administration of MYOP REVERTS BACK TO UNSI and that program continues operations.

33. BETWEEN MAY AND NOVEMBER 1999 a number of audits (forensic and regular) were conducted on MJI.

34. BETWEEN MAY 1999 AND THE PRESENT, the remaining members of the BOARD OF COMMISSIONERS FOR MJI CONTINUE TO MEET in efforts to meet the crises, re-establish the justice worker program, and consider new mandates, procedures, and strategic plans for a Mi'kmaq Justice organization. In June 1999 the Executive Director position was terminated.

VIEWS OF THE MJI STAFF

In this overview of the central themes emerging from interviews with MJI staff, the latter term includes all the justice workers, MYOP staff and secretarial staff. No ENTS translators were interviewed. Virtually all the respondents were enthused about their work and seemed quite dedicated to it. The commitment of one MYOP staffer, for example, is almost palpable in the following remarks on how he would like to expand the reach of the justice circles:

> Because no program deals with repeat offenders, not to knock it, but it feels like we are giving up on the kids; they just go to court and get probation and CSO work. There is nothing there to help the kid, like counselling or something like that. It is not as good as if you send them through the circle because through the circle they get a whole whack of stuff that can help them, not just punish them but help them. I would like to see more stuff like that with my program.

The staff were quite committed to the objectives of their specific programs. One justice worker succinctly defined his responsibility and, then noted how he followed it up, in the following words:

> My priority was to ensure that people got the fairest possible representation in courts and to understand their charges, court procedures and the implications of their charges. That was my objective.
>
> Yes [I would approach people in court]. I would intervene if a person looked like they were having trouble. I was fortunate that the judges, who knew of the program and my work, would not take offence [because] when a person was before the court, I would just walk up. The judges were comfortable; they welcomed it to ensure that people comprehended the court procedure and potential outcomes.

A MYOP employee talked about that program in the following words:

> Some say MYOP is a slap on the wrist, people get away with it. Some have manipulated the system and say 'I only had to do this and I don't have a criminal record'. So they make it difficult for others. But the majority of cases are very emotional and difficult for families to talk of personal issues with other people, and lots are reaching out for help and need extra support. In those cases we are more successful. I do not base this [service] on whether or not they re-offend. It is more than that. Success is [also] defined as victim participation. That does not

> generally happen in the traditional justice system ... If a young person has learned something from their behaviour [that's a success]. If that person re-offends, that case was not necessarily a failure ... Dysfunctional families, problems at school, self esteem and confidence problems are not going to be fixed in three hour sessions. It is multi-dimensional.

In addition to their commitment to their programs, the staff was considered by others with whom they networked (e.g., local service agencies, CJS personnel), to be, for the most part, quite competent and, in a few instances, outstanding. Among themselves, there was a good camaraderie and mutual help when needed. MYOP staff and justice workers assisted one another in their respective tasks (e.g., facilitating justice circles), whether in Cape Breton or on the Mainland, and praised one another in their interview comments. As one MJI employee commented: "the staff got along great. No problem with the staff". Perhaps the only major problem with the staff was that it rarely met (reportedly only twice in two years) in a formal setting to discuss MJI objectives and share experiences. MJI, from a policy perspective, was a top-down organization.

MJI respondents indicated that their relationships with CJS personnel were quite positive, and that the latter had been accommodating and cooperative. Mainland justice workers reported that they got along well with police, prosecutors, legal aid and judges, particularly singling out judges for their receptivity; the latter is perhaps not surprising in that judges rule the courts and their acceptance is crucial for any new role players. Among Cape Breton MJI employees, the interviews suggested a deeper as well as more positive relationship. One justice worker, after noting the excellent relationship he had with police and courtroom officials, (especially judges), spoke of his relationship with lawyers as follows:

> Excellent [relations with lawyers]. Some would keep their cards close but others were open. Some would ask me to sit in on their interviews to make sure everything was understood. It was not in translation. They were good with translators too. They asked me to get translators.

Another young court worker had the following exchange with the interviewer:

> Question: Do you feel the mainstream justice is prejudiced in any way toward Mi'kmaq people?
>
> Answer: No, I have not seen it or experienced it. It could be there but I do not know. They are making it easier for aboriginal people to attend court now. A judge will not proceed until he is satisfied a person does not need a translator or legal counsel or whatever. I think they are treated better than non-aboriginal people. It depends. In terms of passing sentence, they do not know the background or the circumstances of the individual. That is why I am not for court.

The good will and cooperation did not always lead to satisfactory outcomes. A Mainland MJI employee bemoaned the fact that, despite friendly interaction, she was getting few referrals to MYOP from the RCMP. A justice worker complained about the difficulty in securing legal aid assistance for her clients in some areas. And there was some sense, among some respondents, that the mainstream system still lacks sensitivity regarding Mi'kmaq people. One person praised several judges for being culturally sensitive but also commented:

> There is no sensitivity [in mainstream justice]... They do not know what our people are going through, what kinds of social conditions they are coming from; they do not understand the problems they have... The court system puts them into programs... they have to find transportation... They get more angry trying to get there and are more likely to go home and beat up their girlfriends ...

The MJI staffers indicated as well that they received good cooperation and support from Mi'kmaq political leaders and the Mi'kmaq community at large. The chiefs were reported to be collaborative with respect to the justice circles and usually willing to attend the more serious sentencing circles. The community was deemed to be supportive of all the programs, though it was, reportedly, difficult to get residents out to meetings to hear about and discuss issues. The level of perceived support and the actual networking with other local agencies was more pronounced in Cape Breton. There appeared to be much more community networking taking place there, though, as on the Mainland, the respondents indicated that developing community linkages and mobilizing volunteers takes a lot of time and effort. In both Cape Breton and the Mainland there had been few formal presentations made by MJI staff to either band council or community forums. There were a

few more in Cape Breton but, even there, not all communities and band councils had been addressed formally, and none more than once; however, there was more much greater mobilization of volunteers for these justice programs in Cape Breton.

A central theme emerging from the interviews with MJI staff was their pragmatic orientation and their focus on delivering high quality justice services. Perhaps, as might be expected among program personnel in general, there was considerable frustration expressed with respect to the pursuit by MJI management and board members of larger objectives and the costs of that pursuit in terms of less attention and resources to the existing services. These staff respondents considered that the programs or services that they were delivering were important and should be immediately resumed. Beyond that, their concerns were to enhance these services, develop closely related services such as victim services and adult diversion, and partner better with the mainstream CJS. While all respondents appreciated the value of an umbrella organization for justice service delivery, they also emphasized that the job of MJI leadership - the director and the board - should be on "managing the programs and passing along ideas and reports to the major political organizations but not acting as a justice authority". Several respondents considered that MJI "went off the rails" trying to handle too much policy making and politicization; it was held that, given that there are organizations doing that kind of work in Mi'kmaq society (i.e., UNSI, CMM), an umbrella organization such as MJI should focus on operating well the programs that have been negotiated and put in place. This orientation is expressed in the following quotes from several of the interviews:

> [The MJI priorities] seemed to be a little too stretched. They lost their focus and mandate of where they were supposed to go. They kind of went off the wall. If they have had more focus and direction ... to test programs until they are developed, but they went a little bit everywhere.
>
> Question: Should MJI function more as a liaison between mainstream and Mi'kmaw people?
>
> Answer: Yes, policy, planning and research could be a small part of it but they really need to focus on direct services to aboriginal clients.

> Question: Should it be limited to the mainstream or should they be working to setting up alternative programs?
>
> Answer: That could be part of it. We are not going to eliminate the mainstream justice system so we will need some kind of partnership, some kind of liaison. On the other hand, there are some cases where alternative methods could be used and having structured criteria defining which cases can go in there [is important]. That way it could be developed. That is what we have been doing here [in our program].

One aspect of the MJI organization that staff commented upon was that in the field they went about their jobs in their own ways without much supervision. This freedom in the field had its good and bad aspects. It allowed MJI staffers to develop their own priorities and determine how far to extend their service in terms of counselling and so forth. On the other hand, it made for some uncertainty about what exactly they should be doing and, in some cases, especially on the Mainland, the respondents felt confused about their mandate and quite isolated in their work. The lack of supervision, less perhaps within the MYOP grouping, was coupled with frequent micro-managing by MJI management where instructions and demands were issued with respect to certain cases. Many of the MJI staff were quite stressed out on the job and the main source of that malaise was the quality of the management and direction from the MJI service itself. One very well-regarded staffer commented:

> Demand was so great that it had gotten to a point that prior to my being laid off I was going to ask for medical time. It was too intense ... we were getting into the realm of hunting guidelines ... there was not a clear definition of how people should hunt ...
>
> Question: Would you do this kind of work again?
>
> Answer: I don't know if I am still traumatized or what, but I am very suspicious of going back to work. I have been off since June 1999. I am very cautious.

Several of the staff indicated that in maintaining their commitment to their program and its objectives, it was sometimes necessary to resist interference and bias from MJI management. A justice worker noted that she was contacted and advised not to pay attention to a particular client largely on the grounds of who he was connected with, but she ignored that advice.

There was a strong consensus that MJI was poorly managed. Management was seen as possessing a complex vision of Mi'kmaq justice and MJI's role in facilitating it. However, its attention was considered to be focused on 'new frontiers' rather than managing well the existing services. Management with respect to staff activities was seen as sporadic, capricious, usually unavailable and unsupportive; office policies, to the extent that they existed, were deemed to be poorly implemented.

A major problem that MJI staff had was that they could not discuss issues and problems openly with their colleagues or with the board. Most respondents indicated that staff meetings were rare and board-staff meetings even more rare (i.e., all said just one meeting took place); there was no effective grievance procedure in place and apparently no personnel subcommittee of the board to meet with. Staff respondents virtually all indicated that they were told not to discuss matters with the board.

MJI staff respondents were also critical of the board, largely for its perceived lack of interests in the services under way and for its alleged aloofness. One MYOP respondents indicated that the subcommittee of the board set up to deal with that program never became operational. Concerning MJI's office policies, it was noted by one respondent;

> Lack of office policy, lack of communication, lack of financial accountability. There was no reporting structure in place. The board was kept very hands off. The board had a responsibility to make sure there were meetings but the commitment was not there on the part of the board members and there needed to be a strong board ... the board was made up of key people in the legal field and that was great because they had background and insight ... But they were extremely busy and the commitment was more difficult.

One Cape Breton employee summed up the views of others in the comment: "I found the board inaccessible; they were at a different level".

There were other observations and comments made by MJI staffers that should be noted. With one major exception there was little complaint about workload among the MJI staff, though

the paperwork burden was seen as bothersome. There was, especially among the justice workers, much uncertainty about their mandate. Questions such as, should they provide counselling?, how far should they go in providing support for offenders?, and what are the priorities they should follow with respect to case management?, created much anxiety and had largely to be sorted out in isolation. Here the lack of supervision and staff meetings, as well as the isolation from mainstream workers doing similar justice work, clearly aggravated the problem. There was, too, among the justice workers, some criticism about the Court Worker Certificate Program which they were required to take. There was, apparently, a major gap between the course and the justice workers' tasks in the field, and this caused some staff to see the course more as a burden than as something that would facilitate their actual work. Finally, the MJI staffers were wary of significant changes in the delivery of programs. In particular, they wondered about the time and effort required in making their programs more community-based, and the justice workers wondered about the advisability of a more holistic approach that might see them serve victims as well as offenders (e.g., the implications for confidentiality, the support and advocacy functions of their role).

In conclusion, there does appear to be a common viewpoint among the MJI employees. They indicated that their program, and indeed all basic MJI programs (NCWP, ENTS, MYOP), were valuable and should be up and running to ensure justice for Mi'kmaq people. They appreciated the organizational and supportive functions of having an umbrella institute or agency for justice services. They identified a variety of flaws or minor problems such as the appropriateness of some of the content in the Court Worker Certificate Program, the isolation of staff, especially on the Mainland, the uncertainty concerning what the justice worker's mandate should be, and the restriction of their program's mandate in the case of both MYOP and NCWP. The major problems were identified as poor management and direction from the executive director and the board. The respondents considered that a revitalized MJI or other such body could be successful with a more pragmatic and professional direction where the focus was on managing the extant services and incrementally adding to them other closely related justice services as resources and personnel permit. They were supportive of greater community linkages and more holistic programming but wary about how to effectively and efficiently achieve them.

VIEWS OF THE MJI BOARD

All board members were interviewed, in a one-on-one format with the interview guide appended to this report. Board members were disappointed, of course, that the MJI had collapsed. They considered that the specific programs - NCW, MYOP and ENTS - were valuable and that the concept of an umbrella organization to deliver justice services to Mi'kmaq people and advance the agenda for greater Mi'kmaq control over justice in their communities was also important. In particular, the board members celebrated the MYOP program, virtually all members seeing it as both progressive and linked to aboriginal ways of achieving justice; most board members, asked to cite the major successes of MJI, generally referred first to MYOP. Several respondents felt that "it is second to none in Canada". This sentiment was reflected in the words of one board member:

> There were a lot of things that could have been done that were not done. Like diverting our people away from the court system. One of the more successful aspects was MYOP. We should have held it up as a big success of MJI and we still should. Through AJLN we could have trumpeted it as they did with the New Zealand success stories. If there had been more of a communications component we could have got it out to our people. There should have been updates and articles in the Mi'kmaq / Maliseet news every month.

Board members typically had quite high aspirations for MJI. While few members went as far as one board members who contended "MJI needed our own courts, judges, lawyers, our own system", no one considered that its reach should not extend far beyond the native court worker program, the basis upon which MJI initially came into existence. One board member, asked about his vision of MJI, responded:

> In the beginning we were dealing only with sentencing. But we were hoping to establish a justice system that was more reflective of Mi'kmaq culture, values, and language in areas beside the criminal system such as treaties, natural resources etc.

Still, it was recognized that MJI initially would be involved in the delivery of justice programs within the mainstream system. One lawyer board member put it very well, as follows:

Question: What was the most important function of MJI?

Answer: Providing a service delivery mechanism for individuals involved with the law. It adds a Mi'kmaq face to the traditional justice system. It allows Mi'kmaw people to come to grips with [crime], it's a shame that things happen and the law comes involved and there are victims and offenders. It helped those intimidated by the justice system. It offers a Mi'kmaq voice, that listens to the concerns of Mi'kmaq people, a much needed voice.

Board members did not elaborate on their specific tasks or subcommittee responsibilities within the MJI organization. There were special jobs designated and subcommittees were formally structured but it is unclear how much implementation there was. The implication of board members' remarks was that, apart from specific tasks assumed at the outset of their involvement (e.g., preparing the MJI constitution) or on a special project basis (e.g., preparing a proposal for a Mi'kmaq Legal Services Commission), their participation was basically attending board meetings and, for some, assisting in the community and CJS information sessions. Generally, it was held that a small core of board members, with one exception from the Membertou - Eskasoni area, where MJI was headquartered, were the most involved on behalf of the board. Board members typically indicated that they had little detailed information on the specific programs managed by MJI and that their contact with MJI field staff was friendly but perfunctory. A few board members reported that some proposals at board meetings to undertake more rigorous performance reviews of MJI management and its programs were dismissed by others on the grounds that "it's the white way, not our way". When MJI collapsed in financial crisis and the disturbing complaints of the MJI staff surfaced, most board members - even the core group in Membertou - Eskasoni - were surprised and shocked. One board member, learning of the employees's stories, went so far as to label MJI " a toxic workplace".

Board members indicated that while there were high aspirations and large visions for MJI among the board members, there was apparently little discussion of visions at board meeting and no development of a 'strategic plan' for MJI. One board member commented:

One problem was there was no real dialogue on mandate ... There were a number of subcommittees. There were cases of some doing their work on the board and of others not doing their work ... There were a number of initiatives that were given to the director to pursue. There was once a finance committee struck to deal with some of the constraints. Whether they were fully and effectively dealt with, I think there is a question in my mind ... we lacked a general plan of where we wanted to go and how we could get there.

Board members provided many reasons to account for the drift and subsequent demise of MJI. Certainly the constraints of government funding meant that any additional proposal would require much preparation and the tailoring of possibilities to fit project guidelines. Additionally, the MJI received requests from other bodies such as UNSI, the Chiefs' council and DIAND to take on other justice tasks and the MJI board readily responded because there was indeed a broader vision than managing three specific mainstream-related justice programs. Both MYOP and ENTS were themselves acquired by MJI in this fashion and interesting projects dealing with band governance and wills and estates were added subsequently. Opportunities also presented themselves for mounting training programs through UCCB at Sydney. Within a few months of becoming operational, the executive director and the board were occupied on so many fronts, that it was small wonder that the board itself was reeling and the justice worker program received little supervision and quality management. In some ways, MJI could be said to have been the victim of its own success since it did have a lot of success in building up its budget (and unfortunately its liabilities); over two fiscal years, 1997/98 and 1998/99 its revenues were about a million dollars.

Board members identified other problems that contributed to MJI demise. There was a constant demand for the director and chair of the board to attend national meetings on aboriginal justice, crime prevention and related issues. One board member complaining about the diversion of personnel, time and resources to these meetings, commented: "the biggest problem of MJI before [while extant] was trying to satisfy the federal government in attending meetings that dealt with national issues when we did not have the time to clean up our own backyard". Many board members indicated that there were significant divisions among the board members that hindered the effectiveness of the board; these splits were often discussed in terms of a Cape Breton - metro Halifax divide, a distinction that glossed over differences such as whether or not one lived on reserve and ideological and professional identities, and could be categorized as "turf credentialism" disagreement. Reportedly, too, board meetings were often poorly attended and there was considerable alienation by some members vis-a-vis MJI management.

Virtually all board members, reflecting on MJI, could readily identity achievements and future promises. A good many considered that, when all is said and done, better, more accountable management could have sustained MJI, even in the face of the conditions noted above. They, also, were usually quick to acknowledge that there had been mistakes made by the board and that its responsibilities could have been much better performed. Most respondents offered suggestions for how MJI or an analogous umbrella organization might be rejuvenated to

manage the Mi'kmaq justice services but, there seemed to be a reasonable consensus that the structure put in place for MJI would still be appropriate; in other words, the consensus supported the structural planks of MJI, namely nominations from the five founding organizations, regional representation, apolitical membership and the MJI constitution. Most board members observed that the system for replacements and so forth simply had not been implemented. There was some concern that 'new blood" be obtained, particularly people who have the time, energy and commitment to participate fully. Several board members claimed that the absence of a strategic plan with short term and long term objectives was largely "because of other commitments of our commissioners".

Board members, while drawing fairly practical lessons from the MJI experience, were not wont to discount entirely the larger vision of a more significant Mi'kmaq justice "system' blended with the mainstream. They saw the value and need for an umbrella organization which would not only manage conventional programs but which would elaborate them in relation to Mi'kmaq visions and contribute to a more substantial realization of Mi'kmaq justice. In considering how to accomplish the dual objectives, board members cited the need for some core funding for an MJI organization, apart from the NCWP so that pursing the larger vision through modest research, and 'community conversations' about justice, would not be at the expense of a well-managed justice worker service.

Board members also appeared to share three additional viewpoints. First, there was a strong sense that a chief lesson learned was the requirement to start small in this area of justice programming and service delivery, focus on the programs on the table, develop them fully and build on their success. Secondly, there was agreement that there would have to be some preparatory effort put into defining the appropriate management skills required in the executive director's position, conflicts of interests guidelines would have to be developed and the responsibilities of board members clearly detailed. Lastly, there was much agreement that an MJI would have to have stronger links to the community (i.e., be more community-based). One board member articulated the latter viewpoint in the following words:

> To have a uniform justice program for every Mi'kmaq community is naive. Each community is different in the way they talk, the way they comprehend Mi'kmaq world view, if there is such a thing. The broad justice may involve everyone but everyone would look to their own community to remedy things differently. That to me is not trying to start a new justice program in each reserve but the fact that we

make sure the program suits the community, not that the community suits the justice program.

In sum, then, board members had high hopes and big visions for MJI, well beyond the conventional court worker program which provided the basic MJI funding. They saw MJI as growing fast, perhaps too fast, in response to requests from Mi'kmaq organizations and governments, and in order to take advantage of opportunities to effect training and move towards defining a Mi'kmaq style or focus of justice. The board members considered that the justice services MJI delivered were all valuable (especially MYOP) and that other initiatives were reasonable pursuits of the vision they had for MJI. The demise of MJI was attributed largely to poor management and poor board oversight. But most board members believed that lessons had been learned with respect to those causal factors and that a new MJI can be and should be launched within the same structural and ideational framework. It was deemed especially important to focus on the major programs or services, manage them well, develop them in a community-based context and build upon their solid achievements. But it was also considered important that there be some steady headway on the larger vision of Mi'kmaq justice for Mi'kmaq people.

ETUI-NSITMEK TRANSLATION SERVICE

The Mi'kmaq translator program - the Etui-Nsitmek Translation Service (ENTS) - was established in 1995 under the auspices of UNSI to serve the linguistic needs of the Mi'kmaq people as recommended by the Marshall Commission in 1989/90. UNSI developed a certificate training program for Mi'kmaq translators through Eskasoni's TEC. The program provided training in the language, criminal and family law, as well as court structure and procedure. The Nova Scotia Department of Justice accepted the training program and certificates were recognized by the Attorney General. Shortly after the executive director of MJI was hired in January 1997, UNSI requested that MJI take over the administration of ENTS on the grounds that all justice services and programs should be consolidated and managed under its umbrella while UNSI (and other such organizations) focus on policy and "politics". The MJI board obliged UNSI's request.

Prior to MJI's administration of ENTS, the court administration would contact translators from a list provided by UNSI. The courts would pay the translators directly, a process that often

took more than six weeks. Under MJI administration, MJI paid the translators immediately upon service, taking a 10% administration fee. MJI billed the court administration monthly. The secretary of MJI was responsible for organizing and assigning translation services across the province. She made an effort to allocate the work equitably ("I wanted to give them all a fair share of the work"). There appears to have been a good relationship among the translators, MJI and the Nova Scotia court administration. The translators were kept busy (this was essentially part-time work) and there were few complaints about the quality of the service provided. According to an MJI staff person, when MJI tottered on collapse and suspended the service, there was disappointment all round;

> "It was an excellent program. When I called the courts to tell them that we could not provide the translators any more they were devastated. The lady in Sydney could not believe it. She asked for the names of the translators so I gave them to her".

Table J presents data on the activity of ENTS. Use of ENTS did go up substantially once it was administered by MJI, and, once MJI bowed out, the use fell off dramatically. The table shows that in the five quarters prior to MJI management, the service was accessed about twice a month, the same level of use that occurred in the last two quarters of 1999 when MJI was no longer in the picture. In between these times, the service was accessed roughly seven times per month. The central reason for this variation in usage was the presence or absence of the MJI justice workers who advised Mi'kmaq people of their right to have translation. The service, for all intents and purposes, was rooted in Cape Breton; few opted for it outside the island and these may well have been people from the Cape Breton bands. Within Cape Breton, the usage was concentrated at the Eskasoni court. A breakdown by region indicates that 78% of the usage, over the three and a half year period depicted in the table, occurred in the Eskasoni-Sydney area, 15% in Southern Cape Breton (Baddeck, Port Hawkesbury, St. Peters) and 7% on the Mainland. Unfortunately, no data are available on the characteristics of the translators or the users (e.g., age, gender), the roles involved (i.e., offender, victim, witness) or the clients' level of satisfaction with the service provided.

TABLE J

ETUI-NISTMEK TRANSLATION SERVICES: QUARTERLY DATA APRIL, 1996 TO DECEMBER, 1999

Time Period	Total Referrals	Location and # Outside Sydney/Eskasoni
1996 2nd Quarter	13	0
1996 3rd Quarter	2	0
1996 4th Quarter	4	St. Peter's (1)
1997 1st Quarter	8	St. Peter's (1) Pt. Hawkesbury (1)
1997 2nd Quarter	2	0
1997 3rd Quarter	9	Baddeck (1)
1997 4th Quarter	23	Baddeck (1) Arachat (1)
1998 1st Quarter	12	Baddeck (3) Port Hood (1) St. Peter's (4)
1998 2nd Quarter	45	Baddeck (3) Antigonish (5) Port Hood (1)
1998 3rd Quarter	18	Pt. Hawkesbury (1) Antigonish (1) Truro (1)
1998 4th Quarter	13	Pt. Hawkesbury (1) Baddeck (1) Truro (1)
1999 1st Quarter	24	Truro (3) Kentville (1) Baddeck (4) Antigonish (1)
1999 2nd Quarter	13	Truro (1) Baddeck (2) Pt. Hawkesbury (1)
1999 3rd Quarter	5	Pt. Hawkesbury (1) Truro (1)
1999 4th Quarter	7	0

Under MJI, a subcommittee was established to address ENTS issues such as codes of conduct and conflict of interest guidelines, and other policy matters (e.g., training, payment. travel). As noted, the ENTS was well-managed and generally well-regarded within both the Mi'kmaq communities and the mainstream CJS. Unlike in the 1992 study of native justice in Nova Scotia, there was little scepticism expressed by CJS officials about the value of translators, and the only explicit criticism concerned the lack of complete recording of translators' remarks and a suspicion that the request for translation might on occasion be a strategic ploy. Within the Mi'kmaq community, there was infrequent criticism, relating to possible misuse of the service for creating work and to the personal qualities of the translators (e.g., one Cape Breton chief said there was little use of ENTS by his band members because of a lack of confidence in the translators).

ENTS was seen as essential to Mi'kmaq justice by many Cape Breton leaders and community residents. Mainland Mi'kmaq people mentioned it less frequently of course but they, too, generally appreciated its value. A native Cape Breton CJS official commented:

> "the language barrier; that is what a lot of them are having a hard time with. We have an interpreter in court, a couple from Eskasoni. But when I am in Eskasoni [I see] there is a need. They need more than they have".

In addition to its practical importance for ensuring justice is not denied Mi'kmaq people, the ENTS has considerable symbolic importance, especially in the eyes of Cape Breton leaders and residents, since its use in court underlines its relevance and reinforces its legitimacy (see the section on political leaders below). It is important that the program not be a casualty of MJI's misfortunes. Mi'kmaq community leaders have expressed concern that only a small pool of translators (reportedly only two) are presently available. CJS role players also have expressed concern about the current situation and some have requested an extension of services; for example, Legal Aid in Cape Breton would like to have translators available during intake days on reserves in order to facilitate counsel, and others stress the need for translators in Family Court.

In sum, ENTS is a valued justice service which all the major stakeholders in Cape Breton's Mi'kmaq justice milieu want to maintain and perhaps even extend. At the moment the service is in a weakened state, isolated and with few active translators. ENTS is strongest and most effective when part of a network of Mi'kmaq justice services as was evident when it was

under the umbrella of MJI. The program should be revitalized as soon as possible. When it is up and running with vitality again, it should be periodically evaluated to ensure it remains effective, and data (e.g., socio-demographic characteristics of translators and clients, type of clients) should be regularly obtained on the program to ensure it is meeting the needs of Mi'kmaq people.

NATIVE JUSTICE WORKER PROGRAM

The MJI Justice Worker Program or MJI Court Worker Program (NCWP) started in March 1997 with the hiring of three justice workers. The three positions covered the whole of Nova Scotia, with one person responsible for Cape Breton, one for Central and Eastern Nova Scotia and one for Halifax Regional Municipality, the Valley and the South Shore. In addition to being responsible for 24 Mi'kmaq communities, the program by mandate of the federal-provincial, cost-shared NCWP serves all aboriginal peoples in the province. The initial 1992 recommendation to the Tripartite Forum for this program had called for at least five justice workers, but the funding available in 1995/96 would not permit that number of justice workers and cover, as well, management costs (i.e., a director and an office secretary), so, in order to allow for a funded management, the number of justice worker positions was reduced to three.

The justice worker program, aka the court worker program, had a very broad mandate. The staff were mandated to adhere to policies and directions as determined by the MJI Board of Commissioners, under the direct supervision of the Executive Director. They were to assist Mi'kmaq and aboriginal people who came into conflict with all criminal law and to deal with matters relating to young offenders. Formally, they were to provide consistent and ongoing attendance in advance of and during criminal and family court to ensure clients received equitable treatment and to act as liaison between courts and clients. MJI's list of justice/court worker duties included the following:

- explaining to clients their right to legal counsel and to speak for themselves in court
- ensuring the client understands the charges and their rights and responsibilities in regard to their charges
- ensuring a Mi'kmaq translator is available should the client request one
- to explain the nature and meaning of any measures taken against them by the court

- to visit jails or detention facilities to provide moral support and pertinent information to the accused
- assisting with forms and measures such as Legal Aid, probation orders, undertakings and conditional releases

The goals of justice workers were to ensure that any Mi'kmaq / aboriginal person who comes into contact with the law receives equitable and reasonable treatment during court processes. In community surveys and interviews, it was found that, among people who used the service, there was much client satisfaction; people generally reported that the court workers (this term appears to be used more frequently than justice worker by clients) were of much help in making their court experience less intimidating. Under MJI, the justice workers were also responsible for organizing and participating in public education about the law and justice system, and were to encourage community participation in the development of alternative justice initiatives. These goals in practice received much less attention and were difficult to achieve when justice workers did try to link up with community groups. This evaluation found little evidence of any impact in these regards outside of Cape Breton and only modest impact there.

The three Mi'kmaq justice workers brought to their work a considerable experience in social work, community development, court work among natives, and training in the CJS (e.g., policing). They underwent a two week orientation program upon being hired and subsequently enrolled in a newly created Mi'kmaq Court Worker Certificate Program organized by MJI at UCCB (co-designed) and funded by DIAND. The program consisted a variety of modules, at least half available through distance education, spread over a two year period. The justice workers enrolled in the program while carrying out their normal work responsibilities. The Certificate Program provided a common theoretical, professional development and practical training for the participants. Other Mi'kmaq persons also were enrolled in the program and it was anticipated that these persons perhaps could provide back-up services for the MJI program and/or obtain employment, with their certificate, elsewhere in the CJS. This dimension of the program was carried out with the collaboration of Mi'kmaq First Nations in Nova Scotia and each band was encouraged to provide a participant. In addition to the three MJI justice workers, twelve persons were selected for this training.

The ambitious and well-conceived Court Worker Certificate program was, for the most part, carried out acceptably well but, at the end, it was caught up in the MJI financial and

management problems and came to an abrupt, unscheduled conclusion with the last module incomplete. At this point, there were eight candidates still registered in the program at UCCB.

The university, following its standard policy, refused to release grades or consider granting certificates until outstanding fees were been paid. To date there has been no movement on this issue. From the beginning, there had been problems since, in the absence of other available instructors, MJI's director became the overall course instructor, something which deflected her from the growing list of MJI duties and from the supervision of the justice workers. There were criticisms of the management of the Certificate Program by its students (e.g., delays, re-scheduling etc). The three justice workers also questioned the value of the program, holding it to be time-consuming and preventing them from effective case management in the field. Clearly, its contents were not sufficiently linked to court worker activity that the justice workers could see much value for the program in their everyday work. Still, it was an imaginative, entrepreneurial MJI action which provided the justice workers, and others, some useful training in computer skills, mediation and circle facilitation.

Table K presents data on the caseloads of the MJI justice workers over a fifteen month period from July 1997 to September 1998. These data are the only data available on the activity of the justice or court workers. The table indicates that the justice worker for Cape Breton clearly had the greatest workload, handling about 150 cases over that period or approximately ten cases per month. The comparable figures for the Truro and Halifax based justice workers were 100 and 73 cases respectively (i.e., seven and five cases per month). The table indicates that where the data are available, repeat offenders outnumber the first time offenders by a considerable margin, especially outside Cape Breton; unfortunately, there is substantial incomplete information. There is useful information presented in the table on the type of offences dealt with. Consistent with the crime patterns discussed earlier, simple assault and other criminal code offences (public mischief, disturbing the peace and breaching probation and parole) dominate the adult statistics. Included in the table are estimates of time spent by the justice workers on different aspects of their work. It can be noted that the category travel consumed considerable hours in all cases. This allocation was required by the justice workers having to serve lightly populated Mi'kmaq populations in courts scattered around their areas of responsibility. Analyses of the caseload by court location indicates that roughly twenty percent of the Cape Breton justice worker's caseload occurred outside the core Eskasoni/Membertou area and about 15% (or less) of the other workers' cases fell outside their main catchment area, namely Truro/Shubenacadie and Halifax/Dartmouth respectively.

On the surface, the caseloads for the justice workers would not appear to be particularly heavy. In other jurisdictions the loads are typically higher, as was reported in 1992; the only comparisons made for this evaluation were with the 'non-native' service in Halifax-Dartmouth where the loads are heavier but the penetration rates (the proportion of eligible people who actually receive the service) much lower. Determining caseload standards has to take into account, among other things, issues such as the geographical dispersal of cases, the desired penetration rate and the level of service is being provided. In the case of the Cape Breton justice worker, the penetration rate was reported by the court worker to be over 80%. As for the quality of the service, the following comments by the worker describe the service he provided:

> After initial arraignment I would get legal representation, translation if required, interview the family sometimes ... I did a lot of counselling ... We made arrangements with social workers, addictions; we had very good working relations ... If a person was convicted and to be incarcerated, I would also explain that process.

> With repeat offenders? They required less assistance because they knew the system. I would help them set up with lawyers. Follow up and referring to other agencies ... I utilized band employees, economic development, welfare officers, NADACA, whatever the client needed. In the initial interview we do a needs assessment of the client and a need assessment of the court.

TABLE K

JUSTICE WORKER PROGRAM: FIFTEEN MONTH REPORTS (JULY, 1997 – SEPTEMBER, 1998)

	SYDNEY JUSTICE WORKER		TRURO JUSTICE WORKER		HALIFAX JUSTICE WORKER	
Clients Assisted: (July, 1997 – September 1998)						
Gender: Male	93 Adult	14 Youth	57 Adult	13 Youth	42 Adult	5 Youth
Gender: Female	40 Adult	2 Youth	18 Adult	12 Youth	25 Adult	1 Youth
Previous Conviction: Yes	56 Adult	9 Youth	20 Adult	6 Youth	15 Adult	-
Previous Conviction: No	41 Adult	3 Youth	4 Adult	1 Youth	4 Adult	1 Youth
Previous Conviction: Unknown	36 Adult	3 Youth	48 Adult	15 Youth	38 Adult	1 Youth
Charges:						
Homicide/Attempted Murder	1 Adult	-	-	-	1 Adult	-
Assault	36 Adult	1 Youth	29 Adult	10 Youth	19 Adult	3 Youth
Sexual Assault	5 Adult	-	-	-	1 Adult	-
Robbery	6 Adult	-	3 Adult	-	8 Adult	-
Other Violent Offences	1 Adult	-	8 Adult	3 Youth	-	-
Property Offences	15 Adult	7 Youth	12 Adult	5 Youth	7 Adult	-
Morality	6 Adult	-	1 Adult	-	2 Adult	-
Firearms – Criminal Code	5 Adult	-	3 Adult	-	-	-
Other Criminal Code Weapon	15 Adult	2 Youth	8 Adult	9 Youth	2 Adult	-
Breach of Probation/Failure to Appear (FTA)	8 Adult	-	15 Adult	7 Youth	6 Adult	1 Youth
Impaired Driving/Refuse to Blow (RTB)	13 Adult	-	12 Adult	1 Youth	2 Adult	-
Other Criminal Code Offences	11 Adult	2 Youth	31 Adult	5 Youth	8 Adult	-
Drug Offences	1 Adult	-	1 Adult	-	2 Adult	-
Federal Firearms Statutes	-	-	-	-	-	-
Other Federal Statutes	10 Adult	-	-	-	1 Adult	-
Provincial Statutes	25 Adult	3 Youth	-	-	1 Adult	-
Unknown	3 Adult	1 Youth	-	-	9 Adult	-
Estimate of Time Court Workers Spend on Services (in hours):*						
Interacting With Clients	392		160		342	
Case Preparation	217		137		87	
Performing Criminal Court Duties	272		336		157	
Liaise With Criminal Court Personnel	155		149		72	
Counselling/Referrals	198		123		132	
Conduct Follow-ups	157		128		76	
Work Within Community	191		101		168	
Performing Administrative Functions	159		117		172	
Training	264		284		264	
Travel	590		195		444	

*** Hours are rounded to the nearest whole number.**

Reports from the Cape Breton justice worker that his caseload was very demanding were consistent with the views of other CJS officials there and also with the views of MJI staff and board members, and, indeed, as will be seen below, with the views of local agency providers knowledgeable about court work activity in that area. Clearly, then, a high penetration rate, in-depth service and much travel creates a heavy workload. In the other two jurisdictions, there is less basis for assuming that the small numbers translate into a demanding workload, especially considering the proportion of repeat offenders there. It would certainly appear to be the case that, if a more efficient solution was found for dealing with occasional accuseds in the lightly populated, low crime areas outside the main catchment areas, then the justice worker could be expected to engage in other justice activities including public legal education and perhaps victim services; and, this would be the case unless the justice worker were to deliver in-depth counselling, something which, at present, is not in their mandate and is not something they have been trained for. In other words, caseload data indicate that the justice worker can be expected to be a justice worker not simply a conventional, basically reactive court worker.

Interviews with the three justice workers indicated that all were committed to their work. Most clients reportedly came from the court workers approaching people in court. Good relations with police officers and sheriffs often facilitated client contacts as did early receipt of the court dockets (though late additions to the dockets were commonplace). All three justice workers did modest community promotion and participated in workshops and conferences. On the whole, this latter activity was considered problematic for several reasons. It was deemed to interfere with their central work, namely conventional court work activity; also, community participation in these workshops and forums was said to be minimal and thus discouraging, given the effort required to mount them in the first place. All agreed, too, that travel was onerous and limited their time for clients. Paperwork was also considered a chore and all justice workers acknowledged having problems in keeping accurate and complete records.

The biggest complaint of the justice workers, and something which probably aggravated any workload stress, was their perceived lack of adequate supervision / management and administrative support. They reported, too, that there was no protocol to lodge complaints and felt that the board was not accessible. MJI had an office policy with respect to advances, sick leaves and so on but it was, reportedly, not adhered to and there was much idiosyncrasy and confusion in practice.

Like other MJI initiatives, excellent ideas and well-conceived initiatives for guiding and supervising justice workers were poorly implemented. For example, an initial strategic plan

called the MJI Activity Schedule for May 1997 to May 1998 was developed to facilitate scheduling of the diverse justice workers' activities. It was not implemented and justice workers concentrated on serving clients in conventional court worker fashion. There were no effective short term or long term strategic plans to address the larger objectives of the Institute and to support movement towards justice alternatives that embraced culturally defined conceptions, practices and empowerment of Mi'kmaq communities. Another example concerns the table of roles and responsibilities that was developed for MJI justice workers but gave no direction as to priority. Justice workers repeatedly indicated that they were uncertain concerning priority criteria for different cases, and also concerning what was appropriate with respect to spending additional time with clients; for example, they were uncertain whether they should be providing mundane assistance or getting involved in counselling outside their comfort zone and expertise. The following write-up depicts this issue in the case of one justice worker:

> X felt that there was insufficient clarity about how far to go in relating to the client. Should he drive someone to court or to a lawyer. He tried to make it clear that this (driving clients around) was not his job, but rather it was the offender's responsibility to get there ... Still, sometimes people needed more help ... his knowledge of people and their capacities and incapacities meant some tailor-made service could be effectively implemented, but these kinds of cases were generally few and far between, not the regular fare.

Other issues for the justice workers included whether to become involved in civil cases upon request and being thrusted into resource and treaty issues caused frustration because of a perceived lack of preparedness and expertise.

The justice workers, aka court workers, generally performed well and were well-received in the communities and by the CJS officials. In their view, the success of the program was at the court level; as one justice worker remarked:

> Question: in what aspects were you most successful?
>
> Answer: In the courts. Assisting people and court response. Right now our credibility is shot because of the collapse of MJI ... We were a force to be reckoned with and all of a sudden MJI collapsed on us and I don't know if we can get that credibility back.

While acknowledging this valuable conventional court work activity, it is appropriate to question

whether the original conception of justice work can be achieved. There seems to be a significant view, among leaders and community people alike, that the role should be developed in a more proactive, community-based and holistic fashion. It appears that job stress and role limitations may be more a matter of effective supervision and job redesign than resources and workload. In other words, it does seem possible to develop a more efficient system of service delivery (e.g., using contract people and volunteers for certain low use areas) which, combined with effective supervision, can produce a justice worker. At the moment, the justice worker is a court worker operating in an adversarial system on behalf of the accused. And justice workers might well contend that, within that framework, to take on a more holistic role (e.g., serve the victim too), would be inviting breaches of confidentiality and conflict of interest. If the emphasis is placed on justice work within the Mi'kmaq community, then, a different, more holistic role might be considered. In any event, any advance along these lines requires a well-supervised program. There is a clear need to have a full-time supervisor in place as well contended in earlier examinations of the court worker program in Nova Scotia. As one MJI staffer commented:

> I think you need a coordinator to coordinate the program, to oversee the court workers, make sure their job is being done and make sure everyone is doing what they are supposed to be doing ... have staff meetings and sit down and ask them how they are doing and if they are having any problems.

In sum, MJI's justice worker program was well-laid out but poorly implemented in several key respects, most importantly in the absence of effective supervision. The program, from a funding and personnel perspective, carried the MJI to its own detriment. MJI management had its hands full with other matters and the justice workers were given neither adequate support nor clear direction. Instead of a multidimensional justice program, there was simply conventional court work, albeit done well and appreciated by many Mi'kmaq people, as well as mainstream CJS officials. With designated management effecting appropriate job redesign and effective coordination, there seems to be no reason why a rejuvenated justice worker program cannot be shaped to better serve the development of more distinctive Mi'kmaq styles of justice.

MI'KMAQ YOUNG OFFENDER PROJECT

The Mi'kmaq Young Offender Project (MYOP) was launched in 1995 by a collaborative effort of the UNSI and the Island Alternative Measures Society. In June 1997 the administration of MYOP was transferred to MJI, bringing with it, its own funding provided by the Aboriginal Justice Directorate. A full year later, in June 1998 a memorandum of understanding was signed by MJI and the Nova Scotia Department of Justice formally authorizing the delivery of young offender programs by MYOP under MJI direction. Almost from the beginning, under highly regarded and well-focused leadership, MYOP has been the recipient of much praise within and beyond the Mi'kmaq community even while functioning, primarily under a fairly restrictive core mandate, namely handling police referrals of first time, young offenders who have committed minor crimes. MYOP's 'Mi'kmaq justice circles' have struck an important symbolic chord and the coordinator has given substance to the symbolism ("it's Mi'kmaw looking after Mi'kmaw") by carefully nurturing an effective, inclusive, victim-sensitive diversion program, drawing as much as possible on Mi'kmaq imagery and language and community participation. Its high status reflects its ability to create, sustain, and expand community justice based on culturally relevant Mi'kmaq conceptions of justice while simultaneously meeting mainstream justice requirements.

MYOP's mission statement reads as follows:

> To develop and nurture a meaningful and culturally relevant delivery of youth justice to our Mi'kmaw children. To empower our Mi'kmaw communities by placing ownership and responsibility of service delivery to Mi'kmaw staff and volunteers. For the Mi'kmaw people to take self-determining action and take responsibility of the future health of our Mi'kmaw Nation by helping our children maintain a crime-free lifestyle.

The organizational structure of MYOP was simply incorporated into the MJI model upon administrative transfer in 1997. A project management committee of selected board members and the executive director of MJI, was to give direction and support to the MYOP group. Currently, MYOP has a director, a youth liaison officer, two youth justice workers (one for Cape Breton and one for the Mainland) and an office manager. It also has a volunteer cohort of over sixty trained, adult 'youth justice leaders' whose primary responsibility is to mentor and support young offenders participating in MYOP either as diverted young offenders or on court-directed community service orders. After MJI ceased operations in May 1999, MYOP returned to its former administrative niche with UNSI where it remains today, carrying out its usual tasks (i.e., justice circles and community service orders) under an UNSI project management committee.

This is seen as an interim arrangement to ensure proper management and administrative controls are in place.

In the Appendix there is a review of MYOP after its first three years of operation. The review deals with the organizational structure of MYOP and how it has evolved, the procedures and style of the Mi'kmaq justice circles, and an assessment of the MYOP program in terms of the criteria efficiency, effectiveness and equity, The appended report also considers the extent to which MYOP represents significant incorporation of Mi'kmaq customs and community concerns and sensitivities, and the extent to which it further the agenda of enhanced self-government for Mi'kmaq people. The report concludes that MYOP has been successful on all these issues but, in order to achieve more significant success, especially in terms of advancing Mi'kmaq control and impact on justice, and to realize greater efficiencies, its mandate should be expanded to include more repeat offenders, more serious crimes and selective adult cases. It was also recommended that MYOP be evaluated in-depth since only limited data are readily available on key matters such as the level of victim participation, offender and victim satisfaction, subsequent pro- and anti- social behaviour on the part of the diverted youth, effectiveness of the mentor system and so forth.

Extending MYOP's reach and impacting greater on justice in Mi'kmaq communities is consistent with the views of Mi'kmaq political leaders, local service agency personnel, mainstream CJS officials and, (to a lesser extent), community residents, as is indicated in sections below which report on the viewpoints of these stakeholders. Such a development is also congruent with the restorative justice initiative launched by the Province of Nova Scotia in November 1999, and with which MYOP has been involved since the preparatory meetings began some two years ago. At the same time, much 'community conversation" will have to occur since, as noted in the section on community surveys, many Mi'kmaq adults have little familiarity with MYOP and are reluctant to have serious crimes and serious, repeat offenders dealt with outside the mainstream CJS, even while they are critical of that system's effectiveness. While MYOP can be celebrated for involving the community through its volunteer mentor program, it will have to do much more than it has done to date to explain its processes to communities' residents; but, as the following quotes from MYOP personnel illustrate, more community awareness and participation appear to lead to greater acceptance:

Question: Do residents support the idea of MYOP?

Answer: It depends. Some people think it is a slap on the wrist and they are of course uneducated on this. I guess it is our fault they don't know about it. We need to put it out in the communities more, a huge need. We are discussing that, making posters and, down the road, workshops. Different [local] agencies, they know what the program is about and I think they feel good about it. People who are not educated about it, or who have not participated in it, feel that it is a slap on the wrist. Those who have participated, come in with a 'slap on the wrist' view, and come out with a whole different view; it's like black and white! Once they see the process they have a whole different view. It is those who are involved that have a good view. When you tell [people] it is about first time offenders taking responsibility for their actions, as soon as you mention they go through the program without a criminal record if they complete, then they [others] assume it is a slap on the wrist. They think it is not fair not to give a person a criminal record ... they want punishment right away; that is how most people are here in Eskasoni. Restorative justice is more of the Mi'kmaq way.

Question: Are circles open to the public?

Answer: We say if you are there you participate. They have a role. We have some observers there for training. We do not want it to become a public spectacle like court proceedings here ... We want to promote a safe environment for sharing. We have ground rules, we prepare all participants so when we get there it is the most effective environment for communication. We don't want it to turn into Jerry Springer. A lot of personal issues are discussed not only with the victim, offender but community people share too. That is the aboriginal way. We share more than we lecture. Our teachings are by giving examples and these can be drawn from our own lives. So learning comes from other peoples' experiences.

Over the past four years MYOP has conducted nearly 150 justice circles, in addition to administering a Mi'kmaq-sensitive community service order program. It has also carried out eight sentencing circles with adult offenders. The latter have been extraordinary and major undertakings, entailing considerable preparatory work. If MYOP is to become involved in justice circles at all 'entry points" in the CJS, as is envisaged in its future objectives, and as will be done in mainstream Nova Scotia as well through its restorative justice program, there could be considerable implication for resources. Dealing with more serious crimes and offenders, especially at the judges (sentencing) or the corrections levels, will likely necessitate much more preparatory work with both offender and victim, as well as community participants. MYOP would also have to build up its "facilitator" capacity if it is going to be capable of responding to an increased workload in these contentious type of cases. Moreover, if MYOP becomes routinely involved with adult offenders at all levels, as is projected throughout the rest of Nova Scotia,

then all the issues of resources, facilitator capacity, and community support would loom large indeed.

At present, the caseload for MYOP is not excessive in relation to its staff size and other resources. During the past fiscal year (1999/2000), there were only 31 justice circles carried out. Moreover, the number of CSOs declined as did MYOP's success in handling them (in seven of the eighteen cases, roughly 40%, there was non-compliance). Clearly, with all the chaos of MJI's demise, one might have expected a 'poor' year; a MYOP official commented:

> That was a real struggle, trying to build up our credibility again because we were kind of judged under the cloud of the institute ....we have two new staff also and a lot of time had to be devoted to training them in the midst of all this chaos ... so there was not a lot of time for growth and development this past year

MYOP at present appears to have the resources to deal with its shortfalls. Four areas of needed improvement are (a) the need to develop, further, MYOP services on the Mainland; it is interesting that referrals and justice circles did increase there in the past fiscal year; (b) much more community work (including interagency activity) has to be done especially if MYOP is to move on to more complex and controversial cases; (c) there should be more networking with the CJS and especially with other organizations and service providers in mainstream society, both to reduce isolation and to facilitate back-up when staff may be unavailable; (d) more attention has to be paid to routine data management since, unless information is regularly collected and properly retrieved and analysed on issues such as attendance, subsequent offender and victim impact, client satisfaction and so forth, it is very difficult to determine whether MYOP is living up to its objectives and its promise; there was surprisingly little systematic information available for this evaluation.

MYOP IN THE FUTURE -
THOUGHTS ON MYOP BASED ON THE MACMILLAN STUDY

In a recent (2000) evaluation of MYOP, MacMillan assessed the program in terms of its explicit objectives. Here her summary of that report is provided.

MYOP had, earlier, listed the following six program objectives for the immediate future:

- Offering Mi'kmaq Justice Circles to four levels of Justice system and to the community through pre-charge referrals, alternative measures, sentencing circles, and re-integration circles and release plans. Expanding the program to take on repeat offenders, more serious cases and young adult cases and community supervision of early release programs for young offenders and sentencing circles.

- Establishment of a mainland office to facilitate expansion of MYOP programs in that area and to develop community orientation packages and needs assessments for mainland First Nation communities, RCMP, municipal police agencies and justice personnel.

- The development of facilitation training and case management manuals to enhance program effectiveness, efficiency and equity.

- Enhancement of victim support components of circles.

- Expansion of community participation through ongoing recruitment of Youth Justice Leaders and other volunteers, crime prevention initiatives, and involvement with other Mi'kmaq agencies.

- Incorporation of recommendations of the Royal Commission on Aboriginal Peoples in delivery culturally diverse justice initiatives to Mi'kmaq in Nova Scotia through Mi'kmaq customary and restorative justice approaches.

In terms of these objectives outlined above, MYOP has given attention to all of the issues and is working on deeper program development and infrastructure building. The efficiency of the program is improving with respect to expanding caseloads, the development of operation and training manuals, and an increased emphasis on reaching out to volunteers and communities through information and recruitment sessions. Work needs to be done on improving access through an expanded referral base, both within mainstream justice and Mi'kmaq communities. Problems within the mainland office have been highlighted and a strategic plan is apparently

being created to address those issues. A focus on victim needs is on the agenda and will be essential to giving MYOP a more holistic character and obtaining community support.

Efforts to expand MYOP through program development and expansion into new territories is continuing but caution should be exercised and the resource and personnel costs of offering programs such as anger management should be closely examined. Much work still needs to be done in the area of program promotion, referral expansion, and public awareness. Plans are reportedly being developed to implement a community consultation process that will improve networking with other Mi'kmaq agencies, as well as increase the catchment area for volunteer recruitment. The foundations have been well laid for providing Mi'kmaq justice services that are efficient, effective and equitable but there is much still to do.

1999/2000 has been a difficult year for MYOP, given the closure of MJI. However, the fact that the program survived to the extent it did, is testimony to the accepted validity of the Mi'kmaq justice process within the Mi'kmaq nation and to the skills, determination and dedication of its staff. Most Mi'kmaq people across the province are supportive of MYOP and appreciate its potential for community-based Mi'kmaq justice delivery. While, perhaps, no longer the trailblazer of restorative justice within Nova Scotia, MYOP is still one of the forerunners of aboriginal justice processes in the country. With program expansion and the ability to take on more serious cases in ways that are acceptable to both Mi'kmaq communities and mainstream justice officials, MYOP can once again lead the way in building healthy, harmonious communities. Most significant in all of this is the fact that MYOP processes and remedies are imbued with Mi'kmaq practices, practitioners, beliefs and ways of life, something to which no other justice system can readily accommodate. As such, MYOP is best able to deliver justice to Mi'kmaq people in ways that are meaningful and perceived as just, and benefiting all those affected by crime. While little attention has been given to the objective of incorporating the RCAP recommendations specifically, MYOP is successful in delivering culturally diverse justice initiatives to Mi'kmaq in Nova Scotia through their Mi'kmaq customary and restorative approaches.

As in many indigenous communities across Canada, and around the world (Australia, New Zealand, and the United States), ideologies of healing and harmony are emerging in Mi'kmaq communities as central tenets of justice. Collectively the Mi'kmaq are (re)inventing justice traditions, such as sentencing circles, healing ceremonies, and elders' roles, to mobilize their communities and to construct specific alternative justice practices. What is now at stake for indigenous communities is how to create contemporary justice practices that will be legitimate,

consistent, accountable, and equitable within communities and between communities. This is constrained by further tensions impending from outside Mi'kmaq communities by dominant society members who demand that justification for alternative justice systems be met by declarations of Aboriginal uniqueness and authenticity. It becomes very problematic as to how to determine what are authentic processes, for clearly indigenous judicial practices are not static, compartmentalized, and neatly delineated from written codes and precedents as those found in the mainstream system.

As the Mi'kmaq confront the larger social and cultural issues in the development and implementation of their justice strategies, of which MYOP is the driving force, they continue to focus on practices of negotiation rather than adjudication. Mi'kmaq justice looks to family values that are operationalized through their holistic lifeways, to mediations and preventions that are meaningful to their communities and symbolically upheld in their ceremonies, rituals and everyday activities. According to one Mi'kmaq justice worker:

> Mi'kmaq justice views are the same as the Mi'kmaq world views, as the Aboriginal world view, and that is we view things holistically - the mind, body, spirit - like the braids of sweet grass that we use in ceremonies. Its three strands are intertwined with each other and when burned in an offering, they become one. Mi'kmaq view their world with this concept on a daily basis.

Many resource people are available in Mi'kmaq communities who have special knowledge of traditional teachings and folk ways. While MYOP has made some efforts to consult with these people, future meetings may help design culturally relevant approaches of which the community, offenders and victims can feel more a part. In most interviews people indicated they wanted to be involved in consultations in order to share their ideas about what justice processes would work and ways of moving toward harmony. Thus, in terms of reconciling Mi'kmaq community views of justice as family and community-based opportunities for holistic healing, restoration of relations harmed by wrongdoings, and harmony, MYOP is on the right track. Careful attention is needed to provide justice processes in which the communities have confidence that it will be a fair, safe and equitable program, not tainted by political interference or any sense of patronage or special treatment for some over others. To meet these community needs, MYOP needs to be as visible and transparent in their operations as possible without violating client confidentiality. Maintaining confidentiality is such small communities is difficult, but in this area no one reported any problems with MYOP which has very strict guidelines.

OTHER ACTIVITIES OF THE MI'KMAQ JUSTICE INSTITUTE

MJI worked at fulfilling its objectives by getting involved in a number of diverse, but justice related projects, that ranged from Band Governance, Customary Law, Mi'kmaq Grand Council Mediation training, Wills and Estates, to the Grand Chief Donald Marshall Aboriginal Youth Camp. Two critical issues were at stake behind the reasoning of pursuing these activities. The first was financial. MJI had little operational resources outside of the court worker program (MYOP and Etui-Nsitmek Translation had their own resources). In order to facilitate the creation of alternative justice for Mi'kmaq persons, MJI had to actively seek monies from where ever they could get them, because there was no core funding nor any long-term commitment to funding that would have facilitated a logical and sequential strategic plan for expanding the justice agenda. The second issue related to community and government demands and expectations. MJI was all things to all people; it was expected, by some, to handle anything to do with Mi'kmaq justice and MJI tried to meet those expectations.

Band Governance Project:

The Union of Nova Scotia Indians requested that Band Governance project, as a follow up study to the development and enforcement of Indian Act by-laws. UNSI had developed test case traffic code and dog by-laws for Membertou and Chapel Island reserves and wanted MJI to examine the feasibility of expanding these and other by-laws to all First Nations in Nova Scotia, in efforts to increase Mi'kmaq control over community lawmaking and their enforceability. The purpose of the MJI Band Governance project was to provide technical assistance to help develop legislation and possible enforcement mechanisms for the development of governance with respect to justice-related issues. The project was designed to respond to requests from the Mi'kmaq Grand Council, Mi'kmaq First Nations of Nova Scotia, or any organization empowered by all First Nations, such as Mi'kmaq Fist and Wildlife Commission, to assist in the development of Mi'kmaq laws and move the Mi'kmaq people towards self-governance.

This project was developed in conjunction with Nova Scotia Chiefs and UCCB under its Mi'kmaq curriculum expansion. Courses at UCCB were to be tied to the Mi'kmaq Court Worker

Certificate Program. A symposium was held and the Chiefs supported the project, as they saw it potentially furthering their self-government agendas. During the preliminary stages, the MJI received funding from Nova Scotia Links and Indian Affairs and hired a consultant and law student to examine the feasibility of regulating the annual Aboriginal moose harvest in Cape Breton. The key issues raised were beneficiaries, safety, resource management, enforcement, education, training, economic development, authority and jurisdiction and relations with Department of Natural Resources. In exploring regulatory options the Mi'kmaq Grand Council was identified as the governing body best suited to implement, enforce and regulate the moose hunt.

As a result of the study, it was suggested that MJI be mandated to develop traditional dispute resolution models and to advance detailed regulation and an implementation plan. The general goal was to help the Mi'kmaq Nation to internally regulate the exercise of Aboriginal and Treaty Rights. The final report indicated a great deal of interest and support in the local communities. Indeed, a major benefit of this research was the realization that community consultations would be the best strategy in the development of training programs useful for band leaders. The Grand Council approved the suggested overall framework and requested further research into possible roles for it in the governance of Mi'kmaq regulations.

Customary Law and Grand Council Mediation Training:

From the very outset, as is evidenced in the enclosed chronology of MJI, there was much effort spent on the exploration of the continuing salience of customary law. Indeed this thrust had been recommended by the Marshall Commission when it proposed the creation of a Mi'kmaq Justice Institute. Research into customary or folk law for utilization today is an enormous undertaking, and one that is greatly desired by many Mi'kmaq Chiefs, and, of course by many other First Nations across Canada. In an interview regarding MJI, the CEO of one Mi'kmaq organization noted:

> In my lifetime I was under the impression that it was the job of the Keptins [of the Grand Council] to handle justice issues. When there is family discord the Keptin is asked to intervene and try to bring the two sides together. I have seen

> when a Keptin has said to one side or the other, there is no set pattern to it, but he gives them instructions on how to be peaceful. He gives them time to respond. It is not just this individual that has to get along with other people; it is the family too. I suppose the Grand Council could take a leading role in justice today, but it would take something like an MJI to help communities develop something like that. I am not saying that all of our communities would want to do that right away. It would take the MJI itself to start selling it …to help communities become aware such a thing is possible and that the MJI would be there to help the communities in such a way.

Background research of traditional native practices relates to creative processes of identity construction, important to Mi'kmaq nationhood, community empowerment and to the creation of justice systems deemed culturally appropriate. Many people in Mi'kmaq communities embrace the idea of turning to the past to find remedies for today's problems and, like the Marshall Commission, feel that it is the responsibility of MJI to conduct the research and develop the processes.

> The Mi'kmaq vision of the Institute was really to do a lot of first-hand research on Mi'kmaq customary law. One of the driving concepts behind it was Grand Keptin [an MJI board member] Alex Denny using memory and oral history to bring forward how in the past our communities used to administer justice. He would always frame it in Mi'kmaq words and Mi'kmaq terms and when other heard it, it made perfect sense to us. The Mi'kmaw way was not punitive, it was more restorative and healing. Our concept was to try to bring to life those past and proven concepts that our people were familiar with and try to bring them to modern day. Using that as a basis to develop our own model of justice, that was our aim and our concept.

While much effort was expended on proposals for funding to research customary laws, these efforts were not successful. MJI decided that one way to fulfil the demands for a more Mi'kmaq-focused justice system was to promote the Grand Council as a potential legal body which the communities could turn to for hearing and adjudication of adult cases. Various members of the Grand Council had been sporadically involved in some sentencing and other justice circles conducted by MJI and MYOP. A training program for Grand Council mediation was proposed and funding was received for the workshops. The MJI collapsed before the workshops took place.

Wills and Estates Pilot Project:

DIAND requested MJI conduct research on Wills and Estates to set up a program to guide the administration of estates of deceased Aboriginal peoples in Nova Scotia and to provide services, including contacting heirs and beneficiaries, and providing advice and assistance in completing appropriate applications. MJI was to be responsible for inventory, securing estate assets to be held in trust by DIAND. DIAND was to continue to exercise its judicial responsibilities with respect to the estates of deceased Aboriginal peoples. MJI was to periodically report to DIAND information regarding the number of estate files opened, completed and their dispositions.

A call by MJI for applications to fill the position was unsuccessful in finding an appropriate candidate. To determine Mi'kmaq peoples' perceptions of wills and estates, a summer student conducted a small-scale research project in Eskasoni. It was found that there were some difficulties regarding conflicting notion of property within Mi'kmaq and mainstream culture. This research resulted in the production of an educational pamphlet to assist and encourage Mi'kmaq people to make wills and provide instructions on how they would like their estates managed. The project to handle the administrative tasks requested by DIAND did not happened, presumably because MJI did not have the personnel or the expertise to handle it. Clearly, with the accumulation of wealth and property within Mi'kmaq communities it is necessary to develop a program to assist people with making wills in ways that respect current and traditional values and relationships.

Mi'Kmaq Legal Services and Public Education:

MJI was concerned with promoting its programs and services and made attempts to generate community conversations, particularly during the early stages to the Institute. The MJI held a conference called "Joining Forces" in conjunction with the Aboriginal Justice Learning Network. It was a successful endeavour, bringing Mi'kmaq community members together with justice personnel to discuss culturally-based approaches to justice. MJI also held a forum where Judge Rupert Ross came to present his work on utilizing traditional Aboriginal justice concepts.

During the first year of operation MJI held several community information and legal education forums and MYOP held justice forums in schools to present its program and crime prevention issues.

There was and continues to be a great demand for educating Mi'kmaq communities as to their juridical choices. In a community leader focus group on one Cape Breton reserve, the following statements were made:

> Our biggest need right now is public education. As a band council we had a request for a community sentencing. We had a sharp debate about it in council. Some of us felt we should do community sentencing circles and get it out of the court system, but there were others who said it was better to leave it to the courts. We debated and decided it would be better if we dealt with it. The second issue was the victim's family. It took explanation to the families that it would actually be tougher in the community than in the court. So when the issue came up we had to do a lot of education within the community and the council, to really explain what community justice is. We have no materials, no one to come to the community to explain why it is better that we take control over certain issues and not others. It would be best if it came through the MJI. I would not want to see the province or the feds do it, and not the band council. I would like to see a MJI as neutral and independent, but with a vested interest.

> I feel that in the immediate future, there is the need for more public education on what the program [MJI] is about, not only for outside but for our people too. The benefits of it; justice is served when people are more involved in it. The regular court system is really hard. It is hard for everyone, but much more harder for our people, especially the ones that don't understand the language that well.

These views are widely shared across the province. Any Mi'kmaq justice program must include public consultation and education as central to its operation in order for the community to be aware of their choices and to make well-informed decisions.

Mi'Kmaq Legal Aid:

Mi'kmaq Legal Aid is another area MJI examined. It was determined that a Mi'kmaq Legal Aid person would be a great asset to MJI and Mi'kmaq justice, as was suggested if not precisely

recommended in the recommendations of the Marshall Commission and the Clairmont Tripartite Forum study. It was difficult to access funding as Nova Social Legal Aid has funding problems of its own. A research proposal was developed by two MJI board members for Alternative Legal Service for Mi'kmaq and Aboriginal Peoples to investigate the logistics of implementing legal service for Mi'kmaq by Mi'kmaq.

Research goals were to identity the legal needs and available services and to identify, develop and establish a Mi'kmaq Legal Services Commission that is fair, non-judgemental, culturally appropriate and sensitive. It was also to examine how Mi'kmaq lawyers can better serve the legal needs of the community and identify sources of capital and revenue for set-up and implementation. It was hoped that a Mi'kmaq Legal Aid Service would be able to address the differences in values, norms and personal prejudices inherent in a different cultural system. Potential benefits of the project were identified as: improved understanding of non-native justice system, culturally sensitive services, the promotion of healing and recovery from imposition of a foreign system of law, greater self sufficiency in justice matters, and the promotion of better utilization of cultural and spiritual differences by eradicating discriminatory legal practices. The project was not funded.

There were some ideological concerns expressed by Mi'kmaq participants within the context of this evaluation, over whether or not it was a good idea to pursue mainstream justice projects, such as indigenization, or to focus on establish alternative Mi'kmaq justice practices and delivery systems. Some held that the safer, less risky route is to get as many Mi'kmaq people involved in the mainstream system as possible in order to make the system more sensitive and fair. Others claimed that the mainstream system can never adequately address Mi'kmaq justice needs because its premises are irreconcilable with Mi'kmaq beliefs and principles. These concerns must be considered in the construction of any future program.

Crime Prevention:

Crime prevention was a further concern of MJI and efforts were made to access project funding from the National Crime Prevention program. MJI took under its umbrella the Grand

Chief Donald Marshall Aboriginal Youth Camp as a crime prevention initiative and proposed to expand its youth justice programs. The youth camp was a personal project of Donald Marshall, who was also an MJI board member. By joining with MJI it was hoped that the camp profile would be raised in order to access funding and make it a permanent ongoing program. The youth camp was created as a cultural survival camp for high-risk youth, and youth involved with the justice system. It operated independently for four years and received significant support form Corrections Canada. The funding proposal to the National Crime Prevention Investment fund was unsuccessful, but some positive feedback was received indicating other potential funding sources if revisions were made; however the revisions were not carried out due to the collapse of MJI. The camp continues to operate with some MYOP participation.

TABLE ONE

CHARCTERISTICS OF ADULTS PARTICIPATING IN THE COMMUNITY SURVEYS

(%)

	Cape Breton (N = 102)	**Other Mainland** (N = 45)	**Indian Brook** (N = 132)
Gender:			
Male	46%	31%	36%
Female	54	69	64
Marital Status:			
Single	37%	27%	48%
Married/Common Law	42	53	33
Divorced/Separated/Widowed	19	18	18
No Answer	2	2	1
Education:			
Grade 9 or less	10%	9%	17%
High School	42	51	65
Some Post Secondary	26	24	12
College Degree	15	7	4
No Answer	7	9	2
Age:			
Under 20 years	5%	2%	5%
21-40 years	60	44	58
41-60 years	27	49	33
Over 60 years	6	2	4
Main Activity in Past Year:			
Working	41%	33%	45%
Looking for Work	9	13	13
Student	17	9	14
Homemaker	13	24	13
Retired	4	7	5
Other/No Answer	16	13	10

COMMUNITY ASSESSMENTS: THE SURVEY RESULTS

CRIME AND WORRY

The community survey first asked residents about their perceptions of crime and their worry about victimization in the community. The results are depicted in Tables Two and Three (enclosed). The most frequent response across all samples was that there was an "average' amount of crime but in Cape Breton and Indian Brook almost one third of the samples perceived that their community was a high crime area. The Millbrook and South Shore residents, on the other hand, were quite inclined to regard the crime levels in their communities as being 'low'. Interestingly, in all areas, and especially in Cape Breton, the survey respondents most frequently reported that crime was on the increase in their areas. In sum, then, survey respondents perceived crime levels to be a significant problem.

TABLE TWO

PERCEPTION OF CRIME LEVELS AND TRENDS
(%)

	Cape Breton (N = 102)	**Other Mainland** (N = 45)	**Indian Brook** (N = 132)
Level of Crime in the Community			
High	29%	11%	30%
Average	49	40	53
Low	20	38	12
Unsure	2	9	4
Trend in Crime Levels			
Increased	58%	38%	42%
Same	26	36	37
Decreased	9	4	11
Unsure	6	20	10

TABLE THREE

FEAR AND VICTIMIZATION PATTERNS
(%)

	Cape Breton (N = 102)	**Other Mainland** (N = 45)	**Indian Brook** (N = 132)
Do you worry about being attacked or molested here?			
Much	28%	13%	20%
Some	31	24	26
Not At All	39	62	54
Unsure	-	-	-
Do you worry about property theft?			
Much	51%	22%	67%
Some	32	40	22
Not At All	16	36	9
Unsure	-	-	2
Do you worry about being vandalized?			
Much	46%	20%	69%
Some	27	36	18
Not At All	24	42	12
Unsure	-	-	1
Have you been a victim of crime in the past two years?			
Yes	30%	22%	32%

There were a variety of explanations advanced by residents concerning the crime levels in their community. Those who considered that crime was 'average' or 'low' frequently claimed that, while there was a lot of crime on reserve, it was not major crime. One single Cape Breton male in his thirties, for example, said "there's no organized crime, no prostitution, no gang-related"; others, of the same view, pointed to the absence of robberies and the minor nature of most offences. Alcohol and drug abuse were commonly cited as the reason for much crime, especially violent crime, and some respondents considered that more drugs were now available in the communities. A surprisingly large number of respondents in Cape Breton and Indian Brook specifically cited vandalism as becoming a serious crime issue. The activity of the local police was also considered to be a factor. Some respondents held that high levels of crime and, especially its alleged increase in recent years, was because of the policing;

several Indian Brook respondents related increased crime to "police are charging more people". One young Cape Breton female noted " it looks like it has increased but it's just because we have police now", and her view was also expressed by others such as an older Cape Breton male who noted "the fact that a police station is established on the reserve suggests that there is an increase in crime that requires a more constant police presence". A somewhat related perception was that policing has kept down the crime level; a Millbrook woman felt that the crime level has not increased because "policing and security is good". At the same time there were occasional references to high levels of unreported crime among men and women in Cape Breton and Indian Brook; for example a Waycobah woman commented that "a lot of crime gets swept under the rug; people think and know they can away with things and do".

Socio-economic conditions were clearly linked to criminogenic conditions by many residents. Such factors were cited both by those reporting crime rates as high and/or increasing, and by those claiming that crime was becoming less of a social problem. One fifty-year old Membertou male argued that crime was increasing because "there's more unemployment in all of Sydney" while a college-educated female respondent in her late twenties observed "there are few jobs and social assistance recipients [have great problems] because social assistance doesn't give you enough money to live". Several other respondents echoed the views of a 'thirtyish' Eskasoni man who considered that education and better socio-economic conditions have reduced the crime rate. Other respondents pointed more concretely to poor parenting and youth culture and youth malaise as the key reasons for high or increasing levels of crime. Respondents frequently claimed, as for example one Cape Breton female college student, that "teenagers are aggressive and violent and have no respect". Some respondents placed direct responsibility for the latter state of affairs on parenting styles. A 33 year old Cape Breton college-educated mother and homemaker claimed "parents are less involved [nowadays] with children", while a Membertou woman, college-educated and in her thirties, suggested that "violence is learned from parents as children"; an Indian Brook, twenty-five year old woman observed "Nowadays I find the majority of parents around here don't care about their children in the sense of what are they doing in their spare time. They need to sit down and explain to their children what is right and wrong". Others, of diverse backgrounds such as an older male resident with grade seven education and a young female adult with college education, suggested the youth problems were related to lack of programs and facilities; the latter female, for example, commented that "more children [teens] are becoming juvenile delinquents because there is nothing else better to do. Maybe if there were more youth programs and job creation this may reduce the crimes in our community. And the people who commit crimes get light sentences or even a slap on the wrist". Several Indian Brook young women said that burglary and vandalism were skyrocketing and "kids are out of control, doing pills and booze" because "they are

frustrated", "there is nothing for them to do except to steal and vandalize homes because they have nothing to do".

Table Three provides the survey responses to questions about the residents' fear and worries. Roughly one-third the Cape Breton and Indian Brook respondents claimed to have been a victim of crime within the past two years, a very high level for relatively small communities. It may be noted that while the level of self-reported victimization was fairly similar across the subsamples - only modestly less in the "Other Mainland" grouping - there were significant differences among them in reported levels of fear and worry. Indian Brook respondents reported very high levels of worry regarding the possibility of being the object of break and enter and of vandalism, and, indeed, the approximately 50% of Cape Breton respondents expressing much worry in these regards is also unusually high compared to other Nova Scotian non-metropolitan communities. More than a quarter of the Cape Breton adult respondents worried about being the target of attack or molestation, higher than the 20% of Indian Brook respondents with that perception and more than twice the proportion of "Other Mainland". While not depicted in Table Three, respondents were also asked whether they worried about other problems of peace and order in their communities, including general fighting, loose dogs and the like. In the case of Indian Brook, about 50% of the adults indicated that they worry very much or much about these matters. Two-thirds of the Cape Breton adults expressed high levels of such worries, while only about 20% of the "Other Mainland" sample worried very much or much about these social problems.

In general, statistical analyses of subgroups based on age or education differences did not reveal much diversity in respondents' views concerning crime and worry. Young adults were more than twice as likely as older adults (i.e., over forty years of age) to report their community had high levels of crime (i.e., 35% to 15%) and, the more highly educated grouping, those with some post-secondary education or a degree, also were more likely to perceive crime as high (36% to 17%) and to worry about victimization through burglary or vandalism. There were no significant differences otherwise. Gender differences were modest though, not unexpectedly, females expressed more worry about being assaulted in the community. Overall, then, the levels of victimization and fear/worry are high and pose both opportunities and challenges for either new (and locally-managed) justice alternatives or new (and locally-controlled) modes of delivering justice services.

How do these results compare with other recent studies of Mi'kmaq communities in Nova Scotia? A 1999 survey of communities policed by the Unama'ki Tribal Police (UTPS) indicated that in all four reserves the respondents held that crime was on the increase and that the central factor was youth burglary and vandalism. In that study, women and older adults were especially likely to express

these claims and also to worry most about being victimized (Clairmont, 1999). The major 1992 study of crime and justice in native communities (Clairmont, 1992) found that actual victimization as well as perceived vulnerability was much higher on reserves than in non-metropolitan Nova Scotia. It also found that fear and worry of victimization were more common among older persons and those who reported already having been victimized.

CRIME AND RELATED SOCIAL PROBLEMS

Tables Four, Five and Six provide the results for respondents' views on selected crime and social problems in their communities. It can be seen that there is significant variation among the samples. Indian Brook respondents clearly perceived their community as having many "big problems' in the conventional justice or crime sense; in particular, drug and alcohol abuse, burglary and vandalism were so identified. Among the "Other Mainland" grouping, on the other hand, respondents were much less likely to identify the selected items as "big problems" in their areas, although a majority did indicate that drug and alcohol abuse was such a problem. Significant numbers of Cape Breton adults identified drug/alcohol abuse and vandalism as "big problems". Feuding among family groups, child abuse, and social disturbances were all identified by more than one quarter of the Cape Breton and Indian Brook samples as constituting major problems in their communities. These data reinforce the patterns noted above with respect to crime levels and personal fears, and also those patterns noted earlier in the crime data recorded by police agencies. In combination the data suggest that not all Mi'kmaq communities in Nova Scotia may have the same need for new justice programming or justice alternatives at least with respect to conventional justice matters. Respondents were also asked to record other "big problems", if any, apart from those listed in the survey. Many did so and their responses ran the gamut from gambling to youth disrespect but three were most frequently given, namely social conditions (e.g., "lack of jobs"), lack of public amenities and services (e.g., sidewalks), and poor maintenance of property by some residents). There were modest differences by

educational attainment or age of respondents. Respondents under forty years of age were twice as likely as older adults to identify feuding among families and conventional crime as "big problems" (e.g., 33% to 17%); respondents with post-secondary education were more likely, than respondents without it, to identify burglary, child abuse and poor property maintenance as "big problems". Apart from the issue of wife battering where females were more likely to indicate that it was a "big problem", gender differences were generally insignificant.

TABLE FOUR

PERCEPTIONS OF COMMUNITY PROBLEMS
(%)

Type of Problems:	**Percent Perceiving Item As A "Big Problem":**		
	Cape Breton (N = 102)	**Other Mainland** (N = 45)	**Indian Brook** (N = 132)
Break and Enter	36%	13%	67%
Wife Battering	19	11	27
Child Abuse	27	16	39
Vandalism	48	16	64
Feuding Among Families	31	18	46
Social Disturbances	24	11	44
Drug/Alcohol Abuse	78	56	80

TABLE FIVE

REPORTING CRIME: COMMUNITY PERCEPTIONS
(%)

Type of Crime:	% Saying That Crime Is Usually Not Reported To Police:	
	Cape Breton (N = 102)	**Indian Brook** (N = 132)
Wife Battering	50%	64%
Child Abuse	44	60
Petty Theft	66	48
Vandalism	33	42
Bootlegging	87	80
Substance Abuse	82	84
Underage Drinking	77	92

Dealt With:	% Saying Unreported Crime Is Dealt With By Other Community Agencies Or Organizations:	
	Cape Breton (N = 102)	**Indian Brook** (N = 132)
Often	8%	2%
Sometimes	25	26
Rarely	51	48
Don't Know	13	23

TABLE SIX

VIEWS ON WHY RESPONDENTS DO NOT REPORT CRIMES
(%)

	Cape Breton (N = 102)	**Indian Brook** (N = 81) *
Community Pressure Not to Report Things to Officials		
Very Important	40%	58%
Somewhat Important	41	26
Not Important	19	16
Slow Response by Police and Other Officials		
Very Important	72%	71%
Somewhat Important	25	20
Not Important	3	9
Response by Police and Other Officials is Not Very Effective or Helpful		
Very Important	55%	75%
Somewhat Important	41	16
Not Important	4	8
Community Will Deal With Its Own Problems		
Very Important	37%	46%
Somewhat Important	44	16
Not Important	18	38
These Matters Get Dealt With By Family Groups Informally		
Very Important	37%	-
Somewhat Important	44	-
Not Important	18	-

* This is a special sample of Indian Brook respondents taken in 1992. These specific questions were not asked in the Indian Brook Survey of 2000.

More than 80% of the Indian Brook respondents who reported personal victimization within the

past two years, reported their victimization to the police; those not reporting their victimization, like their Cape Breton counterparts noted below, usually gave one or more of three explanations for not reporting to police, namely that the offence was minor, that they did not like the police nor have confidence in them, and that they dealt with the matter themselves. At the same time virtually all respondents, whether or not they reported their own victimization, indicated that unreported crime was quite pervasive. In the Cape Breton sample the corresponding reporting figure to Indian Brook was only about 60%, and these respondents also held that unreported criminal activity was commonplace in their communities. Respondents were asked in detail about the under-reporting of crimes and offences. Their spontaneous views were quite varied but generally they highlighted conventional crime, drug/alcohol offences and family violence as being less reported to authorities. There was only modest variation by subgroups within the samples and, surprisingly, the factors of education, gender, and age did not yield different responses, whether spontaneously or in relation to the specific items asked about. In Cape Breton conventional crime was highlighted whereas in Indian Brook family violence was cited most often as unreported, and females were somewhat more likely than males to spontaneously mention it.

Tables Five and Six examine patterns of unreporting offences. In both Indian Brook and the Cape Breton reserves the large majority of respondents indicated that bootlegging, substance abuse (e.g., pill selling) and underage drinking were generally not reported to the police. In both groupings the respondents indicated that their perception was that vandalism was likely to be reported but, not as frequently, wife battering, child abuse and petty theft. Given these high levels of unreporting, it might be expected that perhaps the matters were being dealt with informally, through family groups or by local agencies and/or political leaders. That does not appear to have been the usual case. As Table Five indicates, about 50% of both the Indian Brook and Cape Breton samples said that it was rare for such matters to be handled informally, and a number of others were unsure what, if anything, happened informally. About one quarter of the adult respondents considered that "sometimes" something might be done informally, and only a handful believed that such informal resolutions were frequent.

In light of the fact that most respondents held that such offences, some quite serious, were not frequently either reported to police or dealt with informally, it is important to understand why. Table Six provides some suggestions. The Cape Breton respondents in 2000, and the Indian Brook respondents in 1991/92, were asked if certain factors were significant in this under-reporting. Most adult respondents in both samples held that there was community pressure not to report things to officials and, in Indian Brook in particular, this pressure reportedly was a very important reason for under-reporting. In both areas, respondents considered that the slow response by police and other officials was a very important reason as well. And a majority of the respondents, an especially large majority in Indian

Brook, considered that the police or other official response was "not helpful anyways and that the problems and the offenders carry on"! There was, in the respondents' views, a fairly widespread feeling that the community deals with its own problems or that family groups somehow handle the problem(s). It should be underlined that here the respondents were reporting on their perception of community patterns and not advancing the position that these serious problems were being adequately dealt with informally; in fact, it is known from their previous answers that they did not think the unreported matters were adequately or necessarily appropriately dealt with through such informal means. At the same time their responses may indicate that there is a potentially solid basis for greater community involvement in new justice alternatives since there is widespread dissatisfaction with the effectiveness of current justice system responses and some basis for community-based responses. Finally, there was no significant variation, either in patterns of reporting or explanations of why unreporting occurred, that related systematically to differences in age or educational attainment of the respondents.

Comparing the above results with the 1999 UTPS and the 1992 data regarding perceived "big problems" and under-reporting of offences reveals few interesting differences. In the UTPS study gender was a factor as women were more likely than men to identify issues as "big problems" and to claim that family violence was both pervasive and unreported. In the 1992 study, as in this current one, there were no significant differences in specifications of "big problems" or under-reported crime by gender, age or educational attainment.

EXPERIENCES AND VIEWS REGARDING THE JUSTICE SYSTEM

Almost one in every two Cape Breton respondents (i.e., 45%) reported that either themselves or other members of their households had appeared in court either as accused or victim within the past three years; the proportion was just slightly less among the "Other Mainland" respondents and the data were unavailable for Indian Brook. Asked whether they, or the family members in question, had been well-informed and treated fairly in that experience, about 70% of the Cape Breton respondents indicated yes as did 60% of the "Other Mainland" interviewees. A young single female adult commented that "they were easy on you when they should have been", and a South Shore male college student reported that "my case was handled well; the legal aid was very professional", while a married thirty year old man, employed and possessing an elementary school education, observed that "yes [it was fair] and I had the option to be tried by the native [diversion?] or non-native system". Among the respondents who did not report the experience in such positive terms, it was common to say that the treatment was fair but they were not well-informed. A middle-aged Membertou male, reporting on a

family member's experience, commented that "they were not well-informed [about] procedures but they were treated fairly", while another Cape Breton male, a college student, noted that "I knew what to do but wasn't well-informed". A few persons reported that they were neither well-informed nor treated fairly; for example, a thirty-five year old Millbrook homemaker commented that "no, [I was not treated well]; my lawyer dumped me because I was late, [I was] not really informed and still don't know".

Respondents were asked to comment more generally on "the problems that native people around here have when they come into contact with the justice system ... as accused or victims". Essentially, their diverse spontaneous responses fell into one of four categories, namely prejudice and stereotyping by court officials, lack of understanding and cultural differences on the part of native people, obtaining and understanding legal services, and insensitivity and disregard for victims. Concerning prejudice and stereotyping, one respondent, a middle aged female in Cape Breton, noted that "native people are usually categorized before they are heard", while a retired South Shore male observed that "[the problem] is built-in racism in the justice system". A frequent viewpoint expressed was that made by a Waycobah female who claimed that "often sentences are not harsh enough when a Mi'kmaq does wrong to Mi'kmaqs"; a variation of that argument was made by another Waycobah female in her thirties who said "I find that crimes against natives are not always taken seriously". The most frequent problem cited focused on native understanding and cultural differences. A middle aged, college-educated Membertou respondent claimed that "they [natives around here] are intimidated by the process", while a young female college student from the same community noted that "they feel scared and intimidated in the court room life, stared at by people in the courtroom; natives are not used to this type of atmosphere"; several respondents simply said "they don't understand the court terms" or "they don't understand and are confused". A number of respondents observed that getting and understanding a lawyer has been a "big problem"; one middle- aged Cape Breton male held that "Indians automatically plead guilty rather than try to get justice; [it's] hard to get a good lawyer when you are on welfare". Several other respondents cited the revictimization of victims by insensitive court procedures and the absence of victim services. Another problem referred to by a number of respondents was the length of time that the court system appears to require in order to process cases.

Tables Seven and Eight present further data on perceptions of problems in the justice system. Respondents were asked to indicate whether they would rate each of six selected issues as a major problem, minor problem or no problem at all. Table Seven shows that the three items considered by a majority of both Cape Breton and "Other Mainland" respondents as a "major problem" were that victims' needs were neglected, that the sentences given were either too light or too severe, and language and/or cultural differences between natives and non-natives. The complaints about the treatment of

victims and inappropriate sentencing would probably be found to the same extent in the larger society. Perhaps, too, the 35% to 40% identifying lack of familiarity with the court system and difficulty talking with lawyers should surprise no one. Clearly, though, the emphasis on language and cultural differences, and less so, on prejudiced court officials (i.e., about 30% of the Cape Breton sample identified this as a major problem facing native people in their area) represent special native concerns. It may be observed in Table Seven that, aside from the prejudice issue, only a small proportion of respondents claimed that any of the various issues was "no problem". Analyses were carried out to determine if gender, age or education accounted for differences in respondents' views about problems in the justice system. There were a few modest differences by gender as females were more likely to consider inappropriate sentencing and know-how in the court milieu to be major problems for natives in their area but the biggest gender difference was that females were much less likely than males to see "prejudiced court officials" as a major problem (i.e., 18% to 38%). In terms of education, those respondents with post-secondary education were more likely than those with less education to identify "know-how in the court milieu" and inconsistent sentencing practices as major justice problems. There were no systematic differences by age of respondent.

TABLE SEVEN

PERCEPTION OF PROBLEMS IN THE MAINSTREAM JUSTICE SYTEM (%)

Item:	Cape Breton (N=102)	'Other Mainland' (N=45)
Prejudiced Court Officials		
Major Problem	29%	46%
Minor Problem	32	25
No Problem	35	19
Unsure	4	9
Language/Cultural Differences		
Major Problem	53%	60%
Minor Problem	33	23
No Problem	12	15
Unsure	1	2
Talking with Lawyers		
Major Problem	39%	46%
Minor Problem	41	24
No Problem	16	20
Unsure	3	10
Lack of Familiarity with Court System		
Major Problem	36%	48%
Minor Problem	42	20
No Problem	19	25
Unsure	2	7
Inappropriate Sentencing		
Major Problem	52%	55%
Minor Problem	35	32
No Problem	11	7
Unsure	2	7
Victim's Needs Neglected		
Major Problem	56%	69%
Minor Problem	34	16
No Problem	7	12
Unsure	2	2

TABLE EIGHT

SPECIAL COMPARISONS: PERCEPTION OF MAJOR PROBLEMS 2000 AND 1991-92 - BY RESERVE TYPE (%)

Item:	% Reporting Item As Major Problem:			
	2000 Cape Breton (N=102)	**1991/92 Cape Breton** (N=188)	**1991/92 Mainland** (N=260)	**1991/92 Indian Brook** (N=81)
Prejudiced Court Officials	29%	53%	43%	50%
Language/Cultural Differences	53	76	59	60
Talking With Lawyers	39	49	54	57
Lack of Familiarity With Court System	36	72	65	74

Table Eight provides an historical comparison between the Cape Breton sample in 2000 and the 1991/92 samples of Cape Breton FNs, Indian Brook, and the Mainland reserves as a whole. It can be noted that in the 1991/92 samples the proportions identifying the various items as " a major problem" were quite similar across Nova Scotia. The table suggests that there has been some progress over the past eight years, particularly with respect to perceptions of prejudiced court officials and lack of familiarity with the court system; the proportion identifying these as major problems has been almost halved (e.g., from 72% to 36% for the familiarity item). Still, a significant number of respondents perceive many serious problems in the justice system, especially perhaps more subtle factors involved in language and cultural differences.

Survey respondents were asked their views about what changes should be made in the present way of dealing with offences. This question yielded a large number of insightful and interesting comments by the survey participants. Not surprisingly perhaps, the comments often echoed the views commonly heard in the larger Nova Scotian community, namely that the YOA (Young Offenders' Act) should be changed to make youth appreciate better the gravity of their offences, that persons charged with spousal assault should receive harsher sentences, that sentencing has become too inconsequential for preventing either recidivism or healing, and that victims' needs should be addressed. In addition, there were comments calling for more native justice officials, for more effective rehabilitation, and for less bias in justice, whether that be against natives in general or among natives (i.e., the influentials on reserve being

treated differently).

The emphasis on tougher sentencing, especially for youth, was expressed in terms such as the comment of middle aged Cape Breton man who wrote "no more slap on the wrists for major crimes" or that of another Cape Breton male in his thirties who noted "first of all, they need to have some type of enforcement for young offenders"; a young, married, female band member elaborated on this viewpoint as follows: "now there are different penalties for youth; they [the justice system] should take native offences more seriously; they tend to take them more serious off-reserve... [but here there is] a lack of charges and convictions". There was a widespread view that victim needs have been neglected and that changes must occur in that area. A Cape Breton band member in his mid-thirties, for example, observed that "yes, on the part of the victim, there should be some kind of justice; there has to be a place for the victim". A number of respondents suggested that more effective rehabilitation must replace current justice strategies which allegedly emphasize incarceration; for example, a female college student in her late twenties argued that "I don't think people should be locked up; they should be helped out in other ways; locking up people makes things worse". There was some support expressed for greater attention to healing and restorative justice practices (e.g., circles). A number of respondents placed emphasis on there being more native court officials and lawyers while a few others called for native-controlled services such as "our own court of elders" and "native jails have to be built to deal with native culture within". Finally, several respondents called for a less-biased justice system; for example, a middle aged, college-educated Cape Breton man observed: "it seems that the justice system here is not all that great; it depends on who you know, such as chiefs, councillors or wealthy people". Overall, then, the views expressed by respondents were diverse though largely similar to those found in the larger society. It seems clear that new justice alternatives may have much support but there will have to be much "community conversation" to effect deep consensus, and also that the new justice alternatives will have to be as much victim and community oriented as offender-based.

All survey participants were asked to consider the level of priority that they would accord to certain specified possible changes in the justice system. Tables Nine and Ten present the results of their responses. It is clear that, among Cape Breton band members, the possible changes accorded the most "high priority" ratings were cultural sensitivity training for Justice officials, more legal services for native people, having native court workers, and more services for victims. About 50% of the respondents also accorded high priority to greater community involvement in justice processing and a native justice system, especially in the case of minor crimes. The "Other Mainland" responses followed a similar pattern, and these kinds of data were unavailable for Indian Brook in 2000. There were a few differences in the responses by gender, age and educational attainment. Women were less likely than

men to accord high priority to a separate Mi'kmaq justice system (i.e., 33% to 53%). Older respondents were more likely to accord high priority to having a separate justice system (i.e., 52% to 36%) and to more services for victims (i.e., 85% to 58%). The more highly educated band members in Cape Breton were more likely than the less formally educated to accord high priority to having more legal services (i.e., 78% to 66%), and more likely to accord low priority to constructing a separate Mi'kmaq justice system (i.e., 38% to 17%).

TABLE NINE

KEY PRIORITIES FOR CHANGING THE JUSTICE SYSTEM

(%)

Item:	**% According High Priority to the Item:**	
	Cape Breton (N=102)	**'Other Mainland'** (N=45)
More Legal Services	73%	87%
Community Involvement in Sentencing	49	44
Community/Other Services for Convicted Persons	54	59
Native Court Workers	70	78
Community JPs for Minor Cases and Bail	49	58
More Services for Victims	68	82
Cultural Sensitivity Training for Justice Officials	82	82
A Native Justice System for Minor Crime	53	71
A Separate Mi'Kmaq Justice System	43	55
Community Justice Committee to Discuss New Alternative Justice Programs	57	67

TABLE TEN

SPECIAL COMPARISONS: PRIORITIES FOR JUSTICE SYSTEM CHANGES 2000 AND 1991/92 - BY RESERVE TYPE

(%)

Item:	% According High Priority to the Item:			
	2000 Cape Breton (N=102)	**1991/92 Cape Breton** (N=188)	**1991/92 Indian Brook** (N=81)	**1991/92 All Mainland** (N=260)
More Legal Services	73%	92%	98%	93%
More Native Involvement	49	78	72	72
Native Court Workers	70	93	95	90
Community JPs Hearing Minor Cases	49	75	71	59
Cultural Training for Court Officials	82	93	95	88
Separate Mi'Kmaq Justice System	43	78	79	89
Community Justice Committees	57	92	95	89

Table Ten provides a historical dimension to the issue of how band members would prioritize possible changes in the justice system. That table depicts two basic patterns, namely the high level of consensus that existed across Nova Scotia bands in the 1991\92 period, and, secondly, the decline in the "high priority" ratings given to virtually all items. It is difficult to know whether that decline represents progress in the sense of a perceived better response in the justice system to native people, or disappointment with alternatives that have been tried. The evidence (e.g., the "problems' data discussed above) would seem to favour the progress thesis. In any event, the changes most frequently accorded high priority in 1991\92 remain the ones most frequently called for in 2000.

VIEWS ON MJI PROGRAMS AND JUSTICE ALTERNATIVES

Survey participants were asked how well informed they were about MJI and its programs. The results are given in Table Eleven. Only a minority of the respondents indicated that they were well-informed of MJI or any of its constituent programs, and this minority was quite small indeed in the case of the mainland band members (e.g., less than 8% in the Indian Brook sample said they were very much informed of any specific program). In Cape Breton a majority of the respondents were, self-reportedly, at least somewhat informed about these programs and services, especially MYOP and ENTS (i.e., interpreters' service). About a third of the Cape Breton respondents reported that they had had some contact with either MJI or one of the programs, about three times the proportion of Indian Brook respondents who had some contact. Interestingly, despite those low percentages of knowledge and contact, the organizations/programs were judged to be important for the respondents' communities.

Three-quarters of the Cape Breton interviewees said they were "very important" and about half the Indian Brook survey participants shared that viewpoint.

Few respondents elaborated on the personal experience or contact that they had had with MJI or its programs, and most of those who did either worked with these programs in some fashion or knew someone who did. The few comments from others were split among positive and negative assessments. One young female college student noted that "Yes, I went through MYOP and feel it's a good program"; on the other hand, a retired male, also from Cape Breton, commented that " yes, MYOP. There was no victim present in the talking circle. I didn't like that. The offender's family being present gives the others a false view of them [the offenders]; they are being good in front of parents". Similarly, the court worker / justice worker program received mixed assessments. A male in his thirties noted "they are needed because they help people understand the legal technicalities in court", while a mainland married man of thirty reported that "yes, the court worker program; he wasn't good, didn't care or have compassion for me as a person; he pre-judged me"; an Indian Brook thirty year old male commented, "I have had contact with it; they gave me good advice and helped things turn out for the better".

TABLE ELEVEN

AWARENESS, CONTACT AND IMPORTANCE OF NEW JUSTICE ALTERNATIVES (%)

	Cape Breton (N = 102)	**Other Mainland** (N = 45)	**Indian Brook** (N = 132)
Informed About Mi'kmaq Justice Institute:			
Very Much	13%	11%	8%
Somewhat	46	16	31
Not at All	38	73	61
No Answer	2	-	-
Informed About Native Court Worker Program:			
Very Much	17%	9%	5%
Somewhat	37	29	32
Not at All	43	62	61
No Answer	2	-	2
Informed About Mi'kmaq Young Offenders Program:			
Very Much	28%	7%	4%
Somewhat	40	22	30
Not at All	28	71	64
No Answer	2	-	2
Informed About Mi'kmaq Interpreters' Service:			
Very Much	24%	7%	3%
Somewhat	44	18	19
Not at All	26	73	77
No Answer	6	2	1
Any Contact with Any Of The Above Programs or Agencies?			
Yes	32%	18%	10%
Importance Of These Programs For This Community:			
Very Much	72%	71%	46%
Somewhat	14	18	32
Not At All	2	-	-
Unsure	9	9	22

As noted, all but a very few respondents considered that either MJI and/or its programs were important for their communities. Many respondents elaborated upon their views in open-ended comments. These responses fell into several broad categories. Some participants pointed to their potential benefit for rehabilitation and crime prevention. For example, a high school educated, Cape Breton male in his thirties suggested that "they [these programs] can make a positive impact for people who want to make a commitment not to re-offend"; a married Waycobah female, also with some high school education, observed that "[these programs] give them [offenders] a chance to redeem themselves and makes them understand the importance of having a clean record"; a Membertou woman commented "they try to help those who are in trouble stay out [of trouble] and victims deal with how they have been wronged". Other respondents stressed the importance these programs have in facilitating understanding for natives of the justice system. A middle aged male noted that "it's easier for natives to talk to each other and the workers are more familiar with the community"; a young female college graduate echoed that view, 'Mi'kmaq are afraid to speak up or maybe embarrassed because they are a minority or can't speak English well". A few respondents highlighted the beneficial impact such programming has for the community at large; one single, young, Waycobah female, working and with some high school education, captured this sentiment well, noting that "community involvement makes the reserve become more strong; unfortunately, I haven't noticed much involvement from these organizations". A handful of survey participants placed the contribution of the programs in more general terms; for example, an unemployed Membertou male explained their potential contribution as "to ensure that natives are treated fairly, without prejudice, and that sensitive issues such as land and treaty rights are respected and understood", and an Indian Brook respondent declared that 'Mi'kmaq people should take of their own".

Analyses by age, gender and educational subgroups yielded few systematic differences in the respondents' knowledge and assessment of MJI and its programs. There were no differences at all between male and female responses. As for the impact of the education variable, the only difference was that the more highly educated claimed to know "very much" about MJI (i.e., 21% to 5%). Older respondents (i.e., those more than forty years of age) were more likely to claim much knowledge of MJI (24% to 6%) and to make more suggestions for how alternative justice programs could be operated or improved.

All survey participants were asked whether they had any suggestions about how the above programs or other Mi'kmaw justice activities should be operated or improved; subsequently, they were asked what role, if any, elders, chief and council, community agencies, community residents and the grand council should have in Mi'kmaw justice activities. The suggestions were diverse of course but four

were most frequent, namely get information about them out to the communities, provide transparent, professional management, involve communities from the very beginning and have regular community workshops, and ensure that the programs are functioning in all the communities.

About 70% of the survey respondents held that elders should be involved in new justice programming and few opposed the idea. Generally, it was considered that elders should be teachers and advisors, and share their experiences, rather than impose sentences or administer programs. A middle aged, college trained Eskasoni female expressed a common view that the elders should contribute "cultural and spiritual aspects". A young Membertou woman commented that "they should become involved since this is being based on native issues and they are the most experienced and knowledgeable about it. They have dealt with the system longer than us; therefore, their views should be respected". Respondents were less in agreement concerning a role for the Grand Council in new justice alternatives; only 44% considered that its members as such should have a role while 22% said no. There was a common sentiment that the organization should focus on religion and spirituality and that perhaps its members might function as a kind of supreme court or last resort of adjudication.

Only 35% of the survey participants envisioned a role for chief and council in justice programming and an almost equal proportion was adamant that they should not be involved. Those who were opposed expressed their views quite strongly but many others considered that chief and council should have a "policy role" and a few persons thought a more hands-on role would be appropriate; a young woman from Membertou, for example, noted "since they run the community they should have a say in how the activities are run". Analyses of these data by gender, age and education subgroups indicated only that women were more likely than men to reject a role for chief and council in new justice activities.

The majority of respondents certainly considered that there should be significant community involvement either directly in conjunction with ordinary residents and/or through interagency collaboration with local service agencies. Concerning the latter, one respondent, a young male adult from Membertou observed, "they have to be intimately involved because they have services and expertise for those affected by crime, including the offender". As for general community involvement, there was, in the comments, about an even split on whether it would generate favouritism and bias or would be a positive factor. A Waycobah young woman noted "no, our community is divided into families, too much favouritism on one side, high class / low class [distinctions exist]; it would not be fair"; on the other hand, a young Membertou female student held that "yes, they [residents] would be able to provide a variety of people input and they would also be able to support and respect the decisions

made". It can be noted that a number of respondents suggested that other types of people should also be involved in any new justice programming; here the suggestions ran the gamut from priest to police but the most commonly cited was the offender or ex-inmate; as one middle aged woman from Millbrook noted, "the past offenders would know what is going on with people in trouble. I feel past offenders would be better counsellors, have more understanding and that teens would listen to someone who has been there, done that". Finally, it can be noted that, apart from the gender difference cited above, there were no significant differences among age, gender and educational subgroups with respect to the role that elders, agencies, chief and council, community residents and local agencies should play in new justice programming.

What functions, additional to conventional justice concerns, should a new Mi'kmaq justice organization focus on? Respondents were asked if they saw a role for such an organization in handling disputes internal to and among bands, carrying out dispute resolution at the individual and family level, and doing research on native justice issues. The survey results are presented in Table Twelve. It can be seen that most respondents (about 80%) clearly saw a role for such an organization in carrying out research and in facilitating the healing process. The majority also agreed that there was a need for some such body to become involved in the regulation - if not the development - of band bylaws and other regulations. There was more ambivalence and disagreement on whether such an organization should have a role in resolving disputes between bands or, more surprisingly perhaps, in dealing with community disputes and feuds. It would appear that respondents were largely distinguishing between facilitative and political roles and considering a justice organization as having the former mandate. The research thrusts that respondents suggested for a new justice organization were basically either "our rights and treaties", as one middle aged, college-educated, Membertou male noted, or focused on particular crime issues such as examining violence, burglary, or as one young male college student observed "how to deal with crimes that are unreported". Analyses of the data by gender, age and education subgroupings did not yield many differences but females and the more highly educated respondents generally were less likely (i.e., 26% to 47%) than their counterparts (i.e., males and the less formally educated) to support political or regulatory activities being done by a new justice organization. It is interesting that the clearest mandate from the survey would appear to be for conventional justice activities, more healing among individuals, and research, generally the kinds of activities that MJI did engage in during its brief existence through the court worker program, MYOP, and its band governance project.

TABLE TWELVE

PERCEPTIONS CONCERNING POSSIBLE FUNCTIONS OF A NEW MI'KMAQ JUSTICE ORGANIZATION (%)

Possible Functions:	% Saying Yes:	
	Cape Breton (N=102)	**'Other Mainland'** (N=45)
Dealing with Disputes Between Bands	37%	56%
Band By-laws and Regulations	69	76
Dealing with Community Disputes and Feuds	48	64
Help Healing Between Victims and Offenders	76	78
Doing Research on Native Issues	83	88

Increasingly, Mi'kmaq people have the opportunity to develop alternatives to the conventional, mainstream justice system. Respondents were asked if they were in favour of their community becoming involved in such activities or alternatives such as sentencing circles, healing circles and the like, and if so, what their concerns might be. There was some ambivalence expressed by the respondents. In Cape Breton, for example, about 40% of the sample was unconditionally in favour of advancing these initiatives while another 26% were conditionally in favour and a roughly similar proportion (i.e., 24%) were opposed. Generally, the respondents in favour stressed that such initiatives can greatly facilitate healing between offenders and victim, and in the process rejuvenate the community. A middle-aged Membertou male observed that "this would make the offender see what they are doing to the victim and community", and an Eskasoni woman noted "yes, [these will] rejuvenate the community's commitment to cultural values". There was a sense among some respondents that the focus should be on healing not sentencing; as young, college-educated Waycobah homemaker expressed it, " yes, for circles and healing lodges but not sentencing circles; that should be for the courts; healing can be done in the community through family and friends". Other respondents approved of the new justice initiatives but wanted to be restrictive in their use, at least initially; for example, a young Membertou female college student commented "yes, only for first time offenders because it gives them a chance to realize what path they are taking". The chief concern expressed by those who were not in favour of these possible developments centred around possible favouritism; a young Waycobah homemaker elaborated on this theme as follows: "no, people are related, if you are respected in the community you can get away with a crime even if it was your fault. The victim could lie; if a native and non-native committed the same

crime, the native would get less sentencing. It is in our nature to stick up for one another".

Survey participants were asked if there were "certain offences or offenders that should be dealt with by the current justice system and not by any alternative Mi'kmaq justice program". About two-thirds of the sample said "yes" while 17% said "no" and another 17% were unsure; in the case of Indian Brook, the proportion saying "yes" was 86%. Typically, the respondents considered that major crime should be dealt with by the mainstream, conventional system, at least for the foreseeable future. A young, female, college-educated Membertou homemaker noted that "they should not deal with big, major crimes, at least not yet; they should start with small stuff". A young adult Membertou male, of similar age and education, observed "on treaty issues there has to be a coexistence of the two. On harsh crimes the current system has to prevail but not without native liaisons to ensure fairness". This view was echoed by several other respondents including a young South Shore female who commented that "I believe that aside from treaty rights and issues, that any charges brought about should be dealt with through the regular justice system". No significant differences in views were found in terms of gender, age or educational factors.

Slightly less than half of the survey participants referred to some specific desired alternative justice program when invited to do so. Their suggestions were quite varied, ranging from halfway houses and healing lodges to a Mi'kmaq department of justice but perhaps the most frequent type of suggestion was having something for victims of abuse (e.g.,more treatment facilities, victim support programs). In answer to a subsequent question, more than 60% of the respondents agreed that special programs or community justice practices are needed in order to assist offenders to reintegrate into the community; interestingly, though, when asked for specific suggestions to accomplish this reintegration, the respondents who answered, most frequently called for more employment opportunities, seeing work and involvement in the community's social environment as the keys to offenders' obtaining self-respect and gaining the community acceptance.

A majority of the survey respondents (about 60% in Cape Breton and 75% in Indian Brook) held that if new justice alternatives were established, community residents would support them. While few respondents said "no", a significant minority were unsure (i.e., 25% in Cape Breton). A number of respondents echoed the view of an Indian Brook man who explained "a high percentage of our community does not agree with the present system". At the same time, some answers revealed much scepticism; for example, another Indian Brook member observed, "everyone would mean well but I can't see it being followed through". Respondents were asked "what can be done to see that new justice programs, run by Mi'kmaq people, are fair and accepted by community residents"? Two major themes were evident in the responses, one emphasizing the need for some "detachment" by the program

personnel, and the other emphasizing community ownership. The former was reflected in statements calling for trained, unbiased people (e.g., "have people that are not biased"; "they have to be run by competent people", "hire people from other reserves to work with us" and "have an independent committee"). Community ownership was seen as achieved by having community forums, regular informational sessions and transparent stewardship by the program managers; A married, young male Membertou adult, with a post-secondary educational background, suggested "conduct open forums that constantly inform residents on native judicial activity and have justice programs that are designed with the victims in mind". Table Thirteen provides the survey respondents' views on factors which could facilitate that community acceptance. Clearly, the large majority of the respondents agreed with the need for a well-trained staff, regular public meetings, victim involvement and including people such as elders who know about tradition. At the same time a majority of respondents, in keeping with their general view on either conventional or alternative justice programming and organizations, were reluctant to see close supervision by chief and council. There were some systematic differences in views by gender and educational attainment, as women were more opposed or unsure about a direct role for chief and council, while the more highly educated were much less likely than the less formally educated to agree to such an involvement by the political leaders (i.e., 28% to 57%).

TABLE THIRTEEN

PERCEPTIONS OF KEYS TO A FAIR AND COMMUNITY ACCEPTABLE NEW JUSTICE PROGRAM (%)

Item:	Cape Breton (N=102)	'Other Mainland' (N=45)
Have a well-trained staff	93%	95%
Include people who know about traditions	84	93
Have regular public meetings	89	95
Have close supervision by Chief and Council	44	22
Have more victim involvement	83	84

In ending the survey, respondents were asked their views about a separate Mi'kmaq justice system. Tables Fourteen and Fifteen provide the distribution of the responses, both in the current sample and in those samples obtained in 1991/92. Looking first at the 2000 sample, it can be seen that the large majority of survey participants agreed, some more strongly than others, that such a separate system would have to be introduced slowly, if at all. A majority also agreed, again with different levels of conviction, that a Mi'kmaq system would deal differently with offenders and would better control crime; clearly, there was more ambivalence on both these aspects, especially as to the efficacy of a separate system. Would such a system lead to too much favouritism? About 70% of the Cape Breton respondents thought it might. Respondents' views on the unwillingness of the Canadian governments to accept a separate Mi'kmaq justice system were about equally divided among "agree", "disagree" and "unsure". There were no significant differences in the views of males compared to females or the young adults compared to their older counterparts; however, there was an education impact, as those with post-secondary education were more likely than others to strongly agree that implementation, if at all, has to be slow (48% to 32%), and that favouritism would be a threat in such a system. The historical comparisons presented in Table Fifteen indicate that Cape Breton views have not changed much on these issues over the past decade, although there has been a modest increase in the perceived threat of favouritism and a modest decline in the perception that a Mi'kmaq system would be more effective in dealing with crime. The differences between Cape Breton and Indian Brook respondents in 1991/92 were greater than the differences between the two Cape Breton samples eight years apart.

TABLE FOURTEEN

GENERAL VIEWS ABOUT A SEPARATE MI'KMAQ JUSTICE SYSTEM (%)

Item:	Cape Breton (N-102)	'Other Mainland' (N=45)
It Would Have To Be Implemented Slowly:		
Strongly Agree	37%	43%
Somewhat Agree	51	41
Disagree	5	13
Unsure	6	2
A Mi'Kmaq Justice System Would Better Control Crime:		
Strongly Agree	24%	28%
Somewhat Agree	36	25
Disagree	28	13
Unsure	11	33
There'd Be Too Much Favoritism:		
Strongly Agree	39%	31%
Somewhat Agree	29	24
Disagree	22	30
Unsure	10	14
It Would Deal Differently With Offenders:		
Strongly Agree	29%	51%
Somewhat Agree	51	37
Disagree	7	0
Unsure	12	12
A Separate Native Justice System Would Never Be Accepted By Canadian Governments:		
Strongly Agree	16%	39%
Somewhat Agree	22	28
Disagree	35	20
Unsure	27	14

TABLE FIFTEEN

SPECIAL COMPARISONS:
GENERAL VIEWS ABOUT A SEPARATE MI'KMAQ JUSTICE SYSTEM
2000 AND 1991/92 - BY RESERVE TYPE
(%)

Item:	% Agreeing With The Item:			
	2000 **Cape Breton** (N=102)	**1991/92** **Cape Breton** (N=188)	**1991/92** **Indian Brook** (N=81)	**1991/92** **All Mainland** (N=260)
It Would Have To Be Implemented Slowly	88%	90%	97%	93%
A Mi'Kmaq System Would Better Control Crime	60	89	87	81
There'd Be Too Much Favoritism	68	50	53	59
It Would Deal Differently With Offenders	80	83	90	88
A Separate Native Justice System Would Never Be Accepted By Canadian Governments	38	43	70	62

AN HISTORICAL CONTEXT

In general, the results from this survey, as regards priorities, knowledge of extant programs and general views on justice, were quite consistent with previous research. For example, the 1999 UTPS study in Cape Breton found that most Cape Breton band members were not especially aware of MYOP. Among those with some knowledge or experience with the program, there was usually, but definitely not always, a positive assessment. The positive comments either reflected personal experience with MYOP cases or a view that the justice circles appropriately divert youth committing minor offences by providing a good forum wherein to explore the roots of the problem(s) and to generate effective support which can redirect the youths. The negative comments drew less on actual experience and largely reflected the view that young offenders would not be persuaded to change behaviours by a program which supposedly gave them merely a slap on the wrist. Overall, the UTPS respondents were in favour of extending the program in instances where the offence did not involve a serious personal assault, whether the offender is a youth or an adult; the sample was quite divided, half for and half

against, about extending the MYOP diversion option to adults committing family violence and to youth who commit serious crimes or are repeat offenders. These survey participants differed much in terms of their receptivity to further restorative justice initiatives but, overall, they were supportive of such developments on the assumption that major crimes and acts of serious personal violence would still be referred to the conventional justice system. Those persons in favour of alternatives pointed to both push (e.g., the current system does not work well) and pull factors (e.g., the alternatives would be more effective and / or culturally appropriate). Those who were opposed usually contended that the alternatives would not deter offenders and were not culturally salient to young people.

The 1992 research found that reserve respondents, in roughly equal proportions, spontaneously called for indigenization, a court worker program, greater cultural sensitivity, and a native-based justice system. Mainland natives were more "integrationist" in their emphases whereas their Cape Breton counterparts were more likely to call for interpreters and a native justice system. The offreserve respondents spontaneously called more for indigenization (e.g., natives in official justice positions) and greater cultural sensitivity. Statistical analyses identified two broad respondent orientations, namely "a native control focus" and "a native participation focus". Reserve residents who were more entrenched in native culture (e.g., spoke the language), who perceived there to be many problems in the court system, and/or who were from Cape Breton, were especially likely to have the "control" orientation and wanted a separate native justice system. Those who had a "participation" orientation were more likely to be young, have higher education, and/or live on the mainland. There was much unanimity in according high priority to the establishment of a native court worker program, regardless of socio-demographic grouping or even whether one held the control or participation orientation. Typically, respondents favoured a broad conception of the court worker role, seeing it as much involved in public legal education and related community work. While there were positive views about having a native system of justice, especially in Cape Breton, there were many questions and concerns raised, and the vast majority of persons recommended that any implementation proceed slowly. Creating a requisite "talent-pool" was especially seen as critical. Respondents generally considered that a native system might well control crime better, basically by giving native people and their communities more of a sense of ownership over the problems and their solutions. There was, however, much scepticism and concern that dense social and kinship ties, and favouritism, would seriously hamper the processes of justice (e.g., enforcement). Effectively dealing with bias and favouritism was seen as a challenge that could be met by separating the justice system from direct politics, by having a well-trained, highly-educated cadre, by the development of a native constitution, by extensive community feedback and by widespread use of native people from other communities in various justice roles. Offreserve respondents were generally more sceptical about the idea of a native justice system, and concerned, too, that they might be left out. There

was substantial division over whether the Canadian governments would go along with the idea of a parallel native system of justice.

STAKEHOLDER ASSESSMENTS: THE POLITICAL LEADERS

EXPERIENCE WITH AND AWARENESS OF MJI AND ITS PROGRAMS

Twenty-two political leaders were interviewed, in one-on-one format, for this study, eleven from the Mainland and eleven from Cape Breton. At least one leading figure from each of the major native organizations - Grand Council (GC), Confederation of Mainland Mi'kmaw (CMM), Union of Nova Scotia Indians (UNSI), Native Council (NC), Native Women (NW) and Friendship Centre (FC) - was interviewed in-depth. Six chiefs, three councillors and three band managers largely made up the rest of the sample. This diverse, articulate sample virtually all supported the specific programs that had constituted the MJI (i.e., MYOP, ENTS, NCW) and looked forward to their re-emergence. A senior advisor to one Cape Breton band observed:

> We still have people going through court everyday. Maybe even more so because we have Tribal police and reporting has gone very high and we have more people getting processed through the system, not less. But we still don't have the services. We don't have Mi'kmaq Legal Aid lawyers or Mi'kmaq court workers, and the translator program has been reduced to one or two persons. We still do not have an adequate level of Mi'kmaq people serving Mi'kmaq people in the justice system, even that is step backwards. We have to regain what was lost. But I don't want the only thing that the MJI does is the old way of mirroring the mainstream and not being progressive and changing.

There was much difference in the depth of awareness and knowledge of MJI and its constituent programs among these leaders. Typically, Mainland chiefs, band managers and councillors indicated that they knew little about MJI and had little experience with any program other than MYOP. In Cape Breton there was much greater use of the three programs and, correspondingly, greater familiarity on the part of the band political leaders. One chief, for example, commented that

> Each time there was a court case involving our band members, someone from MJI provided assistance to those in front of the court. It acted as a facilitator, someone who could explain things well to people, provide translations. I thought it was a very good idea, a good thing they were doing.

Additionally, a core of the Cape Breton political leaders was very instrumental in the establishment of MYOP, ENTS and, subsequently, MJI and the court worker program; as well, they exercised a considerable influence on the direction that MJI took and the kind of referrals it
responded to (e.g.,band governance project, wills and estate project). Several of these leaders readily delineated the major objectives of MJI and were quite familiar with the funding arrangements, especially

the fact that the major revenue for MJI came from the only extant native justice program available through Justice Canada, namely the native court worker program. One such leader, after spelling out the link of the MJI to the Marshall Inquiry of the late 1980s, observed:

> The first task for the MJI was to resurrect the court workers program that began in the 1970s ... before the MJI we had already set up a training program for Mi'kmaw translators ... when MJI was set up we quickly said why don't you [MJI] run this program because it is in your ballpark ... someone had the bright idea that the young offender project should be there too ... we also hoped that MJI would develop proposals for other justice programs ... there were program monies [but apart from these] really the MJI did not have any funding at all.

Another Cape Breton leader, an outstanding contributor to these Mi'kmaq justice initiatives, traced the complicated politics of the MJI initiatives and noted how internal political differences, largely about representation, and the expiry of a federal justice program, resulted in MJI starting off with less funding than anticipated; the lack of flexibility in the funding arrangements created further difficulties. The lack of flexibility in federal justice programs for aboriginal people, in his views, severely constrains developments such as MJI and causes them to work primarily, and often narrowly, within the existing system, limiting their creativity in responding to specific native socio-economic and cultural realities and aspirations.

In any event, the greater involvement of this core of Cape Breton leaders and the greater use of all programs in Cape Breton meant a greater awareness of the initiatives there and much more praise for the services, the staff and for the umbrella organization, MJI. For example, the ENTS program was rarely mentioned by leaders outside Cape Breton but there it was deemed to be practically and symbolically very important. The issue of the heavy workload for the court work activity was highlighted in Cape Breton but much less raised by Mainland leaders. Still, even some Cape Breton political leaders expressed little awareness and very limited use by their band members of the MJI's three basic programs. One chief noted that there was little use of the ENTS by his band members because of the lack of availability of translators with sufficient perceived respectability and credibility. He and another Cape Breton chief said they had little sense of what MJI did and were never well-informed; one commented:

> I think a lot more communication was needed, and information as to exactly what it was all about. Awareness of MJI was very limited if any. Even as Council members we thought this was new. With so many issues popping up, unless there is a constant

> communication flow it is going to be put on the wayside. To get something off the ground and get support there has to be constant information and if one approach does not work then you have to try another.

THE PROMISE AND THE SHORTFALL OF MJI

For many political leaders the underpinnings and promises of MJI and its programs can be readily linked to the Marshall Inquiry. The latter clearly has been a great symbol for Mi'kmaq people's agenda of exercising more control over justice activities and advancing special, unique concerns in conjunction with the mainstream system. Interestingly, the language of RCAP was much less evident in the remarks of the political leaders but a core of leaders, mainly on Cape Breton, certainly conveyed the RCAP sentiments and thrusts in their remarks, as will be noted below in the section on values. The criticisms of the mainstream justice system contained many fairly commonplace themes (e.g., it protects offenders more than victims; the sentencing practices are inappropriate; it is biased towards the rich and powerful) but special criticisms focused on the cultural differences vis-a-vis present and possible Mi'kmaq alternative conception of justice. The following two quotes by different chiefs illustrate this viewpoint:

> It [the mainstream] is an adversarial system, a punishment system, a 'not too friendly to Mi'kmaw people' system. It goes against everything that our culture and belief systems are. Like education, we identified that the system was not working for us so we took the initiative of education and are making it work. That is what has to happen in the justice system.

> I don't think people have that much problem with the current court system but the issue of not totally being culturally aware and sensitive to Mi'kmaw communities and how these operate is a factor when a sentence comes down too low or too hard. A guy broke in a couple of houses and goes to jail for six months, gets out and breaks in again and gets six more months. People are bothered by that. When we had our church vandalized people were crying like it had burned down. A very light sentence was given; it was a joke. There is no faith in that system.

Clearly, then, a priority for most leaders has been to have justice programs both to facilitate change within the mainstream and to develop more community-based and locally controlled justice programs that might be more effective, as well as intrinsically satisfying, within the context of Mi'kmaq society and culture. From that perspective, the leaders generally perceived that the MJI programs were

very effective, while limited in terms of their agenda for justice initiatives. Cape Breton chiefs noted the continuing salience of the translators program, and there was general praise for the court work activity and the healing approach of the MYOP's Mi'kmaq justice circles; the latter were frequently cited as in keeping with the principles of harmony and forgiveness that some leaders saw as the essence of traditional Mi'kmaq justice. The following quotes illustrate their sentiments:

> A lot of our people do need interpreters. They speak English of course but understanding it is another thing and you know how the law goes. The language of law, I get confused! We need to get a better understanding of why things happen but, better still, how to prevent these things and that need to be incorporated into the institute too, preventative measures.

> All the programs were good. They certainly helped people to better understanding. I think the decisions were a lot better than if there was no one around. Instead of a suspended sentence or probation, they might have been incarcerated if they did not get MJI help. But we need more work on the victim. Somehow, we need to help the victim feel justice has been done.

There were some qualifications expressed by the political leaders concerning the possible developments in some programs, and alternative justice priorities. While positive about the concept of circles and interested in the extension to "exit circles" for inmates to facilitate their reintegration, a young Mainland leader was concerned that regular, pre-incarceral diversion become widespread and thought it should be up to the victim whether circles should happen at all. One female political leader, responding perhaps more to fear of future developments than to current practice, was concerned about the use of justice circles in cases of family violence and sexual assault (a major controversy, as well, nowadays in mainstream society). She commented

> They [native women] were not happy hearing about MJI doing sentencing circles; whatever was going on there, were not things that they agreed with, and they felt they were not consulted enough ... the MJI was so new and they were taking on these big things and they did not have support systems in place for it. There is a lot of follow-up, counselling with it, peace making; there is a whole community. You cannot just go into a community and do a sentencing circle and leave. You have to be presence in that community. Maybe if it was break and enter that could be dealt with by MJI.

Several leaders emphasized that more attention, perhaps higher priority, should be directed at

securing Mi'kmaq lawyers and having more involvement in the delivery of legal aid. One Cape Breton leader, arguably the most knowledgeable about these justice initiatives, observed

> A court worker program is in a time warp; it is really behind the times, although it did play a useful service. It is not the type of service that I thought the justice institute could provide in a maximum way. What I envisaged was a Mi'kmaw legal aid service run by MJI. We do have people at the bar who would like to do legal aid service for Mi'kmaw clients. Should court workers be eliminated? In part, yes, but then the court worker programs' funds could be re-allotted; we would put them in areas where Mi'kmaw legal aid was not providing a service ... this is done elsewhere!

The 'failure' of the MJI was seen as a complex matter. Mainland leaders referred to resource inadequacy, poor management, lack of a strategic plan and an impractical vision to begin (e.g., "too high a level"). Certainly, there was acknowledgement, among the most informed, namely Cape Breton leaders, that there had been poor management, questionable financial dealings, and perhaps an inappropriate assumption of too many issues by the MJI. There was, however, especially among these latter leaders, a widespread and deep consensus that the context may have fated the MJI to fail. Here the leaders pointed to limited funding and stringent guidelines, evidence in their mind of a minimal governmental commitment to Mi'kmaq justice. The following quotes illustrate that viewpoint:

> The obstacles I see is to have the province of Nova Scotia and the federal agencies that deal with justice issues begin to trust us in running this most important responsibility properly. We would have to sell the whole idea back to

> the communities as well as to the chiefs ... structures have to be examined so that political representation and autonomy has to be respected at the community level

> I guess if you have to blame anybody you should put the blame on Justice Canada. Their program requirements are so strict and inflexible that you really could not develop a program with it, and all the province did was basically match what the feds did. Indian Affairs funding was all one-time funding. I think the ultimate killer was that it just did not have the base to operate the program ... MJI people were thrown in way over their heads. But for being in way over their heads they did remarkably well.

Most leaders also considered that MJI had not established meaningful community linkages, a true necessity for Mi'kmaq justice initiatives, given the diversity of viewpoints and the current status of the Mi'kmaq nation as a loose confederation of fairly autonomous bands; communities have to be persuaded and "brought along", and structures cannot simply be imposed from the top. To those Mi'kmaq leaders with a strong sense of 'the nation' and a desire to create new justice initiatives based on principles different from the mainstream society, the demise of MJI was a special blow. The specific programs were seen as modest to begin with - the court worker program operated in quite conventional fashion without significant public legal education, community mobilization or incorporation of victim services; MYOP had a very limited official mandate, and ENTS was limited to a small sample of Mi'kmaq people. And the context - funding, government guidelines etc - was very constraining. Nevertheless, there was a vision of getting beyond these limitations and a deep disappointment and even a sense of betrayal when managerial inadequacies rendered the MJI unworkable. Still, the institute was deemed to be an effective start. The programs were considered valuable and the lessons learned were to put in place a well-managed system of justice services and incrementally build on solid achievement. Most leaders, whether on the Mainland or in Cape Breton, appreciated, too, the practical and symbolic value of the MJI. One Cape Breton leader, asked what was the biggest success of the MJI, quickly answered, "the name itself, Mi'kmaq Justice Institute"! A Mainland leader expressed a consensus opinion about the value of the umbrella organization in the following words:

> For the institute to house such programs as the Native Court Workers, Translators and Young Offenders Project, and other programs or projects, this is a very important link. Mainly because you would have developed a number of valuable resources as well as trained staff that could assist in further development and understanding of these projects

COMMONALITIES IN VIEWPOINTS ON JUSTICE INITIATIVES

In discussions about MJI and future justice initiatives there were several common themes expressed by virtually all political leaders. The four most widespread were that the justice initiatives should be as apolitically organized and delivered as possible, that they should be efficiently and effectively managed, that they should be community-based, and that the appropriate strategy now is to start small and build upon solid successful programs.

Interestingly, all chiefs and band officials interviewed indicated that their council did not have anyone with what might be called 'the justice portfolio' and there was no reference in any aspect of this fieldwork to chiefs' wielding any control or undue influence on any of the justice programs. Several respondents did indicate that having chiefs on the board could well enhance the influence of any justice agency in seeking funds. Still, there was little mention of how such justice initiatives would be accountable to the political process, and the overwhelming emphasis was on how the political and justice spheres should operate at arms-length. Generally the chiefs themselves did not want to run or control justice programming. One chief observed:

> Chiefs were not on the board [of MJI] which was a good thing. It takes politics out of it, any inkling of conflict of interest. Where a lot of our family members were involved with the law, it is pretty hard to be objective when you have to deal with a family member. Just the air of having a chief on the board that has to do with an institution like this would not look right. It is good that you have your grassroots people and people with background in that area. There are a number of lawyers on the board and people like Jr. Marshall. That is good to have a person who has had first hand experience in courts. He is one of the big reasons why the institute was formed.

There was much concern that justice programs and organizations have credibility in the native community. A senior band advisor advised:

> I firmly believe that there has got to be a dedicated program or organization just to do Mi'kmaw justice. There is a lot of merit to having it independent from the Mi'kmaq political system. It enhances credibility. There has to be a justice institute. It is the only way we are going to be able to achieve what we want to do with Mi'kmaq customary law. To start all over again, we went through so much pain and agony to get an independent structure established that to simply walk away from it at this point seems like a waste of five or six years of hard work.

A Cape Breton chief reiterated this viewpoint, in connection with the goal of self-government, as

follows:

> Mi'kmaq control of justice facilitates the trend toward self-government as long as it is objective. If there is any inkling of political interference we have to deal with that and get it cleared up. Where a person asks and thinks about credibility, when they think of MJI that has to come out clearly. That you don't have the chiefs interfering, that you have regular communications with the communities and it is made clear that the institution is for the benefit of all our people. The people could go to it with confidence and get help.

There was much reference to having well-managed justice programs. These views sometimes accompanied a critique of the MJI on that basis (i.e., that it was poorly managed), but more frequently they were articulated as simply good and appropriate organizational practice. One chief held that "[a revitalized MJI] should have quarterly reports on its activities in a newsletter to the public. Also, an independent grievance or appeal board, and a board of individuals who clearly understand the mandate and roles". While a number of leaders made reference to a role for the Grand Council, most leaders, especially, but not only, on the Mainland, were rather wary, as indeed were some Grand Council members themselves. One political leader recommended:

> We have to be very careful as to who controls justice in our communities. We have a tendency to protect our own families and friends and there are times when we overlook the serious nature of wrongdoings to protect our own. When we address the concept of what is just, it would have to come from a forum of elders and youth. After a major discussion of all the issues, the facilitators would have to be very knowledgeable of Mi'kmaq concepts and the history as to how our ancestors would handle various situations. The MJI, when it is back on its feet, should have community sessions to begin some meaningful discussions and to have meaningful input from each community to see exactly what they would like. Also, there should be a write-up in the newspaper about what the new concept of the institute will be and to explain what they are going to do. Once this is complete, then proper support from the chiefs should take place and make sure whoever is considered for the board of directors understands their roles and responsibilities to this agency. We have to prove that we can manage this type of program or agency with accountability, transparency and redress if it is required.

There was a very strong sense that justice programming has to be community-based and that the lack of community-rootedness was a major shortcoming of MJI. Part of this orientation rested on the reality of fairly autonomous bands and part of it related to the intrinsic value of local community control. On the latter theme one chief contended that community-based programs do a better job of administering justice because "when the community itself designs what it feels are the proper punishments, there are things that will be taken more to heart. It is a matter of respect amongst the

people". One band council member noted:

> I would like a more community-oriented system where we have our own people providing assistance in punishing, that is a strong word, in reforming or redirecting offenders in the community. It would take a community effort, not one worker. They need agencies interconnected to reform these offenders. Rather than sending them to Waterville where they learn to be more criminal. If we could do it here, it would be more effective and we could use our own culture as well as modern ways; you have to integrate both. A different approach for MJI would be more active role of the agencies in our community.

In response to the question, how should a Mi'kmaq justice system be structured?, one chief commented:

> A community process to deal with community healing. The current system where one standard applies to all, there is no healing of the community in that process. What it is all about is for the community to have its own people realize their own consequences when they do something in their community. We want to make sure our community really understands that crime amongst ourselves is unacceptable and when it does happen how do we deal with it as a whole. To make sure the whole community maintains a healthy level. There are different mentalities and paces for each community [and] the adjustment in getting to that point is going to be different.

Many respondents saw a major role for a body such as MJI to be in facilitating community conversations about justice and assisting communities to develop appropriate initiatives - something which would be far more than ordinary public legal education. One political leader observed:

> It would take something like an MJI to help the communities develop something like that. I am not saying that all of our communities would want to do something like that right away. It would take the MJI itself to start selling it, to help communities become aware that such a thing is possible and the MJI would be there to help the communities in such a way. If anyone is looking at resurrecting the justice institute then they should seriously look for funding to do the kinds of things we are discussing.

There was a widespread view among the political leaders that, whether for funding or other reasons (e.g., the readiness of communities and people for change), the appropriate strategy would be to start modestly and build incrementally on successful programs. Many leaders considered that MJI tried to do too much, too fast. Two Cape Breton chiefs expressed that view in the following words:

> A community-based approach could be administered by a central body if it did not get

> hung up on trying to fix everything at once ... We need to start small and grow as we become more familiar with the protocol and issues and then take on the more serious charges.

They have to take one step at a time. If they do it all, everything is going to be half done.

This view, not surprisingly, was most strongly expressed on the Mainland where culturally, as one Cape Breton chief noted, "the majority have lost their culture and language and there might be a different approach". Mainland leaders were more likely to stress creating bridges to the mainstream, developing programs such as diversion and other restorative justice practices in collaboration with the mainstream justice system, having a pragmatic approach, and operating the funded programs as a priority; one leader put it bluntly, "if the commitment to fund an MJI apart from the court worker program is not there, then don't touch it".

VARIATIONS IN VIEWPOINTS ON JUSTICE INITIATIVES

There was significant variation among the political leaders concerning the essence of having Mi'kmaq justice programs. Some leaders explained the significance in terms of fundamental issues of culture and identity, quite salient to the RCAP issue of adjusting justice in relation to core issues of aboriginal culture and identity. The following two quotes from interviews with Cape Breton leaders capture this perspective:

> Until we are really able to govern ourselves, we need to re-educate ourselves to find out what our true identity is. Part of that is getting our language back, to get as much education as we can in the larger society without losing our identity. That is what is pivotal in what is wrong with us. When you lose that you just become dependent ... We need to relearn how to look after ourselves within the larger society in a world where real things are happening. We cannot put blinders on and say that is them not us; it does affect us. If we re-learn our culture, then we begin to get our identity back; from there, we get pride which motivates us to move from a welfare state to a self-sufficient state

> I think one of the keys of survival of our culture and traditions and our philosophies is the attempt to operate our own justice system, even if it is for the sole purpose of maintaining the harmony and getting back to the original situation. If the victim and offender never get together as happens when the state takes over, then there is no hope of harmony ever existing between the two and the two families, Because in our culture when you hurt an individual you also hurt the individual's family. That individual's family looks at themselves as being hurt not just by the offender but all of [the offender's] family as having done that to them. It becomes a community thing.

In contrast, there was considerable, apparent identity with mainstream values and styles among Mainland leaders (of course not only Mainland leaders held these views) and the concerns there focused more on control and autonomy with respect to justice than on it embodying different principles for native people. This was evident in the following short exchange between the interviewer and a prominent Mainland chief:

> Question: People talk about the mainstream as being adversarial, not culturally sensitive; do these things matter in your community?
>
> Answer: I don't think so. We are deculturalized!

There was also significant variation in the views of political leaders concerning the operational importance of the concept, Mi'kmaq Nation, as it applied to justice matters. Some Cape Breton leaders clearly had a 'thick' sense of its appropriateness, as is evidenced in the following remarks of one such leader:

> Personally I would like to see a whole court system, a prosecutorial system, jails or prisons, those types of facilities, if required. Take control over that. I see something more unique than mirroring the mainstream. If you look to Navajo or the Hopi they have great systems where they incorporate their traditional aspects. The only way it will work from a self-government point of view and the cost effectiveness of it, is it has to be bigger than band by band. There is also political danger in doing it band by band. The MJI could be the catalyst for a legal system that incorporates an aboriginal court. If you incorporate the cultural components of it you will have greater impact and it would be more meaningful to the person in trouble. In an ideal world I would like to see us take back what we had before, use the grand council and the system there was to deal with offenders. In our community there is the will to create a greater justice system and from the Mi'kmaw perspective there is a bigger Mi'kmaw community as a whole.

A somewhat contrasting viewpoint, and one quite common among Mainland Mi'kmaw, is evident in the following remarks of a middle-aged, politically astute leader with a brokerage-type responsibility for bands:

> Mi'kmaq nationhood is a concept that has to be re-discovered. At the present time we strongly believe that the concept has to be understood by everyone as to the uniqueness of our ancestral systems and the ways of life before we can begin to develop our nationhood all over again. The present structures are modernized to fit what has happened. The grand Council has to be addressed and understood from the historical past, and the equality in structure has to be totally reviewed. The whole concept of the Indian Act chiefs system has to be carefully considered since we have lived in this type of

> leadership for at least fifty-one hundred years. Structures have to be examined so that political representation and autonomy has to be respected at the community level. One other issue: would we want people in political positions that can only be removed by death only?

Overall, despite these differences, there appeared to be at least much consensus on the immediate future and its strategic plan, namely have well-run, modest programs which, later, possibly could be absorbed into a sophisticated and complex Justice structure. One political leader commented that APC is working on a self-government framework and "justice would be there to some extent". Another leader, from Cape Breton, expressed a common view that " I do not think you want to separate too much ... not right now but in the future maybe". It was generally considered that "revamping justice is not a big priority right now".

In conclusion, it can be noted that, while there were many viewpoints and some major differences, especially between a core of Cape Breton political leaders and their Mainland counterparts, the Mi'kmaq political leaders advanced the view that the MJI and its programs should be quickly re-established. It was considered that these had to be well-linked to the local communities and should be well-managed within the type of structure that previously existed (e.g., umbrella organization, apolitical etc). There was the general view that these initiatives needed some breathing room from rules and guidelines in order to be creative and come to grips with the issues raised by RCAP, such as what justice activities and processes suit Mi'kmaq needs and preferences. Still, there was clear emphasis, at this point in time, on starting small, working within the mainstream, and building on success. In addition, the political leaders advanced recommendations concerning the need for enhanced involvement with legal aid, improving victim services, revitalizing the translators program, and resolving the problems with UCCB concerning court worker certificates.

STAKEHOLDERS ASSESSMENTS: LOCAL SERVICE AGENCIES AND OTHERS

Sixteen persons were interviewed in the one-on-one, open-ended interview format. These were people mostly working on the 'front-line' in the local communities, providing various services to native people. The agencies represented included Mi'kmaq Family and Children Services (MFCS), Alcohol and Drugs (NADACA), Wellness and Mental Health, and band employment services. In addition, there were several community activists who were involved in quasi-groups such as traditionalists in Membertou or Amikjuaq (i.e., the grandmothers) in Millbrook, as well as a handful of well-known, well-respected reserve residents (all from Cape Breton) who have had much involvement in developing justice programs and delivery systems for Mi'kmaq people. All these persons were band members and eleven resided in Cape Breton.

ASSESSMENT OF MJI AND ITS PROGRAM

Not surprisingly, the representatives from community service agencies, and other community activists, were in general agreement that MJI and its constituent programs were valuable and should be re-established. Most were familiar especially with MYOP and many had participated in a justice or sentencing circle. One of the most influential community activists in Cape Breton emphasized the value of the justice circles and linked them to community ownership and Mi'kmaq tradition, in the following words:

> [Circles], Yes I found them very good; they're emotional, personal.
>
> [Mi'kmaw community justice] has to come from the elders. Something that is terribly wrong in the non-native world could be the status quo in the Mi'kmaw world. It may be repairable. We need a formula to set out stages of restorative justice, to be researched and with input from the old people and leaders so we can have some ownership on what is happening to us. The stages for restorative justice are (1) recognition of the offence and its impact on victims, how your negative behaviour has caused injury; once you recognize that, then you can go to the next step (2) reconciliation; we have to allow ourselves to reconcile with the victim, offender and offence; the circle has to keep moving; it cannot be stagnant in order for it to move all three; there has to be a point of consensus ... (c) restitution has to be so that the quality of life for both parties or all those concerned is improved ... sometimes victims get left out and do not get a chance to say I am hurting too. Restitution should be made so that all are included and all are in consensus as to what happened. An elder should always be present at these dialogues.

An MFCS official, while most familiar with MYOP, commented positively on the other programs as well:

> Yes [I was familiar with MJI] but not to the level I should have been. I only sat in two circles. That was my only real involvement. I knew about the interpreters through family court and the other court systems when there were sexual abuse cases. Translators were good; no complaints, no problems with access, even before UNSI took it over. Court worker program should be ongoing. I think the people that started the program should be ongoing; they have one or two courses to finish. It is an invaluable service that should be available to the communities, especially to the people like us who deal with justice and courts on a regular basis.

Another Membertou woman pointed to the value of community-based assistance with an account of her own experiences with the court worker:

> [MJI] Oh, yeah they were a lot of help ... the court worker was great. He would go to court. He would tell me what to expect ... just someone to be there as a friend. He was able to do different things for us, recommending counsellors.

An Eskasoni social worker, expressing a common standpoint among Cape Breton agency personnel, viewed all three MJI programs as valuable and wanted both to expand the justice circles to include reintegration of inmates, and to have more frequent networking and sharing of experiences and ideas among all agencies and care-giving experts with a direct stake in the justice field.

There was an appreciation of the value of MJI as an umbrella organization for administering justice programs. One Mainland agency head expressed some reservations concerning both MYOP (e.g., the danger of 'token punishment') and the justice worker program (i.e., "emphasis and scarce funding go to the offender as the Law is geared to the offender") but he appreciated the value of an umbrella organization to which program managers would respond and where there was core funding for the umbrella structure in its own right. Another respondent referred to the need for an umbrella structure as follows:

> I think we need that some place you could call. Right now it is fragmented. I got a call from PEI for a translator yesterday. I did not know who to call. We need somewhere where we can house everything, the personalities, the policies, everything, a clearing house; everything is so damned fragmented.

Agencies' personnel, while acknowledging that workloads and resources were problems for

MJI, typically gave a variety of reasons for its demise. A senior Mainland agency person, quite familiar with MJI, contended that MJI had tried to do too much, that its work plans were unclear (i.e., no strategic plan, no specification of operational objectives), and its board ineffective. Others, of different degrees of familiarity with and knowledge of MJI, pointed to factors such as the lack of solid community ties, the lack of core administrative funding, and financial mismanagement by MJI leaders. Several agency people in Cape Breton suggested that the organizational ethos or style of MJI was problematic; one such person alleged:

> I think what happened to MJI is that it was not based on an holistic premise and it was not supportive. It was a very statistically-based organization. Get the numbers to get the money and that is very destructive. You do not do the client any favours. And there is no follow-up aftercare, and nothing to support the workers either.

Most local service agency people considered that there were still significant problems in mainstream justice for native people and that healing, not punishment, should be emphasized in Mi'kmaq communities. But a number of the respondents also considered that the mainstream system was increasingly amenable to change and facilitative of new developments in Mi'kmaq society (e.g., family law and policies). Particularly among Mainlanders, there was a vision of "supplement rather than replace". Whatever the vision (and a more radical vision will be discussed below), there was a widespread sense that a Mi'kmaq justice institute should have a modest mandate, emphasize managing the three programs well and building institutional success. One MFCS employee, in response to a question about whether the communities should handle justice matters, observed:

> Yes, but not everything. We are not at that level yet. Deal with issues that are not too heavy; murder is too much. But B and Es and those types of crimes [are okay]; assaults to a certain degree.

Other, similar, comments were made by a fellow Cape Breton Mi'kmaq who answered the question, "what should be the mandate of MJI" as follows:

> I would like to see resource regulation down the road. I don't think they should do everything at once. I think the criminal aspect first. I would like to see community

> service orders act like that. We seem to have a lot of problems with community service orders and fine options; it is not monitored too well. We should have our own probation officer in place. There are a lot of young people out there who have community service hours but there is nothing for them to do because nobody is putting them through the system. A lot of them come two or three days before they have to get them [CSOs] signed and they are worried sick.

Several respondents mentioned that general justice planning and policy development for Mi'kmaq interests should be left to the "bigger players" such as APC. A justice institute, on the other hand, it was claimed, should primarily tend to the programs and be community-oriented. Almost all the agencies' respondents raised some special operational concerns; the issues advanced dealt with matters such as a more proactive justice worker role (not simply reacting to dockets and court dynamics), securing more volunteers at the community level, more inter-agency collaboration, para-legal training for court workers, appropriately skilled management, dealing somehow with the length of time it takes to prepare for circles, monitoring misuse of community service orders and of other programs such as the translators, being more grass-roots and accountable to the community, being more visible in the communities, and assisting victims. Some respondents advanced suggestions for greater efficiency in the future (e.g., contract out services or recruit volunteers for areas where the demand is quite low for the programs' services). A few respondents called for modest changes in the focus of the MJI mandate; for example, one respondent here noted:

> More geared for youth. I want youth workers, court workers on every reserve and from there they could help us in inter-agency, like with mentors. Youth justice is trying to develop mentoring and I think we are well on the road to where justice is wanting to go. There are too many cases for the people you have. If you had a program reserve on each then you can serve the population better and have more time to get involved with the youth and set up prevention programs. They need to develop more prevention roles. I would like to see a system for adults. There are a lot of people with abuse issues that never have been dealt with, employment issues, drugs and alcohol problems. If you can empower those people getting involved in crime and programs for abusers, those are needed.

The bottom line for many respondents was to successfully operate these valuable programs and build strong community linkages. Successful operations, from this standpoint, could be the basis for further developments. This was expressed quite clearly by one community activist as follows:

> Question: So the concept of Mi'kmaq-controlled justice is not really part of the Mi'kmaq

consciousness?

Answer: Not yet. We are still at the threshold of acquiring that mentality.

Question: What would be the key to pushing it?

Answer: The success of something! The success of MYOP and the court [at Eskasoni], and UTPS and sentencing circles. There has to be a positiveness coming out. When things are new, people always look at the negatives ... Everything has to be looked at closely, all the nicks taken out, and they [the residents] have to see it work.

A SPECIAL MI'KMAQ APPROACH TO JUSTICE?

In many of these interviews, the respondents appeared to be articulating what they considered a special Mi'kmaq approach to justice. There was frequent reference to a Mi'kmaq tradition of balance, forgiveness, and healing. One prominent community activist referred to a tradition of "forgiveness feasts", and many advanced the concept of an holistic approach, featuring those characteristics, which brings together the individual, the family and the community. The balance, forgiveness and healing presumably takes place on all three levels. From this perspective, one can appreciate the critique of the mainstream system which is adversarial and focused on individual rights, freedoms and responsibilities. One middle-aged Eskasoni woman described her view on this difference as follows:

> I have been to Eskasoni court with a few people a couple of times and it is becoming a joke almost, because we are community members and we hear the stories the lawyers are presenting to the judge as defense and the witness stories and you know they are outright blatant lies. I know it is a bunch of crap from the lawyer, but as a community member I have no say; so how can you have faith in a system that is so easily manipulated ... Are we supposed to find closure in that? my neighbour raped my other neighbour and he gets a slap on the wrist and I am supposed to feel good about that? ... The judge, the lawyers, the defense, they are not of this community so it is just a foreign system. It just saves on Indian people from travelling to Sydney. They are being prosecuted or defended or whatever in a familiar setting. {We need} to get our own people in there ... have Mi'kmaw lawyers and judges that are part of the community, that live in the community. You have to be here spiritually, physically, emotionally linked, to understand what is going on here. ... I would like to see some circles where there is some …interaction between the victim and the defendant and all the individuals ... [our ancestors] used to call it 'abey sick tu wa ton' ['apiksiktaq ta' which translates to forgive, pardon, overlook an offence]... the victim and offender came together in a community gathering circle ... behind them would be family and friends.

Through new developments such as inter-agency collaboration, and using techniques such as justice circles, some agency personnel considered that they could begin to forge a justice system quite compatible with an holistic approach rooted in family and community and blend it in with the mainstream system. Indeed, some respondents suggested that, from this standpoint, the hallmarks (i.e., the defining adjectives) of institutional development in Mi'kmaq justice would be holistic, familial and communal. Respondents espousing this vision advanced the ideas that justice practices should strive to reintegrate victims and offenders, wife batterers and their mates, families and so forth. This view was expressed by one agency employee as follows;

> We should all work together. We cannot affect situations like family violence, youth violence, substance abuse, crime, unless we look at it holistically. People have no faith in the [mainstream] justice system. In family violence women get the shit kicked out of them and he gets probation. That is not justice. that is not re-balance. Traditionally re-balance would occur. We do not get that in the mainstream. It is more empowering to go through a circle. It is more strengthening for her. The thing is to set it up so it is, not just for youth. Women should be allowed to go through that process too. it takes a whole team to help empower them. But MJI was understaffed ... There has to be a process in place for the community to restore their faith in justice. Slowly each community is trying to build up their skills so we can deal with justice issues.

The advocates of 'inter-agency' among the respondents tended to specify it in terms of healing; this is evident in the following remarks of one agency woman:

> [What are Mi'kmaq conceptions of justice?]
> It is all of healing, what you learn as a child. it is in the family, sometimes you break away from the norms of your family; that may be good or bad. Justice is what you are taught at home; if you learn respect at home and carry those things with you, justice is respect for oneself and healing oneself. All of us have not had perfect lives but if you learn within the family and carry it in you and traditionally it can be passed on. My father always said you had to love; it is very important. A lot of people do not have that in their lives and they become angry. It is healing, the traditional way. As inter-agency members we see all of that, healing ourselves, healing our families and taking it out and healing our extended families and our community members and taking that negativity away. If you show respect and love it spreads; that is where we are going with inter-agency.

The respondents who tried to convey this alternative or supplemental vision of Mi'kmaq justice might well be said to be carrying out the task raised in RCAP, namely identifying how, in some respects, justice objectives and processes can be adapted to link up with core matters of aboriginal - here Mi'kmaq - culture and identity. They were certainly aware that effecting any such change would require time and skills and, at the community level, more civic culture and communitarianism. They were aware too that within their own communities, others have different views and that therefore "community

conversations" would have to precede significant justice developments along these lines. They do appear to present a challenge to an MJI-type umbrella justice institute to focus more on adapting its programs to this perspective and less on replicating the mainstream focus on the offender and segmented interests (e.g., the victim versus the offender). At the least this vision would call for some creativity and experimentation in adapting court work activity and restorative justice principles in Mi'kmaq communities. The inter-agency movement in Mi'kmaq communities is a recent phenomenon and reflects the significant institutional development, and capacity building, that has taken place over the past decade. For a host of reasons there are fewer exit options for individuals and families in Mi'kmaq communities than in mainstream society, all the more reason for this movement to have the ideological focus it appears to have, especially in Cape Breton. As the records indicate, MJI board and staff did see the potential and necessity for building community strength in the realm of justice. If it is to capture a more distinctive niche in the future, much more attention will have to be directed to that objective in all its future programming.

STAKEHOLDER ASSESSMENTS:
OTHER CJS ROLE PLAYERS AND GOVERNMENT

Fifteen persons or role players in the criminal justice system (CJS) were interviewed, following a semi-structured interview guide, in a one-on-one format. These included three prosecutors, two judges, two probation officers, a Legal Aid lawyer, five police officers and two CJS service agency directors. The areas of Sydney - Eskasoni and Indian Brook - Truro were emphasized, and, in each area, at least one official role player from each entry-level of the conventional justice system (i.e., judge, prosecutor, police, corrections) was interviewed in-depth. Five interviewees were Mi'kmaq persons. Overall, this sample considered that the specific justice services conveyed through MJI were valuable for Mi'kmaq persons and facilitated the smooth functioning of the CJS, enabling it to better achieve efficiency, effectiveness and equity in its operations with respect to native people. These views were especially pronounced in the Cape Breton subsample. There was not much awareness of the MJI per se on the Mainland though there was some knowledge of, and usually modest contact with, MYOP and the court workers. Among the Cape Breton subsample, there was significant knowledge of the MJI and its constituent programs, and much greater contact with all the staff persons.

Eight government officials were interviewed in person. Three were federal employees (i.e., DIAN and Justice Canada) and five were provincial bureaucrats, all in the Department of Justice. The government respondents were all favourably disposed towards the specific justice programming (i.e., MYOP, NCW, ENTS) though less enthusiastic about the umbrella organization, MJI. Their major concerns focused around issues of good management, accountability, affordability, and comparability of services to the mainstream offerings.

CJS ROLE PLAYERS

The CJS respondents appeared to be very open to collaborating with alternative justice initiatives generated by Mi'kmaq programs. They often expressed a desire to work more closely with the Mi'kmaq communities in their areas and to participate more with the Mi'kmaq programs such as MYOP and NCW. A Mainland prosecutor, for example, reported that, upon taking up his position, he expected that he would regularly be contacted by the native court worker and by the MYOP staffer, especially since a door on the main floor of the courthouse has a plague identifying the room as 'native court worker'. He expressed disappointment that there has been little contact at all. The judge sitting at the provincial criminal court in Eskasoni has insisted on translators even to assist in opening court

proceedings and has participated in a justice circle. A Mainland judge, also a circle participant, indicated that he has been trying to work with the community in his area for years on sentencing and other justice initiatives but has been unsuccessful; he questioned whether the community was ready to commit itself to the considerable effort that family group conferences and sentencing circles appear to require. A legal aid lawyer in Cape Breton, an enthusiastic supporter of the MJI system and all its programs, commented: " I would describe the way I practice as the practice of fear because I am so afraid to miss something that is important culturally or language".

There have been very few justice circles in the Indian Brook / Millbrook area and little experience with the 'translators' program. And the familiarity with the other programs and their staff has been modest. The court worker program was known and considered to have value for both natives and courts, At the same time, there was a view among Mainland CJS officials that there are a lot of repeat offenders among the native accuseds and, given that, they questioned whether the priority should be on court work or other trouble points such as youth crime. A particular concern was the adequacy of legal aid services for Mi'kmaq people in the Indian Brook area. A common view was that, while the court worker activity facilitates court processes through basic things such as driving people to court, there would be more value for native people in having a para-legal appointment in Legal Aid and especially in having the Legal Aid responsibility moved from Windsor to Truro where it would be more accessible to the large Central Nova Mi'kmaq population.

Mainland CJS respondents had little conception of the MJI as an umbrella organization for Mi'kmaq justice initiatives. The one official who knew much about it, a native RCMP officer, saw value in such an arrangement and noted that it collapsed because it got involved in too many matters before it secured its base in conventional program delivery. On the other hand, in Cape Breton there was significant appreciation of the umbrella concept throughout the CJS there. One senior UTPS officer described its value in the following words:

> It simplified things. You had one number to call and you told them what you needed and it was taken care of. We got court workers, access to MYOP, and translators. I used them quite a bit. There was a lot of interaction with the court worker. He was the only worker [in Cape Breton]. We had a great working relationship with him. He was familiar with how things worked here. It helped him in dealing with his clients and helped us by giving us the 'heads up' on what was coming down. The way they centralized services was effective. It made it easier to contact people. They were under one roof. It was easier to access the programs. There was a definite need for another court worker. One individual dealing with five provincial courts, let alone family courts. There were all in his jurisdiction and he was run off his feet.

The MYOP program, whether in its justice circles or community service order work, clearly depends on referrals from the CJS system. With the launching of the provincial restorative justice program (see appendix), referrals for circles can come from any of the police, the prosecutor, the judge or the corrections official. Obtaining the collaboration of these role players will require much networking on the part of MYOP staff. Mainland police services, including the RCMP detachments at Millbrook and Indian Brook, have referred very few cases to MYOP for diversion, though there have been signs of change in the past several months and the RCMP detachment commander has indicated that the feedback from victims in these referrals has been positive. The Truro municipal police have referred cases, basically shoplifting in the Truro malls. It is difficult to speculate about future referrals from the other entry-levels but the experience among non-native restorative justice agencies has been that at these levels (i.e., court and corrections), it will be "a tough sell"; the time and effort required to successfully "pull off" a sentencing circle has been daunting to date for all concerned, whether MYOP staff or CJS officials. There has been a very good relationship between probation officers in the Indian Brook area and MYOP's community service order program so that program has been receiving CSOs and handling them to the satisfaction of CJS officials.

In Cape Breton the relationship between CJS officials and Mi'kmaq justice initiatives has clearly been on a more intense and collaborative basis. There was much more familiarity and networking between CJS officials and MJI staff, whatever the program. CJS personnel were high in their praise of the latter, sympathized with the heavy workload of the court worker in particular, and in general acknowledged the value of the programs even while having some reservations about the long-term efficacy of the circles and the potential abuse of the translators' program. One CJS probation officer, herself a native person with a mostly native clientele, noted that CJS officials there were quite open and seemed to recognize the need for Mi'kmaq involvement and for Mi'kmaq appointees such as herself. She also emphasized how the sharing of cultural experiences facilitates a more open dialogue that builds healthier connections for those who have troubles and provides opportunities for healing; in her words,

> Being from the community really helps. I know their backgrounds and circumstances. I can make placements for them. I found a lot of natives were not saying anything about what was bothering them [when with non-native personnel]. I ask them what the problem is and they really open up. I speak the same language. I am not a professional counsellor but I do open doors to other agencies ... The language barrier is what a lot of them are having a problem with ... there is a need [for translators] ... the court workers are overwhelmed ... MYOP workers are overwhelmed ... there is a strong need. People ask me for advice when I am in court and that is not my job.
> [the consequences of there not being a Mi'kmaq court worker available?] people just plead guilty to get it over with ... A lot of lawyers do not know much about native people

and the conditions on the reserves. They should at least know.

In Cape Breton, the situation has been better for referrals to MYOP but RCMP collaboration has not been as high as might be expected, perhaps because of the low level of crime in the RCMP jurisdictions and also, perhaps, due to the fact that the RCMP has its own community justice forums for diversion. A native RCMP officer there reported that, to his knowledge, no cases have been referred to MYOP and that the community of his band was not ready for dealing with complex cases because family loyalty dominates civic culture. UTPS police have themselves referred only a small number of cases to MYOP while, as on the mainland, the municipal police with jurisdiction in the area of the malls (i.e., CBRPS) have referred a small stream of shoplifting cases. UTPS police respondents, nevertheless, spoke very positively about the recent justice initiatives. One senior officer spoke about his involvement in a sentencing circle as follows:

> It is great. We have great representation. A lot of community members will be there. I was a little apprehensive when I began this sentencing committee because of the crime. It is very sensitive. My feeling was that this guy is looking for a way to get off, a way to avoid jail time. I did not have much faith in the community itself. But since I began, and the more meetings I attended, I am totally of a different mind. I am impressed with the community and how serious they are taking this ... the community was equally as shocked at what happened to the victim as I was. They shared my feelings and that made me feel more comfortable. In the end this guy is not going to get away with it. The community wants him held accountable. This opportunity would not happen in a court setting.
>
> This benefits the community, giving them ownership. The community is telling people out there that they are not going to allow these things to happen without having consequences to be paid for them ... I see great things if these are to continue. I see it as healing too. The community is giving the opportunity for everyone involved to heal, the victims and the offenders. It puts it to rest and gets it over with, to move on. Here you have the community having an impact on what is going to happen and that is a much better system.

While hard data were lacking, there was a sense among the UTPS respondents that these new programs had positively affected recidivism and that they might be even more necessary in the future given the reserves' demographics (i.e., high proportion of youth) and the increasing disclosure of serious family and sexual violence. Generally, there was the sense that the justice circle concept should be expanded; for example, it was considered that reintegration circles could be valuable for reintegrating offenders back into the community. In addition to these positive views, there were a few concerns. Several senior UTPS officers drew attention to the high amount of energy and work involved in

instances of alternative sentencing and suggested that it will have to be reserved for the serious cases. This view was also expressed by other CJS role players who were impressed with the sentencing circle they attended. Another UTPS officer expressed concerned that the MJI court worker approach was too adversarial and argued that was not the culturally appropriate way to proceed; in his view "the native problem here is not understanding but [rather] control and our taking responsibility for justice". He added,

> I think communication is a key issue. There was less or not as much communication with MJI as with MYOP. With communication we could have an exchange of ideas. We are here for the individuals. We are not the bad guys so to speak. I think there needs to be more clarity in relation to the roles and responsibilities, and at the same time being in partnership with MJI workers and UTPS employees.

The sitting of the provincial court at Eskasoni was generally considered a very valuable innovation according to CJS officials and MJI staffers, as well as most residents. It may perhaps symbolize the more in-depth involvement of the CJS with Mi'kmaq people in Cape Breton. One native CJS official in response to the question, "Do you feel there is racism in the courts these days?", commented

> We have courts in Eskasoni every second Tuesday. In Eskasoni I do not see any racism there. The judge even goes on native time, the Indian time now. There is humour in court and you do not see that in Sydney at all. There is a comfort level in Eskasoni but if you are in Sydney, it's all business, not joking, you can't do anything! ... [it's a lot easier for a lot of natives ... a lot of them show up.

Several local community leaders also spoke of the value of the court being on reserve, basically in terms of concrete benefits; one person, for example, observed that people like the court being on reserve since most don't have cars, while another person commented that "it is just a regular court but there is a support system there".

CJS officials, in both areas of Nova Scotia, pointed to the need for some victim services programming, something that appears almost totally missing from the Mi'kmaq court milieu. Several Cape Breton CJS officials, while not discounting the need for the court worker program, echoed the sentiments of their Mainland counterparts in calling for more native involvement in legal aid, primarily through the appointment there of a Mi'kmaq para-legal. CJS personnel in both areas expressed some concern about the creation of parallel Mi'kmaq justice systems, contending that, among other things, it would be costly and would 'ghetto-ize' the native population.

Overall, then, the CJS officials were quite positive about the MJI and its constituent programs, seeing them as beneficial both for the Mi'kmaq people and for their own work in the courts. This viewpoint was especially pronounced in Cape Breton. CJS personnel also pointed to the need for some improvement in the system of Legal Aid to enhance the value of the justice system for native people. Additionally, shortfalls were noted with respect to the provision of victims services.

GOVERNMENT OFFICIALS

The government people interviewed at the federal level generally preferred not to discuss their opinions about MJI and its programs, largely contending that they really knew little about the actual operation of these agencies and services or the people involved with them. The only person who ventured an assessment of MJI considered that it was poorly managed and disappointing in how it dealt with special funding, as neither required reports nor an adequate accounting for funds were ever submitted. From that official's perspective, the MJI did not do well what it was supposed to do and got in over its head, "chasing red herrings instead of minding the store"; "it did not do the basic task of first securing your core activities before you chase other issues". The federal respondents generally emphasized the flexibility and opportunities that existed with respect to native justice initiatives and funding arrangements. It was noted, for example, that the native court worker program has long allowed the native carrier agency to set its own priorities for providing services (e.g., whether to emphasize dealing with first-time offenders or those charged with serious offences that might result in incarceration) and to allocate funds as it saw fit with respect to personnel, management and other cost items; moreover, the federal government has allowed a certain discretion to the agency for involvement in

'front-end' and 'back-end' activities related to court work (including, for example, public legal education and some community work) which was not formally mandated. Interestingly, it has also been possible for funding to be directed to a clinic structure wherein the carrier agent can allocate funds among legal aid, court work and public legal education. According to one official, this flexibility will soon be considerably enhanced. After years of frustrating discussion and negotiation, between the federal government and various native groupings, concerning the native court worker program, there are now, apparently, tentatively agreed-upon recommendations for the program which will close the gap between official policy and actual practice, and which should facilitate more activity with respect to public legal education and services to victims. Moreover, it appears the federal government's approach to the program may become more policy-oriented, whereas, up to this point, it has largely been simply a banker, cost-sharing court work activity in the field of criminal (and youth) courts, the jurisdiction of provincial governments. Despite these possible changes, the native court worker program remains focused on conventional court work in the criminal courts.

This theme of opportunity and flexibility was also conveyed in terms of justice initiatives in the area of band bylaw development and regulation where, presumably, band governance in justice can be advanced. From the point of view of one respondent, the biggest obstacle has been ambivalence among the First Nations - "they [FNs] want the power but they also want the authority of the outside system in order to make sure the offender buys in" and, in general, "in theory people want power but in practice [they] prefer the mainstream for one reason or another". It was also contended that, where a strong and detailed case can be made for a specific justice proposal, pertinent to MJI activity for example, there are funding possibilities at the federal level. While core long-term funding awaits higher level negotiations, short-term funding can be obtained through Indian Affairs or Justice for initiatives that enhance the kind of services MJI provided; here it was noted that DIAN funding for MJI training programs was substantial and over and above funding obtained through the court worker program. The suggestion was made that if one could establish a strong case for term funding of a director position, apart from program costs, the funding was possible through federal programs directed at "building capacity" in First Nation communities.

Provincial government respondents were typically much more focused on the need for clear mandates, detailed budgets and appropriate accountability than on the substance of the Mi'kmaq justice initiatives per se. The general message was that the provincial government is in a tight financial squeeze and all programs are being carefully assessed for their 'value-added" and affordability. At the same time, there was a strong commitment to the twin goals of rejuvenating the MJI in some form and securing funding for the Mi'kmaq justice initiatives. Government officials spoke of a preference for dealing with Mi'kmaq justice initiatives on a Nation basis rather than with each different bands. Moreover, there was apparent agreement with at least two of the RCAP themes, namely that (a) it would be useful to sort out what aspects of justice bear on the core of Mi'kmaq culture and identity and, accordingly, might be subject to their control, and (b) native-controlled systems of justice, though "fleshed out" by Mi'kmaw people according to their needs and preferences, would be substantially similar to that of the larger society. There was, on the other hand, no explicit acknowledgement of the Marshall Inquiry's recommendation that the provincial and federal governments directly fund a Native Justice Institute to be a conduit on justice matters between the Mi'kmaq communities and the justice system, and to undertake research on the potential salience of customary law.

The provincial officials considered that the resurrection of Mi'kmaq justice programming they would be dealing with, would entail basically the conventional programs that MJI coordinated and perhaps public legal education. They took the position that larger issues of a justice department or an equivalent to MFCS, for example, would require negotiations on other and higher levels. They were generally of the view that programs such as MYOP, NCW and ENTS were valuable initiatives but that the umbrella organization (i.e., management and board) had been so poorly operated that it raises the issue of whether an umbrella organization is required at all. They were also much more likely than their federal counterparts to have specific suggestions for operating the specific programs in a more cost-effective way, citing parallels in their own organizations (e.g., dealing with small 'isolated' populations through 'contract staff'). The greatest concern was determining where the funding would come from for rejuvenating and potentially enhancing the systems that had been in place. There was a general acceptance that Mi'kmaq justice initiatives might well be different than mainstream justice services in modest ways; for example, several persons mentioned that MYOP's protocol might well be different than the that of the provincial restorative justice agencies on the grounds of cultural differences.

Overall, then, government officials presented the viewpoint that current programs allow for much flexibility wherein Mi'kmaq people can create justice programming that suits their needs and cultural concerns. It was also considered, at the federal level, that funding arrangements, while ad hoc and project-based, provide opportunities for well-specified proposals. Clear objectives and

accountability, both financial and performance accountability, were deemed to be major considerations, more so than the content or delivery style of the program delivered. The major programs - MYOP, ENTS and NCW - were all considered valuable though there was more questioning, especially at the provincial level, of whether an umbrella organization such as MJI was also required. The government officials typically had a vision of justice programming that entailed modest adjustments or enhancements of conventional criminal justice activities. There was no explicit reference to the 1990 recommendation of the Marshall Inquiry that federal and provincial governments fund a Native Justice Institute to carry out and coordinate a variety of justice activities, of both an operational and research character.

DIRECTIONS FOR CHANGE

INTRODUCTION

Recommendations invariably involve values and judgment as much as they may relate to careful analyses of information. This report has had the objective of producing a thorough assessment of MJI (Mi'kmaq Justice Institute) and its programs, their evolution and performance, and their future possibilities and challenges. To go from that assessment to advancing recommendations and new directions for change is daunting, perhaps even presumptuous. The following recommendations are given in the spirit of contributing to the discussions that must ensue among policy makers and opinion leaders represented in the Tripartite Forum and in the larger Mi'kmaq and mainstream communities.

THE MJI

A Mi'kmaq justice organization, be it a Mi'kmaq Justice Institute or a Mi'kmaq Legal Services, has been recommended by both the Marshall Commission (1989) and the Tripartite-sponsored Clairmont study of 1992. Its functions were deemed to be several-fold but, being an 'umbrella' for Mi'kmaq justice services, in one way or another, and conducting policy-oriented research on Mi'kmaq justice alternatives. were highlighted. The arguments advanced in both these reports apply as much today. In fact, the case is considerably stronger, given the explicit policy statements at both the federal and provincial levels of "nation to nation partnership", and "facilitating Mi'kmaq autonomy and difference", and given the recommendations of RCAP (Royal Commission on Aboriginal Peoples) in 1996 for accommodating justice institutions to core matters of aboriginal culture and identity. The advantages for the constituent, small-scale, programs of being administered by an umbrella organization have been shown to be considerable. The need for a larger umbrella organization to assess the fit of programs to Mi'kmaq preferences and realities, and to facilitate the engagement of Mi’kmaq people in community conversations about future directions in justice is also considerable. As the Law Reform Commission of Canada observed in 1991: "the possibility of differently conceived notions of rights means that any aboriginal justice system must be carefully constructed and needs widespread support". Certainly the community surveys as well as the interviews with Mi'kmaq leaders strongly support a major role for an MJI-type organization in community conversations about justice issues. Moreover, despite its ultimate demise, MJI proved that an organization such as itself, pursuing the tasks it did, represents a significant step forward for Mi'kmaq justice services. Therefore, it is recommended that an MJI-type organization be re-established.

An organization such as MJI cannot survive, well, if at all, siphoning off limited resources designated for its constituent programs. The resources available through the NCWP (Native Court Workers Program) should be directed to that program and its supervision, as should be the case for MYOP (Mi'kmaq Young Offenders Program). Some core funding, then, must be available for an umbrella organization such as MJI charged with such a variety of tasks as, among other things, general administration of a variety of justice services, exploring the salience of customary law, and determining how Mi'kmaq people want to deal with issues of band governance, family problems, wills and estates and so on, Therefore, it is recommended that the Tripartite Forum seek funding for an MJI-type organization among federal and provincial authorities, (e.g., DIAND's "building capacity" program?). In light of the absence of program funding other than NCWP, and, given emerging developments in Mi'kmaq justice through policy development and negotiations at other levels (e.g., APC, Atlantic Policy Conference), it would be reasonable to secure this funding as "special project funding" for three to five years. These funds would support an executive director and modest office assistance and related costs.

It is clear from the interviews and other materials presented in the text, that MJI was not a well-run operation and for that shortfall, both top management and board members must bear responsibility. The constituent programs, especially NCWP which had no internal supervisor, were poorly directed, personnel relations were terrible, the board seemingly divided and directing its attention to other considerations, the organization drifting in response to external stimuli rather than guided firmly by a strategic plan, and, of course, there was the apparent financial mismanagement. At the same time, it should be noted that what the MJI did in developing new initiatives was not inconsistent with what community residents and political leaders wanted it to do, that much was accomplished in laying a solid base for the organization's structure and process and for the pursuit of a larger vision of Mi'kmaq justice, and that many persons volunteered a considerable amount of time and energy on behalf of Mi'kmaq justice. The issue now is how to get an MJI-type organization up and running again, this time more effectively and drawing on the lessons learned from the MJI experience.

It took several years for Mi'kmaq leaders to agree on the format of MJI. In this evaluation it was found that most board members and other knowledgeable persons expressed reluctance to revisit that arrangement, despite the fact that the 'constitutional' processes (i.e., collaboration among the founding organizations, selection of board replacements, and general board processes) did not work well in actual practice. That reluctance is shared here. It is recommended that an MJI body be re-established with the same basic institutional arrangements, that is, the framework entailing the collaboration of the five founding organizations, the same board structure and operational policy, and the same general office policies. There are a host of recommendations, which follow, which are geared to

making that organizational arrangement work better and these largely address issues of implementation.

Board members should be sought among people who have the time and commitment to attend regular board meetings and participate in one or two special board sub-committees. They should be Mi'kmaq persons with an interest in justice issues and represent a good mix of program-oriented people and people focused on the larger picture of where Mi'kmaq justice is heading and should go. The executive director of the organization should be a person who is an excellent manager of people and programs and who can network well and facilitate dialogue and community conversations about justice issues.

The board and executive director should develop a strategic plan for the organization which is vetted among staff and publicly communicated to the founding organizations, band councils and local service agencies. The strategic plan should have short term and long term objectives and be re-specified yearly as a business plan. The board should have several sub-committees, including committees for personnel relations, finances, community networking and the three basic justice programs being delivered (i.e., MYOP, NCWP, ENTS). All committees should have ex-officio or seconded members where needed or deemed valuable. There should be an executive committee of the board. The committees should meet regularly and their expenses should be covered by organization.

In order to kick-start a rejuvenated MJI-type organization, the current board should implement procedures, based on the MJI constitution, for securing their replacement. There should be 'new blood' on the board but not necessarily total replacement. Board members have gained valuable experience concerning how such an organization should function and they should pass that knowledge along in the form of recommendations concerning dealing with extant programs, responding to new opportunities and referrals whether by government or Mi'kmaq political leaders, and setting forth guidelines for board membership (e.g., participation responsibility) and for handling conflict of interest situations on the part of all organizational members, including board members, executive director and staff. There is no basis to indicate that the MJI staff - the justice workers and MYOP employees - were negligent or incompetent in any way, and they should be encouraged to seek re-employment with the organization.

THE THREE PRIMARY JUSTICE PROGRAMS

The native court worker program in Nova Scotia, for almost thirty years, has always been embroiled in controversy and generated much stress and frustration among its staffers. It has had many

ups and downs and never survived for more than two years under any specific format. And, of course, it did not really beat 'the two year jinx' under MJI this time either. The recommendations of the Tripartite 1992 report, and the suggestions contained in the chiefs' proposal of 1993/94, were not adequately adopted. As explained in the text, and as the reported experiences of MJI's justice workers indicate, the court worker / justice worker program has to be appropriately supervised and administered if it is to be province-wide and deal well with the various objectives and tasks expected of it. Following the 1992 recommendation, as well as the recommendations of Coflin & Associates in 1998, it is recommended here that the program be embedded in an umbrella organization such as the MJI. The economies of scale, the collaboration among different Mi'kmaq justice services, and the advantages of having a larger vision for considering the evolution of the service - for these and other reasons, the program should be part of a larger justice organization, as virtually all inquiries and evaluations have suggested. It is also recommended that the program have its own supervisor or coordinator, whose tasks would be to coordinate the court work / justice work activities, develop and maintain guidelines and priorities for the justice workers, ensure the appropriate information is collected and reported regarding the cases handled, clients contacted and other activities performed, engage in community consultations and CJS (Criminal Justice System) networking, and generally strive to achieve an effective and efficient program. This supervisor / coordinator should be basically that, a supervisor, not a field employee. The supervisor should report regularly to the director of the umbrella organization in which the program is embedded and should be advised regularly by a subcommittee of its board.

Ideally, the program should have four field staff but it may be possible to accomplish its objectives with the current complement of three persons, if a system of associate justice workers or court workers (whether volunteers or on a contract fee for service) can be implemented to deal the low caseload in the less populated areas of the province. It is recommended that the three current sub-offices at Membertou/Eskasoni, Indian Brook/Truro and Halifax Regional Municipality be maintained. These are the areas of high demand, accounting for over 90% of the MJI justice workers' activity. It is recommended that a system of associate justice workers or court workers be established and examined on a trial basis. If a fourth full-time, field employee is shown subsequently to be required, it is recommended that the person be assigned the area 'straddling' the causeway, namely Southern Cape Breton and the Mainland up to New Glasgow.

The NCWP as implemented in Nova Scotia almost exclusively did conventional court work activity (i.e., assist the offender in navigating through the court system). The NCWP is a program that was developed in the early 1970s, prior to the major imperative of increased community controls over justice matters and to other social movements such as the victims' movement. The emphasis, then, was

basically on equity in the processing of native persons through the mainstream court system. As seen in this report, many people now question such a conventional, offender-based thrust and, at a minimum, want a more community-oriented service; some leaders even advance a more holistic Mi'kmaq justice model where the justice worker would serve offender, victim and community. There appears to be, as well, increasing flexibility allowed in the NCWP for native carrier agencies to adapt the program in these broader and more holistic ways. The use of the label 'justice worker' would seem to imply that the Nova Scotian program had such broad objectives in the first place. Can and should the program be so adapted in Nova Scotia? Would workload permit the assumption of more varied tasks? It could be argued that it could, provided the program had a full-time supervisor and clarified and limited the types of services that the justice worker was expected to provided. A case can well be made that, since justice workers or court workers are neither lawyers nor trained counsellors and since they deal so frequently with repeat offenders, their involvement with offenders need not be so time-consuming as to prevent their working with victims and doing public legal education at the community level. It may be noted that the character of crime patterns has been changing in Mi'kmaq communities (i.e., less personal, violent crime) and that there is some demand for justice work in family and civil matters; both these considerations would favour a less adversarial or advocacy role for the justice worker. Perhaps a more important issue than workload would be whether providing services to victims as well as offenders would be a conflict of interest and raise problems of confidentiality, advocacy and so forth. Clearly, there are complex questions here to resolve but this evaluation recommends that justice workers be justice workers and engage in community justice activities and explore how they can better serve victims. Even if, ultimately, adversarial imperatives win out over holistic ones, the justice workers could facilitate victims' liasing with regional Victims Services organizations.

MYOP has been a successful Mi'kmaq justice initiative. Operationally, while MJI was extant and not in crisis mode, MYOP profited from being under its umbrella, especially at the level of collaboration among the MYOP staff and the justice workers, and in both Cape Breton and the Mainland; such collaboration provided needed support for the small staffs involved in either program. It is recommended that MYOP be administered again by such an umbrella justice organization. As explained fully in the text, it is recommended also that MYOP expand its reach in providing justice circles to more serious offenders and in instances of more serious offences. Further, MYOP must do more in terms of informing and educating the communities on its objectives, structures and processes, especially as it moves more significantly into the controversial area of responding to serious offences. At this point in time, MYOP's workload is modest and it appears to have sufficient resources to meet both these challenges but there should be a review of the situation especially if MYOP takes on many adult referrals. There is some indication that MYOP might develop in-house programming in areas such as anger management. This strategy could seriously divert resources and attention from its primary

objectives and the challenges noted above, and raises questions as well about the depth of expertise of current staff. It is recommended that this trajectory of development be re-considered; it should be assigned a low priority, though not necessarily scrapped. The challenges noted, as well as other stated current objectives of MYOP, as listed in the text (e.g., enhancement of victim support, incorporating RCAP's concerns), should be accorded central focus. The small size of MYOP staff, and, in the Mainland at least, their relative isolation, can generate problems of stress, absence of backup, and inadequate opportunities to learn and share experiences in this 'restorative justice' area of justice programming and so on. It is recommended that MYOP staff network much more, not only within the Mi'kmaq community (e.g., in interagency activity) but also with their mainstream counterparts. It is difficult to assess MYOP's performance when there is so little information routinely collected and reported on crucial matters such as who has attended the justice circles, the subsequent behaviour of offenders, the views of participants who have experienced the circles and so forth; after four years there should be much better data retrieval and management. It is recommended that MYOP pay much greater attention to this basic management task.

The translator service, ENTS, is a relatively low use justice service applicable largely to Cape Breton, and especially Eskasoni. It is of much practical and symbolic value for Mi'kmaq justice concerns. ENTS usage increased significantly when it was administered under the MJI umbrella. It is recommended that it be administered again by such an umbrella justice organization as soon as possible. Reportedly. the number of available translators has shrunk precipitously; in revitalizing ENTS, the need for a renewal of the translator's training program at the University College of Cape Breton (UCCB) should be considered, both to maintain the quality of ENTS and to increase the supply of qualified interpreters. Virtually no data were available regarding the socio-demographic characteristics of the translators or of the service's users, nor was it recorded whether (and how frequently) the service was accessed by victims and witnesses as well as accuseds, nor whether the users or clients were satisfied with the service. It is recommended that these data be regularly collected and reported. There were several other issues raised concerning ENTS that are noted in the text (e.g., the adequacy of courts' transcribing translators' statements and comments in court).

OTHER JUSTICE ISSUES

As noted in the text, a number of other justice concerns for Mi'kmaq peoples were raised by respondents. In particular, many political leaders, CJS role players, community residents, and MJI staff identified the need for more legal services, particularly mentioning Legal Aid. It may be recalled that

some MJI board members developed a proposal for a Mi'kmaq Legal Commission. The proposal did not bear fruit. It would seem quite unlikely that suggestions to hire a Mi'kmaq lawyer in Legal Aid would be successful now, given the current fiscal realities in Nova Scotia and the ambivalence in the CJS community concerning the priority of such a move, as well the fact that currently two Mi'kmaq band members are employed in Nova Scotian legal aid services, albeit outside the high traffic areas for Mi'kmaq clients. Nevertheless, there are some things that could be done which would improve Legal Aid services for native people, It is recommended that, on the Mainland, responsibility for Legal Aid in the Shubenacadie area (where Indian Brook accuseds typically are processed) be shifted to Truro Legal Aid. This recommendation was advanced in 1992 and has long been championed by Central Nova CJS role players and by Indian Brook leaders. Under current circumstances Indian Brook residents rarely travel to Windsor where the responsible Legal Aid is located and, accordingly, their contact with Legal Aid is limited to arraignment and other court dates. In Cape Breton, it is recommended that a qualified Mi'kmaq person be hired as a para-legal to liaise with Legal Aid with respect to the Mi'kmaq communities in the Membertou-Eskasoni area; there appears to be much support for this innovation among CJS and Mi'kmaq leaders.

There is little sign of victim services in the Mi'kmaq legal services milieu. It was clear from the interviews with political leaders and local service agencies representatives, and from the community surveys, that, as in the mainstream society, there is strong desire among Mi'kmaw to have a justice system which is as responsive to victims as it is to offenders. Above, it has been recommended that the three central Mi'kmaq justice programs - ENTS, MYOP and NCWP - all should become much more sensitive to and involved with victims. The most dramatic change could be with the justice workers' activities. If the changes recommended for the justice workers' mandate with respect to victims, are not acceptable, then some other mechanism, presumably within a Mi'kmaq justice umbrella organization, must be found for liaison with Nova Scotia Victims Services; it would be quite expensive to mount a separate Mi'kmaq Victims Services. Finding an efficient and effective solution to the concerns of victims is requisite to the community acceptability of the remaining programs, and, unless there is a solution, Mi'kmaw will be less satisfactorily served by the CJS than their mainstream counterparts.

The history of the MJI leaves little doubt that opportunities could arise for pertinent, funded Mi'kmaq justice activities (e.g., band governance), and certainly referrals and requests to an MJI-type organization could be expected from political leaders. Given the long-term objectives of Mi'kmaq leaders, it is not unreasonable that these opportunities and referrals should be considered. Clearly, though, such an organization should not allow itself to become overwhelmed by taking on major activities without the funds and personnel to do so, and not at the expense of the its current

programming. Mi'kmaq leaders and community residents alike want to see successful program implementation and want to build on solid performance foundations. It is recommended that additional activities should be congruent with a strategic plan developed by the board, a flexible and periodically reviewed strategic plan, and that the executive director and other staff (e.g., the coordinator for the justice workers) should not be directly employed in (nor draw any salary from) such new developments.

CONCLUSION

A new opportunity presents itself to effect the considered recommendations of the Marshall Inquiry, the Tripartite Forum's 1992 report and the 1996 RCAP agenda, and to advance the explicit, consensus political objective of governments and Mi'kmaq people to achieve a justice system where Mi'kmaq people have justice services subject to their control and reflective of their needs, values and traditions. The recommendations made here are modest in all respects. Costs, additional to those that supported MJI in fiscal 1998-99, would probably be about $85,000 annually and might well be obtained, with Tripartite support and brokerage, from special federal project funding. It is important that a new Mi'kmaq justice initiative have flexibility and room to be creative, to be able to successfully carry out specific modest programs while, simultaneously, keeping, what civil rights leaders used to call, "an eye on the prize", a larger vision of greater control and distinctiveness in justice as it applies to Mi'kmaq communities. The recommendations have been designed to encourage that simultaneous focus on the 'trees' and the 'forest'. Mi'kmaq leaders have a responsibility to operate programs in efficient and effective ways, with attention to proper administrative practices and transparent accountability. Governments have a responsibility to follow through on their commitments to facilitate meaningful Mi'kmaq justice initiatives. Trust and commitment on all sides can produce a significant evolution of justice in Nova Scotia.

BIBLIOGRAPHICAL CITATIONS

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

Asch, Michael (ed.), ABORIGINAL AND TREATY RIGHTS IN CANADA: ESSAYS ON LAW, EQUITY AND RESPECT FOR DIFFERENCE. Vancouver: UBC Press, 1997

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

Braithwaite, John, CRIME, SHAME AND INTEGRATION. New York: Cambridge University Press, 1989

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

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, "COMMUNITY-BASED POLICING: IMPLEMENTATION AND IMPACT", Canadian Journal of Criminology, July-October, 1991

Clairmont, Don, CRIME, POLICE AND JUSTICE IN INDIAN BROOK: 1991-92. Halifax: Atlantic Institute of Criminology, 1993

Clairmont, Don, DIVERSION AND THE SHUBENACADIE BAND: AN ANALYSIS AND INTERIM EVALUATION. Halifax: Tripartite Forum on Native Justice. 1993

Clairmont, Don, NATIVE JUSTICE IN NOVA SCOTIA. Halifax: Atlantic Institute of Criminology, 1992

Clairmont, Don, NATIVE JUSTICE IN NOVA SCOTIA. 3 Volumes Halifax: Queen's Printer, 1992

Clairmont, Don, THE ACTIVE POLICE ORGANIZATION: COMMUNITY-BASED

POLICING AT HALTON REGIONAL. Halifax: Atlantic Institute of Criminology

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, TO THE FOREFRONT: COMMUNITY-BASED ZONE POLICING IN HALIFAX. Ottawa: Canadian Police College, 1990

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

Coflin, Jim, REVIEW: MI'KMAQ JUSTICE WORKER'S PROGRAM. March 1998

Fienup-Riordan, ESKIMO ESSAYS: YUP-IK LIVES AND HOW WE SEE THEM. New Brunswick: Reutgers University Press, 1990

Folk Law and Contemporary Coast Salish Tribal Code. In American Indian Culture and Research Journal, 1995, 19(3) 141-164

Frideres, James, NATIVE PEOPLES IN CANADA. Scarborough: Prentice-Hall, 1993

Green, Ross Gordon, JUSTICE IN ABORIGINAL COMMUNITIES: SENTENCING ALTERNATIVES. Saskatoon: Purich Press, 1998

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

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

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 INNCER 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

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

Merry, Sally Engle, CULTURE, POWER, AND THE DISCOURSE OF LAW. In New York Law Review, 1992 (37) 209-225

Miller, Bruce, THE INDIVIDUAL, THE COLLECTIVE, AND TRIBAL CODE. In American Indian Culture and Research Journal, 1997 21(1) 107-129.

Miller, Bruce, THE PROBLEM OF JUSTICE. Nebraska Press, 2000.

Murphy, Chris and Don Clairmont, FIRST NATIONS POLICE: A SURVEY OF POLICE OFFICERS IN FIRST NATIONS COMMUNITIES. Ottawa: Solicitor General Canada, 1996

Nader, Laura, HARMONY IDEOLOGY, 1990

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

Police and Public Safety Services, WHITE PAPER ON THE DEVELOPMENT OF A POLICING PLAN FOR NOVA SCOTIA. Halifax: Department of Justice Nova Scotia, 2000

Police and Public Safety Services, BOARD OF POLICE COMMISSIONERS: ROLES AND RESPONSIBILITIES. Halifax: Department of Justice Nova Scotia, 1989

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

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

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

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

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

Waldram, James, THE WAY OF THE PIPE: ABORIGINAL SPIRITUALITY AND SYMBOLIC HEALING IN CANADIAN PRISONS. Peterborough: Broadview Press, 1997

Warry, Wayne, UNFINISHED DREAMS: COMMUNITY HEALING AND THE REALITY OF ABORIGINAL SELF-GOVERNMENT. Toronto: University of Toronto Press, 1998

APPENDIX I

BACKGROUND MATERIALS

MI'KMAQ / NOVA SCOTIA / CANADA - TRIPARTITE FORUM ON NATIVE JUSTICE IN NOVA SCOTIA

Volume III, Section A.: The Native Court Worker in Nova Scotia

The Native Court worker Program (NCWP) in Nova Scotia has had a long and tortured history. The classic form, federal-provincial cost-shared NCWP, was only in existence for two of the last twenty years. But the program in various guises has bobbed and weaved throughout the years, taking major blows from constitutional requirements and larger political strategies but always resurfacing and always an important consideration in the policy deliberations of the major native organizations. Perhaps that fact in itself signifies a considerable underlying need. In discussing the NCWP here we focus on three periods, namely the founding era beginning in 1971 and culminating in the federal-provincial- native agreement of 1974-1976, the makeshift era covering the years 1977 to 1982 where in effect there was no provincial government involvement (financial or otherwise), and the post-Marshall Inquiry era which includes this research.

NCWP IN NOVA SCOTIA: FOUNDING ERA

The first stirrings of the NCWP in Nova Scotia occurred in the early 1970s when an articulate and assertive native person began performing the service in the Sydney courts under the aegis of the John Howard Society. Subsequently, through a manpower grant, a 'local initiatives project', a more substantial service was developed involving two Court workers. This project was administered through UNSI and the Court work activity was linked to a larger alcohol and drug focus in conjunction with the National Parole Board (Freedman, 1990). In April 1974 a full-fledged NCWP was launched with its own board under a two-year, renewable, cost-sharing agreement between the Department of Justice and the Nova Scotia Attorney General. While UNSI was the initiator and major player on the native side (handling the executive board functions) there was collaboration with the Non-Status Indian and Metis Association of Nova Scotia, and an advisory board with representatives from both organizations as well as government was established.

Interviewed in 1991, the major native figure in Court work activity throughout this era and the first co-ordinator of the NCWP, noted that he became involved because he was deeply angered at the way native people were treated in court and believed (and continues to believe) that, "Natives need to feel they have the backing ...that they can go there [to court] and get some backing.". In his view natives and 'whites' have different conceptions of court justice where the native will say, "I did it so how can I plead not guilty.". He acknowledged that his anger sometimes overflowed and recalled how once he had pursued a judge into his chambers to complain about slurs against native people which he felt the judge and prosecutor had engaged in. (1) He felt that he was successful in the courtroom and that his anger made him willing to be an advocate and speak up. He had received some training through Legal Aid and "got along well with them". He considered that other officials got mad at him because he was successful in getting a lot of native defendants to plead not guilty. Realizing he said that he had become *persona non grata* in some official eyes and worrying about a negative impact for his clients, he decided to withdraw from the program.

A native woman who had been involved in Court worker activity since 1972 became co-ordinator of the NCWP in 1975. She had a clear and conservative vision of the NCWP which she articulated well for the Marshall Inquiry (p.13029):

> [Were you satisfied that the NCWP was fulfilling a useful function?]
>
> Yes it was… the native people to better understand what was happening to them, better to be able to accept it and to help themselves within the system because to me...you do something for someone to help them to a point. You educate them how to help themselves in case this might happen again in the future and you also were there to assist the non-native that were dealing with native peoples to become better aware of some of the problems that they have in understanding and relating to the system.

Her approach as she noted in the Marshall Inquiry was less dramatic than her predecessor's in the courtroom but through follow-up notes to judges and others she brought to their attention shortfalls in their dealings with native defendants. She felt that she got along well with judges once she got known to them and suggested that a militant person could be self-defeating. Moreover she managed the NCWP into a very wide range of activities over the justice system (e.g., prison liaison). Interviewed in 1991 she emphasized the need for a holistic approach that did not limit Court worker activity to criminal

cases; in her view just doing the latter was really impossible as once the Court worker gets known calls mounts; besides, she added, "You have to be connected with the whole picture; it all fits in.". It should be noted that when she was the NCWP co-ordinator there was not the service infrastructure now available (e.g., NADACA, MFS, prison liaison) in the native community. Her orientation appeared to be one emphasizing independence and professionalism. She appreciated the advisory board concept where knowledgeable and influential people, native and non-native, could be consulted and disliked the term 'court worker' since the latter in her view did not generate respect in the court ambience. In her view training and organizational sophistication were important since NCWP had "the monumental task of dealing with lots of departments staffed by experts".

Given the high expectations the co-ordinator had and the reality of quite modest staff training, high staff turnover and significant organizational confusion and 'politics' (including a dual reporting responsibility to the advisory board and UNSI) one might expect there would be much frustration. Having heavy familial responsibilities, taking university courses and committed to the position that she along with other staff persons should be 'hands-on' and have a significant client load, it is not surprising that she testified "it was a hard program to work with" (Marshall Inquiry, p.13034).

Certainly that was the view also of another person who was a Court worker for a time in the program. Interviewed in 1991 he recalled that then there was no training, no proactive or therapeutic programs and no community education work. He felt as if he were in a pressure cooker although his workload was only a few cases a week and he just did "court work and taxi work" (i.e., driving people to court and to legal aid primarily). A major problem was that people phoned him at home a lot and they did not understand the program. Many defined it as "getting a person off" and the result was, "If a person didn't get off they complained about your work and on the other hand the victim's family got mad at you for even taking the case [client].". Having received threats against himself and his family and given the limitations of the program he resigned after a short time. Despite that experience he has always believed in the necessity of having both a NCWP and an interpreters' service. He has little doubt that the program could make a difference, reporting that even in the earlier era where court officials were less sensitive to native people, he did get called 'into the backroom' to discuss the case and sentencing options with the judge and the lawyers. In his view any new NCWP should have high recruitment standards (i.e., at least high school graduate and experience) and should have a broad

mandate. He stressed the importance of community awareness of the NCWP's objectives and of public legal education generally. Given the educational improvements over the past decade he believed that a talent pool was available for a province-wide organization right from that start and opined that the organization should be directed by a board which included chiefs and other native representatives since it would apply presumably to both reserve and offreserve native people.

Descriptive data and records on the NCWP during the 1974-76 period are very incomplete. At the end of the first year's operation the staff consisted of a co-ordinator and five Court workers whereas at the end of the second year there were two fewer Court workers. Apparently the combination of inadequate budgeted funds for travel, training and advertisement and inflation (no cost of living factor was budgeted for) caused the NCWP to run a deficit and led to a reduction in staff (2). Although one person was laid-off turnover had perhaps made the reduction easier to accomplish; at least three persons had left the organization in the 1975-76 year alone. The records for 1974-75 were unavailable but quarterly and year-end reports were available for 1975-76. These reports indicate that the NCWP was involved with a host of justice issues including family issues (child welfare, divorce), other social welfare matters, information requests, assisting persons in filing complaints and of course criminal code 'cases'. The latter type of case accounted for slightly less than one quarter of year-end total of over 3000 'cases' (where the term case apparently indicated any contact, including dispensing information via telephone). Taking into account that individual clients may account for several cases, it would appear that the average number of criminal court clients per Court worker per week would indeed be as indicated by the Court worker above, namely a few a week.

It appears that once the 1974-76 NCWP came into effect there was a two-week training session provided by the co-ordinator. Subsequently in 1975 there was a one-day training session provided through the Attorney-General's office. The latter featured a discussion of court procedures and court roles and a mock trial was held. The instructor observed that there was a significant gap between the skills required for the NCWP and the capabilities of the Court workers; he recommended much more training including both apprenticeship and structured programs (NCWP Correspondence). The NCWP co-ordinator was quite aware of the training needs and both she and the collaborating native organizations tried unsuccessfully to secure special project funds for this purpose. The lack of training, the limited talent pool of college or even high school graduates at that time in the native

communities, the co-ordinator's strategy of handling herself a heavy client load which in turn limited her supervision, the large amount of time spent 'on the road'. Undoubtedly such factors fed on one another and helped to create the pressure cooker atmosphere already noted.

Given the scarce resources in relation to the broad 'Court work' activity conducted and the province-wide mandate it is not surprising that little effort was spent on community linkages. The NCWP was very reactive in character. A brochure had been prepared and distributed and the co-ordinator in 1975-76 spoke at about a dozen reserve and off-reserve meetings. All who were active in the NCWP recognized that there was more work to be done along these lines. Similarly there was apparently fairly widespread agreement that the organizational structure was flawed. The co-ordinator in January 1976 suggested to collaborating organizations that the NCWP would function better if it was an independent organization with its own board of directors. Leaders of the collaborating native organizations agreed with virtually all these budgetary, training and organizational concerns and, as the NCWP was nearing completion under the initial cost-sharing agreement, had proposed to the governments budgetary and administrative changes including a new advisory board; the UNSI president wrote, "We do not want UNSI and NSIMANS executive to be on the advisory board for they have played politics in the past." (NCWP Correspondence)

Disagreement between native leaders and government over the level of funding, and by implication the level and quality of the service that could be provided, helped cause the NCWP to come to an abrupt end in March 1976. UNSI (as well as the Non-Status and Metis Association and the NCWP co-ordinator) wanted a substantial increase in funding for 1976-77 to bring the complement of Court workers up to eight but it was unable or unwilling to provide the funding agencies with an acceptable audit; the province, unable to monitor things, was also uncertain about the administration of the NCWP (Freedman, 1990). There was another crucial issue, in fact, perhaps the crucial issue since the Nova Scotia Liberal government indicated in correspondence to UNSI that otherwise they would be "prepared to continue the program on a similar basis as it had been run in the past". The NCWP became embroiled in larger political issues as UNSI decided it could not accept provincial funding in its name, regardless of the 'carrier', without possibly jeopardizing its aboriginal title. The Province was for its part unwilling to go along formally with the UNSI-proposed 'fiction' that its funds be designated for non-status Indians and Metis whereas federal funds were for status Indians; accordingly, given the UNSI position, it simply terminated the program and refused requests to develop alternative

arrangements with the non-status organization (see NCWP Correspondence).

Leaders of the collaborating native organizations indicated that in their view the NCWP had been performing a valued service. There is some indication that government officials considered the program to be successful and beneficial for native people (NCWP correspondence). Testimony in the Marshall Inquiry suggest that most players in the criminal justice system did find the NCWP quite beneficial. A Legal Aid lawyer rated the program well (Marshall Inquiry, p.5428) and judges were reportedly positive. Court officials, particularly in the smaller courts where there may have been more of a problem with language and low formal education, were also seen as quite supportive. NCWP co-ordinators testified that while some officials, prosecutors and police in particular, were less enthusiastic about their presence, overall they thought they had achieved a credibility for the NCWP in the justice system. They also reported an acceptance of the role in the community, attested to at least by high demand for service.

Perhaps the major implications to be drawn from the demise of the NCWP in this era are the necessity for an apolitical organizational structure, the importance of full-time management, the need to avoid a 'pressure-cooker' work environment by having well-trained staff dealing with prioritized tasks, and the value of a well-informed and supportive native community linkage. The letters of the Non-Status and Metis Association and UNSI leaders (March and April 1976) indicate clearly the problems that ensue when a program gets caught up in the larger political agenda of organizations. The importance of full-time management is reflected is the hectic pace and threats of resignations on the part of the co-ordinator who herself handled an incredible caseload apart from any management responsibilities. The pressure-cooker work environment is indicated by the turn-over of staff and the sense of being overwhelmed while only handling a few conventional criminal court cases a week. The lack of a supportive, informed community base is reflected in the threats some Court workers received and the unrealistic expectations for service (e.g., drives, calls at home) they often encountered.

THE NCWP: THE MAKESHIFT ERA

While the federal-provincial cost-sharing agreement collapsed in 1976, Court worker activities

continued to be provided for natives in Nova Scotia under ad hoc, special funding. UNSI used some of its Indian Affairs' funding for social programming for this purpose and the Native Council of Nova Scotia, NCNS, (formerly the Non-Status and Metis Association), provided Court worker services for its constituency under a CEIC, Canada Works Program grant. Attempts by UNSI to provide more substantial and secure funding for a NCWP repeatedly came up against the requirement that such programs be cost-shared by federal and provincial governments. As one federal-provincial correspondence related:

> Provinces have the constitutional jurisdiction for the administration and delivery of justice services [therefore] the status of federal involvement with the cost-shared NCWP is conditional on full provincial participation.
>
> (NCWP Correspondence)

Throughout much of this period the Department of Justice was involved in many negotiations and several ways of mounting a program were considered but ultimately provincial contribution was seen as an obligatory constitutional feature of such programs. Attempts to involve the now Conservative Nova Scotia Government in a new funding arrangement proved unsuccessful. While agreeing in 1979-80 to a short-term, four-month 'fiction' whereby UNSI funds were deemed to be the provincial share in a federally required cost-sharing agreement (3), the provincial government pleading both insufficient funds and democratic principle, refused to contribute anything at all. The Province's political principle or position was repeated frequently in the 1979-82 period in correspondence with native leaders who requested funds for a NCWP. Its essence is summed up in the following 1982 Attorney-General's response to one such request:

> I am unable to recommend provincial funding for a NCWP because in my opinion the Indian population constitutionally are the responsibility of the Federal Government and if special services over and above services available to other people of the Province are thought necessary, then such should be provided by the Federal Government.
> (NCWP Correspondence)

In 1981 a native Court worker service was being provided under the direction of Union of Nova Scotia Indians (UNSI). It was coordinated by a director operating out of the UNSI offices at Membertou and had a staff of five Court workers, three of whom carried out their duties on the mainland. Funding came from a variety of sources and program areas as co-ordinated by UNSI,

including, apparently, Indian Affairs, the Department of Justice and the Nova Scotia Law Foundation. The Court worker program was part of a larger UNSI program so its budget was always contingent upon UNSI's general revenue situation.

The director of the Court worker program in 1981 had been a Court worker in the initial program described above. Interviewed about this second phase he recalled that the program, like the earlier one, had employed a brochure or flyer to advertise its services, identifying the Court workers and their functions. Also a national Court worker manual was utilized for training purposes. While acknowledging that in-service training was limited, the director considered that it was adequate. He spent a fair amount of time 'hunting for funding' and also attending various Court worker conferences throughout Canada (e.g., PEI, British Columbia, Alberta), adding that he always tried to take one Court worker with him to enrich the latter's experience. He himself was a member of the national advisory board for Court workers. In his view judges were not familiar with the program and little contact had been effected there. He believed that the Sydney Police Department and the RCMP detachments were favourably disposed as a result of his frequently meeting with them; "[They saw us as] ...we were the buffer between the natives and the criminal justice system.". He believed that crown prosecutors were also favourably disposed once they came to realize that, "We were offering a service to the criminal justice system [e.g., getting people to court on time].". When no lawyer was present he, as Court worker, sat beside the native accused while if a defense lawyer was there, he sat behind the rail. He reported too that he sat in on plea bargaining and that the Legal Aid director in Sydney had sent a memo to his staff okaying this presence provided that the client had signed the Court worker program's form specifying the request. From his perspective the Court worker program was successful in establishing its credibility within the criminal justice system.

The director observed that there was an attempt at least to link up with the native community. He got the bands to provide office space, undertook a few workshops in schools and liaised with native counsellors. Still there was little contact with the chiefs and the bands and he was disappointed at that since he regarded the community response as very important in small sometimes fractious communities where a case of assault can have widespread implications. Given this situation, he noted that it is very essential to select the right people, train them well and create a professional-type image in the community. Training and formal credentials are important ingredients here but also necessary, in his

view, is the requirement of a good organizational structure which is accountable and sustains the professional stature of the Court workers. He suggested an organizational structure apart from existing political organizations with a board of directors that includes representation from the chiefs as well as sensitive and respected community people especially elders and women. The fact that the Court worker program's funding and operation was so intertwined with UNSI was a major reason for the director's resignation in 1982.

Looking back the director considered that it was difficult to get native accused persons to appreciate that pleading guilty and getting a record would have implications for jobs, bonding and the like. Still, he thought that the Court worker program was successful in reducing the percentage of guilty pleas and claimed that nowadays natives are much more open to seeking lawyers and that their rate of incarceration has declined. Unfortunately he could not produce any hard data to support these claims. He also contended that 'demand' may be down since fewer native people are charged. While agreeing that such a development if true might be a function of increased educational achievement as well as community development, he also pointed to the role of some idiosyncratic factors such as the reluctance in some native communities to lay charges and thereby contribute to provincial fine coffers. The lower demand could in his view allow for a more encompassing Court worker role in the native communities, one that leads to community workshops and public legal education, diversion programming and alternative dispute resolution and more effective liaison with the justice system. He cautioned though that despite the Marshall Inquiry and the improved education there is still a comprehension problem among many natives and still a large number who have limited contact with non-natives and find the justice system external and alien.

Overall then the director of the Court worker program in the late 70s and early 80s believed that the Court worker program had been successful in reducing incarceration, having natives consider more before pleading and making the courts more sensitive to native traditions (e.g., having people pay fines and meet probation obligations in the late fall rather than in the late summer months when traditionally they have migrated to the United States for work). He believed it achieved a level of credibility in the justice system and was much appreciated by native people. At the same time there were some shortfalls especially in terms of organizational structure, off-and-on financing and community

knowledge of the way the program should operate. The changing demand situation and an improved organizational arrangement could facilitate a Court worker or justice worker program, he believed, which could overcome these problems.

The 1981 weekly reports of one Court worker who had responsibility for south-western Nova Scotia (and shared some duties for the metropolitan Halifax area), indicate well the nature of and demand for the service at that time in that region. Her reports began on January 19, 1981 and came to an end with her resignation on May 25, 1981. These reports indicate that over the four-month period she had contact with approximately 20 different clients, only a handful of whom would fit neatly in the category of offenders of a criminal code transgression. Although she did not provide a precise time sheet for her different activities it seems that her efforts were about equally split among assisting criminal code offenders, assisting in family problems (eg, divorce, adoption), and helping out in civil matters such as wills, small claims and band registration.

It is clear that the lion's share of her time was spent on advocacy work and especially getting information for people and determining their rights on a wide variety of fronts from band business to town policies and adoption rules. There is no question that the term, justice worker,
would better describe her activities than would the term, Court worker. Much time was especially spent travelling to meet persons at correctional centres, legal aid and agency offices etc throughout south-western Nova Scotia. She assisted authorities and agency personnel in various ways, including probation and pre-sentence reports and locating persons. And given her wide role definition, much time was also spent gathering information such as checking out the services and costs of a law referral service or finding out about gun regulations. During the four month period the Court worker attended a one day workshop in Sydney held for all UNSI native court workers. She also attended two native conferences that dealt with general leadership skills. While the Court worker had few clients, two or three alone consumed a considerable amount of her time, largely because these clients had ostensible mental health problems and so a wide range of officials and issues had to be dealt with; in fact even as she was resigning she was making arrangements for the continued processing of two clients with whom she had been regularly involved for over three months.

Another former native Court worker, a co-worker to the above person, was interviewed about the 1981 situation. He indicated that the major task then was 'making sure all the paperwork was done and that the accused got to court as scheduled'. Defined in this way it is easy to see why court officials could appreciate a Court worker service! In his late twenties at the time, he reports having a large caseload (i.e., 70 cases a month) and a wide coverage area -basically the Truro/Shubenacadie area plus metropolitan Halifax. Considerable time was spent travelling and more could have been spent on travel but 'funds were limited'. The training was minimal -"a few days and away you go"- and he missed the one day workshop held in Sydney for all native Court workers. Actually he received just one day training, a briefcase and a job description. Still because he had much previous experience in the security business and had had much contact with court officials he did not feel out of place around the court. He reported too that the work was basically reactive, another reason why he did not think a lot of training was required. The major problem in his view with the Court worker program in 1981 and the reason for his resignation from it before the year was up, was that funding was always limited and precarious so he did not consider there was a future in it.

Elaborating upon his role the Court worker recalls that he would explain things to the accused, help them get a lawyer, often drive them to court, remind them of the things they needed to be reminded of and phone a lot of agency referrals on their behalf. Most of his cases came from the Indian Brook reserve and involved the criminal court though there were some family court cases. He described himself as a go-getter who made work for himself by phoning up people who were accused and offering his services. He experienced a lot of satisfaction in the job, helping people, being a factor in their not being incarcerated and appreciating the thanks of his clients. He experienced few threats from people in the community but he did also restrict himself to dealing just with the accused, not the victims. For the most part he operated out of an office in the band building where a lot of people came to him for advice on a lot of matters. Still because 'the walls were kinda thin', he did not always use the office. He believed that the way he helped people get lighter sentences was by encouraging them to obtain lawyers. This was difficult often since many just wanted to plead guilty and get out; having a record was 'no big deal' since, as he explains, many accused were basically labourers, not middle-class people with middle-class aspirations. Despite the services the Court worker provided he was not especially welcomed on the court scene. He had virtually no contact with the judges in Truro or Shubenacadie where most of his clients were tried. Also he had to be aggressive with the accuseds' lawyers since

"Legal Aid try to keep you out so you have to insist if the client wants you there.".

This former Court worker considered that the Court workers should be linked to the native community and that public legal education, diversion programming and other duties are also important and could be combined with Court work into a more composite justice worker role if training and organization were available. He suggested a trial period where Court work caseload and other workload could be assessed.

Implications that could be drawn from this phase of Nova Scotia's NCWP include the necessity of more full-time management and the need for a separate organization with its own board of directors. The former is evidenced in the high turnover of personnel and the sense among some Court workers and informed observers in the native community that there was little quality control or esprit de corps. The fact that the program was ensnarled with other UNSI programming could hardly be avoided given the funding arrangements but it did cause problems for the co-ordinator and his staff. It was also clear, from the examination of the one detailed log available, that justice advocacy may not only be the preferred 'Court worker' mandate, but as was found in the founding era, a more accurate description of what really takes place anyways.

NCWP: THE POST MARSHALL INQUIRY ERA

Once the Marshall Inquiry began in 1986, in fact even while it was simply being proposed, proposals to establish Court worker programs were deferred pending the report of the commissioners. The provincial government was unwilling to act and without provincial involvement the relevant federal department, Justice, apparently could not proceed. Both UNSI and CMM submitted proposals in 1986 and 1988 respectively to the Department of Justice which refused to act without endorsement of the proposals by the Province.

In the late fall of 1990 and over the next few winter months a Court worker service was provided for native offenders in the Sydney area. The native Court worker had done similar work earlier in Ontario and noted "there we often substituted for Legal Aid but never here". Her role as

Court worker in the Sydney area was more circumscribed than in the case of previous Nova Scotia native Court workers because it was organized and directed through the Elizabeth Fry Society and had a specific mandate of assisting persons who came before the courts (usually criminal courts). There was apparently no direct government funding and certainly no direct sponsorship by UNSI or any other native organization. In fact the funding was always problematic and for a few weeks the Court worker did the work without pay. She prepared several proposals for longer term funding but none were successful in gaining the strong support of either UNSI or the provincial government. She left the position in February 1991, partly because of a physical disability, and partly because of her perceptions of ambivalent support on the part of some native organizations (i.e., they were not opposed in principle (4) but indicated to her that they had different priorities) and a lack of enthusiasm at the provincial government level; no one replaced her as Court worker specifically for native offenders in the area.

Although the Elizabeth Fry mandate was basically to provide services for females, the native Court worker indicated that she handled both male and female offenders, in roughly equal numbers. She also reported taking on clients whether they were from Eskasoni or the Sydney area, so long as they were natives and came before the Sydney courts. According to her there were roughly three or four cases per week. Apart from limited word of mouth advertising, she used to phone the court clerk to determine if any natives were on the docket. Given the limited publicity associated with her activity and the precarious funding situation, it seems likely that her caseload would underestimate the demand even for a pure Court worker service in the Sydney area. Certainly in light of the significantly greater number of male court cases it would appear that her coverage here would be much less than 100% if she handled equal numbers of males and females. The Court worker indicated that the court cases she handled were mostly assault, disturbance, drunk driving and peace bonds (here she urged battered wives 'to go away for a while'). In her view she was quite successful in dealing with the court cases, noting that native people were receiving quite lenient sentences and that at least one judge often referred an offender back to her for counselling as part of the sentence. She considered that a particularly good tactic she developed was to provide feedback to court officials on her counselling activity as well as, sometimes, on probation matters; this feedback was much appreciated apparently by court officials. Despite these comments she indicated elsewhere that the Court workers' relationship with court officials was often problematic and the Court worker role was not always accepted, as it should have been. It

does appear that to a large extent the Court worker, in her role as such, was rather isolated from court officials as well as from native leaders. In such a situation one would expect a certain amount of idiosyncracy in the Court worker role as the Court worker largely on her own develops the role and its style and chief linkages.

In considering the Court worker role, the respondent noted that, "We should get rid of the term 'Court worker'; it's an ach.". She suggested a wider mandate that would include working with those incarcerated, with people in the holding cells (e.g., 'drunk tanks'), with diversion programming at the band level and with general issues of rights and public legal education. She thought that there should be three native court workers for Cape Breton, two in the Sydney area for Eskasoni and Membertou and one in Baddeck for the other reserves. She also believed that at least one Court worker should be bilingual, noting that she herself did not speak fluent Micmac and so she was reluctant to translate or interpret in court.

In the spring of 1991 a native Court worker began working in the metro Halifax area under the auspices of Coverdale, an organization assisting women in conflict with the law. She was hired under a CEIC twenty-six week grant obtained by Coverdale. The Native Friendship Centre collaborated in the project. It may be noted that the Friendship Centre in Halifax unlike some such Centres in other provinces, had never been involved in a Court worker program though it did have kindred activities such as prison liaison and crisis intervention. Once the initial CEIC funding ran out the native Court worker was taken on by the Friendship Centre and has continued there through funding provided by the Tripartite Forum on Native Justice. Prior to beginning her work this college educated, mature woman did volunteer work with Coverdale, learning on the job. She recalled that while she read a fair amount of related material, training was basically of the 'practical, tag along sort'. The native Court worker's mandate in the Coverdale phase was to work with native offenders whether male or female but, when none were available, to assist any female appearing in court. In the mornings the Court worker spent time at the courts and in the afternoons she did follow-up work and other counselling at the Friendship Centre.

Each morning the Court worker would go to the court office (mostly provincial court in Halifax but occasionally to the Dartmouth court) and copy names off the docket, checking for native people;

she would observe persons in the waiting room and go down to the cells to see if any native people were present. Of course arraignment dates were also recorded and specific trials attended. Unless a relationship had already been established with an accused, she would approach the person, explain her role and offer her services. If the accused accepted the service the Court worker would discuss the case, encourage the person to get legal advice, generally familiarize the person with the court procedures and provide emotional support. If an accused came in and pled guilty the Court worker contact might end with assistance to the offender in arranging probation. The job required a certain assertiveness, an ordered and empathetic mind and a thick skin (not everyone accepted the offer or graciously declined it). Over the period April to October the Court worker had a small criminal court caseload, basically several cases a month (less than twenty native clients for the period); there were no young offenders and no Halifax family court cases. Only one native person was in the area's correctional centre during this six-month period so there was little prison liaison.

To a very large extent the Court worker was on her own. There was minimal organizational backup and she had to navigate her own way through the court system. The Court worker's familiarity with and acceptance by court 'players' was quite limited. Though she identified herself as a native Court worker, Legal Aid lawyers did not 'think it necessary' for her to be present when discussing matters with native clients even though in some cases the client wanted her there. The Court worker never was invited to discuss matters informally with judges, something she was eager to do but did not know how to go about effecting. Halifax Police refused to allow her to visit a native person jailed there since 'there is no facility for visitors'. No formal meetings and discussions had ever been arranged with the court 'players'; no orientation program had been implemented with court officials. Without organizational backing and in the absence of formal acceptability the Court worker had always to deal with her own marginality, all the while quite sensitive to the considerable and diverse knowledge she felt that she had to absorb.

The Court worker recognized the need for public legal education among native people in the metro Halifax area. There had been little information disseminated to the native public about the Court worker role. She did a certain amount of 'advocacy work' with native battered women and saw the need for more sophisticated counselling for these persons as well as for the repeat offenders struggling with alcohol problems. In the light of these shortfalls and the modest criminal court numbers she found

the concept of a justice worker or advocate quite meaningful. Over the winter of 1991-92, on an essentially part-time basis in the Justice Worker Pilot Project she formed a justice liaison committee in the metro area, publicized the project via newsletter inserts and several talks, arranged meetings with justice officials and has developed greater credibility within the justice system; one indication of the latter was her involvement in discussions between the Legal Aid lawyer and the native client. Interestingly as she has began to transform herself into a 'justice worker' her core Court worker activities have also increased, suggesting improved coverage. It still is the case however that she is operating largely on her own without organizational support or direction.

The chief implications that can be drawn from analyses of the NCWP in this current phase are the need for much more linkage to the native constituency (e.g., the penetration rate, that is, the extent to which the targey population was reached, was problematic in both projects though in the Halifax instance it has improved considerably of late), the need for organizational support (to sort out priorities, to set out reasonable expectations for service, to standardize the service limiting idiosyncrasy in advice, advocacy and linkages, and to keep appropriate records) and the opportunities at least in the metro Halifax area for a broad justice advocacy role given the low court demand.

Notes:

1. This has become a well-known incident in Nova Scotian court circles and was examined at some length in the Marshall Inquiry.

2. The budget for 1975-76 was $77,384 of which $50,000 went for salaries (the Court workers were paid about $9000 and the co-ordinator received about $12,000), $20,000 for travel and $8000 for administration. There was no training item in the budget.

3. The province accepted $5000 from UNSI which would be considered the Provincial contribution towards the establishment of the NCWP for the period December 1, 1979 to March 31, 1980. Accordingly the Attorney General signed the federal-provincial agreement (NCWP Correspondence).

4. UNSI's president in a 1989 letter to provincial government authorities concerning the Elizabeth Fry Society's proposal for a short-term NCWP project, indicated support but added, "Court worker-type of programs are not the long term solution to present Micmac justice problems.". (NCWP Correspondence).

APPENDIX II

THOUGHTS ON THE MI'KMAQ YOUNG OFFENDERS PROJECT

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JULY, 1998

This overview of Mi'kmaq Young Offenders Project (MYOP) is based on reading the three progress reports submitted to the funders by MYOP and the two independent evaluations submitted in 1996 and 1997 respectively, plus attending a justice circle, and discussing the program with the staff on several occasions. The author has participated in and evaluated similar programs in both the aboriginal community and the larger society for some twenty years. A more thorough assessment would systematically get at the views of the Criminal Justice System (CJS) players, especially police both inside and outside the Mi'kmaq communities since police are the major players in this post-charge, 'police have to agree to refer' type of diversion, and, interestingly, outside police according to the latest MYOP progress report had referred more cases than the local Una'maki Tribal Police Service (UTPS) members had. It would also be valuable to interview victims, and to explore issues of impact and recidivism amongst offenders; since there appear to be some similar cases that were not diverted it might be possible to compare the impacts of diversion and conventional justice responses. The volunteers would be useful to interview because the way volunteers have been mobilized is an outstanding feature of MYOP and one which could pay major dividends for administrative efficiency and community development, as well as for mentoring young offenders. A general communities' survey could shed light on the extent to which the project is well known and supported, and what consensus may exist for the possible future directions set out below. Such a survey might also constitute a basis for subsequent 'community conversations' on justice issues and responses to them.

In presenting this overview attention is directed at:

1. The organizational structure of MYOP and how it has evolved

2. The procedures and style of the Mi'kmaq justice circles

3. The extent to which the MYOP program could be said to be effective, efficient and equitable

4. The extent to which MYOP represents significant incorporation of Mi'kmaq customs and community concerns and sensitivities

5. The extent to which MYOP furthers the agenda of enhanced self-government for Mi'kmaq people

6. The implications of MYOP for the larger restorative justice movement

MYOP: WHAT IT IS AND HOW IT WORKS

MYOP is a youth diversion program which is post-charge and where referral must come from the police. A protocol sets out the agreement between the organization and CJS official policies and programs. MYOP staff can occasionally be proactive - acting on a concern by a parent for example, the staff may request a case be diverted by the police. It is not clear how much of an aggressive advocacy for diversion MYOP is. What is clear is that the UTPS members are considered by MYOP staff to be increasingly sympathetic to referrals although not all officers are so inclined. Interestingly, a significant number of referrals are made by other police forces in the area, namely the RCMP and CBRPS. The diversion mandate, set out in a formal protocol, specifies that MYOP will deal with first time youth offenders who have committed minor offences. Stretching has occurred of course and there have been instances of repeat divertees, of persons diverted who had a criminal record, and even an 18 year old offender being processed through the circle, but the stretching has been quite minimal to date.

Once a case has been referred the MYOP staff contact all the parties that might be involved and try to arrange for a circle. Rarely are letters resorted to. Usually staff either visit or telephone the households involved. The last available progress report indicated that 15 diversion justice circles took place between April 1 and September 30, 1997. Present, typically, are the MYOP co-ordinator,

another staff person, the offender, some offender supporter / parent / guardian, the victim or pertinent organizational representative in the event of a victim-less offence, and a police officer (usually a UTPS officer). Occasionally the adult volunteer assigned to the offender will also attend. The session is closed to the public. The police officer is never the facilitator as that role is played by MYOP staff. The procedure followed is the typical circle protocol (e.g., all persons in the circle contribute, consensus is sought etc). Usually there are two cycles or phases, a first to focus upon the problem and a second to explore solutions and dispositions. When a consensus disposition is reached, a contract is produced which spells out the offender's responsibilities and it is signed by the pertinent participants.

As MYOP staff have indicated, each Mi'kmaq Justice circle (MJC) has its own rhythm and idiosyncrasies. The offender and / or the victim may be very open and communicative or shy and withdrawn. There may be great emotional outpouring by the participants. MYOP staff have accumulated experience and appear to be very effective in drawing out participants and in emphasizing the Mi'kmaq and community context. Indeed these latter dimensions are what especially sets apart a MJC from an Alternative Measures session since the latter are much more focused on the offending individual and infrequently involve the victim or emphasize the community context. MYOP progress reports and independent evaluations indicate that to date virtually all referred cases are proceeded with, that the dispositions are virtually all completed, and that all participants appear satisfied with the diversion experience. Data are not available on recidivism nor is there much depth in the information that is available on victims' or offenders' attitudes or perceptions with respect to the experience.

Apart from diversion cases, MYOP also is charged with organizing and supervising court-directed community service disposition. Indeed in its first year of operation these latter outnumbered diversion cases by almost a two to one margin (18 to 10).

MYOP began in April 1995, co-sponsored by Island Alternative Measures Society (IAMS) of Cape Breton and the Union of Nova Scotian Indians (UNSI) and with a female non-native as director and a local Mi'kmaq female as 'youth worker'. As of 1998 it is under the umbrella of the Mi'kmaq Justice Institute and its director is the former Mi'kmaq youth worker. There is still a connection to the Island A.M. Society at the board level and regular informal communication between the organizations. MYOP funding was renewed for two years in 1996, and subsequently for a three-year period in 1998.

MYOP's staff currently consists of three full-time persons, including the director. In addition there are some 25 volunteers who supervise the offenders' carrying out of the dispositions they have received and assist the offender in meeting those demands as well as becoming a mentor at least for the time period of the community service and disposition. MYOP assigns a volunteer to each offender and that person also may attend the justice circle and of course contribute to it. Typically the volunteer and the offender are paired on a gender basis although MYOP staff are sensitive to the wishes of offenders.

ASSESSING MYOP:

The three MYOP progress reports and the two independent evaluations indicate that MYOP has been an effective, well-administered program which has steadily increased the number of cases it has handled, elicited more referrals from UTPS and other police services, and, especially through its utilization of volunteers, engaged in significant community development and institutionalization. Its effective implementation is manifest in the data on no-shows, disposition completion rate, and MJC attendance of key players, where on all three criteria its record has been quite enviable. MYOP staff have well publicized the program and it appears to have a solid reputation in the community and among CJS officials. Both evaluations have been very positive. The 1996 evaluation indicated that the organizational imperatives were being attended to, that is, securing and training volunteers, developing community banks for community service orders, and achieving a favourable reputation for the program. The 1997 evaluation provided an impressive listing by community of elders and volunteers, and the special talents they possessed. It also reported that the 1996-97 objectives for MYOP had been met and that MYOP had been successful in securing more referrals, more volunteers and more Mi'kmaq control over justice matters. This evaluation recommended a more expansive mandate and greater community involvement to 'top up' a very successful initiative.

MYOP has clearly become a Mi'kmaq-controlled organization and at the symbolic level this evolution is manifest in the new label given to the youth sessions; nowadays they are called Mi'kmaq Justice Circles (MJCs) rather than alternative measures sessions. At the same time as MYOP has become unequivocally a Mi'kmaq institution it has also expanded. As of June 1, 1998 there is now a full-time person responsible for MYOP activities on the mainland and answerable to MYOP's director. Now all Mi'kmaq bands and reserves in Nova Scotia, technically at least, are served by this program.

While Mi'kmaq now clearly direct the MYOP initiative, and are doing restorative justice their own way, it is important to underline that the program still basically deals with minor offences committed by first time young offenders, and even here it depends often on police co-operation outside the aboriginal community since much Mi'kmaq youth crime (and the youth crime level does not appear terribly high to begin with) is committed off-reserve in the metropolitan area. Accordingly, while MYOP contributes to the self-government agenda, its contribution to date has been modest.

EFFICIENCY, EFFECTIVENESS AND EQUITY:

The three general criteria of efficiency, effectiveness and equity - often called the three Es - are frequently employed when assessing new justice initiatives.

Efficiency refers to the number of cases handled, the penetration rate (the proportion of cases handled from the total eligible), administrative competence, the mobilization of community resources, and in general how well managed are the resources available to the program. The progress reports indicate that a modest number of cases are being processed through the MJCs but no data are available on what proportion these constitute of the eligible offenders. It does appear that the number of native young offenders housed in provincial institutions has declined in recent years so perhaps the penetration rate is quite high. The number of referrals has increased and perhaps more can be secured from the police services in the area. Reportedly, there are some UTPS officers who have not 'bought into' the program so perhaps there is room to expand case numbers within the aboriginal communities. By all accounts the MYOP program is well administered and perhaps the best exemplification of that is in the successful recruitment and training of volunteers, usually young adults. The MYOP program has been able not only to manage the external resources well but has also mobilized local resources.

Effectiveness refers to considerations of victim satisfaction, offender rehabilitation and reintegration, and community development. Detailed and useful restorative justice yardsticks have been developed to evaluate similar initiatives in terms of whether victims receive justice (e.g., do they have a voice in the process, are their needs addressed, do they get needed restitution, do they receive adequate information etc), whether offenders receive justice (e.g., do they participate meaningfully, are

their needs addressed, are they encouraged to change behaviour, are charges verified etc) and whether community concerns are addressed (e.g., is the process sufficiently public, is there some provision for problem-solving etc). In addition, evaluators often look at the impact on victim-offender relationships. No solid data exist on whether MYOP has addressed justice from the victims' perspectives although the two evaluations suggest positive impact here. The presence of the victim is more likely than in other diversion programs known to this writer so there are some grounds for optimism. Clearly, like many diversion programs, the main impact of MYOP would appear to be on the offender. In the circles, reintegration is always being practised, not simply left to a hug or ennobling statements at the end of the session. There is much effort directed at problem solving, and the use of volunteers as supervisors / mentors for the diverted youth also ensures his or her needs are being addressed. One clear example of this is that typically the young offender suggests a more severe penalty than other participants do and these latter thereby show both realism and concern for the offender in a public way. The MYOP program also emphasizes community concerns, much more than one would find in the typical alternative measures programming. There is an emphasis on contributing to the Mi'kmaq nation, on seeing oneself as part of a larger whole and acting accordingly. Of course community development is also seen in the incorporation of young adults as mentors, in the types of community service work required, and in the attempts to develop a plan that could render less likely any future re-offending.

Equity refers to the essential fairness of the diversion principles, process and disposition, and to whether access is available on a fair basis. In programs such as MYOP one has to ask what does equity mean where dispositions are tailored to the specific needs and rehabilitative possibilities of specific individuals? Moreover, given the minor level of offences dealt with, it could be argued that equity is the least important of the three E criteria in assessing MYOP to date. Little data are available that directly relate to considerations of equity. One conventional way of looking at equity is in terms of the involvement of women in a program. Certainly in the case of MYOP women have the major leadership positions and appear to be effective getting the support of CJS and band officials. Only a more in-depth evaluation could determine whether differences in social influence and power have had any bearing on accessing MYOP and on the dispositions that have been rendered. At the same time, it is clear that neither of the two evaluations reported any concern on the equity issue.

UNIQUENESS OF MYOP:

In comparison with alternative measures sessions elsewhere and with diversion programs in other Canadian aboriginal communities, MYOP stands out in terms of having victims present, the amount of preparatory effort expended on each case, the extensive utilization of voluntary community resources, and the effective networking with police and other social agencies. It clearly has an identity (i.e., Mi'kmaq) and a collective sense and context that is rather unique. It also appears to be well-managed and free from political interference. Of course as an IAMS staff member observed, MYOP has had a luxury in that the small caseload facilitates greater involvement with the parties involved and with institutionalization in the communities. While there is merit in that observation, it is also true that in many projects where caseload is modest, the implementation and administration is still sub-par. Clearly, it is important to have a dedicated staff that has a sense of what it wants to accomplish and a plan to achieve it. MYOP appears to be so favoured. Also, there may not be the same level of communitarianism or 'person availability' to be tapped in other areas. And the manner in which MYOP has utilized volunteers is particularly noteworthy for offenders and for community development. In any event, in MYOP it is possible to see the restorative justice strategy of diversion and family conferencing well implemented, and so, the theories behind these kinds of programs could be properly examined and tested here. MYOP clearly is a model that warrants attention.

LOOKING AT THE FUTURE OF MYOP:

Clearly the MYOP program has evolved in terms of its territoriality, organizational structure, terminology employed, FN ownership, and some stretching of its mandate within the general limits set by the protocol. For many reasons, including efficiency (a more favourable balance of resources and work), and the self-governance agenda, it may be time to move on to more challenging tasks. This expansion could be three-fold namely:

(a) utilization of Mi'kmaq Justice circles (MJCs), the key MYOP restorative justice strategy, in all phases of the justice process, from police to corrections, from diversion to release from incarceration

(b) expansion of the MYOP mandate to enable it to deal explicitly with more serious youth offenders, even problem recidivists; MYOP has what appears to be an effective strategy in

place and it should be tested against more challenging problems, otherwise it is inefficient and might be deemed insignificant (or merely net-widening) in relation to community problems

(c) expansion of the program to include young adults. These latter tend to account for most of the justice problems in FN communities as they do elsewhere. The individuals are far too young to be written off yet there is no program akin to MYOP that focuses on this population. Such an expansion of MYOP would bring more cases (i.e., increase efficiency) and enhance its significance for community justice problems.

Is MYOP ready for these kinds of expansion? It would seem so since an effective, community-based system has been put into place. The favourable word-of-mouth assessment of MYOP is indicated for example in requests to its director to exercise the facilitator role in two RCMP's community justice committee sessions where diversion was implemented, following family conferencing principles, for non-aboriginal offenders outside the reserves. The timing is appropriate since MYOP has funding security for three years and the Government of Nova Scotia is embarking upon a major restorative justice initiative in several regions of the province. The main restraint consideration is that the program has yet to receive a comprehensive evaluation. Are the FN communities agreeable to an expansion? Are CJS officials knowledgeable about MYOP's accomplishments and approving of an expansion? What suggestions might the communities and the CJS officials advance? And what are the views and further potential for utilization of the volunteers, a key component of the MYOP program? Has the program been impacting as desired on the offenders, the victims, and the communities? These kind of issues have been alluded to but not adequately dealt with by the evaluations to date as detailed above.

RECOMMENDATIONS:

(a) that the MYOP program expand its activities in each of the three respects noted above, namely utilize MJCs and related restorative justice strategies throughout all segments of the justice system, take on more serious young offenders, and extend the program to young adults for a limited range of offences. Extending the initiative to all parts of the justice system would be compatible with the "four entry points" model being advanced by the provincial Department of Justice and thus represent an opportunity for mutual learning and program legitimation. Expanding the protocol to deal with repeat young offenders and instances of more serious

offences by youth is both within the capacity of MYOP and necessary for the program to make a positive impact on youth crime and social problems. Extending the program to young adults would bring in more cases, and especially bring the successful program developed to date, to bear on the age categories with the highest rate of crime and social malaise. Initially, the protocol for the diversion of young adult offenders might be similar to that developed several years ago between the Shubenacadie band and the Nova Scotia Department of Justice.

(b) that the MYOP leadership should undertake discussions with justice system officials and have "community conversations" in order to advance the MYOP program along the lines suggested above. There should be some specification of the new case characteristics for acceptable diversion (e.g., what types of offences are to be excluded at what level) and the circumstances under which the MJCs would be implemented. It is imperative to bring both justice officials and community members into the planning for any expansion and to involve them in the development of objectives, operational strategies, and evaluation criteria. In this way, consensus and legitimation is strengthened from the very beginning as MYOP expands into more serious areas of justice. Fortunately, as noted earlier, there is a solid base to build upon.

(c) that once the MYOP leadership determines its preferred path of development in consultation with its partners and the communities in general, a meeting be held with governmental authorities to develop a new protocol and to arrange whatever funding resources may be required. It may not be that major new funding would be required but the expanded mandate would likely require some additional office staff, special training funds, and a larger budget for travel and related expenses. Clearly, expansion of the MYOP is necessary for efficient utilization of resources, maintaining skills and morale among volunteers, dealing with substantial community problems, and making more real the promises of native self-government. The MYOP project as it expands should be properly evaluated since it is trail-blazing for other restorative justice initiatives in Nova Scotia.

APPENDIX III

RESTORATIVE JUSTICE: FROM THE MARGINS INTO THE MAINSTREAM

> *Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.*
> (United Nations Working Group On Restorative Justice, 1996)

Restorative justice is a major philosophical movement and social construction in contemporary modern society. Its central premise is that crime is a violation of people and relationships and that the task of the justice system is to repair the harm done to the parties and restore harmony to the community. Some key themes of restorative justice include the ideas that the conventional criminal justice system does not meet the needs of the victim, offender or the community, and that all of these parties have to become, as they were in earlier times, more active participants in experiencing justice. This type of philosophy or approach is deemed quite compatible with traditional small societies, given their emphasis on restoration, harmony and community when confronted with harmful actions (LaPrairie, 1993; Depew, 1996), but it remains contested on the terrain of modern, heterogeneous, urbanized society. It does presume a certain level of communitarianism (Etzioni, 1993; Depew, 1996) since it requires interaction, activity and collaborative problem solving and accommodation on the part of community members. In the forefront of the restorative justice approach in Canada have been religious-based groupings such as the Mennonites and prison chaplains, aboriginal persons and groups, and 'progressive' Justice officials (e.g., police, judges, bureaucrats). It could be argued that, while sharing a common core of beliefs and values, each of these groupings has a particular central thrust in its advocacy of restorative justice. The religious bodies have emphasized apology and forgiveness on a personal and interpersonal basis (Tavuchis, 1991). Justice officials and academics have emphasized effectiveness in dealing with victimization and recidivism by getting to the root of the problem situation and dealing with it by harnessing the support of positive 'significant others' (Braithwaite, 1994, 1996); for some advocates this has translated into an emphasis on social development and community mobilization (LaPrairie, 1993). Aboriginal influences have emphasized more the community and its ownership of justice, both substantively and procedurally (Jackson, 1992). This latter position is

understandable since many aboriginals have seen the conventional criminal justice system as controlled by outside persons with different values and traditions, and as both over-representing them as offenders and inmates, and not effectively dealing with the crime and social disorder in their communities. For many aboriginal advocates, restorative justice is a way to reassert control over their lives, re-connect with certain values and traditions and rebuild their communities (Stevens, 1994).

TWO PHASES OF RESTORATIVE JUSTICE

Restorative justice ideas and practices were quite popular throughout the western world in the 1960s and 1970s, spurred on by religious bodies, social critics and reformers within the justice system. Particular programs emphasized included community mediation, court-based mediation, victim-offender reconciliation, and diversion of youths and adults for minor offences. By the mid-1980s most initiatives had suffered serious setbacks and the surviving programs were primarily those closely connected to the mainstream justice system and seen basically as an arm of it, such as court-based mediation (Merry, 1990). While the reasons for the setbacks were many, the chief one was that the programs did not offer a significant and authentic alternative to the conventional Justice practices; they were marginal justice activities; offenders did not opt for them and they had little demonstrated impact on recidivism or other key criteria (Feeley, 1983); and they were not authentically community-based (Fitzpatrick, 1992). Other weaknesses included poor program implementation, poor networking with justice system officials, preoccupation with organizational survival (which led the sponsoring agencies to focus on low risk offenders and use discounted criteria of success), and too great an emphasis on a client approach (i.e., the offender) to the neglect of victims and the community at large.

Over the past decade or so, for a host of push and pull reasons, the restorative justice movement has been rejuvenated. In this new phase major stimuli have been the high costs and negative impact of incarceration, claims of ineffectiveness and inefficiency in the way the mainstream justice system deals with offenders, victims, and community concerns, and pressure from the aboriginal communities for greater control over a justice system that might operate on somewhat different principles in their communities (Clairmont, 1996; Linden and Clairmont, 1998). The current restorative justice movement is more international than its earlier version and highlights mediation and diversion

programs such as family or community group conferencing, victim-offender reconciliation panels, and circle sentencing (Saskatoon, 1995; Galaway et al, 1996; Church Council on Justice and Corrections, 1996; Bazemore and Griffiths, 1997). There is a significant amount of restorative justice activity going on in Canada today (Clairmont, 1998) and throughout the world (Galaway et al, 1996). Also, much more is known about successes and failures in the operationalization and delivery of such programming (McCold, 1997) though, unfortunately, the quality and generalizability of information remain problematic and it is not clear that lessons learned from past experience have been incorporated in the new designs. While the restorative justice programming is more institutionally rooted than in the earlier era and has spawned numerous manuals, guidelines and monitoring/evaluation strategies, it is still not clear whether it will be appropriately implemented and what its impact will be for offenders, victims and others (Daly, 1996; Clairmont and Linden, 1998).

There is reason to believe that restorative justice may be most successful, and generate a community impact as well as an impact on offenders, in communities, such as First Nations, which are small, relatively homogenous, characterized by significant communitarianism and able to draw on revitalized and re-worked traditions as mobilizing myths (Church Council, 1996; Hazlehurst et al, 1997). In large urban areas, successful restorative justice appears to be tied up with a quest for community defined as support groups and ego-centered, micro networks. Whatever the milieu, it is presumed that the concerned parties will respond to the opportunity to experience justice and that the experience can be beneficial for all of them. It also appears that the value of restorative justice may hinge upon its programs dealing with serious offences and offenders and not being hived off either administratively or at 'front-end' (i.e., police charging) entry points (LaPrairie, 1996, 1997; Clairmont, 1999). Whatever the venue, restorative justice is a demanding Justice style which flies in the face of the larger societal emphasis on professional, bureaucratic processing of people and incidents, as well as the emphasis on retributive justice and the principle of "just deserts" (Giddens, 1990). There remains too a legacy of criticisms, namely that restorative justice programs may further disadvantage certain groups (e.g., female victims), that while in principle they highlight concern for victims, actual programming focuses more upon the offenders as 'clients' (Clairmont, 1996), and that the official governmental sanction of this approach might mask an off-loading of problems without providing communities with the resources they need to meet the challenge. Here some critics draw the analogy of the earlier de-institutionalization of mental hospitals without adequate funding of community alternatives. Restorative

justice initiatives such as family group conferencing, circle-sentencing and victim-offender conferencing would clearly require more community involvement and a more intensive interaction with offenders, victims, and perhaps their supporters, than is featured in current programming such as alternative measures. They require more volunteers and more training for community members. And, insofar as these initiatives succeed in penetrating the mainstream justice system, presumably they will focus on more serious matters which may pose serious challenges for facilitators and participants (e.g., more intense emotion, more intractable issues to be dealt with). Nevertheless, there appears to be a growing consensus that the response of the criminal justice system has been in large measure, ineffective and that something different must be considered. It clearly is time to bring the restorative justice perspective into the mainstream and examine its value. Ultimately, as Carol LaPrairie observes (personal communication), restorative justice approaches must acquire credibility and acceptance as legitimate and 'real justice' if they are to effect change and impact on the policies and guidelines that direct decision-making.

The Law Commission of Canada has recently produced a discussion paper (From Restorative Justice To Transformative Justice, 1999) which describes and advocates the restorative justice perspective in criminal justice, and champions its extension to other conflicts and problematic relationships (hence the reference to Transformative Justice). It emphasizes the essence of restorative justice as being "a set of ideas about how justice as a lived experience should be pursued" and contends that the time is ripe for "justice as promoting harmonious social interaction". There is a clear inference too that restorative justice would effect a more equitable justice, since in the current system, which has a retributive thrust, offenders of low socio-economic status are very disproportionately charged, convicted and incarcerated.

The paper acknowledges potential pitfalls or shortcomings such as the relevance of restorative justice for the macro, structural conditions associated with criminogenic patterns, the possibility that in practice it might simply result in another layer of adjudicative authority added to the existing criminal justice apparatus, and the great challenge of implementing its philosophy especially as regards victims and the community. With respect to the latter point, it can be noted that restorative justice is replete with rhetorical flourishes to victim and community but skeptics wonder whether such references represent more "the sizzle than the steak". The paper does not discuss some major criticisms such as the danger

that restorative justice could amplify the inequities of the formal criminal justice system by "coercing" the less powerful and less resourced populace into its stream (administrative justice for the disadvantaged?); moreover it says nothing about several of the major controversies in contemporary discussions of restorative justice implementation, namely whether and how it might be utilized in cases of sexual assault and wife battering. Still, the document reinforces the claims of restorative justice advocacy, adding the influential support of the Law Commission of Canada to this revitalized movement in the criminal justice field.

THE NOVA SCOTIAN RESTORATIVE JUSTICE INITIATIVE

The restorative justice initiative being launched by the Department of Justice in Nova Scotia (Department of Justice, 1998) is directed initially at young offenders in four regions of the province. Within two years it will have been extended throughout the province and to all offenders, adults and youths. It is not unusual in its initial emphasis on youth nor with respect to the specific restorative justice programs being implemented (e.g., cautioning, conferencing, circle sentencing) but it is especially innovative in focusing on four socio-economically different regions (urban, small town and rural), and in implementing the restorative justice approach virtually simultaneously throughout the justice system. Referrals to the non-profit agencies, delivering the restorative programs at arms-length from government, are expected to come from pre-charge, charge, pre-sentence, post-sentence, and incarceration "entry points". This latter strategy directs restorative justice programming to the total range of offences, a marked contrast to most programs which have focused on minor offences and limited entry points. The Nova Scotian approach involves utilizing restorative justice to deal with serious offences and serious offenders and potentially all criminal justice incidents and
situations. By engaging all major segments of the justice system (i.e., the four "entry points" of police, crown prosecutors, judges and correctional officials) the Nova Scotian initiative implies a total institutional involvement and encourages the kind of positive feedback and networking, not to speak of acceptability and consensus, that has been lacking in so many restorative justice initiatives throughout North America. The establishment of co-ordinating "community restorative justice committees" of justice system stakeholders in each region, advising the regional carrier agencies and to which potential restorative justice implementation issues could be referred, and where meaningful assessments / discussions could be undertaken of implementation and outcome issues, is also an interesting feature of

the plan.

The initiative has also been marked by considerable pre-implementation preparedness. The regional carrier agencies for restorative justice programming beyond the level of formal police cautions, are experienced in providing alternative measures and other youth programming. Through federal-provincial cost-shared funding, they have been allotted more resources, provided with more training for their volunteers and linked more closely to one another and to other justice system segments. There has been thorough discussion of the initiative at all levels or entry points and protocols have been developed. A steering committee and organizational structure for direction of the initiative has been in place for almost two years. Community mobilization has been developed in several regions and other related endeavours are planned. An incremental phasing in of other regions and subsequently of adult offenders has been projected. In sum, the initiative is well planned, timely, and resonant with the revitalized restorative justice movement. It is consistent with current societal values emphasizing sensitivity and healing for victims, the use of alternatives to the expensive and ineffective incarceral dispositions where possible, and more accountability and community reintegration for offenders. It builds upon the extant alternative justice strategies, such as alternative measures and adult diversion, which have been modestly successful but of limited scope and substance; they remained rather marginal to the major demands on the criminal justice system, did not address adequately the problems and needs of victims and serious (and potentially serious) offenders, and lacked a strong sense of community ownership.

At the same time it would be unwise to underestimate the challenges that lie ahead for the Nova Scotia initiative. Canadians, and Nova Scotians in particular, are very much caught up in retributive policy and 'just deserts' principles. The majority of people for example continues to believe that youth crime and criminal behaviour are increasing, much more so than is respect for the law. The majority also holds that the current criminal justice system is already too lenient, especially in the area of sentencing. Interestingly, there is, nevertheless, a public preference in all regions of Canada, for utilizing alternative sentences rather than building more prisons. Clearly, the public might well be receptive to a restorative justice approach which could be an effective alternative but such an approach must deliver on its claims and not be merely a slap on the wrist for offenders and indifferent to the needs of victims and to community concerns. Nova Scotians may take especial

persuading since survey data indicate that the Atlantic region public may be proportionately more in support of incarceral strategies at present.

Pre-implementation research which included in-depth interviews with a wide variety of stakeholders and participation in various subcommittees (e.g.,the police, the judges and the protocol committees) has underlined these challenges (Clairmont, 1999). There was a widespread view that, while extant alternative justice programs are of merit and have been reasonably successful in implementation and impact, they simply do not go far enough in addressing the inadequacies of the criminal justice system. Restorative justice was seen as a potentially major enhancement of alternative justice, offering more options for justice processing, more restorative opportunities for all parties to an offence, and most especially for the victims. Although these respondents, typically active in the initiative, were positive about the development, few characterized themselves as strong advocates of restorative justice or identified themselves as a 'driving force' behind the initiative; virtually all respondents were quick to identify potential problems in the implementation process. Clearly even the commitment of active persons will have to be nurtured.

Respondents typically considered that, at least initially, the restorative justice program in Nova Scotia would be police-driven and that most of the activity would be formal cautions by the police and police referrals to the regional agencies for conferencing and other restorative justice activities. The extent of participation at the entry points of the crowns, the judges and correctional officials was deemed problematic. At these levels there was some hesitation about utilizing referrals in incidents when the matter was not referred at earlier entry points; moreover, there seemed to be a limited sense of the variety of restorative justice practices; family group conferencing, victim-offender direct 'mediation', and circle sentencing do not exhaust the range of options. In addition, many respondents expressed concern about the dynamics of the restorative justice sessions and the role and competence of volunteer facilitators (not all facilitators would be volunteers) when serious offences and offenders are being dealt with. Clearly the comfort level is greatest where the restorative justice initiative remains marginal to the central problems of criminal justice. There is a real possibility that such reluctance, in conjunction with police reluctance to recommend repeat offenders, adults, serious offences, and offenders with an informal reputation for criminal involvement, could result in a very modest "value-added" to current alternative measures and adult diversion programs.

If the restorative justice initiative in Nova Scotia is to live up to its objectives and rhetoric there will need to be continuing attention paid to coordination, nurturing support, networking and feedback, and formative evaluation. Bringing restorative justice into the mainstream of criminal justice concerns will not be a simple unfolding of the design plan. Still, a solid basis has been laid, much pre-implementation work has been accomplished and a formative evaluation framework (with a detailed accompanying 'logic model') has been developed. It is clearly possible that restorative justice will enter the mainstream and that the Nova Scotian experience might yield valuable insights not only into issues of implementation, the focus of most past evaluation, but also on whether restorative justice can deliver on the many substantive claims made by its advocates.

APPENDIX IV

OVERVIEW OF THE PROCESS LEADING TO THE ESTABLISHMENT OF THE MI'KMAQ JUSTICE INSTITUTE

PRESENTED BY DAN CHRISTMAS
ABORIGINAL JUSTICE LEARNING NETWORK CONFERENCE
HALIFAX – DECEMBER, 1996

Mi'kmaq Justice Institute - Tripartite Forum

- 1990 Royal Commission on the Donald Marshall Jr. Prosecution
- 11 Recommendations on Nova Scotia "MicMac" and the Criminal Justice System
- March 1991, Mi'kmaq – Nova Scotia – Canada Tripartite Forum established
- Three agenda items agreed upon:
  - Justice
  - Policing
  - Human Rights
- May 1991, Tripartite Sub-Committee on Justice formed

Clairmont Report

- Sub-Committee recommends a needs assessment study for the Court worker program
- July 1991 to April 1992, Donald Clairmont conducts study on Native Justice
- Study employs 9 researchers and interviews 622 Mi'kmaq households both on and off reserve
- September 1992, Clairmont Report titled "Native Justice in Nova Scotia" presented to Tripartite Forum
- Clairmont presents 19 recommendations on policing and justice

Pilot Projects

- December 1991, Shubenacadie Band Diversion Program (SBDP) approved for 3 years; begins March 1992
- December 1991, Friendship Centre Justice Worker Project approved for 1.5 years
- September 1992, CLIF Demonstration Project approved for three years; begins November 1992
- January 1995, Mi'kmaq Legal Translators Program approved, graduates 5 translators in July 1995
- April 1995, Mi'kmaq Young Offenders Project approved for three years; begins May 1995
- April 1995, Band By-Law Project approved for two years; begins June 1995
- June 1996, CLIF and SBDP ended

Other Initiatives

- May 1994, UNSI study on Nova Scotia Legal Aid
- June 1995, Eskasoni establishes provincial court sittings on reserve
- Assisted Mi'kmaw Law Graduates in seeking articles and private practice
- Discussed sentencing advisory committee with Provincial Court
- Proposed Mi'kmaq Community Corrections Office at Eskasoni
- Conducted Parolee supervision and community assessment of parolees

Mi'kmaq Justice Institute

- April 1993, UNSI and CMM contracts Bernd Christmas to develop proposal
- September 1993, Bernd presents proposal titled "Mi'kmaq Justice Worker Program" to Chiefs of Nova Scotia (Board Model #1)
- December 1993, Tripartite Forum accepts proposal in principle, recommends inclusion of pilot projects
- April 1994, UNSI, CMM, NCNS and Shubenacadie submit joint proposal titled "Mi'kmawey Jajikimtumkewey" (Board Model #2)
- September 1994, proposal approved:
  - Justice Canada
    - $100,000 for 1994-95
    - $250,000 for 1995-96
  - N.S. Aboriginal Affairs
    - $100,000 for 1994-95
    - $250,000 for 1995-96
- November 1994, NCNS rejects Board Model #2
- July 1995, N.S. Aboriginal Affairs presents proposal titled "Mi'kmaq Court worker Agency" (Board Model #3)
- July 1995, UNSI, CMM, NCNS accept Board Model #3
- October 1995, Justice Canada and Nova Scotia sign federal/provincial Court worker agreement
- October 1995, UNSI rejects Board Model #3
- May 1996, UNSI proposes Board Model #4
- June & July 1996, UNSI, CMM, NCNS, NSNWA, MNFC discuss recruitment and selection of Board Members
- September 1996, Board Model #4 and selection of board members accepted

(…Continued)

Board of Directors

Valley/ South Shore Area:

- Viola Robinson
- Janette Peterson

Halifax Area:

- Patty Doyle-Bedwell
- Cathy Benton

Central Area:

- Heather MacNeil
- Rosalie Francis

Eastern Mainland /
Western C.B. Area:

- Paul (P.J.) Prosper
- Donald Marshall Jr.

Sydney Area:

- Alex Denny
- Trevor Bernard

Alternates:

- Elizabeth Paul
- Heidi Marshall

Outstanding Work

- Incorporation of Mi'kmaq Justice Institute
- Sign bilateral agreement with Nova Scotia
- Hire Director and Justice Workers
- Develop Justice Worker Training Program
- Provide office facilities
- Review evaluations of SBDP and CLIF
- Assume MYOP and ETS