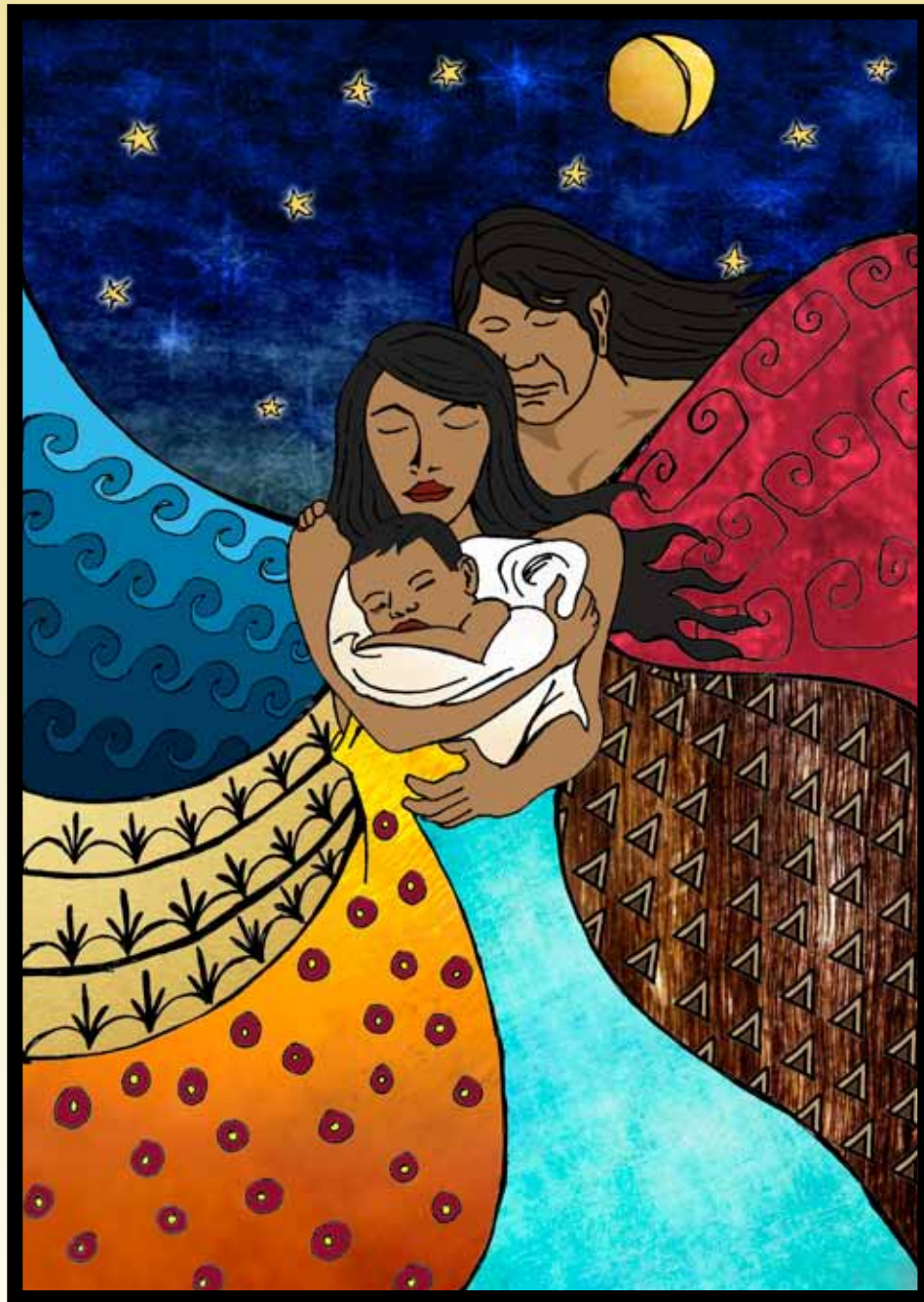


Addressing Mi'kmaq Family Violence

Family Violence and Aboriginal Communities: Building Our Knowledge and Direction through Community Based Research and Community Forums[©]

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Executive Summary

I first must acknowledge the time, energy and courage with which Mi'kmaq community members participated in this research. We heard many heart wrenching stories of astonishing suffering, but we also heard many stories of hope, inspiration and great motivation for change – the spirit, passion and desire for change and the strength of culture in Mi'kmaq communities are the greatest resources in terms of potential for challenging the problems of family violence. Many thanks to everyone who contributed to this work, every effort has been made to accurately represent your opinions, voices and recommendations for how you would like to address Mi'kmaq family violence.

In 2006, the Mi'kmaw Legal Support Network, Mi'kmaq Family and Children Services and the Nova Scotia Advisory Council on the Status of Women approached me as a Canada Research Chair in Indigenous People and Sustainable Communities at StFX University, to be the principal investigator for a community-based, participatory action research project in Nova Scotia Mi'kmaq communities on family violence called *Family Violence and Aboriginal Communities: Building Our Knowledge and Direction Through Community-Based Research and Community Forums*.

For the past five years, my research team and the family violence sub-committee of Tripartite Justice have deeply examined:

- 1] The past history and present circumstances of family violence;
- 2] The nature and extent of violence;
- 3] Reactions and responses to abuse by individuals and others;
- 4] The adequacy and inadequacy of current approaches and services, and;
- 5] The potential for creating a community-based response strategy to prevent, intervene and manage situations of family violence within Mi'kmaq communities in Nova Scotia.

After receiving approval to conduct the research from Mi'kmaq Ethics Watch and from StFX's Research Ethics Board, we talked with many people from many different walks of life: youth, elders, survivors and abusers, leaders, front line workers, employed, unemployed, addicted, non-addicted, men and women. Over one hundred and fifty Mi'kmaq people were formally consulted in this research process through interviews, focus groups and community forums.

The findings were then compiled and we returned to the community for feedback on the best practices for prioritizing a community strategy to help families and individuals experiencing violence in ways that: protected their rights, acknowledged their unique identities and customs as Mi'kmaq peoples, provided satisfactory remedies in times of crisis, and ongoing support for family and community healing. Another 300 + people were informally consulted through meetings, conferences and workshops.

This research is informing justice and social policy at the local and provincial levels and is likely to inform policy nationally and internationally upon impending dissemination, particularly given the current F/P/T emphasis on addressing domestic violence.

During 2009 and 2011, the research was presented in a variety of forums for consideration and application, including: the boards of Union of Nova Scotia Chiefs (2010) and the Confederacy of Mainland Mi'kmaq (2010); the Mi'kmaq / Nova Scotia / Canada Tripartite Forum (2010); the Nova Scotia Provincial Coordinating Committee Domestic Violence Task Force (2010); the Nova Scotia Department of Justice Crime Prevention Symposium (2010); The INAC Atlantic Regional Family Violence Workshop (2010); First Nations Inuit Health Branch Regional Conference (2010); and at numerous academic and community conferences.

This research was funded by the Atlantic Aboriginal Health Research Program at Dalhousie University, a CIHR-funded program, and by Mi'kmaq / Nova Scotia / Canada Tripartite Special Projects Fund and supported by Social Sciences and Humanities Research Council Canada Research Chairs Programs.

Brief overview of findings:

Every community is different in Mi'kma'ki, and such diversity must be addressed when developing and implementing programs to tackle the problems of violence. There is ample evidence locally, nationally and internationally suggesting Indigenous women are over-represented as victims of domestic and family violence. However, there are no clear measures or reliable estimates as to the extent of such violence, as perpetrated against men, or any accurate measure of the extent to which men and women under report it, but under reporting is expected to be higher for Indigenous populations than for the general population largely due to the consequences of colonization, systemic discrimination and inadequacy of the Canadian Justice System to meet their needs.

Instead of focusing on the deficiencies in the statistical data, priority for this research is the examination of the design and implementation of culturally aligned community based anti-violence programs that create meaningful, effective opportunities for prevention, intervention and resolution of family violence for victims, perpetrators, and their families through alternative reporting and assistance services.

According to the majority of research participants, family violence in the majority of Mi'kmaq communities is frequent, but nothing seems to stop it so the problem of family violence is commonly perceived as 'normal'.

Violent acts are not normal; people are horrified, angered, fearful, frustrated, confused and traumatized by acts of violence. They want it stop. But, it is the fact that very little, or nothing, ever gets done to address acts of violence between intimate partners that is seen / perceived as normal. There are very few consequences for perpetrators, unless it is a case of extreme, life threatening violence, it usually goes ignored and unreported. Survivors are unassisted, or sometimes ostracized by friends, family, or community for seeking

help. So, even though many people are aware of, know of, or are people who are in violent relationships, there is little out there to help them meaningfully.

The reasons for this vary between communities and individual experiences, but a number of themes emerged in the research: Access to justice is a significant problem for Aboriginal victims and offenders and Mi'kmaq people are unlikely to turn to the Canadian Justice System (CJS) or mainstream services providers for help because of a general mistrust due to:

- Significant inadequacies of CJS to meet Mi'kmaq needs due to systemic discrimination and marginalization across race, class, poverty, language, ability and sexual orientation
- Perceptions of the CJS as an institution of colonial oppression
- Length of time to process charges
- Hyper-responsibilization of Aboriginal women in situations of family violence
- Zero tolerance policies result in counter charges
- Limited culturally appropriate options in court: cases collapse, problems of giving evidence, language issues
- Pro-charge / pro-incarceration policies – problematic policing relations
- High risk assessment tools are culturally inappropriate
- Inadequate sentences
- Jail as ineffective deterrent
- Financial and social costs of going to court
- Inability to navigate the legal system

People experiencing family violence also find it difficult to seek help within Mi'kmaq communities because of:

- Power structures (internal / external / familial / political/ jurisdictional – federal and provincial)
- Lack of trust
- Lack of community support
- Lack of comprehensive assistance and crisis follow up
- Inconsistent confidentiality policies for information sharing
- Mistrust of community capacity (internal colonialism) due to funding insecurity and inconsistent programming caused by service providers working in silos because they have to compete for scarce resources due to grant dependent program operation
- Inadequate communication strategies regarding what help is available
- Fear of losing children
- Strong desire to avoid any contact with Mi'kmaq Family and Children's Services
- Fear of losing housing
- Inadequacy of CJS policies such as restrictions to obtaining Emergency Protection Orders (EPO) on reserve due to complicated federal and provincial jurisdictions

over property rights, the accuracy of high risk for lethality assessment tools, appropriate and enforceable conditional sentences and probation orders

- Fear of family retaliation
- Self blame & shame (I asked for it, I started it, I hit back)
- Limited sustainable services for victims
- Addictions
- Culturally imbued understandings of avoidance, non-interference and beliefs in spiritual sanctions
- Religious reasons
- Limited access to culturally aligned options for dispute management
- High rates of reconciliation

Overwhelmingly the participants in this research indicated that poverty, addictions, and culture loss, are the most significant factors that perpetuate family violence. Ongoing systemic discrimination and racism alienate access to justice, education, economic and health institutions and deny people the opportunities to address individual and collective problems of family violence.

To clarify, it is not the act of violence that is perceived as normal. It is the helplessness, the patterns of continued abuse that are linked with substance use and poverty and the lack of effective intervention and remedy, the lack of access to the Canadian legal system and its inability to provide adequate justice, and the sense that people feel so distant from their culture. These are the experiences that people tell us are normal in their lived experiences.

This research concludes that there are three critical paths to addressing the problems of poverty, addiction and culture loss that trigger and continue family violence in Mi'kmaq communities.

First is the understanding that the cultural health of the Mi'kmaw Nation requires recognition of Mi'kmaw rights and title, meaningful consultation and fulfillment of the fiduciary obligations of the Crown. Without rights education and the implementation of Mi'kmaq treaties, systemic discrimination and poverty will continue to contribute to, rather than limit, the experiences family violence. Such recognition will enhance nation rebuilding strategies and afford opportunities for reconciliation between Mi'kmaq, Federal and Provincial governments and their constituents. This is a necessary project of decolonization and cultural realignment.

A second path is to continue to improve Mi'kmaw experiences within the mainstream justice system through the expansion of the very good work and services of Mi'kmaw Legal Support Network, Mi'kmaq Victims Services and Mi'kmaq Family Healing Programs. Mi'kmaq encounters with the Canadian justice system can be advanced by the complete and consistent fulfillment of the Marshall Inquiry and Royal Commission on Aboriginal Peoples (RCAP) Recommendations through tripartite commitment to improve translation services, expand court worker services, establish sustainable victims' and family court services, provide Indigenous legal aid, probation and aftercare. The creation

of an Aboriginal court, that is given equal weight, respect and enforcement powers as regular Provincial courts to resolve problems in a culturally aligned and holistic manner that promotes balance and healing rather than adversarial dispositions, will help answer the problems of over-incarceration, observe the directions of s. 718.2(e) of the Canadian Criminal Code and better reflect and respect Aboriginal sovereignty.

The third and perhaps most important path is to address the sense of culture loss by creating programs and remedies that are meaningful to those who participate in them. The communities have told us they want customary law programs to promote prevention and to provide interventions to help families in crisis. By creating customary law protocols that are rooted in Mi'kmaq ways of being and framed by Mi'kmaq rights, meaningful, flexible and culturally relevant mechanisms will help people work through their crises, enhance Mi'kmaq values for living right, and provide visible and serious consequences for those who commit acts of violence in Mi'kmaq communities. This approach involves a full-scale educational program on prevention and intervention and comprehensive holistic service provision that assists couples in distress, whether they reconcile or dissolve their relationships. The emphasis is that violence is not acceptable in Mi'kmaq communities and community sanctions will act as the greatest deterrent.

From the research we have learned that success requires community design and ownership, sustainable mobilization, and sufficient resources to make choices available that are culturally real and comprehensive. Mi'kmaq customary law involves talking it out (addressing root causes), seeking and receiving counsel, Elder reprimands and teachings, shame and shunning, restitution, reintegration, reconciliation, transparency and accountability.

Mi'kmaq justice operates on principles of inclusive processes whereby survivors, offenders and community collaborate for remedies that hold people accountable in a timely manner, that considers the shared community and service provider responsibility in making remedy plans work through compliance monitoring and enforcing agreed upon consequences in situations of non-compliance. It is hard work, but it is the most effective strategy available to protect and empower victims, to provide support to families, to educate batterers and to alert community members that working together can improve everyone's quality of life.

By expanding referral entry points (Victims' Services, Wellness Centres Crisis Centres, Mi'kmaw Legal Support Network, Mi'kmaq Family Children Services, the Mi'kmaq Friendship Centre, Mental Health, individual requests, Bands, courts, police), reestablishing interagency case management and coordinated follow up to dispute management and healing plans through customary law, communities become empowered. We are witnessing the desire to demand and make change through the efforts of Parents Against Drugs, Sisters in Spirit, Mi'kmaq Venture Program, Men's Intervention programs, Building Bridges, parenting programs, Adult Education Programs, youth groups and other such mobilizing programs. By tapping into this momentum Mi'kmaq communities can address the problems of access to justice, and choose to live in communities where doing nothing about violence is no longer normal.

Therefore, this research, based on community input, has produced a series of recommendations for change, to build on the solid foundation of Mi'kmaw Legal Support Network (MLSN), Mi'kmaq Family Children Services (MFCS), Native Alcohol and Drug Abuse Counselling Association (NADACA), Wellness, Mental Health, and Victims' Services to set up collaborative protocols for dealing with family violence using customary law as a way to address the problems of culture loss, addictions and poverty as the major contributors to family violence. This is an exercise in cultural revitalization, rights education, and community empowerment that mobilizes family and civic healing.

These protocols will offer Mi'kmaq people viable culturally aligned choices, and consistent, visible approaches to combating family violence, helping restore community health and wellness through collaborative prevention, intervention and reintegration and will improve Mi'kmaq encounters with the Canadian justice system.

The Family Violence sub-committee of the Tripartite Justice Committee has a series of next step recommendations to address the problems of family violence in Mi'kmaq communities.

The Domestic Violence Committee recommends the following priorities as the necessary next steps in addressing Mi'kmaq family violence and improving access to justice:

1. To develop and implement intervention protocols for family / domestic violence cases to be managed by a collaborative community-based Mi'kmaq customary law process;
2. To implement and maintain Men's Intervention and Empowerment Programs to provide consistent, sustainable, family healing plans and compliance monitoring strategies to end family violence in Mi'kmaq communities;
3. To expand and sustain Mi'kmaq Victims' Services by using a comprehensive navigation protocol to work collaboratively with Mi'kmaq Family Healing, NADACA, Mental Health, the RCMP and other policing services, and other service providers, to provide consistent, safe, sustainable, family healing plans and compliance monitoring strategies to end family violence in Mi'kmaq communities;
4. To design and deliver culturally meaningful prevention and anti-violence education.
5. To expand support and legal services for Mi'kmaq people engaging the Canadian Justice System.
6. To mobilize reintegration procedures and support network activities in each Mi'kmaq community on reserve and in urban centres.

Addressing Mi'kmaq Family Violence

Introduction

This participatory action research was framed to consider on one end of a continuum, the social-political phenomena, namely historical traumas such as colonization, residential schools, systemic discrimination and racism and the complex community dynamics that arise from such circumstances that contribute to family violence, and on the other end, the intensely personal experience of abuse and the collateral damage associated with those experiences.¹ This continuum framed the assessment and evaluation of social connectedness, community capacity, and gaps in services, as well as potential best practice measures and strategies for intervention. The main goal was to empower Mi'kmaq families and communities to make it normal to do something about violence. To do this we asked them to help develop programs that have meaningful consequences and remedies that enhance intervention and prevention to break the cycles of violence. It is hoped that this research will crack the intergenerational and enabling dynamics of family violence, and lead to sustainable and effective strategies for individual and community healing, empowerment and control over the situations that affect the quality of life in Mi'kmaq communities.

Healthy communities share a sense of belonging, responsibility and safety. People have the right to feel secure and to actively participate in justice processes that have a capacity for positive collective responses to community problems. Families in Indigenous

¹ Bopp, Bopp and Lane 2003.

communities are the cornerstones of sociocultural organization. Kinship networks order all relations past, present and future. They order belief systems, governance, land use patterns, and play a key role in education. The ideas and ways of how to live right are framed and taught through family networks. Families are responsible for expressing and operationalizing the values of their cultures. When problems occurred there were, and remain, local mechanisms to address disputes through family and community arrangements.

Colonial processes, discriminatory legislation and policy decisions largely eroded the capacity for community control over dispute management and silenced customary practices. Jurisdictional disputes between federal and provincial responsibilities, systemic racism and prejudice led to asymmetrical fields of power in which Indigenous communities were disempowered, causing cultural collapse and fragmented kinship networks. The catastrophic consequences of colonization are revealed today in the major health crises experienced in many Indigenous communities. Sociocultural health in Aboriginal communities is further compromised by problems of access to affordable housing, employment, transportation, education, health care, justice and culturally meaningful programs and services, all of which impeded the treatment of violence.

Indigenous communities respond to these problems in a variety of ways, however; common elements of a vision for the future often include self-determination and independence in planning, developing and implementing systems of governance, which will best meet their cultural, pragmatic and tangible needs. Current research finds that revitalization of customary systems of resolving issues and problems that include women

as important elements of the community is imperative. ²"Aboriginal women are actively participating in improving the quality of life in their/our communities. Many Indigenous cultures embrace women as nurturers, care givers and leaders, and strive to strengthen women's roles within their communities. To do otherwise would be to foster a climate conducive to cultural suicide."³

The traditional laws were never codified. Consistent patterns of interaction governed disputes between nations and families. Most Aboriginal communities share sets of values by which they measure behaviour and determine the severity of wrong doings and put forth ideas of how to correct them. These values generally are respect, kindness, honesty, sharing, strength, bravery, wisdom and humility. Today these values provide the basis for community consensus about standards of behaviour. Through various forms of indirect social control and sanctions, rather than written regulations, people are pressured into controlling their behaviour.

Social controls inherent in traditional values are made evident when emphasized through public acts, ceremonies, and observances. When wrong doings have to be corrected, the authority of the verdicts are accepted as just because they are consistent with cultural values and positively reinforced by other members of the community. Traditional methods of social control focused on deterring crime through internal community pressure and sanctions. Today methods such as teasing, mocking, gossip, ridicule, avoidance, and shunning continue to exert significant public pressure to modify inappropriate behaviour. These methods are particularly effective in communities where daily face-to-face interaction is high and kinship networks are active. The findings of this

² Pauktuutit 1995; Redbird 1998.

³ Chuchryk and Miller 1996: 4.

research support the creation of a specialized customary law program, drawing on Mi'kmaq philosophies adapted for contemporary environments to address the problems of family violence. In order to understand the present, we must first look to the past. The first section of this research explores Mi'kmaq culture, family violence and law prior to colonization.

The Past History of Family Violence and Mi'kmaq Customary Law

The Mi'kmaq Nation has occupied Atlantic Canada for thousands of years. For the last 400 they have been subject to European colonialism. However imperiled their sense of nationhood and pride, large parts of their tradition and culture survive. Much, however, has been marginalized or eroded, including the customary law that governed dispute resolution among the Mi'kmaq people. The model of justice that prevails – that of the Canadian nation-state – is patently an instrument of alien domination, an irritating symbol of the discrimination and oppression that characterize the colonial experience and a constant reminder of the injustices routinely suffered by the Mi'kmaq.⁴

Prior to colonial domination the Mi'kmaq were well equipped and well adapted to their environment. In addition to their material culture and resource strategies, they had corresponding, culturally imbued ways of living with each other within their environments. Social laws reflected the ideas and practices to ensure survival.⁵ The Mi'kmaq had ideas about what had to be done to keep the world in balance, and how to treat each other justly. Social norms in Mi'kmaq culture existed without the sustaining

⁴ McMillan (2011) "Colonial Traditions, Co-optations, and Mi'kmaq Legal Consciousness" *Journal of Law and Social Inquiry*. 36:1.

⁵ The term law is used here to describe linkages between cultural meaning and legal concepts, which include standards of behaviour and belief and action and are embedded in consciousness and are part of the transformative system of culture. Laws describe conduct and application of juridical ideology.

force of courts, police, or other such expressions of authority.⁶ There were particular practices to appease and please the spirit world, to correct mistakes, to explain the unexplainable, and to bring peace to others when balance was disrupted by harmful actions. Community cohesiveness and value sharing formed the basis for the translation of cultural teachings, through Mi'kmaq oral traditions shared within and between families. This section illustrates the balance that the Mi'kmaq people strived for in their day-to-day lives and relationships with one another. The earlier writers, mainly missionaries, document their observations with an overtone of disbelief that an "uncivilized, non-Christian" society could manage their communities with little formal regulations.⁷ The most noted characteristic is that it is the responsibility of the entire community to ensure that not one member is wanting for food, shelter, clothing, and most importantly, love and nurture. Many of the understandings, customs and traditions were intended to address conflict and problems before they began.

Mi'kmaq Customary Practices Prior to Colonial Domination

Traditional Families

Prior to colonization Aboriginal communities had governments, religions, economies, territories, laws and comprehensive geopolitical systems. They had ways of getting along and ways of managing problems when they occurred. Such organization enabled people to survive, create and prosper for millennia. Indigenous peoples are rarely seen as innovators, but indeed they are and have been for thousands of years. In order to

⁶ See Hoebel's *Law Ways of the Comanche* in which he defines a "social norm is legal if its neglect or infraction is met by the application, in threat or in fact, of the absolute coercive force by a social unit possessing the socially recognized privilege of so acting" (in Bohannan 1967:187).

⁷ The language used by the missionaries and early explorers is often offensive and prejudiced. I have used their materials verbatim for accuracy rather than altering them to reduce offense. My apologies.

understand contemporary issues in Aboriginal communities we must first understand the impacts of colonization on Aboriginal cultures, because without this understanding effecting positive, sustainable change is unlikely.

The ancestors of Mi'kmaq people have lived on the eastern shores, rivers and inlets of this continent for over 12,000 years. Contrary to historical perceptions of Mi'kmaq as people without law, culture, religion or governance, the Mi'kmaq had in fact a highly complex society. Customs and values, embedded in language and kinship networks that compelled people to work together to flourish as a nation governed Mi'kmaq social order. Due to their expansive territory, the abundance of diverse resources, and their ability to extract those resources to support a higher population density, the Mi'kmaq required social and political organization beyond the local territory.

Their geopolitical strategies included the division and defense of territories and resources based on family and tribal membership. The primary social unit of the Mi'kmaq was the extended family and was the principal source for establishing and reinforcing community values at the foundation of Mi'kmaq culture. Mi'kmaq lived in bilaterally extended family units. Residence patterns tended to be patrilocal after a pre-marriage matrilineal residency in which the potential suitor demonstrated his worthiness to the woman's family in a form of bride service and apprenticeship. Early visitors to Mi'kmaq territory in the 1600s documented the rules and exchange patterns in courtship and marriage that they witnessed. Courtship and marriage practices involved elaborate gift exchange, permission seeking, and subsistence gathering rituals, as well as extensive counseling from elders. If a husband and wife did not live well together they could easily separate, seeking elsewhere peace and union that they could not find together; the idea of

the indissolubility of marriage was foreign to them.⁸ At dissolution of marriage parenting continued within the extended family networks.

Other people who were not blood relatives were also present in the bilateral kin groups if they chose to align themselves with the head of the family or through adoption, which was common. Several family groups together formed a local band; each local band had its chief. The territories of the local chiefs were coextensive with the area occupied by the inhabitants of a single summer village. Within the village, the chief headed a council of elders, which consisted of the heads or representatives of the families in the settlements. Membership in the local band was fluid and bilateral kinship reckoning, bilocal post marital residence, the absence of exogamous unilineal kin groups, and considerable personal choice in marriage partners fostered the flexibility in residence. This flexibility of Mi'kmaq social organization increased its ability to redistribute people to different locations as economic and personal situations warranted. Groups could alter their size with relative ease. These characteristics of cognatic and composite tribes create residential groups that have adaptive advantages in environments where outstanding concentrated resources existed, but where year-to-year and season-to-season variability in location and abundance also occurred.⁹

Laws of how to live right were integrated into every facet of tribal life. When problems occurred the Mi'kmaq had mechanisms for managing disputes and altering behaviour to reintegrate a wrong doer back into the community and repair the harmed relations. Responsibility for maintaining peace was communal; everyone had a role in finding a resolution and facilitating reconciliation, it was necessary for survival. Talking

⁸ Paul, 2006.

⁹ Nietfeld, 1981.

it out was the key strategy; every person had a voice. Spiritual sanctions and purification rituals helped heal rifts between individuals, families and community. Peacekeeping was largely informal and family oriented. Elders and leaders counseled people in a dispute and gave guidance through teachings highlighting respectful relations and reciprocity. In the past, before entering into a marriage or partnership, young people were instructed on how to live right with each other and extended kin networks reinforced those teachings.

Through extended family kin networks, respect for elders was reinforced through daily activities in the home and through public deference in ceremonies or in any social gathering. With respect to food taboos, of which the Mi'kmaq had many, elders were given the favoured pieces and always ate first. Generally elders were perceived as embodying wisdom due to their long experience, ability to persevere, their tales of survival and understandings of the world around them. The respected elders formed a Council of Elders, and together, with the Chiefs and the *pouins* or spiritually powerful people, they made decisions that would affect the communities or families within the communities, particularly those related to dispute management, settlement relocation, division of territories and resources, war and peace. This council was called on to address problems that could not be resolved within nuclear and extended families, where it is likely the majority of problems were addressed. The words and opinions of the respected elders carried weight, and the people were required to adhere and abide by the instructions of the elders and chiefs or move away. Shaming and shunning were effect social control mechanisms, as were the threat of spiritual sanctions.

Kinship was foundationally critical to Mi'kmaq political organization. Chieftainship was the product of kinship affiliations, as well as superior personal ability,

and was customarily passed down through families having a tradition of chiefs, and members capable of assuming the roles. Basic to the power of any chief was a large, cohesive, and stable kinship group of which he or she was the recognized leader. The larger the unit, the more powerful the chief, because of the greater number of alliances and affiliations traced between it, and other groups. In addition to belonging to a large and powerful family, leadership ability, superior intelligence, generosity, courage, and aggressiveness in war, and superior hunting ability, were the desired qualities for a chief. Chiefly authority was secured by means of example, customs, kinship and family alliance rather than coerced obedience. Generally female leadership occurred post menopause as the Mi'kmaq held strong beliefs regarding the power females held during menopause and took great precautions in terms of interpersonal contact, tool handling, food preparation and ritual activities during menstruation.

Oratory was an important skill because leadership involved convincing followers to participate fully in their directives, such as warring, or forming alliances with other families and bands, and complying with territorial divisions for hunting and fishing. Leaders were required to recite their family ties in order to remind people of their kin ties and obligations. These activities were significant to identity formation and in the edifice of Mi'kmaq cultural consciousness lineage mattered. Family heads and elders would recite their genealogies in speeches given at marriages and funerals to preserve the histories of the families, communities, and their ties to one another, the land, and the spirit world. The speeches included descriptions of important events, acts of courage and generosity, exceptional hunting and fishing adventures, and perhaps most importantly, instructions on what constitutes desired qualities for living right in the Mi'kmaq way. The

oral traditions of the Mi'kmaq, their legends, historical accounts, and anecdotes helped socialize the young by acquainting them with the mores of the society, and educating them as to the behaviour expected. Children were told of the ancient law ways through Kluscap legends. The stories shared over generations taught listeners how to avoid shame and reproach, and how to carry out exploits considered honourable, such as respecting the resources, revering sacred places, exacting avenge in the socially sanctioned manner and sharing. Writing in the late 1600s LeClercq (1910) observed “You will see them supporting their relatives, the children of their friends, the widows, orphans, and old people, without ever expressing any reproach for the support or the other aid which they give them. It is surely necessary to admit that this is a true indication of a good heart and generous soul.”¹⁰ Sharing was a critical virtue valued by the Mi'kmaq and remains part of the social milieu of community life and interaction today.

The Mi'kmaq had many feasting protocols, reinforcing ideas and values of expected proper behaviour and the interconnections between the sociopolitical and economic welfare of the people. Deference for rank and age were the most obvious protocols. The eldest and most notable people made the first speeches and conducted many rituals such as pipe ceremonies, spiritual cleansing practices, and of course orations of genealogy to mark lineage and kinship enhancing ties to each other and to place. Rituals create shared meanings for those involved. They are important mechanisms for defining membership, and delineating status and their attending responsibilities. Songs and dances are symbolic manifestations that integrate individuals into the group and build identity consciousness. Women had a different style of dance from the men. Songs were

¹⁰ LeClercq 1910:245.

sung for different occasions, ranging from welcome songs, to war chants, to mourning descants. Some songs recounted stories, offered fables with a moral lesson, or warnings of the consequences of wrongdoings. Special songs, dances, and feasts, honoured those who successfully avenged themselves.¹¹

In addition to the above ceremonial practices, the Mi'kmaq practiced a sweat lodge tradition. In the early 1600s Denys (1908) noted, "During sweats ... they chanted songs and told stories to make themselves laugh ... being refreshed they put their robes upon them and then went into their wigwams as composed as ever." Lescarbot (1911) suggests shamanic participation and that the Mi'kmaq likely used sweat lodges as a religious ceremony and as a rite of purification and healing, undertaken both to restore and to maintain bodily health, but undertaken even more generally as a preliminary for participation in religious exercise. Furthermore, the use of the sweat lodge as a purification ritual conducted prior to making major decisions is connected to Mi'kmaq law ways. Sweats acted as a conduit to the spirit world, which helped in guiding those decisions. As a purification ceremony, spiritually sick wrongdoers could seek solace and healing in the sweat lodge with the help of a shaman or a respected elder. Of its many uses, the sweat lodge offered an opportunity for counsel for those that entered.

Respect for all things, human and other than human, was a central theme in many Mi'kmaq teachings and oral traditions. Respect for one another, the wisdom of elders, the bounty of the earth as embedded in the principles of *netukulimk* were all vital to demonstrating expected behaviour, which fostered aspects of Mi'kmaq legal consciousness that informed the people of how to live right. The Mi'kmaq who occupied

¹¹ Hoffman, 1955.

the territory of present-day Eastern Canada have had one of the longest periods of contact and colonization of any Indigenous group in Canada.

How to live right was first transmitted within Mi'kmaq families. Adults taught children rules and etiquette in the home, which grandparents, and other members of the extended family, further reinforced. The central values, represented today as the " seven sacred teachings" reflect concepts of love, honesty, humility, respect, truth, patience and wisdom.¹² Teachings included protocols for showing children respect for their elders.

They never quarrel and are never angry with one another, not because of any inclination they have to practice virtue, but for their own satisfaction, and in fear, as we have just said, of troubling their repose, of which they are wholly idolaters.¹³

Elders accumulated prestige from successful hunting and warfare, and they become more active in the public life of the tribe. "It was the old men who spoke first at the public feasts and who constituted the council of elders. These were accorded respect as befitted their age and deeds; the youths were silent before them."¹⁴ An elder may also be *pouin* (shaman).¹⁵ As women aged, they, too, gained status:

Old age was probably a time of relaxation of restraints. It was no longer necessary for them to undergo menstrual seclusion; they were cared for by their children or

¹² See Murdena Marshall's Mi'kmaq Sacred Teachings describing the seven stages of life with the seven gifts.

¹³ LeClercq 1910: 242.

¹⁴ Hoffman 1955:310.

¹⁵ Pouin - refers to supernatural, mystical, impersonal power and to the subjects, which possess it. The word may be applied to the mystical force though to be causing an intangible or mysterious experience, or to the spirit being possessing such power, or it may be applied to a human possessing power. It may be possessed in small or large quantities resulting in a ranking of supernatural beings according to the 'strength' of their power. Since one's position in this system of rank can only be determined by individual tests of strength - i.e. by shamanistic combat - the Micmac legends relating Bouin [pouin] read like a rell of gladiatorial combats (Hoffman 1955: 379).

relatives, and were given respect and consideration by the younger people; and their advice was sought in matters concerning illness and the use of herbs. Furthermore this was probably the time when a few of them could gain genuine prestige by becoming shamans.¹⁶

Respect for elders was reinforced through daily activities in the home and through public deference in ceremonies or in any social gathering. With respect to food taboos, of which the Mi'kmaq had many, elders were given the favoured pieces, and always ate first. Generally elders were perceived as embodying wisdom due to their long experience, ability to persevere, their tales of survival, their strategies for achieving peaceful relations and understandings of the world around them. The respected elders formed a Council of Elders, and together with the Chiefs and the *pouins*, likely made decisions that would affect the communities or families within the communities, particularly those related to dispute management, settlement relocation, division of territories and resources, war and peace. This council was called on to address problems that could not be resolved within nuclear and extended families, where it is likely the majority of problems were addressed. The words and opinions of the respected elders carried weight, and community members were required to adhere and abide by the instructions of the elders and chiefs. Elders often taught by doing and children learned by trying. Mi'kmaq let their children learn experientially. Parents refrained from interfering in that process unless great harm was to come to them. Children were highly revered in Mi'kmaq culture. Families were considered very fortunate to have many children.

Hence it comes about that they never contradict any one, and that they let everyone do as he pleases, even to the extent that the fathers and mothers do not dare correct their children, but permit their misbehaviour for fear of vexing them by chastising them.¹⁷

¹⁶ LeClercq 1910: 229-233 in Hoffman 312.

¹⁷ LeClercq 1910:242.

The Micmacs loved their children and were permissive parents. There was no corporal punishment. No child had to cry for anything as his parents would even take food out of their own mouths to placate them. The first tooth, the first walk, were causes for family celebration. Infants had small toys and beads attached to their swaddling boards, but once they were able to stand on their own, they began to enter the adult world.¹⁸

According to Upton (1979) Mi'kmaq people had a highly developed sense of responsibility to the group and were, "slow to anger with each other and made every effort to avoid giving offense by criticizing or advising or disagreeing."¹⁹ Often these education practices are misinterpreted by settler society and Mi'kmaq justice becomes characterized as non-interfering. There is no evidence to suggest that in terms of disputes, or living the right way, that people simply did not interfere, nor were extremely permissive, on the contrary, Mi'kmaq confronted problems and wrong doers.

Youngsters of about ten or twelve years of age were told by the old people how to behave; thereafter they participated in tribal affairs, and heard the old stories. That, according to 1911 informants, was the Micmac way... In 1850, Silas Rand said 'The rod was used unsparingly to tame rebellion and teach manners. (Children) speak respectfully of parents. They do not pass between their parents and the fire unless there are old people or strangers on the opposite side that are to be honoured more'.²⁰

The oral traditions of the Mi'kmaq, their legends, historical accounts, and anecdotes helped socialize the young by acquainting them with the mores of the society, and educating them as to the behaviour expected of them under special circumstances. Children were told of the ancient law ways. The stories shared over generations taught listeners how to avoid shame and reproach, and how to carry out exploits considered honourable, such as exacting avenge in the socially sanctioned manner, and sharing.

¹⁸ Upton 1979:6.

¹⁹ Upton 1979:7.

²⁰ Wallis and Wallis 1955:254.

Sharing was a critical virtue valued by the Mi'kmaq and remains part of the social milieu of community life and interaction today.

The Mi'kmaq word for sharing is *utkunajik*. The sun shares its warmth; the trees share their wind; and the Mi'kmaq share in the same spirit, be it in their material goods or in their life experiences. Most words in the Mi'kmaq language describe a relationship between the people and nature. Respect for nature is an extension of tribal awareness, for the Mi'kmaq knows that nature is an integral part of his existence ... The term Mi'kmaq also describes and create a coherent social description of how to act in this society. It describes a society where the wellbeing of others is placed above the individual wants and desires in the material world. This is the essence of the alliance, a customary code of behaviour and values, which emphasizes Mi'kmaq dignity in spite of flux.²¹

According to several accounts, the Mi'kmaq would regularly gather in large numbers after the harvest season, as winter settled in. During these gatherings they would recite to one another the names of all those born and died since they last gathered. They would also discuss any significant happenings such as usual weather, exceptional fishing and hunting expeditions, conflicts, and disputes, and tell stories. Included in the gatherings were competitions and games. These occasions brought about opportunities for seeking out potential marriage partners, and building political and familial alliances. Chiefs and elders petitioned newlyweds by advising them on how to get along without quarreling. They would deliver lessons regarding marriage at wedding ceremonies.²²

Mi'kmaq Holistic Traditions of Respect, Responsibility and Healing

The Mi'kmaq had many feasting protocols. Sharing and generosity also go hand in hand with reputation building. "They are in no ways ungrateful to each other, and share everything. No one would dare to refuse the request of another, nor to eat without giving

²¹ Johnson 1991:27.

²² Wallis 1955:239.

him a part of what he has."²³ For example, the Mi'kmaq feasted to mark most transition points in the cycle of life:

With the child's first tooth a celebration is held, and the teeth of the elders officiate at the feast and there is a vast amount of chewing, and they rejoice thus that the little one will soon be able to make use of his own. When he walks alone, they celebrate again, and at this festival there is much dancing. The first game a child kills in hunting affords another occasion for a great celebration the family assemble and all the Indians of the vicinity are invited to this feast, if they are away on an expedition, it will be deferred until their return, and in the meantime, to preserve the game better, it will be smoked. At these Feasts, a somewhat special formality is observed, neither the family of the young hunter nor himself taste the game which he has killed and no matter how small it might be, it is a point of honour to divide it among all the Guests. Care is taken to put it in the cauldron last. They eat to their hearts content and only pause from time to time in order to honour the hunter with cries and joyful songs. All game killed by him in his earliest youth is given to others, to show his skill and courage, but he is not so liberal with his prizes when he has attained the marriageable age.²⁴

Demonstration of provisioning skills and sharing ethos were highly desirable in marriage partners. Rituals create shared meanings for those involved and reinforced gendered roles and expected duties. They are important mechanisms for defining membership, and delineating status and their attending responsibilities. Songs and dances are symbolic manifestations that integrate individuals into the group and build identity consciousness. Women had a different style of dance from the men. Songs were sung for different occasions, ranging from welcome songs, to war chants, to mourning descants. Some songs recounted stories, offered fables with a moral lesson, or warnings of the consequences of wrongdoings. Special songs, dances, and feasts, honoured those who successfully avenged themselves after a harm and helped return the community to balance.

²³ LeClercq 1910: 290.

²⁴ Hoffman 1955: 270.

In addition to the above ceremonial practices, the Mi'kmaq practiced a sweat lodge tradition. "During sweats ... they chanted songs and told stories to make themselves laugh ... being refreshed they put their robes upon them and then went into their wigwams as composed as ever."²⁵ Lescarbot also suggests shamanic participation in sweat lodge ceremonies and they were likely used as a religious ceremony.

... [I]t is a rite of purification and healing, undertaken both to restore and to maintain bodily health, but undertaken even more generally as a preliminary for participation in religious exercise ... In the Indian's eyes the sweatbath was far more than a simple physical efficacy. It brought him intimately and directly into contact with the powers which uphold his world, giving universal health and sanity of nature. All the elements, fire, stony earth, water and vaporous air, entered into the ritual healing, which was preceded by chants and prayer and was felt to bring a new birth into the life of that greater community of being.²⁶

Connected to Mi'kmaq law ways is the use of the sweat lodge as a purification ritual conducted prior to making major decisions. Sweats acted as a conduit to the spirit world, which helped in guiding those decisions. As a purification ceremony, spiritually sick wrongdoers could seek solace and healing in the sweat lodge with the help of an experienced healer. Sweat lodges and feasting offered opportunities for counsel and teachings, and indicate that Mi'kmaq people have been interested in holistic healing strategies for hundreds, if not thousands, of years. Mi'kmaq followed menstrual taboos closely. Menstruating women avoided the sweatlodge and often went into seclusion when on their moontime.

Respect for all things, human and other than human, was a central theme in many Mi'kmaq teachings and oral traditions. Respect for one another, the wisdom of elders, the bounty of the earth as embedded in *netukulimk*, are vital to demonstrating the good and

²⁵ Denys 1908:416-417.

²⁶ Hoffman 1955:309.

expected behaviour, which fostered aspects of Mi'kmaq legal consciousness that informed the people of how to 'live right'.

Since all things have a common origin in the sparks of life, every life-form and every object has to be respected. Just as a person has a life-force, so does a plant, rock or animal. Therefore, the Mi'kmaq are taught that everything one sees, touches or is aware of must be given respect. This respect requires people to develop a special consciousness that discourages careless treatment of things. Thus, a person gathering roots, leaves or bark for medicinal purposes pleases the life-force of each plant by placing a small offering of tobacco at its base, believing that without the cooperation of the manitu the mere form of the plant cannot work is cures.²⁷

Children were taught to be respectful of elders, to listen, watch attentively, and to treat everything with special care for its spirit. Apparently precocity was undesirable, because if one is too clever when young it was believed that he or she will have no sense when they grow up, and this leads to trouble. They also encouraged respect for animals in the proper treatment of dogs, which were vital to hunting. The following tale suggests why it is important to treat all with kindness and respect:

A certain man was always kind to his dog, and another was never kind to his dog. The former man heard the following conversation between these two dogs: Why don't you go hunting for your master? He is never kind to me; he gives me only hard bones and no meat. You are treated well, and you hunt for your master. When it is cold, he drives me out of the wigwam and I almost freeze. That is why I do not hunt for my master. The man told this to his friend. "I don't know whether you have had bad luck", he said and related the dogs' conversation. The friend took the dog into his wigwam and treated him well. Soon it captured moose, and later much other game. The man, because he had shown no kindness to his dog, had nearly starved.²⁸

Mi'kmaq were great travelers and visiting among relatives and friends was frequent. When traveling in other families' territories certain courtesies were practiced as a way of showing hospitality and respect. Evidence indicates that the host has a duty to

²⁷ Battiste in Henderson 1997:15.

²⁸ Wallis 1955:115.

welcome and feast guests as long as possible, and guests gave presents to their host. Cultural expectations indicate a strong emphasis on reciprocating such hospitality; failure to do so resulted in strained relations. Sharing among friends, family and community, as in chiefly generosity, were paramount practices in Mi'kmaq society, fostering cohesiveness, enhancing equality and improving chances for survival. Frequent visiting is also a social control method. Frequent visitors may impede opportunities for family violence to go unnoticed or unreported and thus visiting may have acted as a deterrent to any behaviour that would bring shame should a visitor arrive unexpectedly.

The early missionaries commented on Mi'kmaq hospitality toward kin and strangers. As part of the great-hearted complex, the Mi'kmaq strived to care for all of their relatives, friends, widows, orphans, the elderly and strangers. Failure to do so brought the risk of being called stingy and without heart, "the injury most felt among them ... it is a crime among our Indians not to be hospitable."²⁹

Custom and Conflict in Mi'kma'ki Prior to Colonization

During early contact Mi'kmaq life was not without problems. While it may be attractive to think of the past as harmonious and peaceful, this was not always the case. The Mi'kmaq participated in cultural prescribed warring and avenging practices directed at managing relations between culture groups. However, there were other sources of conflict that produced tensions within Mi'kmaq communities. For example, trespassing caused stress or damaged relations. If a person went into other families' hunting grounds without asking permission, taking game, food, or other materials, a fight may ensue, and compensation paid to the persons responsible for a territory may be required to settle

²⁹ LeClercq in Hoffman 1955:603.

matters. Theft of personal property may have occurred, particularly in instances of someone wishing to access supernatural powers, or to bring harm to an enemy by stealing their medicine bundles, pouches, or other such articles imbued with special strength. Due to a general ethos of sharing and borrowing, theft was not likely a common problem until the colonial period, when competition over access to European goods, and a rapid decline in resources increased tensions and reduced opportunities for survival.

Daily stresses, induced by the pressure to succeed in providing food and protection, may have resulted in heightened moments of conflict, particularly when food was scarce, or the weather was bad. Competition to gain status in the community through generosity, bravery, spiritual prowess, or by accessing the rights to favoured resource territories, was probably high among young adult males. The strain of living up to these standards took its toll on young men.³⁰ Tensions sometimes erupted in fights, which were then mediated by respected elders and family members.

They make up and end all their quarrels and their differences through friends and through arbiters. If it is, however, a question of punishing a criminal who has killed or assassinated some Indians, he is condemned to death without other form of law. "Take care my friend if thou killest, thou shalt be killed." This is often carried out by command of the elders, who assemble in council upon the subject, and often by the private authority of individuals, without any trial of the case being made, provided that it is evident the criminal has deserved death.³¹

Disputes were generally not disruptive to daily activities. In small-scale societies petty quarrels and insults could not interfere with the daily pressure to acquire food, clothing, shelter, and produce tools; however, fights did occur. Dispute management occurred through the mediation of kinfolk within closely related communities, and by negotiations, under threat of revenge if necessary, between more distantly related

³⁰ Hoffman 1955: 274.

³¹ Hoffman 1955:513.

communities.³² Friends and companions were able to referee fights between community members and to negotiate settlements quickly. More serious offenses, such as murder, were treated formally, in some cases, by taking the matter before a council of elders, or informally, by the individual acting on his or her own volition and seeking revenge.

Revenge was a key aspect in Mi'kmaq dispute management. It was both a cause of trouble and a remedy. Once a call to avenge a wrongdoing has been made public, there was no turning back. Failure to carry out a claim brought greater shame to an individual and their family. Revenge was a significant aspect of finding and achieving a sense of balance in Mi'kmaq society. When problems did arise, there were various acceptable mechanisms available for their management. Fighting, for example, was perhaps the most common way to act on trouble if talking it out did not work.

If the offenses are not between tribes but between compatriots and fellow-citizens, then they fight among themselves for slight offenses, and their way of fighting is like that of women here, they fly for the hairs, holding on to this they struggles and jerk in a terrible fashion, and if they are equally matched, they keep it up one whole day, or even two, without stopping until some one separates them.³³

Fighting was either informal or semi-formal. It seems that fairness constituted an equal matching of foes without the use of weapons. As Upton argues, it is unlikely that dispute was common as people relied on one another to survive and as such needed to get along most of the time.

The band was too important to all its members, too dependent on the collaboration of all, to permit much indulgence. If anger was aroused, it was most often dissipated by mocking the antagonist behind his back. Extreme provocation could produce a fight, but it was a purposely ineffectual one, consisting mainly of hair-pulling. Major offences such as murder or adultery called for the personal vengeance of the aggrieved family and rarely occurred within a band. Discord was

³² Barsh 1991:11.

³³ Thwaites JR III 91-97.

a luxury no one could afford.³⁴

When offended, Mi'kmaq people preferred to internalize the insult rather than cause a conflict or problem with another family or community member. This resulted in suicide as noted by the missionaries and early settlers.

Other of our authors confirm this tendency towards suicide, and inform us that other reasons led to it- both for men and women. These included shame or violation of modesty, and the death of spouses, friends, or relatives. The existence of this suicide pattern necessitated a counter-pattern; it was apparently customary for friends or relatives to keep constant watch over individuals who betrayed melancholy through their attitude or through the sad and gloomy songs, which they sang.³⁵

Fights were easily modified by friends, or by the authority figures in the community, chiefs or elders and on some occasions, *pouin* [shaman]. Peace was also brought about through reparations to the aggrieved.

The little offenses and quarrels are easily adjusted by the Sagamores (Chiefs) and common friends ... The great offenses, as when some one has killed another, or stolen away his wife, etc. are to be avenged by the offended person with his own hand; or if he is dead, it is the duty of the nearest relative when this happens, no one shows any excitement over it, but all dwell contentedly upon this word *habenquedouic* "he did not begin it, he has paid him back: quits and good friends." But if the guilty one, repenting of his fault, wishes to make peace, he is usually received with satisfaction, offering presents and other suitable atonement.³⁶

LeClercq tells us that:

When they are convinced at length of their fault, one may threaten to break their bones with blows of clubs, to pierce their bodies with swords, or to break their heads with guns [clearly post contact], and they present themselves to submit to these punishments. "Strike me," say they, "and kill me if thou wilt; thou are right to be angry, and as for me I am wrong to have offended thee."³⁷

³⁴ Upton 1979:7.

³⁵ Le Clercq, 1910, pp. 248-249; Diereville 1933, p.165; Hoffman 1955:277.

³⁶ Hoffman, 1955: 509.

³⁷ Hoffman 1955:599.

While it may be true that fighting was an immediate and satisfying response to more simple affronts, sometimes harms were not easily wiped clean. Evidence suggests some situations did lead to longer periods of contention and occasionally developed into feuds. If problems arose between families sharing resource territory or winter and summer campsites, it is likely that the parties would avoid each other, and if necessary, move away from each other. Stories of social fragmentation and groups splitting up as a way of ending or avoiding ongoing confrontations are found in Kluscap legends. Kluscap was considered to be supernatural being who had human form and assisted the Great Spirit or Creator.³⁸ Kluscap's teaching instructed Mi'kmaq on how to live right and foretold the consequences of bad behaviour. In order for a person or family to leave a resource community, tensions and personal risk must be quite high because the community offers levels of security and comfort not easily acquired by strangers moving to a new group, or individuals struggling on their own. If resource stresses required that groups split, these were socioeconomic matters decided by political processes. However, in some cases, if resource decline is a result of bad behaviour, improper adherence to protocols, bad medicine, or some other breach, a marginal group in the community may get the blame. When people with less status, less supernatural power and less subsistence skills face accusations of performing bad medicine, or are held responsible for negative cosmological interventions, they are ostracized by the community and forced to leave as a survival tactic of the community.

Feuding between families may have resulted over competition in resource areas, or due to bad relations resulting from a marriage refusal, or a break down in alliances.

³⁸ Miller, V. in Morrison and Wilson (2004).

Accusations of sorcery, bad medicine, the casting ill will or bad fortune on another caused suspicions to increase and troubles were not easily fixed by fistfights. Individual feuds could escalate into family feuds due to the high levels of interaction in tight knit communal situations as people take sides and ally themselves with friends and family.

Compensation was a further aspect of Mi'kmaq dispute management. Spiritual and material offerings, presents and atonement were important processes in the return to socio-spiritual balance. In order for restitution to occur, the parties or party that perpetrated the wrong must take responsibility. According to LeClercq:

Also they endure with patience the severest punishments when they are convinced that they have deserved them. They even make considerable presents to those who punish them severely for their misbehaviour, in order, say they, to remove from the hearts of the former all the bitterness caused by the crime of which they are guilty.³⁹

These patterns of conflict, exchange and reconciliation guided Mi'kmaq communities for centuries. Practices of negotiation and counseling were also paramount in Mi'kmaq conceptions of marriage.

Marriage Customs and Protocols

Mi'kmaq marriage customs included a residence protocol prior to the married cohabitation of the couple. The male generally lived with the female's family to assess whether they were compatible and learn how to care and provide for the wigwam. The union of two people was important beyond the couple, as in all affairs of the nation, the community through extended family networks, political alliances and spiritual relations were all impacted by marriage, birth, divorce and death. Males would generally seek

³⁹ Hoffman 1955:599.

permission of the female's father to enter into courtship. According to the early missionaries parents never forced couples into marriage, nor did they arrange marriages.

The one of our Indians who wishes to marry a girl must live an entire year in the wigwam of his mistress's father, whom he must serve and to whom he must give all the furs of the moose and beavers he kills in hunting. By the same law it is forbidden to the future husband and wife to abandon themselves to their pleasure.⁴⁰

During courtship males needed to demonstrate that they were good hunters, capable of supporting a large family, and ensuring the future happiness of his bride. While no dowry was paid, the groom was obliged to provide the wedding feast from the profits of his competence as hunter, fisher and gatherer. Females also had to demonstrate their capabilities in various activities to assist her husband in fulfilling his responsibilities to the family and the community.

The girl, for her part, also does her best with that which concerns housekeeping, and devotes herself wholly, during this year, if the suit of the boy be pleasing to her, to making snowshoes, sewing canoes, preparing barks, dressing skins of moose or of beaver, drawing the sled- in a word, to doing everything which can give her the reputation of being a good housewife.⁴¹

At the end of the year, if the couple still wanted to marry, they did; if not they went their separate ways, usually without great consequence. After the probationary year of bride service, the newlyweds often returned to the family of the groom's father where the residential unit was usually an extended family, consisting of a husband and wife, their young children, some of their married children with their spouses and children, and perhaps a few other relatives (consanguine or affinal) or even nonrelatives who chose to reside with the family.⁴² During this era it was very advantageous and honourable to have

⁴⁰ LeClercq 1910:238.

⁴¹ Le Clercq 1910:260-6.

⁴² Nietfeld 1981:410.

many children. Once married, men and women worked together, fished together, and shared the economic pursuits of the family.

It is such that if any stability is found in the marriages it is only when the wife gives to her husband evidence of her fecundity; and it can be said with truth that the children are then the indissoluble bonds, and the confirmation, of the marriage of their father and mother, who keep faithful company without ever separating, and who live in so great a union with one another, that they seem not to have more than a single heart and a single will.⁴³

With balance and fairness in mind, Mi'kmaq peoples also had an understanding of divorce or separation if things did not work out between couples. Dissolution of marriage occurred when a couple no longer felt passionate toward one another. Early writers assumed that the inability to produce children was a key reason for a marriage to end likely because subsequent generations were required to procure food and shelter for the well being of the group as the population aged. If a couple did not get along they could usually go their separate ways without much contestation.

If no children were born to a couple within the first two or three years, the man could divorce his wife on his own volition. The marriage could be dissolved at any time on grounds of mutual antipathy, and either the man or woman could take that action. Divorce was, however, held in check since it involved an expensive exchange of presents. A man's second wife was acquired with much less formality, by making presents to her father, and the wedding feast did not have to be particularly elaborate.⁴⁴

Either the husband or the wife could dissolve marriages and there is no significant evidence suggesting there were strict regulations on dividing property, as most property was communal. As the missionaries came to be a part of the community, they tried to influence the marriage customs by encouraging people to marry in the church and to involve the clergy in choosing a mate. Missionaries condemned the practices of

⁴³ Le Clercq 1910: 262-63.

⁴⁴ Upton 1979:5.

premarital co-residence and divorce as sinful, heathen and wrong and thus significantly disrupted Mi'kmaq social organization by imposed their marriage rules. The following story found in Whitehead's *The Old Man Told Us*, describes a priest beating a Mi'kmaq man because he did not heed the priest's advice regarding his former wife. Take note that the terminology in this disturbing account may be offensive.

1692- Last year (M. Baudoin, priest at Beaubassin) beat one of them, and left him for dead, and I cannot refrain from giving the reason. This Indian had married in the native manner at Chedabucto; his squaw had left him for another man some months later, which, among them, is regarded as dissolution of marriage. Her husband took her back in response to the pleadings of her parents, but it was not long before she again went off with another, and by him had a child. The first husband, therefore, had no further desire to see her and took a second squaw with as little ceremony as he had the first. M. Baudoin, not being aware of this, had promised another Indian that he should have this woman when they returned from hunting. The first Indian and his second squaw went to Baubassin, and M. Baudoin told him he must leave her and take back the first. He protested, saying that she had abandoned him and had borne a child to another man; he was ready, he said, to marry this squaw in the church. When M. Baudoin found that neither he nor his concubine would exchange mates he threw himself on the Indian, and, having kicked him in the stomach and given him many blows with a stick as he pleased, left him covered in blood and returned to the village to boast of his martial exploit. I trust that what I have related will be credited, because it is the plain truth.⁴⁵

As French and British efforts to push Mi'kmaq to practice Christianity increased, kinship practices, gender roles and marriage protocols were all disrupted and disturbed by foreign interventions, often with terrific consequence for the Mi'kmaq. Mi'kmaq men had the duty to protect and provide for Mi'kmaq women as part of the cultural honour complex and to ensure the continuation of the nation. In colonial times, this role was significantly expanded against greater threats – the settlers.

The men were also not immodest, and greatly resented any liberties, which the French attempted to take with the women. After an incident during Biard's stay at

⁴⁵ Joseph Robinou de Villbon to Count Ponchartrain, 1693. In *Acadia at the End of the Seventeenth Century*, by John Clarence Webster. 1934:50-51 in Whitehead 1991: 71.

Port Royal ‘they came and told our Captain that he should look out for his men, informing them that any one who attempted to do that again would not stand much of a chance, that they would kill him on the spot.’⁴⁶

As settler society expanded in Mi’kmaq territory, Mi’kmaq experienced situations of rapid culture change. Under colonial authority, the power to adjudicate their injuries, form marriage bonds and keep peace according to customary practices was removed from kinship networks. Influence formerly held by chiefs, elders, community and family members, was usurped by coercive Christian and British practices, forcing the Mi’kmaq to seek redress in foreign legal systems or the church. The colonists were not satisfied with just political and economic control, but sought to deny Mi’kmaq history, disfigure their culture, especially their social organization, seasonal rounds, marriage and spiritual practices, in other words, breakdown their customary laws. After thousands of years of managing the harsh environment and producing sophisticated strategies for survival the social, economic, political, spiritual and environmental health of the Mi’kmaq took a dramatic turn in the 1600s. With the onset of missionary activities of the French and the subsequent battles between the French and British in the 1700s, Mi’kmaq social organization and customary practices were irrevocably destabilized.

Domestic Violence

Evidence of domestic violence in the archival record is sparse. As we learn from the Kluskap legends and myths, the Mi’kmaq had ways of belonging and behaving that were favoured, and those that were not. Interpersonal violence, deceit, abandonment, failure to provide and protect your partner and your children resulted in significant

⁴⁶ Biard, 1616; in JR., Vol.3 pp.103-105; Hoffman 1955:281.

community crises. Such wrongdoings would not go unpunished and individuals had to correct the harms or else further trauma would result. Bad behaviour upset the spirits and ancestors. Kluscap legends taught people how to avoid bad behaviour and provided warnings about what would happen if people did not treat each other honourably and with security and respect. Many stories provided teachings that encourage people to treat their spouses with kindness or else bad things would happen to the entire family and community. It is likely that the moral orders of Mi'kmaq society and the strength of the seven sacred teachings would not have permitted abuse to occur beyond an initial episode of violence. Emotions are socially negotiated responses that derive their meaning from a culturally constructed moral rhetoric of the self. In turn, the rhetoric of the self derives its significance, and is reinforced, within historically informed social contexts.⁴⁷ But the moral order and self respect broke down rapidly with the influx of settler society ideologies and alcohol.

That the introduction of alcohol increased incidents of violence and gave rise to a slew of other problems not present in the historical record prior to its use, is of little surprise. However, one must keep in mind that by the time alcohol was widely available in Mi'kmaq society, the nation was in crisis due to dramatic population declines resulting from “endemic diseases brought on by dietary changes following sixteenth century contact and trade with Europeans.”⁴⁸ Diseases contracted from Europeans, a genocide campaign conducted by the British and starvation undoubtedly distorted cultural practices. Rapid population decline dissolved kinship networks, disrupted political

⁴⁷ O'Neil 1996.

⁴⁸ Virginia P. Miller (1976) “Aboriginal Micmac Population: A Review of the Evidence.” In *Ethnohistory* 23/2 (Spring) (117-127) 117.

succession, interrupted seasonal round and food procurement strategies and altered social order because knowledge bearers died prematurely without their teachings being passed on to and upheld by the next generations. The law ways of the Mi'kmaq were breaking down as the settler society imposed their rules and social orders. In these times of calamity, alcohol made vulnerable people all the more susceptible to violence as the normal social control mechanisms of elder reprimands, talking it out and spiritual sanctions were not so effective against the onslaught of colonization. The archives recount the intensive traumatic shift of everyday life.

Lewdness, adulteries, incest, and several other crimes which decency keeps me from naming, are the usual disorders which are committed through the trade of brandy, of which some traders make use in order to abuse the Indian women, who yield themselves readily in their drunkenness to all kinds of indecency, although at other times, as we have said, they would be more like to give a box on the ears than a kiss to whomsoever wished to engage them to evil, if they were in their right minds.⁴⁹

Injuries, quarrels, homicides, murders, parricides are to this day the sad consequences of the trade in brandy; and one sees with grief Indians dying in their drunkenness: strangling themselves: the brother cutting the throat of the sister: the husband breaking the head of his wife: a mother throwing her child into the fire or the river: and fathers cruelly choking little innocent children whom they cherish and love as much as, and more than, themselves when they are not deprived of their reason.⁵⁰

Nicolas Denys noted the changes in Mi'kma'ki after European contact and focused on how alcohol deeply affected many aspects of Mi'kmaq life:

Since they have taken to drinking wine and brandy they are subject to fighting. Their quarrelling comes ordinarily from their condition; for being drunk, they say they are all great chiefs, which engenders quarrels between them. At first it needed little wine or brandy to make them drunk. But at present, and since they have frequented the fishing vessels, they drink in quite another fashion. They no longer have any regard for wine, and wish nothing but brandy. They do not call it drinking unless they become drunk, and do not think they have been drinking

⁴⁹ Le Clercq 1910: 255.

⁵⁰ Le Clercq 1910:255.

unless they fight and are hurt. However when they set about drinking, their wives remove from their wigwams the guns, axes, the mounted swords, the bows, the arrows, and (every weapon) even their knives, which the Indians carry around their neck. They leave nothing with which they can kill one another.⁵¹

Violence in the family escalated and the women spent more time protecting their families from drunken husbands than in preparing the meat, skins, tools, and shelter for them. Alcohol misuse and colonial ideologies, which valued male supremacy and Catholic patriarchy, negatively altered customary attitudes of reverence and respect toward women and disrupted men's traditional duties to protect, provide for and nurture the family.

Immediately after taking everything with which they can injure themselves, the women carry it into the woods, afar off, where they go to hide with all their children. After that they have a fine time, beating, injuring, and killing one another. Their wives do not return until the next day, when they are sober. At that time the fighting can be done only with the poles of the wigwams, which they pull to pieces to allow this use. Afterwards, their poor wives must go fetch other poles, and other pieces of bark to repair their lodging. And they must not grumble, otherwise they would be beaten.⁵²

Much of the provisioning and protection fell to the women when the men abandoned themselves to drinking, which was much encouraged by the traders and settlers. With their husbands, brothers, father and uncles impaired, the traders enticed the Mi'kmaq women away from their partners, often with promises of brandy, and assaulted them.

The women and the older girls also drink much but by stealth, and they go to hide themselves in the woods for that purpose. The sailors knew well the rendezvous. It is those who furnish the brandy, and bring them into so favorable condition that they can do with them everything they will.⁵³

Other times men and women would drink together and violence was common.

⁵¹ Denys 1908:444.

⁵² Denys 1908:444.

⁵³ Denys 1908:449.

If there remain with them some women who like to drink, although they are certain of being well beaten, they do not give themselves any concern provided that they may get drunk.⁵⁴

For a period of time customary dispute management patterns remained active in Mi'kmaq country. The following quote indicates that parties to a conflict would seek forgiveness and make reparations to those harmed. However, the reparations now included the procurement of liquor in addition to gifts of food, shelter, clothing, or other necessities.

If it is found that anyone among them is hurt, he who will have done it asks his pardon, saying that he was drunk; and he is pardoned for that. But if someone has been killed, it is necessary that the murderer, aside from the confession of his drunkenness and the pardon he asks, should make to the widow some present to which all the others condemn him. And to make the peace complete, he must pay for another drinking bout.⁵⁵

Conclusion

Orally transmitted, Mi'kmaq justice practices are found in the language, and visually expressed through teachings, sacred and secular rituals, ceremonies and oratory. Other practices such as resource extraction, and relations of production, also shape individual and collective forms of legal consciousness as Mi'kmaq peoples participated in daily economic, political, social, and spiritual activities.⁵⁶ There were dynamic processes available to resolve problems, and new normative patterns developed as changes in social organization and environment occurred. Ideas and practices of justice

⁵⁴ Denys 1908:449.

⁵⁵ Denys 1908:444-45.

⁵⁶ See Bruce Miller's work on tribal codes that outlines the complex relationships between the legal standing of individuals, members of extended families and tribal interests and their conflicting claims (1997, 2000).

occur in spiritual values and principles, and within the political, economic and social interaction of the individuals and communities within the cosmos of Mi'kmaq culture, they were spiritual and practical. The Mi'kmaq territory was divided into at least seven sociopolitical regions that covered what is now Nova Scotia, Prince Edward Island, parts of New Brunswick and Newfoundland and into New England. The regions were joined through political alliances, common language, kinship and economic relations. Embedded in the language are concepts of injury, loss, security, empowerment, harmony, revenge, shame, forgiveness, banishment, integration and balance. The oral traditions and Kluskap stories offer some insight into how the early Mi'kmaq handled problems. Dispute stories tell that some resolutions force the offending party to move away in order to avoid ongoing confrontation. Another important aspect is that of managing disputes not through seeking immediate resolution, but through intermittent feuding and revenge. There may have been a reliance on spiritual guidance and the need to acquire spirit help in seeking to avenge problems.

When an offence was committed, it was primarily an offence against relationships and secondarily a violation of rules. When problems arose, family members intervened to produce solutions because the family was the primary site of cultural justice production. Generally, responsibility for managing wrongdoings remained with the parties involved. If wrongdoings developed into feuds, or interfered with the daily operations of the community, spiritual practitioners and respected elders were called in to assist, to remove sicknesses thought to have caused the troubles, or to find other causes and propose potential solutions. Other times, persons with authority, such as community leaders, or respected elders, talked with the wrongdoers, teaching them how to fix the situation, and

to find balance in a concept called *apisiktuagn*, a mutual forgiveness. It was important for social cohesion, group unity, and ultimately survival, that members be reintegrated into the group.

Dynamic, flexible processes to resolve problems were made available through informal and formal practices ranging from talking, teaching, and ritual performance, to ridicule, shaming, gossip, and ostracization. Some problems were quickly resolved through immediate confrontation, such as fighting it out, or by employing *hapenkuituik*, the law of vengeance that states that great offences are to be avenged by the family wronged.⁵⁷ To make even is called *asidolisk*. The nation's leadership adjudicated other disputes by recognizing alliances, banishing wrongdoers who did not alter their bad behaviour, redistributing hunting and fishing territories, giving instructions on war and peace, reminding people of their teachings and their marriage obligations - the expected standards of how to live right. A significant part of this practice was the recitation of genealogies, which served to remind people of their connectedness, their identity and place within the Mi'kmaq world. Where you are from remains important today. Many of these elements of dispute management are evident today.

Contrary to early interpretations of Mi'kmaq culture as simplistic and without law, Mi'kmaq society incorporated complex practices designed to direct relations between members of their society. Socially constructed expectations and standards around which these practices were enforced, challenged, and changed were based on underlying principles of Mi'kmaq justice found within family, community, and nation. These practices were founded in daily interactions reflecting the interconnectedness of

⁵⁷ Marie Battiste, in Henderson (1997) discusses the concept of *hapenkuituik* as a law of revenge.

Mi'kmaq physical, social, and spiritual realms. Mi'kmaq justice was, and remains, about relations. Kinship patterns, marriage practices, political processes, notions of authority, status, inheritance, class, relationships to the land, each other, the spirit world and outsiders, were all guided by ideas about how to live right. The goals of Mi'kmaq justice were to reinstate wrongdoers into the community, to find balance, to maintain, and when needed, restore relationships with people, the land, and the spirit world. Of course not all disputes were resolved as evidenced in community fragmentation. Life was not purely harmonious, nor edenistic, and the Mi'kmaq had sophisticated, flexible mechanisms for justice, legitimated because they were made meaningful by those that participated in and witnessed them. These concepts involved confrontation and intervention in periods of disharmony, and are flexible because they conform to the specialized circumstances of each event. With the advent of settler society and the imposition of British colonial laws and Christian doctrine, Mi'kmaq customary practices were prohibited, devalued and eventually criminalized.

The Consequences of Colonization and Changing Root Causes of Family Violence

The Mi'kmaq encountered the first French Jesuit settlers in the early 1600s. The principle aim of settlement was to convert the original inhabitants to Christianity.⁵⁸ Mi'kmaq interaction with the French missionaries brought about changes in their spiritual and political order, which manifested as changes within their legal orders. Although their contact was generally sporadic, the French and Mi'kmaq fostered relations described more as friendly than as adversarial. That the Mi'kmaq were willing to participate in French Catholic ceremony and religious services was not an indication of

⁵⁸ Henderson 1997:79.

submissiveness, but rather a shared enjoyment of pageantry, an ability to find common ground within acts of worship, and a way to solidify trade relations.

The Mi'kmaq following their traditional law ways, demanded presents and ceremony as people entered their territories, which encouraged reciprocal relations and fostered economic development rather than avarice. In order to facilitate trade and alliances, the French and Mi'kmaq eventually intermarried, learning each other's languages and ritual complexes. Orally proclaimed, Christian inspired regulations may have fit well with Mi'kmaq oratory traditions.⁵⁹ Without the Mi'kmaq, French survival was tenuous given the harsh conditions of the environment and the Jesuits' lack of experience.

On June 24, 1610, Father Jesse Fleche from the diocese of Langres, whose commission provided him the political jurisdiction and religious authority to give absolution, to baptize the Mi'kmaq, and to establish alliances with the Holy See, baptized Grand Chief Membertou in the Catholic faith. This alliance was in fulfillment of Messamouet's vision and Kluskap's prophecy. Messamouet was also a high-ranking chief of the Sante Mawio'mi and a relative of Membertou. A ceremony was held combining Mi'kmaq and Christian rituals in which Membertou along with twenty-one family members were baptized.⁶⁰ Wampum belts made to record the concordant were presented to the church, and to the other district chiefs to let them know of the alliance.

⁵⁹ To wit, the humanist impulses of the missionaries, if not necessarily their doctrinal teachings, struck a chord with indigenous ideas of action in the world, of healing and the making of history, of moral infraction and entitlement, of community and civility (Comaroffs 1997:8).

⁶⁰ Henderson 1997:85.

Conversion was not a straightforward process. It is difficult to determine how effective the missionaries and Jesuits were in transferring their religious concepts to the Mi'kmaq, particularly as their presence was sporadic due to financial hardships brought about by European wars. The repercussions of the European conflicts were felt throughout Mi'kmaq territory.

The Jesuits described Mi'kmaq culture as without law and they disapproved of Mi'kmaq dispute management techniques, particularly revenge, direct confrontation, and fighting. Failure to comprehend Mi'kmaq law ways contributed to notions that Christian doctrines were needed to bring order to the Mi'kmaq world and precipitated ideologies of European superiority. Coercive harmony silenced disputing practices of Indigenous peoples, and prohibited the sometimes violence interactions that they had formerly relied on to manage their disagreements and problems. The carefully regulated processes of Mi'kmaq dispute management that were guided by the canons of reciprocity, and sanctioned by the threat of retaliation and revenge, were significantly altered as, “Christianity moved the fundamental direction of moral reciprocity from the horizontal plane between people to the vertical between man and God mediated by the pastor and church.”⁶¹ Eventually Mi'kmaq exposure to Christian doctrines also led to the disempowerment of Chiefs, elders, women and shamans because the priests repeatedly discredited their authority. Within this pacification process, the incorporation of concepts such as patriarchy, sin, punishment, and absolution caused changes to Mi'kmaq social order.

⁶¹ Nader 2002:128.

The missionaries used Catholic dogma to transform spiritual and social relations as they attempted to convert beliefs and condition cultural practices of the Mi'kmaq to those acceptable within the Church. By denouncing death and mourning rituals, shamanic consultations, mobile seasonal rounds, and pre-marital co-residence as profane, and promoting Christian doctrines as sacred, the Jesuit missionaries, at first subtly distorted, and then, directly condemned, traditional practices.

Missionaries wanted the Mi'kmaq to settle and become farmers because the mobility of seasonal rounds made conversion difficult. Missionaries encouraged Mi'kmaq to dispense with their notions of spiritual sanctions by replacing them with Christian concepts of penance and punishment, concepts that shifted moral values and deterrence principles. Christian proselytizing and European paternalism significantly altered gender relations and roles of women. Between the 1600s and 1800s, missionary contact with the Mi'kmaq precipitated significant cultural changes that had lasting effects on Mi'kmaq cultural practices and identity. Mi'kmaq were presented with confusing and contradictory messages, particularly as the French incited the Mi'kmaq to commit hostile acts against the English as the wars in Europe were transferred to Mi'kma'ki.

Meanwhile the Mi'kmaq continued to honour their alliances with the French as they entered into conflicts with the English. Mi'kmaq leaders saw themselves as equals with the king of France and offered gifts and military assistance to the French. In return, the Mi'kmaq expected the French to honor their alliances by periodic ceremonial distribution of presents. With time this connection spawned a complex middle ground of cultural accommodations in which Métis offspring of Mi'kmaq women and members of the French merchant families played prominent roles as intermediaries.⁶²

It is likely that the French used these crises as moments to appeal for harmony and instilling harmony ideology as a way of bringing the Mi'kmaq under submission,

⁶² Chute 1999:496.

playing on the concept of guilt, but also the idea of immediate absolution through confession, made possible through conversion to Catholicism. The power to offer penance as a way to manage disputes quickly freed them from the responsibilities of their actions that formerly would have required excessive gift giving and amendments that were part of the wider reciprocity and exchange systems the French sought to undermine.

It is neither gaming nor debauchery that disables them from the payment of their debts, but their vanity which is excessive in the presents of peltry they make to other savages, who come either in quality of envoys from one country to another, or as friends or relations upon visit to one another. A village is sure to exhaust itself in presents, it being a standing rule with them on the arrival of such persons to bring out everything that they have acquired during the winter and spring season, in order to give the best and most advantageous idea of themselves.⁶³

If the French could interrupt these patterns, they would gain some economic advantage. As European invasion of Mi'kmaq lands proceeded, the French made land grants to their French subjects in Acadia. Article seventeen of the Charter for *La Compagnie des Cent Associes* (1627), provided protection only for Christianized Mi'kmaq as French subjects. The blatant denial of Aboriginal rights and titles emerged as critical factors in the pacification efforts and reveal the ultimate consequence of conversion to be the dispossession of Mi'kmaq lands and resources.

Despite experiencing dramatic cultural changes the Mi'kmaq remained able, for a time, to keep the French on the middle ground between contact and conquest.⁶⁴ However, once the British arrived and began making claims on their territories and resources without due regard to Mi'kmaq protocols and without recognizing the sovereign authority of Mi'kmaq economic, spiritual and legal governance, the middle ground shifted

⁶³ Hoffman 1955.

⁶⁴ Richard White 1991

considerably from accommodation and cooperation with the French to genocidal invasion and occupation by the British.

Eventually European occupation of Mi'kmaq territory contributed to a decline in chiefly authority and disrupted social organization. The cultural processes for handling changes, such as succession and apprenticeship, eroded due to rapid population decline and interference. Resource extraction processes and technologies shifted with the introduction of guns and European tools. Over time the necessities of subsistence became scarce due to increasing incursions by British, an expanded fur trade, which significantly pressured resources, and a change in seasonal rounds as more time was spent procuring furs instead of bringing in supplies for winter. The expansion of the settler population challenged subsistence endurance. A group of middlemen emerged as go betweens for the traders, military forces, missionaries and the community, enabling people who had previously not demonstrated the required, and desired chiefly characteristics to assume new forms of power, status, and privilege. Previously, family trading focused on consumption rather than accumulation.

As the British gained dominance over the French in Mi'kma'ki, they did not develop relations of reciprocity and accommodation with the Mi'kmaq that the French enjoyed. Rather, the British ignored Mi'kmaq customs and activities, except when they interfered with their settlement plans and commercial activities. In 1713, the Treaty of Utrecht between France and Great Britain ended a decade of wars and 'Acadia' became part of the British Empire. The colonial office renamed 'Acadia' as Nova Scotia in a symbolic gesture of this conquest. British attempts to erase Mi'kma'ki and the Mi'kmaq began in earnest.

British/Mi'kmaq Treaty Making

The Mi'kmaq responded to the British intrusion with periods of intensive armed resistance and then in negotiations under duress. As British aggressions against the French and Mi'kmaq escalated, the British instilled a campaign of genocide that significantly diminished their numbers.⁶⁵

Any resistance against British encroachment on their lands arose from small groups, acting under local leaders. Heads of these units demanded payment for land and resources that they declared Britain had taken without permission. British recalcitrance in responding to these requests doubtless under laid the many sporadic and sudden attacks by Mi'kmaq parties on British fishing or merchant vessels, often heedless of whether France and England were at war or peace.⁶⁶

Mi'kmaq alliances with the French put them in bad favour with the British, and whenever they sought support for their interests, as self-determining people, the British used these alliances against them. After the Treaty of Utrecht the French sought to secure Unama'ki (Cape Breton), a disputed area under the treaty, and built a fort at Louisbourg. The Treaty of Utrecht did not stem from the conquest of the Mi'kmaq nor the purchase of their land, but from the defeat of France. The missionaries encouraged the Mi'kmaq to remain separate from the settlers and traders, who they thought were encouraging disreputable behaviour and interfering with their trade and conversion. The French relied on the Mi'kmaq to help attack the British and gave presents in the hopes of sabotaging potential Mi'kmaq-British alliances.

British efforts to promote settlement among English speaking Protestants were largely unsuccessful until the creation of Halifax in the mid 1700s. In establishing its new colony, the British created the Nova Scotia Council in 1720, as the king's chief

⁶⁵ Miller, V. 1982, Paul 1993.

⁶⁶ Chute 1999:496.

administrative body. The governor appointed the council members, who possessed wide-ranging powers, including the right to overrule the governor's authority and to act as a court of law in which the French could be brought into submission.⁶⁷ The British could not simply ignore the Mi'kmaq as their retaliatory efforts interfered with British commercial designs in the fish and fur trades. The British solution was to enter into treaty with the Mi'kmaq.⁶⁸ Here British law ways became the, "cutting edge of colonialism, an instrument of power of the alien state and part of the process of coercion" that undermined Mi'kmaq cultural production, particularly their law ways, and redefined relations with the newcomers in their territories.⁶⁹

The treaty making process did not occur in a vacuum. Local and global events affected the contexts and relationships in which negotiations took place. The Mi'kmaq had entered other treaties with Indigenous groups and held informal agreements with the French. Agreements were recorded with wampum and repeated in oral recitations, which became embedded in the memories of the audiences, and passed on through generations. The Mi'kmaq had experience in transmitting the information contained in covenants across time and space, according to cultural norms, using memory, oral traditions, and the wampum as mnemonic devices.⁷⁰ Mi'kmaq social organization employed collective decision-making processes (recall the assemblies, elder oratory, and gatherings of

⁶⁷ Wicken 2002:89.

⁶⁸ The treaty making period of the Mi'kmaq is very complex and requires great attention to detail to do it justice, pardon the pun, and thus falls outside of the scope of this paper. William Wicken has written an excellent account of the treaty process entitled *Mi'kmaq Treaties on Trial: History, Land and Donald Marshall Jr.* (2002).

⁶⁹ Chanock 1985.

⁷⁰ A mnemonic device is a device that aids memory. The stringing of beads or shells in a particular pattern assists the reader or holder in remembering the details of the events that the wampum represent.

councils), which enhanced social cohesion, minimized ill will, and limited political disagreements that might undermine village and familial stability.

Since the Mi'kmaq participated in treaty negotiations, they must have had an explicit political order and a common political will or they could not have exerted any influence on the treaty-making process. Without such a political order the treaties would have been redundant, as the British could have simply forced themselves on the Mi'kmaq through military means. That the British did not, and recognized that they could not, and were worried even as late as 1808 about the dangers the Mi'kmaq posed to British Nova Scotia's security, indicates that such an order did exist. There is no more telling proof of this than the British signed not just one treaty with the Mi'kmaq but five separate agreements over fifty-three years between 1726 and 1779.⁷¹

The Mi'kmaq signed their first treaty with the British in 1726⁷² as a peace and friendship treaty designed to end years of conflict between them and to end the Indian wars taking place in the northeast. British planned to use the treaty to incorporate the Mi'kmaq into the network of British colonies to assist in their battle against the French. There were significant conceptual differences that formed important distinctions in the interpretations and understandings of the treaties. For example, the British emphasis on the written word and Mi'kmaq emphasis oral traditions, were vastly dissimilar. The Mi'kmaq held long discussions about the meaning of the treaty. Their decision processes were directed by these discussions, in which their terms were determined jointly among their leadership and their constituents. However, Mi'kmaq terms and understandings were not articulated within the narrow confines of written articles, but would have been understood and preserved, as part of the life of the treaty in Mi'kmaq conceptions of it. Memories of the consultative decision making process, in which many people

⁷¹ Wicken 2002:40.

⁷² The treaty ratified by the Mi'kmaq at Annapolis Royal was an exact copy of the agreement signed at Boston in December 1725.

participated and articulated their opinions, are what gave the treaty meaning and life in Mi'kmaq world views. These opinions were based on long-term historical memories, teachings, and records of the relationships the families and groups had with the land, resources, and spirit worlds. Furthermore, protocols that governed the transmission of information and the reception of messages influenced communication processes.

Importantly the language of the spoken and written words differed. The Mi'kmaq had French translators, but how fluent the Mi'kmaq were in French is questionable, particularly in matters concerning the translation of ideology in treaty making. Prior to 1726, missionary activity was greatly diminished in Mi'kma'ki. The tumultuous historical relations between the French and British also likely skewed missionary interpretations of the political objectives of the British. While total incomprehension, with or without French intervention, was unlikely, translations had serious implications for the Mi'kmaq. As Wicken explains, while treaty making embodied both cultures, the embodiment was unequal as the writing of the treaty was in English not Mi'kmaq:

For good example, consider these English concepts: 'lawful', 'submission', and 'subject'. These words were specific to the history of Great Britain. Mi'kmaq history had not evolved in the same manner, so the words used would have been different than those used by the British. How the Mi'kmaq understood 'lawful', 'submission', and 'subject' would have been conditioned by their own history and by the history of their interactions with European people.⁷³

The British had the power to control the interpretation of the treaties, power derived through the hegemony of British law. They were able to impose their cultural order onto the Mi'kmaq, providing the British colonial officials with the means to simultaneously deny Mi'kmaq their autonomy, while breaching the laws that they had made recognizing their sovereignty. British law in the colonies focused on forming

⁷³ Wicken 2002:97.

alliances with Aboriginal peoples, in which the Aboriginal communities acknowledged British sovereignty, and agreed to submit to British law peacefully. After a ceremony to mark the occasion, British expected Mi'kmaq incorporation into a "proper understanding of the law, and so learn to behave like members of a civil society."⁷⁴ The treaties were to facilitate this colonizing process by regulating Mi'kmaq interactions with British subjects. This process was to set up a hierarchical relationship with an omnipotent king and his obedient subjects to benefit the British and subdue the Mi'kmaq, rather than enter into reciprocal relations.⁷⁵

The nine clauses of the articles of the 1726 treaty outlined the framework for the regulations in which to impose the laws of the colony on the Mi'kmaq. Problems abounded as clear understandings of how the lands were to be dispersed, utilized, and settled, remained ambiguous. In each clause, British law superseded alternative legal conceptions embraced by the Mi'kmaq. For example, the treaty states that new settlements were to be lawfully made; however, what was meant by 'lawfully', according to the British, and how the Mi'kmaq were to interpret it, were not outlined. As Wicken (2002) notes, this situation created ongoing political and legal questions regarding British settlement of Mi'kmaq lands, and Mi'kmaq rights of occupation, ownership and title.

The Mi'kmaq were resistant to English encroachment on their lands. They emphasized they were the first inhabitants, the rightful owners of the territories, and rejected the notion of anyone else holding jurisdiction over them, or their resources. The

⁷⁴ Wicken 2002:113.

⁷⁵ A relationship that differed significantly from French-Mi'kmaq alliances in which the French king was seen as benevolent and protecting in a dynamic relationship that required constant nurturing by the king who was available to hear complaints and try to meet their needs (Wicken 2002:115).

Mi'kmaq asserted their sovereignty; any right to settle their lands derived from their authority, not some invisible king in a foreign land. In the reciprocal promises of the treaty, it was guaranteed that the "Indians shall not be molested in their persons, Hunting, Fishing and Planting Grounds nor any other their Lawfull Occasions". The clause thus assured the Mi'kmaq could continue to exercise their customary rights on their lands. As was customary among the Mi'kmaq, permission to access and compensation were required before lands could be used, and if trespassers were found, they had to pay for the violation to make things right according to Mi'kmaq law ways. The Mi'kmaq firmly believed it was necessary to protect their present and future endeavours by committing to rebalance their symbiotic relationships with all things human and other than human. These Mi'kmaq patterns of settlement, management, and work, clashed with those of the British and French. Wicken concludes:

Thus, when the Mi'kmaq were told that the British would not molest them 'in their persons, Hunting, Fishing and Planting Grounds nor in any other their Lawfully Occasion,' they understood this to mean that in these areas they would exercise some form of control that would enable them to protect their hunting and fishing lands from outside interference. This control would include the right to regulate outsider's travels through their lands - a right that included regulating the movement of New England traders.⁷⁶

A further clause of the 1726 Treaty altered long-standing Mi'kmaq dispute management practices. The clause states, "That in case of any misunderstanding, Quarrel or Injury between the English and the Indians, no private Revenge shall be taken, but Application shall be made for redress according to his Majesty's Laws." As noted in the previously, the Mi'kmaq law of *habenquedouc* demanded revenge in the case of murder,

⁷⁶ Wicken 2002:132.

either through compensation in goods, or life for life. A story recalled by Wicken⁷⁷ tells that when a killing occurs between people from different nations, revenge was the community's responsibility, and reparations were the responsibility of the offender's community or nation, rather than confined to a settlement within the families.

Some New England fishermen encountered a small group of Mi'kmaq off the coast of Cape Sable and offered to pay them if they went to 'hunt birds'. Two Mi'kmaq took up the Englishmen's offer and were later found dead, 'their bodies floating in the water.' Believing that the fishermen were responsible for the two deaths, local Mi'kmaq villagers seized nine or ten fishing vessels. The captains were kept prisoner, and the crew members released 'all disfigured after cutting their cheeks from the mouth to the ear. Though none of the fishermen were killed, the fact that the captains were kept hostage suggests that the Mi'kmaq intended to ransom them in compensation for the lives of the two men who had been killed. In this instance, a Mi'kmaq village was exacting revenge on the nation it held responsible for the killings...New England officials interpreted the hostage taking as an act of war; the Mi'kmaq believed that their actions had defused a dangerous situation. By avenging the deaths, they had righted a wrong, and prevented further bloodshed (Wicken 2002:135).

The British, outraged at the act, held their methods to be superior without understanding the customs by which Mi'kmaq law ways were mobilized. The treaty was to create a new process to resolve disputes, but left the details up to the imagination. Removing the power to adjudicate their injuries according to their customary practice altered sociolegal power held by chiefs, elders, and community leaders, and forced the Mi'kmaq to seek redress in a foreign legal system that had little meaning for them.

Initially the Mi'kmaq did not use the system and later, the British legal system was generally unresponsive to Mi'kmaq applications. By signing the treaty, the Mi'kmaq agreed that they would not remedy perceived wrongs committed against them by the strangers in their territories by their own hands, but would submit to a judicial process,

⁷⁷ The story is in the Archives Nationales, Paris, France - Archives de colonies - Correspondence general, Canada 35:12v-13r, MM. Ramezay eet Begon au ministre, 13 septembre 1715.

based on the British rule of law and punishment. To access this process they could complain to the governor, who was the conduit to the king, the one responsible for mediating disputes with the Mi'kmaq in Nova Scotia. Clearly the British had faith in the rule of law, and individual rights, and wanted to control conflict in the region because it interfered with ability to pursue their colonial economic interests. Contrary to British beliefs, the Mi'kmaq did not agree to become subjects of the Crown. The treaty process itself was a negotiation between independent nations, and yet formed on concepts that presented contradictions in their meanings and interpretations cross-culturally. In his thorough analysis of treaty making, Wicken concludes that based on the social and economic interests of Nova Scotia officials, "they interpreted the treaty in a manner that explicitly recognized that the Mi'kmaq were independent of British law."⁷⁸

By mid 1700s, British presence in Nova Scotia had expanded significantly with settlements at Halifax and Lunenburg, as well as several forts and new military forces. These settlements were built without Mi'kmaq consultation or approval, on territories they regularly occupied. Hostilities between French, British, and Mi'kmaq escalated and Mi'kma'ki was undergoing vigorous transformation as British colonists began to claim more and more of the landscape, changing names, clearing lands, and building walls. Renewal of the 1726 treaty occurred on several occasions, once in 1749, and again in 1752, with the addition of seven new articles. The flexibility with which the treaty was originally interpreted was increasingly undermined as the colonial officials were able strictly enforce, due to a larger military and bureaucratic presence, a narrower interpretation that served their land acquisition and economic needs as paramount over

⁷⁸ Wicken 2002:140.

any concerns of the Mi'kmaq, whose population continued to suffer dramatic displacement and decline.

Governor Cornwallis arrived in 1749, determined to exact his authority over the Mi'kmaq. Known for his brutality, he offered rewards for killing or taking the scalps of any Mi'kmaq because they demanded negotiating new settlements rather than just submitting to the British.⁷⁹ Cornwallis empowered himself in a patriarchal role to unilaterally impose British law on the Mi'kmaq without consultation. He ignored Mi'kmaq interpretations of the treaty because he thought the Mi'kmaq were a "savage and barbaric race that needed to be told what the law was, not to participate in its creation."⁸⁰ Cornwallis' commission gave him power to establish the accepted institutions of British civil government: a council, a legislative assembly, courts, and a judiciary. It accorded him the power of the civil executive to defend the colony, exercise the king's prerogative of mercy, administer public funds, make grants and assurances of lands, and establish fairs and markets.

Furthermore, under Cornwallis:

Beginning in 1749 Britain began a deliberate policy to overwhelm the Mi'kmaq population by importing German Protestants, Planters, and retinues from disbanded regiments who could be settled in mass on lands frequented by the Mi'kmaq during the summer months. This policy frightened and enraged the Native population, who feared for the security of their access to shore and sea, from where they derived much of their sustenance.⁸¹

In the 1752 treaty, the government agreed to provide the Mi'kmaq with financial incentives to keep peace, finding this to be a less expensive avenue than continuing hostilities. The treaty promised annual presents. A final article of the treaty promised:

⁷⁹ Paul 1993:108.

⁸⁰ Wicken 2002:175.

⁸¹ Chute 1999:497.

That all disputes whatsoever that may happen to arise between the Indians now at Peace and others His Majesty's Subjects in this Province shall be tried in His Majesty's Courts of Civil Judicature, where the Indians shall have the same benefits, Advantages and Privileges as any others of His Majesty's Subjects.

Now the dispute mediation process between the culture groups had clarification, as a formal court system was in place in Nova Scotia. However, "the British were unable to impose their law on the Mi'kmaq, or to make them live as if they were the king's subjects," because fighting continued as the Mi'kmaq resisted British domination.⁸² The image of the lawless frontier no doubt became firmly entrenched in British colonialist minds.⁸³

By 1758, the French lost their stronghold as Louisbourg fell to the British, but the Mi'kmaq continued to fight without their allies, forcing the British to pursue further treaty making with them. The final treaties with the Mi'kmaq were the treaties of 1760-1761, which were based on the treaty of 1726.⁸⁴ In 1761, Lieutenant-Governor Belcher held an assembly to ratify a treaty of peace and friendship and a ceremony to bury the hatchet. Belcher promised that:

... the king (George III) would protect their religion and would not interfere with the Catholic missionaries living among them: 'The law will be like a great Hedge about your Rights and properties, if any break this Hedge to hurt and injure you, the great weight of the Laws will fall upon them and punish their Disobedience.' However, the Mi'kmaq, said Belcher, must also learn to respect the rights of His Majesty's other subjects: 'I must demand, that you Build a Wall to secure our Rights from being trodden by the Feet of your people'.⁸⁵

⁸² Wicken 2002:190.

⁸³ See Jo-Anne Fiske's article in *BC Studies* (115/116:1997/98) in which she addressed how traditional law was displaced and delegatized in discourse and practices as she examines the colonizers who emerged as lawmakers and law enforcers.

⁸⁴ Another treaty was signed in 1779 but it did not substantially modify the earlier treaties (Wicken 2002:191).

⁸⁵ Wicken 2002:216.

"For two years the government issued presents in accordance with the terms of treaties of peace and friendship that had been signed in 1760 and 1761, and then it abruptly discontinued the practice".⁸⁶ By this time, the gulf between the communities of the Mi'kmaq and the British were firmly entrenched. The British had successfully marginalized the Mi'kmaq through the treaty process as British law gained centrality in its interpretation. However, the Mi'kmaq persisted in resisting the imposition of the British sovereign's will, fully recognizing the British intentions, and their disregard for their rights. The Mi'kmaq continued, against all odds, to exercise their culturally derived authority over their lands and resources. Written legal code did not confine Mi'kmaq law ways; however, their legal consciousness shifted through these experiences. The British failed to honour their promises to the Mi'kmaq in the treaties and continued their colonization of Mi'kmaq peoples and their lands and resources. The violence of these colonial processes continues to resonate in Mi'kmaq worlds today.

Confederation and the *Indian Act*

By the 1800s, Mi'kmaq populations had declined to their lowest, and there was a general sense among the settlers that the Mi'kmaq would disappear. The majority of productive lands, once held by the Mi'kmaq had been taken over by settlers without due compensation and resources were depleted. The Mi'kmaq became increasingly dependent on the colonial government for support. It was a time of continued land loss, declining demand for Indigenous resources, and the emergence of welfare dependency.

The British North American Act of 1867 entrusted Canada with the federal responsibility for Aboriginal peoples and the lands reserved for them. However,

⁸⁶ Chute 1999:500.

provinces were given authority over the lands and resources within their boundaries. The division of powers caused numerous jurisdictional problems that some Mi'kmaq interpreted as, "an excuse for non-fulfillment of the Crown's treaty commitments, and as a pretext for preventing serious discussion of the land question."⁸⁷ Canadian Indian policy evolved from a misconceived moral premise embedded in pre-confederation legislation that generally justified the discriminatory legislation found throughout the Indian Act and assimilation policies. Accumulating federal and provincial powers resulted in an increasingly complex bureaucratization and further eroded Mi'kmaq control over their daily lives. Policies to assimilate Aboriginal peoples served to destabilize the authority of elders and customary political and social orders. Colonial settlement plans altered normal survival patterns to such an extent that they were no longer able to restore them and kinship networks were significantly disturbed. Poverty and hunger expanded among the Mi'kmaq due to reduced participation in the Nova Scotia settler economies and settler encroachments interfered every aspect of Mi'kmaq life.

Through Confederation 1867 and the *Indian Act* of 1876, the Mi'kmaq came increasingly under the administrative control of the dominant society as the Canadian government implemented sporadic, but violent programs of assimilation, acculturation, and elimination. Aboriginal populations were radically reduced through epidemics, war and starvation. The Mi'kmaq were alienated and marginalized at all levels of interaction with the dominant society. Notwithstanding the series of treaties that were to protect Mi'kmaq rights, the laws and values of the western system eroded their cultural practices and justice systems. In general, the settlers either did not comprehend or abhorred

⁸⁷ Marshall, Denny and Marshall 1989:88.

Mi'kmaq cultural systems and values. Avenues to justice were repeatedly closed off to the Mi'kmaq. The government did not consult the Mi'kmaq about changes to settlement patterns, nor were they reimbursed for their land and resources as settler populations continued to expand in their territories.

Colonial Consequences Conclusion

Aboriginal populations in Canada were supposed to disappear. The machine of colonization, the projects, policies and programs were largely predicated on this assumption. Law was the cutting edge of colonization, through treaties, centralization, reservations, land script, residential schools and the *Indian Act*, a rapidly imposed system of administration and assimilation affected every facet of the lives of Aboriginal people and resulted in the disruption of cultural fabrics woven over thousands of years. The threads were pulled apart, the patterns distorted and in some cases destroyed. The so-called benevolent administration of Aboriginal peoples legislated discrimination from pre-confederation to its consolidation in the *Indian Act* 1876 and onward. Consider for a moment the violence, the assault on identity that occurred through the criminalization of livelihoods, belief systems and kinship networks. Laws were imposed by outsiders that restricted mobility, diminished food security, interrupted cultural safety, outlawed ceremony, eroded knowledge systems, erased life and liberty and tore families apart. Aboriginal peoples were being systematically erased from society, their presence denied, the extraordinary diversity, resilience and richness of their cultures muted and exoticized in the place of Canadian history and in the education of generations to come.

Colonial processes were justified and fortified through frontier myths, legal concepts such as terra nullius, doctrine of discovery, and extinguishment, all of which

deflated Aboriginal expressions of sovereignty and denied their human rights. Residential schools and the “Sixties Scoop” created to hasten assimilation, destroyed Aboriginal families, cultural practices and languages and constituted the most heinous actions ever perpetrated in Canadian history.⁸⁸ Further consequences of colonization have variously disrupted gender and generational roles and women have become targets of violence, intimidation and neglect, even in communities where they once held considerable power.⁸⁹ While there have been attempts to correct gender discrimination within the *Indian Act*, through Bill C-31 in 1985 and more recently in the controversial Family Homes on Reserves and Matrimonial Interests or Rights Act, these efforts are modest and have unintended consequences that further jeopardize women’s safety.

Colonial relations are framed by power imbalances that denigrated the cohesive, innovative Mi’kmaq culture into chaos and collapse. Colonization fragmented Mi’kmaq ways of life, disrupted generational protocols and eroded traditional gender roles. Ongoing systemic discrimination has prevented equal participation of the Mi’kmaq in justice, education, economic and health institutions, thus creating conditions of unemployment, epidemic crises in health, addictions, intergenerational trauma, suicide and hopelessness. The violence of racism is staggering.⁹⁰

Paternalistic policies of containment, surveillance and the criminalization of Indigenous activities accelerated colonial efforts of assimilation. The government enforced policies of centralization in education and communities to integrate the

⁸⁸ Castellano, Archibald & DeGagne, 2008.

⁸⁹ MacDonald & MacDonald, 2007.

⁹⁰ RCAP, 1996.

Mi'kmaq into the capitalist economic order.⁹¹ One of the most violent projects of Canadian assimilation was the centralization policy. During the early 1940's an aggressive campaign to control Mi'kmaq life ways was embodied in a centralization program. The program forced and coerced Mi'kmaq from across the province of Nova Scotia onto two recognized reserves, one at Eskasoni, Cape Breton, and the other at Shubenacadie, on the mainland. The Indian agents coerced people to move often under the threat of child apprehension or in peril of having their houses burned to the ground.

The objective of the centralization program was to improve administrative efficiency. In effect it reduced Mi'kmaq land bases and restricted their daily hunting, fishing and social activities even further. By herding Mi'kmaq into central areas the government was better able to increase surveillance and direct control over their daily activities. Traditional economic and subsistence migration patterns were disrupted. Customary leadership structures were further eroded by the unilateral imposition of the policies of containment. Under the control of Indian Agents, the centralization program turned reserves into assimilation camps. Daily activities came under rigid scrutiny, even games of *waltes* were policed and frequently condemned through fines and increasingly people were jailed for non-payment of such fines. People were encouraged to speak English. Instead of improving life, conditions for the Mi'kmaq apprehended in the centralized communities became worse. The lack of compassion of the Indian Agents is evident in this story of centralization at Eskasoni:

⁹¹ Centralization was the "first social experiment of its kind in Canada ... the Department of Indian Affairs implemented the policy to terminate Mi'kmaq special rights and political status, both with the objective of another kind of involuntary assimilation" (Henderson 1992:46).

I will tell you another story. When we first moved to Eskasoni, that is why I said the laws were stricter or harder. This guy, his family had a baby and they were living in a tarpaper shack, a shanty. It was wintertime, near spring. At that time there were no doctors or hospitals you just had babies in the homes with midwives. Anyway, they had this little baby boy and it was raining. It was raining so hard the shack was starting to leak and there was this, people used to live in tents when they first move to Eskasoni, when the family move they live in tents first. They had this tent. It was the Indian agent's tent. The old midwives cut the tent and put it inside the shack over where the woman and the baby because it was leaking. They put that on top. After awhile, a few days, the Indian agents heard what happened, and by gosh, they sent the mountie about this tent. 'You ripped this tent,' and took him (baby's father) to jail! Next day he had a trial and he got thirty days for destroying government property. And it was just an old army tent. I supposed they were given to the Indian people. And he was in there for thirty days.

Trials, fines and jail were replacing traditional dispute management mechanisms. Settler society imposed laws that infringed on Mi'kmaq basic rights, and conflicted with Indigenous value systems. When war veterans returned home they expressed their anger over the treatment of their people while they were off defending Canada. A group of veterans wrote a brief to the Department of Indian Affairs castigating the government for not upholding the human rights of the Mi'kmaq. Ultimately the centralization project was deemed unsuccessful and was terminated in 1949. Many families returned to their home communities, or moved elsewhere.

Rules and regulations according to settler society conceptions of individualism, Protestant work ethic, and religious discipline, became the order of the day rather than the values, principles and positions constitutive of Mi'kmaq laws ways. Legal assaults on tribal culture reflect an ethnocentric government policy of repression and forced assimilation. It was compulsory residential schooling, both a policy and a legal provision

of the Indian Act that demonstrated the extremes to which the state wanted to re-socialize Aboriginal children.⁹²

The Shubenacadie Indian Residential School and Intergenerational Trauma

The most notorious and direct form of racial discrimination was the establishment of Indian residential schools.⁹³ In addition to legislation, the colonizers considered education to be the vehicle by which the Mi'kmaq could achieve 'civilization'. As an additional burden of colonization, the memory of the schools and injustices perpetrated in those institutions permeate Mi'kmaq life today and are inextricably linked with family violence and intergenerational trauma.⁹⁴

The Shubenacadie Residential School was a Roman Catholic opened in 1926 under Deputy Minister of Indian Affairs Duncan Campbell Scott. Along with the majority of bureaucrats running the country, Scott held the position that there was an "Indian problem", and the only way to eradicate that problem was through aggressive assimilation. According to Milloy (1999) when Scott was planning Shubenacadie School he told the Catholic Church that it "should be located within full view of the railway and highway, so that passing people will see in it an indication that our country is not

⁹² Sidney Harding (1998) *White Man's Law: Native Peoples in Nineteenth-Century Canadian Jurisprudence*. Toronto: The Osgoode Society.

⁹³ See Isabelle Knockwood's *Out of the Depths: The Experiences of Mi'kmaw Children at the Indian Residential School at Shubenacadie, Nova Scotia* (1992). She addresses the painful stories arguing that her people have been silenced far too long and must tell their stories to begin their healing journeys. Also see Milloy (1999).

⁹⁴ Numerous studies from RCAP (1996) to the publications of the Aboriginal Healing Foundation (2003, Bopp, Bopp, Lane), from medical journals to economic analyses, point to the direct correlation between residential school experiences, intergenerational traumas and family violence in Aboriginal communities.

unmindful of the interest of these Indian children.”⁹⁵ The highly controversial schools are now well known to be institutes of cultural genocide, abuse, torture, violence, and slavery for many, and periodic places of learning and camaraderie for others.⁹⁶ The schools were designed to intentionally obliterate any habits and associations with Indigenous cultures.⁹⁷

It could be argued that every residential school student was subjected to abuse of one form or another. Even those who have benefited from their experiences in terms of the education they received (and they are few in number, given the generally poor educational standards) were subjected to abuse in the form of removal from their families, isolation from their communities, and the destruction of their culture, language, and spirituality. Additionally, chronic underfunding left children perpetually hungry, malnourished, inadequately clothed, and forced into manual labour to support the daily costs of running the institutions.⁹⁸

The legacies of the residential schools have caused lasting suffering in Indigenous communities. Terms such as Residential School Syndrome, intergenerational trauma, historical traumas, and transgenerational effects, are commonly used to describe the ongoing consequences of colonial assimilation policies.

Transgenerational effects of the residential schools include: the structural effects of disrupting families and communities; the transmission of explicit models and ideologies of parenting based on experiences in punitive institutional settings; patterns of emotional responding that reflect the lack of warmth and intimacy in

⁹⁵ In Milloy (1999) (p. 149 n. 82 N.A.C. RG 10, Vol.6041, File 160-5 Part 1, Mr C 8153, D.C. Scott to Rev. J. Guy, 11 July 1926.

⁹⁶ Some anthropologists claim that residential schools planted the seeds of supratribalism and pan-Indian resistance. Cornell (1988) for example, suggests the schools created opportunities for lasting friendships and facilitated intertribal bonds and communication as people shared a common experience of being Indian in the white world (1988:114-115).

⁹⁷ Royal Commission on Aboriginal Peoples (1996)

http://www.collectionscanada.gc.ca/webarchives/20071211055641/http://www.ainc-inac.gc.ca/ch/rcap/sg/sg28_e.html

⁹⁸ Llewellyn, Jennifer (2002). Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice. *The University of Toronto Law Journal*, 52(3), 253-300

childhood; repetition of physical and sexual abuse; loss of knowledge, language and tradition; systematic devaluing of Aboriginal identity; and, paradoxically, essentialising Aboriginal identity by treating it as something intrinsic to the person, static and incapable of change. These accounts point to a loss of individual and collective disempowerment and, in some instances, to the destruction of communities.⁹⁹

It is only since the 1990s that Indigenous peoples across the country began to speak out against the atrocities of residential schooling. In Mi'kmaq country people were, and remain, reluctant to speak openly about their residential school experiences, so extensive were the silencing mechanisms brought about by the horrors experienced there.

A Mi'kmaq woman who was spent eight years in Shubenacadie Indian Residential School stated:

I have witnessed changes, the residential school era, which started before I was born and I experienced it and I tried to do something about in the early 70s. I tried to make it come to the forefront to be talked about. People were not talking. It was a trap door that should not be opened according to them and according to me too, because I lived for 50 years before opening my trap. That did an awful lot of damage to our nation as a whole, the values. If the nation was left alone they would have had a lot to show this planet about how to live with each other. That sense of sharing, that sense of belonging, that they are not a reject or an outcast. No hierarchy, you know. I did not want to be taught to erase myself, my soul. At a very young age I learned human beings may come in different colours, but their human dignity is the same in any colour. I always thought in my own language. When I came against the wall I would think in my own language and I would ease out of that wall or I would go right through and I did not have to fight or swear, I would just peacefully accept some things and other times I would not peacefully accept thing. I would voice my opinion. My language taught me to survive. And it still is teaching me to survive.

The experiences of residential school survivors and their descendants are devastating to listen to and even harder to imagine in their tales of inhumanity. The

⁹⁹ Kirmayer, L., Simpson, C., Cargo, M. (2003). Healing traditions: Culture, community and mental health promotion with Canadian Aboriginal peoples. *Australasian Psychiatry*, 11(Supplement), 15-23.

purposes of the schools were made very clear to the students confined there. Being Mi'kmaq was bad, and everything that had anything to do with that identity needed to be erased, 'scrubbed' out at all costs. The school was located at Shubenacadie, on the mainland about forty kilometers northeast of Halifax. Shubie School, as it is known, was managed by the nuns and priests of the Catholic Church, and funded through the federal government and church donations. Children were rounded up from communities across Mi'kma'ki, put into panel trucks, loaded on buses and trains, ripped from their families, communities, culture, and all that was familiar to them. When children arrived at the school they were strictly separated according to gender. A separation that prevented brothers and sisters from communicating and supporting each other, disrupting long held familial connections. The school was a farm / industrial institution, and the daily routine included prayers, chores, a brief study period, more chores and prayer. Some students benefited from the instruction, however the tactics with which it was exacted leaves much to be desired judging from the accounts of beatings, public humiliation, and general merciless treatment. The conditions of the school were harsh. Acquiring adequate funding to provide proper care was a constant problem and the children, the first to suffer, were undernourished. The following interview excerpts are included to illustrate what life was like for these Mi'kmaq residential school students from Cape Breton. Perhaps captive is the more appropriate word, because the school was in effect a jail, responsible for changing behaviour through incarceration and punishment. That this behaviour modification program emanated from a program of colonization and domination is abundantly clear.

We started walking from the train station to Shubie. It was a big, big building man. The first ones I met was two nuns and Father. That was the wicked guy. That guy clobbered you like nothing.

Not long after arriving, this person escaped from the school, but was captured by a local non-aboriginal resident who received a bounty for reporting him.

Anyway I got back and we did not get a beating right away. They let us eat something and sent us up to bed. Then all of a sudden there was Sister so and so. I don't know. Four nuns anyway, and they hold me down and start beating me with a strap. As far as I know it was fifty lashes, but they just kept going until you pass out you know. Jesus Christ. I never forgot that. And after that I always got beaten and I did not give a shit anymore. Sometimes I used to make like I cry and rub my knuckles into my eyes like. They used to beat our knuckles with serving spoons. That is why my knuckles are all beat up. Every time I talked Mi'kmaq they made me eat raw soap, the ones they scrubbed the floor with. Jesus Christ that stuff was strong. It burned like Lysol. Every time I blinked I had to go to the bathroom. You get used to it after. You get immune to it. And fighting, we fought everyday as you grow up. You know like somebody would come up to me and say you are a Membertou guy and smack.

Sometimes when you talk Indian they put a weight in your mouth and they make you say the alphabet and you sound like retarded man. Honest to god you sound like deaf and dumb most of the time.

If you spoke that you, are cursing [cursed] all ready if you spoke ilnu wesyl gedul? [meaning 'do you speak Mi'kmaq]. And he if he doesn't understand he will go to the eneip or nun and tell them you are cursing or swearing. Finally I just gave up ilnuwesyl [speaking Mi'kmaq]. You even forget it.

JM: Did you?

Oh yeah when I came out I could not speak Indian then.

Another survivor told me he was trying to speak the truth about an incident to a nun. For him the truth could only be told in Mi'kmaq. The nun took a bar of lye and shoved it in his mouth. "I was gagging and throwing up and it was running down my shirt, but she would not stop. I was just trying to tell the truth. I will never forget that."

In addition to the beatings, the food was substandard. People frequently commented that the priests and nuns received higher quality meals while the children were fed food that was sometimes rotten, poorly prepared, and generally inedible.

When the other kids went home for the summer I used to stay back and work in the garden and take care of the pigs and cows. I used to even eat cow food, that grain. That is rough stuff boy. You don't pass that easy, dry [laughs] (Cape Breton male).

JM: You must have been hungry?

Hungry, I guess. It was like slave labour working in the field. We ate turnips raw and carrots. We worked all day. After I finished all those years in Shubie and I came out I tried to go school here, but I lasted a week.

In another interview, a man who had started on what he called his healing journey, a journey that took thirty years for him to begin, shared the following account. It tells a story of sexual abuse. The offenses committed against these blameless children by the people assigned to protect them are staggering.

JM: Did they use a lot of intimidation?

Oh yes. I remember one. Jane, I worked in the garbage and sometimes it was a privilege to work in the garbage because the hunger there, you were hungry too. I got into the butter, whatever was left on the butter dish there. I started salvaging that. I guess I picked up a stomach cramp during that night in the bed and I soiled myself. When the nun saw this, it was two o'clock in the morning, and nun came along and told me to come down and take a bath. It was two in the morning and I had to go all the way down the stairs with her, and I was sick and crying. She filled that tub with hot water. It was hot. She threw me in there; it was hot. She soaped me with sunlight soap, it was a new bar and it could feel it burning. I could feel the soap hit my leg, burning. She has a brand new bristle brush she started scrubbing me down. I can talk about this because I come to terms with it. She started reaching down to my privates, she didn't ejaculate me, but she rubbed down there. I am defenseless. So on top of all that, the next morning I had to parade down in front of all the kids, you got your laundry. There were girls dinning in this section and boys dinning in that and you got to go through that. You had to walk, that is your humiliation I guess. You have to walk with your laundry and they are laughing. That is an indication not to soil yourself.

Holding the perpetrators of these crimes accountable has been a terrific challenge and Mi'kmaq resistance is far from over. Some of the challenges occur internally and reinforce the silencing of residential school experiences. Prior to the healing movement, some survivors of residential school became social outcasts within their own communities, as the following excerpt of another survivor relates.

JM: So what is life like for you now?

There is no life there you just exist down there. You cannot reach out to anybody, even if you try to help yourself they just kick you down. You are labeled. Once you are labeled you are labeled for life. It does not matter where you came from or what you did. They see you, but they don't see themselves, what they did, what they have done before. They will push you down, once you are labeled, especially if you are from Shubie, or Dorchester [a penitentiary]. Me, I am just stubborn. Sometimes I say things because if I don't, I am going to clobber them, or take it out on myself. I was hateful when I came out of Shubie. Just bump me and I would chase these white guys with a machete.

According to this gentleman, people from Shubenacadie Residential School were labeled, and their chances for improving their lives were diminished by that label. He attributed the majority of his problems to his residential school experiences. This man tried to seek retribution, sought legal counsel, and challenged the priests that had harmed him. Instead of recognizing the root causes of his violent outbursts and eccentric behaviour as originating from the trauma of being torn from his family, community and culture and being physically abused in a Christian institution, he was seen as a “crazy drunk.” With such a diminished status he was essentially made powerless to help himself. Isolated from his community, labeled as a troublemaker, and ostracized because he challenged the Catholic Church, an institution embraced and fully integrated into Mi’kmaq communities, he became further marginalized. As one man against the Catholic Church, particularly during the 1980s when residential school atrocities were silenced, considered shameful and hidden, challenging the hegemony of a segment of Mi’kmaq culture that upholds Christianity as one of its significant identity markers, he had limited options. These labels compound the impact of what is sometimes called residential school syndrome or intergenerational trauma, and is evident in the desperation that he describes below:

There is something like a generation gap there. They [kids] live in a fast world now. Now they think we are too lenient on the kids, but I do not agree with that. I am not a family dude (he has several children but did not directly raise them), but if I had a boy I do not want to get him on the wrong track. I do not want him smoking. No one disciplines me. A lot of Shubie guys, someone asked me one time, “you find Shubie guys or guys from the residential school system suicidal?” I said, “We are all suicidal.” We like our booze and we are trying to get our freedom back that was taken away. You can't do that; you can't go back.

As this participant noted, many people who attended residential school ended up in trouble with the law, serving time in prison, living lives complicated by addictions, poverty and violence, all significant evidence that residential school experiences negatively impacted their lives and the lives of the children. Over one thousand Mi'kmaq attended residential school.

As a tool of colonization, the residential schools are seen as yet another of the dominant society's efforts to destroy Mi'kmaq peoples and their culture. Intense feelings of anger, mistrust, hatred and confusion permeate Mi'kmaq society's encounters with settler societies, whether or not they attended the schools themselves, are direct descendants or friends, or just aware of this history. The schools have also spawned a great deal of spiritual and cultural confusion because they were rife with cultural and religious contradictions. A woman from Membertou recalls how her mother's experiences at residential school impacted her life:

My mother was a survivor and she went through hell there. She was one of the youngest kids at Shubie School. She spent the younger part of her life being confused. The confusion was when she went home in summer she had to learn her language over again. When she went back to school she had to learn English again. When you do not have a strong foundation of one language it is very difficult. The treatment she got there was very cold and she was very cold. She was not a touchy-feely person. She did not show emotions. She was violent. She would not think twice about smacking me in the face, and she yelled a lot. It is only stuff she learned, that is what she was taught. My mother did not speak Mi'kmaq. I knew I was half-Indian and I was very proud of that growing up, but she could not teach my culture. When she moved away she had a difficult time

when she moved to Maine. She had a dark complexion and dark hair, and people stared. She stayed at home for along time, she shut right down.

Residential schools interrupted Mi'kmaq socialization practices and disrupted social cohesion, taking away integral supports and teachings of the extended family. Ultimately, the dominant society failed to reach its goal of total assimilation and the school closed between 1967 and 1968. Survivor experiences demonstrate the complexity of the context within which Mi'kmaq legal consciousness is made and unmade and their decision making when it comes to seeking help or ending violence or staying in harmful relations. Residential school discourses are representative of both colonial and counter-colonial processes. The silencing of harmful experiences has long been inculcated into Mi'kmaq daily lives and is a practice that is replicated in current situations of family violence. "Don't talk, don't tell" is a common mantra of people encountering violence and is reinforced by cultural responses emerging from residential schools. Today, residential school discourses play large in the dialogues on family violence. In order to comprehend and address the problems of family violence we must understand the intergenerational consequences of colonial and residential school traumas.

In 1996, the Royal Commission on Aboriginal Peoples (RCAP) called for a public inquiry to examine the origins, purposes and effects of residential school policies, to identify abuses, recommend remedial measures and begin a process of apology and healing. The Royal Commission on Aboriginal People found that:

Abuse had spilled back into communities, so that even after the schools were closed their effects echoed in the lives of subsequent generations of children... The survivors of the Indian residential school system have, in many cases, continued to have their lives shaped by the experiences in these schools. Persons who attend these schools continue to struggle with their identity after years of being taught to hate themselves and their culture. The residential school led to a disruption in the transference of parenting skills from one generation to the next.

Without these skills, many survivors had had difficulty in raising their own children. In residential schools, they learned that adults often exert power and control through abuse. The lessons learned in childhood are often repeated in adulthood with the result that many survivors of the residential school system often inflict abuse on their own children. These children in turn use the same tools on their children.¹⁰⁰

As the abuses at residential school were revealed, victims began to emerge as survivors, empowered by their shared experiences as they strive to maintain or regain their individual integrity. The government had to change its strategy of blaming the victim and its stance of benevolent champion of assimilation in order to counter the increasingly powerful human rights discourses Mi'kmaq and other Indigenous communities appropriated. As such, much of the discourse around residential schools has turned to healing, harmony and more recently to truth and reconciliation. In 1998, federal government established a \$350 million Aboriginal Healing Foundation (AHF) to address the damages caused by residential schools across the country. The AHF worked diligently to steer the direction of recovery of colonial traumas away from destruction and despair toward empowerment and capacity building that foregrounded Indigenous voices and ways of being and healing. Rather than imposing healing strategies, the AHF tried to build collaborative, inclusive, culturally aligned strategies with the intent of attaining programmatic sustainability.

The research undertaken by the AHF contributes to community healing programs in the short-term and strengthens the long-term healing capacities of Aboriginal communities. AHF's research approach is grounded in Aboriginal knowledge and the experience, wisdom, and authority this knowledge represents. This approach requires a participatory process in which Aboriginal people determine how the AHF can most effectively respond to their healing needs. This approach also recognizes the value of holistic healing, the importance of forming partnerships with other service providers, and the need for interdepartmental cooperation in achieving the goals of research and evaluation.¹⁰¹

¹⁰⁰ Indian and Northern Affairs Canada, 1991.

¹⁰¹ A Compendium of Aboriginal Healing Foundation Research (2010: 2).

Accessing the subsidies and sustaining the programs proved challenging and the AHF program funding was terminated in 2010. The good work and momentum toward implementing opportunities for healing and strategies for community capacity building emerging from the Healing Foundation and its expansive research base cannot be underestimated in its contributions to the ‘healing movement.’

Today, addressing family violence goes hand in hand with acknowledging the harms of centralization, residential schools and colonial traumas generated by assimilation policies and the failure to recognize Mi’kmaq sovereignty. Collectively survivors of Shubenacadie Residential School joined national efforts of the Assembly of First Nations and other survivor groups in demanding accountability for the atrocities from churches and governments.¹⁰² Alleging emotional, cultural, physical and sexual abuses, over 13,000 survivors across Canada turned to litigation for redress of the harms they endured. Recognizing the untenable financial and human costs of such litigation the Indian Residential School Settlement Agreement (IRSSA) was a court-ordered settlement endorsed by Survivors’ legal representatives, churches and the federal government, implemented in 2007. It is the largest out-of-court settlement in Canadian history. Approximately seven hundred and fifty Mi’kmaq survivors have applied for one of the components of the IRSSA, the Common Experience Payment (CEP). Current work is underway in the Atlantic region to assist survivors in the Individual Assessment Process (IAP), which was created to financially resolve claims of people who “suffered sexual

¹⁰² One of the foremothers of this collective action is the late Nora Bernard who is heralded as a great social justice activist who encouraged Mi’kmaq people to speak out against the residential school and to stand up for Aboriginal rights. Ms. Bernard was instrumental in seeking compensation for residential school survivors.

abuse, serious physical abuse, or certain wrongful acts which caused serious psychological consequences.”¹⁰³

In addition to residential school as a mechanism for dismantling Indigenous cultures, foster care and adoption systems were widely used to breakdown extended kinship networks as a strategy of assimilation. During the 1960s, 1970s and 1980s extensive adoption or temporary placements of Aboriginal children into non-Aboriginal homes perpetuated the discrimination, injuries and abuses of residential schools. Section 88 of the Indian Act expanded provincial child welfare services to reserves but, “did not clarify the financial obligations of the Federal government to the Provinces, the consequences of which would be an enduring conflict between the Federal and Provincial governments.”¹⁰⁴ In Nova Scotia the federal government was to pay 100 percent of the cost child welfare for Aboriginal custody cases and soon Aboriginal children became over-represented in provincial care.¹⁰⁵ As Johnson notes:

Gradually, as education ceased to function as the institutional agent of colonization, the child welfare system took its place. It could continue to remove Native children from their parents, devalue Native custom and traditions in the process, but still act ‘in the best interest of the child’. Those who hold this view argue that the Sixties scoop was not coincidental; it was a consequence of fewer Indian children being sent to residential schools and of the child welfare system emerging as the new method of colonization.¹⁰⁶

¹⁰³ Sadly and frustratingly, the people quoted above died before they received their compensation. Many survivors and descendants of survivors are concerned with access to the IRSSA and the length of time from initiation to settlement. This is the subject of further research currently underway with Atlantic Policy Congress.

¹⁰⁴ MacDonald, Gloade and Wien (2005:358).

¹⁰⁵ MacDonald, Nancy First Peoples Child and Family Review, Volume 3, Number 1, 2007: 38.

¹⁰⁶ Johnson, Patrick (1983:24)

Non-aboriginal child welfare workers held Aboriginal people responsible for the poverty, over crowded and unsanitary housing conditions and malnutrition in which the majority of people lived and this led to the phenomena of mass apprehension.¹⁰⁷ This situation further compounded the multi -generational traumas of colonization. As with residential schools, this practice occurred across the country.¹⁰⁸ Social workers were involved in such tragedies as the formation and recruitment of students to Residential schools, the Sixties Scoop, and the continued over representation of Aboriginal youth in child welfare programs. Community narratives often confirm the tentativeness with which women treat programs such as those offered by the Mi'kmaw Family and Children's Services as too closely linked with child welfare agencies.

Cindy Blackstock places the situation into context by explaining that traditionally, if problems arose regarding child welfare, community response would comprise of community involvement in caring for the child, providing resources to the parents and conflict resolution.¹⁰⁹ In other words severance of parent-child ties were extraordinarily rare.¹¹⁰ This throws into sharp relief cultural changes that occurred post-contact as a result of assimilation efforts. The reputation of social workers within Aboriginal

¹⁰⁷ MacDonald, Nancy First Peoples Child and Family Review, Volume 3, Number 1, 2007: 39. See also Crichlow (2003).

¹⁰⁸ Hilary Book *Brown v. Canada (Attorney General)* (2010), 102 O.R. (3d) 493 (S.C.J.) (Released May 26, 2010). Recently (2009) a group formed to launch a class action suit against the Attorney General of Ontario arguing that: [T]he Federal Crown had wrongfully delegated its responsibility to aboriginal persons by entering into an agreement with Ontario that authorized a child welfare program that systematically eradicated the children's aboriginal culture, society, language, customs, traditions and spirituality. The Plaintiffs adduced evidence that loss of cultural identity caused low self-esteem, depression, anxiety, suicide, substance abuse, violence and other difficulties for aboriginal individuals, as well as problems for aboriginal communities. The Crown sought to strike the claim for failing to disclose a reasonable cause of action

¹⁰⁹ Blackstock 2003.

¹¹⁰ Auger in Blackstock 2003.

communities began to form during the advent of the Residential School system. In 1946, the Canadian Association of Social Workers and the Canadian Welfare Council reported to the Senate and House of Commons, stating that, “assimilation should be a priority, and though the residential schools display shortcomings they nonetheless play a role in a “well rounded system of Indian education.”¹¹¹ This report further paved the way for Section 88 to be added to the Indian Act, which called for the expansion of provincial child welfare services for First Nations people on reserve.¹¹²

The period is often referred to as the sixties-scoop, saw social workers play an integral part in the cultural destruction of such assimilation policies. Social workers often removed Aboriginal children from their homes in order to “rescue” them from the effects of poverty, poor housing, and violence.¹¹³ In such reasoning it becomes apparent that the approaches to child welfare mandated through the Indian Act or the Child Welfare Act are extensions of colonial values and efforts of assimilation.¹¹⁴ Ethnocentric forces are still evident in Nova Scotia largely in the manner with which the standards of best interest are enforced. The situations which Aboriginal women are faced when trying to access help for domestic violence are complicated by organizational structures that must adhere to the Child Welfare Act, and where socio-economic factors such as poverty, substandard housing and poor sanitation are used as justification for seizure of children.¹¹⁵

¹¹¹ Blackstock, 2003.

¹¹² MacDonald and MacDonald 2007.

¹¹³ Monture-Angus, 1995; Sinclair, 2004.

¹¹⁴ Crichlow, 2003.

¹¹⁵ Palmer and Cooke, 1996 in MacDonald 2007.

Changes to the Ontario Child and Family Services legislation in 2000, placed increasing emphasis on investigations by child welfare agencies concerning children exposed to domestic violence.¹¹⁶ While addressing the effects of childhood exposure to domestic violence must clearly be a priority, such legislation has the unfortunate effect of causing women to become more tentative to seek help from transition houses, out of fear that child welfare organizations could become involved.¹¹⁷ Such legislation has the potential to be detrimental to the overall cause of addressing family violence, especially in the cases of Aboriginal families, where faith in the social services is already delicate at best. Exposure to domestic violence under the Child Welfare Act is seen as a “failure to protect” on the part of the parent, leaving them to be held responsible for “exposing” their children to continued violence if they do not leave abusive relationships. Considering the complicated situation within Aboriginal communities where women may be unable to leave an abusive situation for numerous reasons including isolation, fear of retribution, or poverty and addictions, there is a very real threat of women being re-victimized, albeit unintentionally, by the very organizations they sought help from originally.¹¹⁸

Mi’kmaq Encounters with the Canadian Justice System

There is overwhelming agreement that the current Canadian legal system has and continues to fail Aboriginal people.¹¹⁹ Statistics clearly show that Aboriginal peoples are over represented in Canadian prisons. In 2006, 1,172,785 people who self-identified as Aboriginal comprised 3.71% of the total Canadian population of 31,612,897. Also in

¹¹⁶ Alaggia et al 2003.

¹¹⁷ Alaggia et al. 2003

¹¹⁸ For examples see: Edleson, 2004; Jaffe, Crooks, Wolfe, 2003; Magen, 1999; Magen, Conroy, and DelTufo, 2000.

¹¹⁹ RCAP 1996.

2006, 24% of the 90051 Canadians who were admitted to a custodial sentence self-identified as Aboriginal.¹²⁰ The incarceration rates of Aboriginal peoples continue to rise despite 1996 the introduction of 718.2(e) to the Canadian Criminal Code and the Supreme Court of Canada Gladue decision in 1999.¹²¹ The sentencing reforms instruct sentencing judges to take into consideration the following principles: (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.¹²²

[T]he involvement of aboriginal peoples with the criminal justice system must not be seen simply in terms of individual law violators, but as the consequence of a political, legal, and socioeconomic framework which has contributed directly and indirectly to the criminalization of natives both as natives and as persons who occupy subordinate socioeconomic positions. That is, efforts to suppress native peoples, their traditions, and their socioeconomic independence have often involved placing Indians in situations where their everyday life activities are defined and acted upon as criminal in nature, or their responses to lived circumstances place them in conflict with the law.¹²³

While the sentences given aboriginal offenders have become shorter on average, they have become more frequent and increasingly involve offenses against the justice system itself in the form of failure to appear for court and default in paying fines (Department of Justice Canada, 1991:7).

Research indicates that Aboriginal offenders are: denied bail more often, spend more time in pre-trial detention, are more likely to be charged with multiple offences, spend less time with lawyers, do not have access to court, probation and parole services in their home communities, and are more than twice as likely to be

¹²⁰ 2006 Census Data; CANSIM Table No. 251-0001: Adult correctional services, admissions to provincial, territorial and federal programs, annual.

¹²¹ R. v. Gladue, [1999] 1 S.C.R. 688.

¹²² Rudin, Jonathan (2006). A Court of Our Own: More on the Gladue Courts.

¹²³ Wotherspoon and Satzewich 1993.

incarcerated than non-Aboriginal persons.¹²⁴ Other research suggests that recidivism rates are high among Aboriginal offenders because punishments are ineffective deterrents and conflict with cultural values and community circumstances. Because the criminal justice system tends to remove offenders from their communities they cannot be held accountable for their actions against their victims, families and communities, and thus broken relations are not restored and the potential for re-offending increases when root causes are not addressed.

Aboriginal justice was a topic of fervent discussion in Nova Scotia in the 1990s as the conviction and life sentence of a Mi'kmaq man for a murder he did not commit culminated in the widely publicized report of the Royal Commission on Donald Marshall, Jr., Prosecution. The report dissected the legal processes leading to Marshall's wrongful conviction and challenged all facets of the provincial justice system. The case brought to light fundamental problems in policing, courts and the judiciary in Nova Scotia, and raised important questions regarding the legitimacy, authenticity and efficacy of the Canadian criminal justice system, particularly its treatment of Aboriginal peoples.¹²⁵ The inquiry concluded that the criminal justice system failed Donald Marshall Jr. at virtually every turn from his arrest and wrongful conviction for murder in 1971, up to and even beyond his acquittal by the Court of Appeal in 1983. The report, released in 1989, clearly identified Marshall's Aboriginal identity as a significant contributing factor in the denial of justice: "The tragedy of the failure is compounded by evidence that this miscarriage of justice could and should have been prevented, or at least corrected quickly, if those involved in the system had carried out their duties in a professional and

¹²⁴ Green 1998, La Prairie 1994, Silvermen and Neilsen 1996, 1994.

¹²⁵ McMillan, 2011.

or competent manner. That they did not is due, in part at least, to the fact that Donald Marshall Jr. is a Native”. Marshall served over eleven years in prison; he escaped once, was recaptured and endured innumerable periods of solitary confinement for protesting his innocence. Marshall was repeatedly deemed ineligible for parole because he would not demonstrate remorse for a crime he did not commit. Furthermore, the adverse consequences for Donald Marshall Jr. extended well beyond the legal system.

The Royal Commission report released in 1989 delivered 82 recommendations. In response to those recommendations, the Mi'kmaq have two main goals, one, to ensure better treatment of their people as they encounter mainstream justice and two, to create their own system of justice in order to deal meaningfully with problems in their territories. After the Marshall Inquiry the Mi'kmaq considered two elements vital to the development of community based justice; time to consult with community members and the financial resources to engage the necessary expertise to design what is acceptable to the community. Over the past two decades a number of justice initiatives have been implemented in Mi'kmaq communities ranging from the indigenization of mainstream programs, to court worker programs, from creating dispute management strategies using customary law to exploring options for control over resource regulation, from community assisted parole hearings to culturally aligned corrections programs, from crime prevention initiatives to programs of justice as healing and victims services. Today the Mi'kmaw Legal Support Network provides customary law and court worker services for Mi'kmaq in Nova Scotia encountering the Canadian criminal justice system.

In addition to the Marshall Inquiry the 1999 landmark Supreme Court of Canada decision in *R. v. Gladue* and the provisions in Section 718.2(e) of the *Criminal Code* have

made it clear that there is a positive duty on counsel to adduce and judges to consider information related to the unique circumstances of Aboriginal people who come before the courts and to address the problems of Aboriginal overrepresentation in correctional facilities in Canada. These factors directly impact the options available to Mi'kmaq working to address the problems of family violence. The principles of community-based restorative justice are a starting point from which both the courts and Indigenous communities can work to engender much needed re-assignment of the structural authority of dispute management strategies Indigenous people encounter when they come before the law.

This brief overview of Mi'kmaq encounters with settler societies over 400 years establishes the complexities within which family violence occurs and foreshadows the obstacles to getting assistance from non-Aboriginal service providers in Mi'kmaq communities. In order to understand contemporary issues in Mi'kmaq communities we must understand the impacts of colonization on Mi'kmaq culture and communities because without this understanding effecting positive change in Mi'kma'ki is unlikely.

Addressing Mi'kmaq Family Violence: Resilience, Innovation and Empowerment

That Mi'kmaq communities have survived the onslaught of assimilation strategies, policies and legislation designed to undermine their cultural practices and ways of being

is a very strong indication of the resilience and integrity of the nation. However, the conditions of social and cultural health of the Mi'kmaq nation are not optimal and family violence is a serious issue that many people want addressed. The important work of Michael and Judie Bopp and Phil Lane (2003) that analyses Aboriginal Domestic Violence in Canada is an example of research supported through the Aboriginal Healing Foundation. They argue convincingly that the problems of family violence in Aboriginal communities are rooted in, "Aboriginal historical experience, which must be adequately understood in order to be able to restore wholeness, trust and safety to the Aboriginal family and community life" (2003:13). The federal government's track record of supporting sustainable programs in First Nations is marginal at best. It is unlikely that any short-term programming can effectively resolve the consequences of the legacies of colonial abuses or address the crises of family violence in Aboriginal communities.

Indeed as Bopp, Bopp and Lane argue:

[The] constraining factors from outside Aboriginal communities that impact their capacity to work effectively and systematically to address family violence and abuse in terms of three categories:(1) present-day government policies and programs (these have not been developed in full consultation with the whole circle of Aboriginal partners, are too often based on an inadequate understanding of the problem and lines of action that could prove effective, are inadequately resourced and are not designed to support the type of integrated long-term strategies needed to tackle the full range of determinants for family violence and abuse); (2) the marginalization of Aboriginal people in society as a whole (this puts them at risk of a whole host of social issues, which are associated with family violence and abuse); and (3) national and global trends in society and mass culture (these undermine the values and dynamics that distinguish Aboriginal communities and sustained them in traditional times).¹²⁶

In reviewing the literature on Aboriginal family violence and violence against Aboriginal women, it is clear that community controlled justice processes are a necessary

¹²⁶ Bopp, Bopp and Lane (2003:14).

part of social justice and self-determination. Recent scholarship addresses the thorny issues of gender and political power dynamics, re-victimization, situations of hyper-responsibility, culture, assimilation, accommodation and tradition in community healing.¹²⁷ These insights and cautions are particularly useful in the design and implementation of innovative community-based justice programs. There is a productive tension between those who promote pro charge, pro conviction and pro incarceration stances against those that want and can manage disputes using alternative and restorative justice approaches to facilitate community and individual safety.¹²⁸ This research explored how legal consciousness is shaped by personal and collective experience and through analyses of the competing discourses regarding the legitimacy, authenticity and efficacy strategies to address the problems of violence as identified by Mi'kmaq people who have experienced violence in their lives.

The following sections detail the findings of our field research in Mi'kmaq communities in Nova Scotia from 2006 to 2011. From the experiences of the participants the nature and extent of violence in Mi'kmaq communities is assessed. Questions were asked to delineate the reactions and responses to abuse by individuals and others so that we can understand the cultural strategies at work, as well as gain an appreciation of the adequacy and inadequacy of current approaches and services. The participatory action stance of this collaborative research mandated that this report formulate an analysis of the communities' perceptions regarding the potential for creating a community-based

¹²⁷ Balfour (2008); Behrens (2005); Brownridge (2003, 2008); Cameron (2005, 2006, 2007); Ceresne (2007); Daly and Stubbs (2005); Darnell (2001); Edwards and Haslet (2003).

¹²⁸ DeKeseredy (2011); Coker (2006); LaForme (2005); Koshan (2005); Grauwiler and Mills (2004); Daly (2002); Dissel and Kindisa (2003); Hayden (2000); Pranis (2002); Glover (2006); Braithwaite and Strang (2002); Rubin (2003).

response strategy to prevent, intervene and manage situations of family violence within Mi'kmaq communities in Nova Scotia and to make recommendations for next steps based upon these examinations.

The Nature and Extent of Family Violence

Family violence is one of the most important issues affecting the quality of life of Aboriginal peoples in Canada.¹²⁹ Aboriginal women are two to three times more likely to experience spousal violence than non-Aboriginal persons and they are also more likely to be subjected to the most severe and life-threatening forms of spousal abuse. A report that examined Crown Prosecutor files on family violence and sexual assault offences in the territories between January 1999 and December 2004, found that over three-quarters (77%) of those accused of a family violence offence had at least one form of abuse in their own personal histories, suggesting significant potential for intergenerational trauma in Aboriginal communities.¹³⁰

Baskins (2006) argues that family violence rarely existed pre-contact due to the connection between individuals and the community. Factors associated with and which sustain domestic violence include the internalization of colonial attitudes, racism, the normalization of ignoring violence, multigenerational grief and family structure breakdown associated with residential schools and resulting intergenerational abuse, addictions, low socio-economic status, social impoverishment and stress, such as being a single or teenage mother, or a recipient of financial assistance. Also important are major changes that affect social and moral bonding in family organization and structure, alcohol

¹²⁹ Bopp, Bopp and Lane, 2003.

¹³⁰ Paletta, 2008.

and other drug misuse and low levels of education attainment. Aboriginal peoples are overrepresented in all of these categories; further complicating the situation is isolation, limited appropriate services, lack of transportation, gaps in judicial proceedings and social services, and systemic barriers in law, health care and education that enhance internal colonization and interrupt effective prevention and intervention strategies from taking hold.

While the General Social Survey possesses certain shortcomings in evaluating violence according to Aboriginal status, and Statistics Canada states that it is likely to underestimate the true incidence of violence, some researchers see it as the best national indicator. The General Social Survey (2004) estimates that 24% of Aboriginal women in Canada have experienced spousal violence compared to 18% of Aboriginal men. However, some research places rates as high as 80-90% in Northern Territories, and ranging from 25-100% in other parts of the country, depending entirely on methodology and sample.¹³¹ Abuse takes many forms; Aboriginal males and females report high instances of emotional abuse: 37% and 36% respectively compared to non-Aboriginal women (18%) and men (17%).¹³² Aboriginal people (21%) report being victims of spousal abuse, a rate three times higher than non-Aboriginal people even when the effect of other factors such as age or economic factors are controlled.¹³³ Aboriginal women are twice as likely to experience some form of stalking in the previous five years, which caused them to fear for their lives.¹³⁴

¹³¹ Brownridge, 2008.

¹³² Statistics Canada, 2006.

¹³³ Native Women's Association of Canada, 2007.

¹³⁴ Statistics Canada, 2006.

Violence is also more severe and more likely to be ongoing for Aboriginal people.¹³⁵ In 2006 Statistics Canada reported 43% of Aboriginal victims of spousal violence report being injured as a result of violence compared to 31% of non-Aboriginal victims, with 33% reporting violence serious enough that they feared for their lives, as compared to 22% of non-Aboriginal women victims. Aboriginal women (54%) report severe or potentially life-threatening violence used against them versus non-Aboriginal women (37%). Rates of spousal homicide are at the lowest in 30 years, having declined steadily since 1978; however, women in general and Aboriginal women in particular, are still overrepresented.¹³⁶ The rate of spousal homicide was eight times greater for Aboriginal women and 38 times greater for Aboriginal men as compared to their respective non-Aboriginal counterparts.¹³⁷ When comparing the 2006 data with the most recent survey data, the numbers of Aboriginal people experiencing spousal and non-spousal violence have not declined and in fact may be increasing.

The Juristat bulletin on the General Social Survey (GSS) focuses on violent criminal victimizations as reported by Aboriginal people living in the ten provinces during 2009, and notes that more than one-third of the Aboriginal population living in the provinces reported having been a victim of one of the eight offences examined by GSS.¹³⁸ 41% of incidents reported were violent, namely sexual assault, robbery and

¹³⁵ Brownridge, 2008.

¹³⁶ Statistics Canada 2009.

¹³⁷ Statistics Canada, 2006.

¹³⁸ The survey collects information from a representative sample regarding their victimization experiences for eight types of crime: sexual assault, robbery, assault, break and enter, theft of motor vehicles or parts, theft of household property, vandalism and theft of personal property (Samuel Perreault, 2011 <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11415-eng.htm>). Violent victimization of Aboriginal people in the Canadian Provinces, 2009.

assault. “Of those violent incidents, 15% were sexual or physical assaults committed by a spouse or common-law partner (current or former) in the 12 months preceding the survey.”¹³⁹ Aboriginal people are more likely than non-Aboriginal people to be victims of violent crimes and are more likely to be victimized multiple times. Aboriginal people reported being victims of sexual assaults 70 incidents per 1,000 compared to 23 incidents per 1,000 reported by non-Aboriginal people. Non-spousal violence is more likely to be perpetrated by a relative, friend, acquaintance, neighbour or another person known to the victim. “The higher proportion of Aboriginal people who knew their perpetrator may be related to the higher incidence of sexual assault among Aboriginal people as this type of offence was more likely to be committed by someone known to the victim than other forms of violence.”¹⁴⁰

According to the 2009 statistics based on spousal violence that occurred in the five years preceding the survey, Aboriginal people (10%) were almost twice as likely to report being a victim of spousal violence as non-Aboriginal people (6%). Aboriginal women (15%) were at greater risk of being a victim of spousal violence than non-Aboriginal women (6%).¹⁴¹ “More than half (59%) of Aboriginal victims of spousal violence reported being victimized more than once in the past five years and 50% reported being victimized more than three times.” Additionally, “Aboriginal victims of spousal violence were more likely than other Aboriginal people to be victims of non-

¹³⁹ Perreault (2011). <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11415-eng.htm>

¹⁴⁰ Perreault, Samuel and Shannon Brennan. 2010. “Criminal victimization in Canada, 2009” *Juristat*. Vol. 30, no. 2. Statistics Canada Catalogue no. 85-002-X. (accessed on January 14, 2011).

¹⁴¹ Perreault (2011). <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11415-eng.htm>

spousal violence. Aboriginal people who self-reported spousal violence were also about three times more likely than other Aboriginal people to have been the victim of a non-spousal violent crime.”¹⁴² The level of violence was more often serious for Aboriginal people reported being hit with an object, beaten, strangled, threatened or assaulted with a firearm or knife, or forced to engage in an unwanted sexual act by their spouse nearly twice as often as non-Aboriginal victims of spousal violence. Interestingly, according to these statistics, Aboriginal victims of spousal violence are more likely than their non-Aboriginal counterparts to report the violence to the police (29% compared to 15%), although as is the general case with victimization, fewer than one in three incidents were reported to police.¹⁴³ Aboriginal victims of spousal violence who contact police were generally satisfied with the actions taken by the police (73%). The most common reason Aboriginal and non-Aboriginal victims cited for not reporting incidents of spousal violence to the police was the belief that the incident was not severe enough.¹⁴⁴ Of those that reported, most (94%) Aboriginal victims of spousal violence sought support from friends or family and were more likely than non-Aboriginal (67%) people to tell someone about the violence. 63% of Aboriginal victims of violence by an ex-spouse shared at least one child with that ex-spouse, of those 76% were single parents, usually single mothers.

¹⁴² Perreault (2011). <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11415-eng.htm>

¹⁴³ Perreault (2011). <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11415-eng.htm>

¹⁴⁴ Research and Evaluation Unit, Strategic Planning and Research Branch, MCSCS (2011:3).

Overall, 16% of all Aboriginal people living in a lone-parent family experienced spousal violence in the last five years.¹⁴⁵

As of March 2010, Sisters in Spirit recorded 582 cases of missing or murdered Aboriginal women; 153 of these are murder victims, representing approximately 10% of the total number of female homicides in Canada.¹⁴⁶ According to Sethi's (2007) work on Domestic Sex Trafficking of Aboriginal girls in Canada, Aboriginal children are also overrepresented in sexual assaults; 75% of Aboriginal girls under 18, 50% of girls under 14 and almost 25% of Aboriginal girls younger than seven years of age have experienced sexual abuse. Current statistics on elder abuse amongst Aboriginal populations are not available.

There is ample evidence locally, nationally and internationally suggesting Indigenous women are over-represented as victims of domestic and family violence.¹⁴⁷ However, there are no clear measures or reliable estimates as to the extent of such violence or any accurate measure of the extent to which men and women under report it, but under reporting is expected to be higher for Indigenous populations than for the general population largely due to the consequences colonization. Yet, if more Aboriginal people are reporting spousal violence, as according to Juristat 2009, what are the factors contributing to that trend? It is possible that police, victim and social service outreach programs and policies are contributing to increased reporting, or it could also mean that the rates of family violence are even higher than what is being captured in the Statistics Canada process and therefore the rates of reporting appear higher as a comparative

¹⁴⁵ Research and Evaluation Unit, Strategic Planning and Research Branch, MCSCS (2011:3).

¹⁴⁶ Native Women's Association of Canada, 2010.

¹⁴⁷ Dickson-Gilmore & LaPrairie, 2005.

percentage. Instead of focusing on the deficiencies in the statistical data, priority for this research is the examination of the design and implementation of community based anti-violence programs that create meaningful, culturally aligned, effective opportunities for prevention, intervention and resolution of family violence for victims, perpetrators and their families.

Mi'kmaq Responses to the Problems of Family Violence

The Province of Nova Scotia has given considerable attention to the problems of domestic violence. In 1995, Framework for Action Against Domestic Violence established and was reviewed in the Russell Report in 2001. “The Framework for Action Against Family Violence represents Government’s commitment to improve the response of the justice system to this serious social problem. It is in the public interest that the justice system responds swiftly and effectively to reports of spousal / partner violence. Accordingly, the Minister of Justice issued the following Directive to ensure the implementation of a pro-arrest, pro-charge, pro-prosecution policy.”¹⁴⁸The Province of Nova Scotia has a wide range of legislation, policies, programs and services currently in place to address domestic violence such as: the Domestic violence Intervention Act; Pro-arrest, pro-charge, and pro-prosecution directives; and more recently province-wide intimate partner violence risk assessment by police; High Risk Case Coordination Protocol Framework; and domestic violence coordinator positions within police agencies. Amid increasing concerns about domestic violence locally and nationally, the Minister of Justice in 2008 directed a Domestic Violence Prevention Committee to work with

¹⁴⁸ High-Risk Case Coordination Protocol Framework Spousal / Intimate Partner Violence. Appendix “c” Operational Manual Appendix IV-1-8. (2008:55)

community and government to seek ways to improve provincial responses. The committee made 70 recommendations its 2009 report and in December 2010, as promised in the September Throne Speech, responded to the report and its recommendations with the Domestic Violence Action Plan.¹⁴⁹

Meanwhile, in March 2006, the Nova Scotia Advisory Council on the Status of Women sponsored a small delegation from Nova Scotia to attend the National Policy Forum on Aboriginal Women's Issues. In June 2006, as a result of this opportunity, a working group on Family Violence and Aboriginal Communities was formed in Nova Scotia to assess the efficacy of the legislation, policies, programs and services available for Aboriginal peoples experiencing domestic violence. Initial membership on the working group consisted of representation from the Mi'kmaw Legal Support Network, the Mi'kmaq Family Healing Centers, the Tripartite Forum Steering Committee, the Nova Scotia Office of Aboriginal Affairs, and the Nova Scotia Advisory Council on the Status of Women. Membership grew to include representation from the Nova Scotia Native Women's Association, Victim Services, the Department of Justice, the Department of Community Services, and the Department of Health and RCMP. The working group has also affiliated itself with the Mi'kmaq-Nova Scotia-Canada Tripartite Forum and has become a sub-committee of that forum's Justice Working Committee. This unique collaboration facilitated the development of a comprehensive strategy for cultural empowerment to address family violence in Mi'kmaq communities. The goal of the research process was to directly involve community members in the decision-making and implementation of their contributions. Repeatedly people express frustration at being

¹⁴⁹ Domestic Violence Action Plan (Province of Nova Scotia 2010).

‘researched to death’ with little or no visible impact. Our goal was to ensure that our work would lead to tangible outcomes for the communities concerned in ways that did not make our research complicit with paternalistic, extractive, colonizing methodologies that result in nothing being done to address the problems of violence. This research was funded by the Atlantic Aboriginal Health Research Program at Dalhousie University, a CIHR-funded program, and by Mi’kmaq / Nova Scotia / Canada Tripartite Special Projects Fund and supported by the Social Sciences and Humanities Research Council Canada Research Chairs Program. We applied for and received ethical approval to proceed with the research from Mi’kmaw Ethics Watch and Saint Francis Xavier Research Ethics Board and complied with Tri-Council policies regarding research with Aboriginal communities.

Methodology

Following an extensive literature review of statistical analyses, government reports, and academic articles focusing on feminist and anthropological theories, restorative justice, and Aboriginal peoples and the justice system, the Aboriginal student research assistants scanned Aboriginal family violence intervention and prevention programs across the country to glean and summarize best practices. We participated in national and international conferences investigating issues specific to Aboriginal family violence. The primary goal of the working group is to develop in consultation with communities, culturally appropriate models of family violence prevention and intervention to assist women, families and communities in effectively dealing with and responding to family violence. Collective knowledge on the working group identified considerable gaps in services at the community level with respect to family violence

intervention both within community service provider capacity and in the Canadian justice system. There is an urgent need for social education of culturally relevant responses to normalize intervention and destabilize the normalization of violence in Mi'kmaq communities.

From the preliminary research we designed the following approach and considered:

- 1] The past history and present circumstances of family violence;
- 2] The nature and extent of violence;
- 3] Reactions and responses to abuse by individuals and others;
- 4] The adequacy and inadequacy of current approaches and services, and;
- 5] The potential for creating a community-based response strategy to prevent, intervene and manage situations of family violence within Mi'kmaq communities.

We talked with many people from many different walks of life: youth, elders, survivors and abusers, leaders, front line workers, employed, unemployed, addicted, non-addicted, men and women. The people we spoke with range in age from 16 to over 65 years of age, some are high school graduates, some are employed, most live on reserve, about one half speak Mi'kmaq and all are Aboriginal. Over one hundred and fifty Mi'kmaq people were formally consulted in this research process through interviews, focus groups and community forums. The findings were then compiled and we returned to the community for feedback on the best practices for prioritizing a community strategy to help families and individuals experiencing violence in ways that: protected their rights, acknowledged their unique identities and customs as Mi'kmaq peoples, provided satisfactory remedies in times of crisis, and ongoing support for family and community

healing. Another 300 + people were informally consulted through meetings, conferences and workshops.

Community Forums for Knowledge Mobilization

The working group held two major community forums one in Millbrook and one in Membertou on the topic of family violence. The forums were intended to present information on family violence, encourage dialogue on the issues involved, and develop direction from the community, particularly the grass roots, in terms of appropriate responses to the problems of violence. In this way, the community provided leadership with respect to the focus and objectives of the overall research project and its outcomes. The community forums increased our awareness of the impact and prevalence of family violence in Aboriginal communities across Nova Scotia, identified the urgent need for increased resources in order to effectively deal with the issues of family violence, illuminated community perceptions of the services that are available, detailed their experiences with the Canadian and Mi'kmaq justice processes and identified the fact that services for men were particularly and problematically absent.

Careful consideration was given as to how best consult with the communities on this sensitive and often highly personal subject. We worked to ensure the forums were an opportunity to gather in a healthy way to raise awareness and discuss issues of concern, in order to map how the community members perceive and experience family violence and apply their knowledge to creating innovative, meaningful responses. We were all concerned with safety, confidentiality and creating an environment for respectful sharing. Social workers and support counselors from Mi'kmaq Family and Children Services and the Family Healing Centers volunteered their services during and after the forum in case

people required immediate assistance or referrals to services. It is always a challenge to encourage people to attend and participate at such forums. We chose Membertou as a central location for the Unama'ki (Cape Breton) communities and Millbrook as central to the mainland communities. Tripartite communications sent invitations to band councils, Mi'kmaq organizations, service providers and other front line workers, asking them to select members from their client bases and communities to attend. We also welcomed anyone interested to join. Most bands selected delegates and we offered to pay travel for those that required assistance. The Confederacy of Mainland Mi'kmaq and Tripartite generously donated door prizes, and local entrepreneurs catered lunch.

After much discussion within the working group we decided that we would pose two questions at the daylong forums. Following coffee and a welcoming ceremony, general introductions and instructions, the large group was divided into smaller talking circles (through a random colour coded sticker process) in order to give people the greatest opportunity to share. Mi'kmaw Legal Support Network (MLSN) coordinated the large and small group facilitators. Each group was given a flip chart and a MLSN or Mi'kmaq Family Healing Center facilitator recorded responses. The first question "How does family violence affect you and your community?" was presented to circles in the morning. At the end of the morning session the circle members were asked to evaluate their lists and choose the three issues they felt to be the most important. The second question, "What are options for changing family violence?" was presented in the afternoon session and people were again asked to select the issues they felt most important. After all of the hard work of the small groups we gathered into a large group, had a thank you ceremony and door prizes, and reminded people of the counseling

services available to them and were given the contact information of the researcher in case they wanted to have private discussions. Once the participants left, the working group gathered to debrief.

From a research perspective, the two community forums were very successful in helping us gather and synthesize peoples' insights and experiences of family violence and provided us with suggestions for improving existing resources and developing new strategies. During the two debriefs we noted that the experience provided 'good medicine' for the majority of people in attendance, we were happy with the turnout and the diversity of the groups in terms of gender, age, employment and education experiences, beliefs, encounters with the justice system and as survivors of violence. We examined what was said and what was not said. Both forums were highly emotive experiences. Many people shared deeply personal accounts of witnessing and experiencing violence and abuse, many of these reflecting intergenerational traumas. Heartfelt accounts of anger and frustration detailing the challenges facing their communities in overcoming widespread social problems were mixed with hopeful visions of better futures.

Focus Groups, Interviews and Community Feedback Approaches

In addition to the community forums, focus groups and interviews were conducted with victims and perpetrators of violence and their extended families, frontline workers and service providers who deal with family violence prevention and intervention, police officers, justice personnel and youth. We examined the nature and extent, past history and present circumstances of family violence; reaction and responses to abuse; adequacy and inadequacy of approaches; and the desired outcomes and recommendations

for change. We examined the unique social-political phenomena emerging from collective historical trauma of colonialism, residential schools, systemic discrimination and racism as well as the very personal experiences of abuse. Once these methods were completed we assembled the findings and the community recommendations and took the findings back to the communities. Presentations were made to the Adult Education Program students in Eskasoni and Potlotek, frontline health and social service workers from across the province in Bear River, Millbrook, Membertou, Indian Brook, Paqtnkek, and We'koqma'q. Native Alcohol and Drug Association, RCMP personnel who work on reserve, Nova Scotia Victims Services, Metro Interagency on Domestic Violence and members of Transition Houses Association of Nova Scotia met with the researcher and the Mi'kmaq Domestic Violence Committee to discuss the findings. Formal presentations were made first to the Boards of the Union of Nova Scotia Indians and the Confederacy of Mainland Mi'kmaq and then to the Tripartite Officials in October 2010. Community members were consulted throughout the research process in order to seek feedback and direction on the next steps.

Findings

The Nature and Extent of Family Violence in Mi'kma'ki

According to research participants, violence in Mi'kmaq communities is perceived as 'normal' in that it occurs regularly, it is frequently visible, but a pervasive ethos of non-intervention and non-interference usually precludes people from getting involved. Desensitization toward violence is a consequence of the intergenerational traumas brought about through centuries of attempted ethnocide, coerced assimilation,

discriminatory legislation and the destruction of families, communities and culture by outsiders seeking to control Mi'kmaq rights, territory and resources. Overwhelmingly the participants in this research indicated that **poverty**, **addictions** and **culture loss** are the most significant contributing factors to the perpetuation of family violence. Ongoing systemic discrimination, racism, alienation and marginalization from justice, education, economic and health institutions limit opportunities to address individual and collective problems of family violence. Internal and external colonization contribute to divisive lateral violence. The majority of family violence incidents are not reported due to a complex matrix of factors including: real and perceived prejudice by police, courts and community services; possibility of dual charges; uncertainty of rights; shame; self-blame; retaliation; extended family and community dynamics; severe lack of exit options including housing, employment, transportation; financial dependency on abusive partner; addictions; and fear of losing children. Frequently couples reconcile, but there are very limited services to assist family healing or to support victims and perpetrators as they reconcile, thus perpetuating the conditions for continued, unreported, unaddressed abuse.

To assess the nature and extent of family violence in Mi'kmaq communities we interviewed front line workers in health, justice, education and social services, examined police and other statistics, reviewed the few publications available, and most importantly talked with community members who experienced or witnessed family violence. Every community is different in Mi'kma'ki, and such diversity must be addressed when developing and implementing programs to tackle the problems of violence. There 24,175 people who identify as Aboriginal in Nova Scotia. Across thirteen Mi'kmaq First Nations and thirty-four reserve locations there is a registered population of 14,300.

Approximately 10,000 non-registered were living in the province as of 2006.¹⁵⁰ The Aboriginal population of Halifax is growing (5000+). Of the registered population 44% are under 25 years of age. 66% live on reserve, 11% living on-reserve live in crowded conditions and 15% live in houses in need of major repairs. 12% of the Aboriginal population aged 25-64 had a university degree compared to 20% of the general Nova Scotia population. Unemployment rates on-reserve are 24.6% compared to 9.1% for all Nova Scotia with only 50% of people living on-reserve population participating in the labour force; overall the Aboriginal unemployment rate was 15.5%.¹⁵¹

The Mi'kmaq population is an increasingly young population. According to the General Social Survey age was the primary risk factor for victimization against Aboriginal people. Aboriginal youth aged 15 to 24 years were the victims in nearly half (47%) of the non-spousal violent incidents reported by Aboriginal people and Aboriginal people who used drugs and alcohol at least once in the previous month had four times the risk of victimization compared to those who reported never using drugs.¹⁵²

According to the Nova Scotia Advisory Council on the Status of Women (2006), “There are evident differences between the family life experiences of Aboriginal and non-Aboriginal women. Aboriginal women are considerably less likely to marry, are somewhat more likely to live in common-law relationships, and are more than twice as likely to be lone-parents as compared to non-Aboriginal women. Regardless of their marital status, Aboriginal women living on-reserve are much more likely to have three or

¹⁵⁰ Data is compiled from the 2006 census and the 2010 INAC registry system.

¹⁵¹ Nova Scotia Office of Aboriginal Affairs

<http://www.gov.ns.ca/abor/aboriginal%2Dpeople/demographics/>

¹⁵² Research and Evaluation Unit, Strategic Planning and Research Branch, MCSCS (2011:2).

more children while most Aboriginal women living off-reserve and all women in general have only one or two children.”¹⁵³

JM: How deep of a problem is family violence in the Mainland communities?

Down in the Valley and the smaller communities, it is there, but it is not as bad as Millbrook or Indian Brook. But it is harder for them to get services down there (Service provider).

JM: Are the problems the same for a smaller community as a larger community?

I work in the smaller communities – Glooscap, Cambridge, Bear River and Yarmouth. I would not say they are not as big, in Glooscap 85-95% of the people live off reserve. Including myself. I would not say there is a lot, but it is definitely there. It has been there.

JM: Is it a problem getting access to resources from the smaller communities?

To come from the Valley, yes it is difficult to come here to Millbrook. Transportation is an issue when they want to leave or when they call the police and do not know what to do. I think in part some did not come for help because over the years well until the last year or so, the feeling in the Valley was that because this place was called Millbrook Family Healing Centre, as soon as you put a name on it, people think that it is owned and run by Millbrook and it is nobody else's. This place was not promoted in the valley at all. They always assumed it was owned by Millbrook. They did not know it was attached to Mi'kmaq Family and Children Services. Native Council did advertise for us a lot. The ones that did come it was Native Council (Service provider).

A Mi'kmaw Legal Support Network worker who serves mainland communities

argued that family violence is a significant problem amongst young families.

They commit violent acts against their partners and it escalates to violence against family members because family members will step in because some of these women will have been with their boyfriends since they were 14 and now they are getting older and possessive and they have not experienced anything but that one community and that one relationship, and it is not a healthy one because starting a relationship at 12 and having it until you are 18 or 19 and some of them have 3 or 4 kids by the time they are 18 or 19 and buddy is starting to look at other young women and he says 'you got 3 kids to take care of you go home' and they venture out. Then you see young men have children with other women and that is when

¹⁵³ Advisory Council on the Status of Women (2006).

the violence starts, the jealousy. They think I am a stay at home mom; I don't have means to get out there and enjoy myself like he does. He goes out there and what not because he is a fisherman and he is allowed to do that. He is allowed to party and go drinking because some of them don't fish in the community; they go off to other communities to fish.

If an assault took place they say 'it was because I wanted to leave.' That is what I mean when a man says 'I am going down the road to a party' and (she says) 'you are not leaving because I am here with all of your kids and we are together on this' ... there are going to be a lot of young single girls 18 because it is ration day. Usually ration would be a good night for something to happen, an assault, like a domestic assault. Usually it lands on a Wednesday or Thursday night twice a month and then you have family allowance once a month on the 20th of every month.

Another mainland service provider shared her experiences with helping those in situations of family violence:

There was another case, a young male, in an early relationship, she was young too, about 16 and he was 18 and he threw her around or something and so this guy and I talked with him about violence and his experience with violence and I asked him, 'how many fights did you see this week?' And he said, 'about 3 fights. I saw buddy jump this guy and buddy jump that guy.' I asked, 'how many fights have you witnessed in your entire life.' He said he 'didn't know, that he had not really thought about it, but he had seen his mother in probably about 50 fights and his family members. In my lifetime I have probably seen about 300 fights.'

JM: and he is 18, and do you think this is typical?

In Indian Book yeah.

JM: When you ask people about their experience with violence, what do they tell you?

That it is normal. It is even normal to me until I got educated to family violence when I was 19, thank god for that or else I would have self-medicated too.

He continued to see it, he was exposed to it all his life, his mom was; is still, a very violent person. My heart goes out to this kid. He tries to calm his mother down all the time. He has to hide money, try to do all these things to keep his mom happy and satisfied, he has a baby now with a young woman, I don't know where she is, I heard they took the baby away because she was on crack while he was in custody.

Service providers and police who serve Cape Breton agreed that people involved in situations of family violence are generally, "young couples with young kids. Or young females with small families and in relationships with another person, not the baby's

father.”¹⁵⁴ Family violence occurs in other family circumstances, between couples without children and does exist across all age groups.

JM: How deep of a problem is family violence in the Cape Breton communities?

I think it is a big problem for a lot of them. Especially their past issues. A lot of the parents we have now grew up in abusive homes and they haven't dealt with issues. They have a lot of issues on their own when they are parenting and it just comes down the line after that. Knowing this community (We'koqma'q) I find there are a lot of women that are staying home regardless of how much violence there is in their home. As long as child welfare is not in there pushing her out of there, they are not going anywhere (Service provider).

A Mi'kmaq victim support worker indicated that family violence is widespread in the Cape Breton communities:

JM: How common is family violence?

It is everyday.

JM: The ages of the victims?

Mostly women and they are young from 18 to 30s and 40s, most are in their 20s.

Police occurrence statistics determined by way of PROS H Division Domestic Violence Survey Code for a period of April 1 2008 – September 2010, suggest that incidents of calls to police that are categorized as domestic violence fluctuate considerably.¹⁵⁵ For example, from April 2009 to September 2010 Eskasoni RCMP identified 115 domestic files, whereas Wagmatcook had zero files coded as domestic violence in the same time period, We'koqma'q had twenty, and Potlotek had twenty-two. Membertou is policed by Cape Breton Regional Police Services; numbers for that community were not included. On the mainland Millbrook files were not specifically

¹⁵⁴ Interview August 17, 2009.

¹⁵⁵ The Domestic Violence Committee and the researcher are very grateful to the Eskasoni RCMP detachment, particularly Dan Morrow and Walter Denny, Julia Rustad and Lydia Quinn – Program manager for Victim Services “H” Division, Inspector Greg Bursey Community, Aboriginal and Diversity Policing Services and Constable Deborah Maloney for their support, advice, and generosity with information gathering, many thanks.

designated as domestic files by the RCMP because the policy was not yet in effect; however, in 2009, there were forty assault files, seven assault with a weapon / assault causing bodily harm, two sexual assaults, fifty-four disturbances and thirty-four uttering threats files. How many of these files are domestic incidents is unknown. In 2009, Indian Brook had sixteen incidents of assault with weapon / assault causing bodily harm files. Additional files included seventy-four assaults, eleven sexual assaults, seventy-one disturbances, six arson, and fifty uttering threats. In releasing this information the police services cautioned that it is very hard, if not impossible to fully capture the nature and extent of family violence in Mi'kmaq communities and these numbers should in no way be interpreted as representing the number of victims requiring services or the number of cases of families in crisis.

In one small mainland community with a population of less than 370 living on reserve and where half of the population is under 18 years of age, the RCMP indicated that seven couples were designated as high risk for lethality.¹⁵⁶ The officer suggested that while family violence is a “significant” problem in this community, but that the “high number of designations was likely inflated due to problems with the assessment tool when applying it to Aboriginal people.” The Ontario Domestic Assault Risk Assessment (ODARA) is a tool used by a number of agencies in Nova Scotia to assess the risk for recidivism of domestic violence including the RCMP. The item summary sheet of ODARA asks for information on the following 13 points to determine the level of risk once an incident is deemed a domestic violence case.

1. Prior domestic assault (against partner or the children) in police records
2. Prior non-domestic assault (against any person other than a partner or the children)

¹⁵⁶ Informal interview with RCMP officer 2011.

in police records

3. Prior sentence for a term of 30 days or more
4. Failure on prior conditional release; bail, parole, probation, no-contact order
5. Threat to harm or kill anyone during index incident
6. Confinement of victim during index incident
7. Victim fears (is concerned about) future assault
8. More than one child altogether
9. Victim has a biological child from a previous partner
10. Violence against others (to any person other than a partner or the children)
11. More than one indicator of substance abuse problem; alcohol at index, drugs at index, prior drugs or alcohol, increased drugs or alcohol, more angry or violent, prior offence, alcohol problem, drug problem
12. Assault on the victim while she was pregnant
13. Victim faces at least one barrier to support: children, no phone, no access to transportation, geographical isolation, alcohol / drug consumption or problem

If an information item is present, it is valued at one. If an individual is assessed at seven or higher, they are deemed dangerous and given high-risk for lethality designation. This research did not test the empirical and anecdotal evidence which suggests that Indigenous peoples are more likely to score high-risk for lethality than their non-Indigenous counterparts, due to higher numbers of prior encounters with police resulting in convictions and jail terms, greater incidents of substance abuse and suicidal tendencies, as well as higher birth rates. In Eskasoni and We'koqma'q a high risk for lethality assessment triggers the use of a 'critical development ongoing information sharing form', which is part of the province's high-risk case coordination protocol framework to help police and domestic violence coordinators work with service providers to get pro-active referral forms filled for spousal / intimate partner violence. The high-risk case coordination protocol framework is part of the Framework for Action Against Family Violence, which is a directive of the minister of justice regarding spousal partner violence and its use is expanding across the province to all communities.

In its first year of operation, Mi'kmaq Victim Services, with one person primarily

serving one large Cape Breton community had a caseload of over 80 files, at least half of which were domestic violence files. Mi'kmaq victim services is currently expanding to provide services to all Aboriginal populations in Nova Scotia and its operations were recently transferred from the Nova Scotia Department of Justice Victims Service program to the Mi'kmaw Legal Support Network, a customary law and court worker program that offers court and translation services, as well as justice and sentencing circles utilizing customary Mi'kmaq conceptualizations of reconciliation, mediation and restitution. These organizations and their services are discussed in detail in the sections assessing the adequacies of response and future directions.

In the final report of a First Nation research project on healing in Canadian Aboriginal communities called *Mapping the Healing Journey*, Eskasoni, a community with an on reserve population of close to four thousand people was described in the following manner:

Workers described the most serious healing issues to include addictions (which has changed over the years to now include very serious prescription drug abuse, and which still touches upwards of seventy percent of the households in the community), “massive sexual abuse” which for the most part has not been acknowledged or systematically addressed, as well as profound anger and rage which often translates into abuse and violence. They also spoke eloquently about the need to transform the *systems* within which people live and that serve the community. Some of the systems of particular concern include the welfare and child protection system, the education system, the justice system, the political system, the economic system and spiritual and cultural systems. All of these, participants explained, were hijacked by the colonial process and the aftermath of residential school and now need to be reclaimed, healed and transformed so that they are no longer European cultural artifacts, but rather living Mi'kmaw institutions and processes that contribute constructively to the people's well-being and prosperity.¹⁵⁷

¹⁵⁷ Lane, Phil and Bopp, Michael and Bopp, Judie and Norris, Julian (2002). *Mapping the Healing Journey. The Final Report of a First Nation Research Report on Healing in Canadian Aboriginal Communities*. Aboriginal Peoples Collection. Aboriginal Corrections Unit. Ottawa: Solicitor General Canada.

Statistics from Mi'kmaq Family and Children Services and their Mi'kmaq Family Healing Centres program annual reports indicate that family violence is a serious problem.¹⁵⁸ Anecdotally people perceive family violence incidents as common occurrences and primarily related to substance use. Victims and offenders are generally dissatisfied with the Canadian justice system's treatment of their cases when their disputes result in charges. While many agree that there are some cases that should result in prosecution, conviction and incarceration, most people want to avoid police and courts and seek alternative intervention and mediation options to help reconcile or end relations 'in a good way'.

Between April 1 2009 and March 31 2010, the Millbrook Family Healing Center, one of two Mi'kmaq Family Healing Centres that provide shelter services for Aboriginal women and outreach and education programs for the thirteen communities, had 21 admissions, 1424 bed stays and 219 access visits (not overnight). During this time period, ten children stayed at the shelter. Of the admissions, seven were related to family abuse, while six were related to housing concerns. Twenty of the 21 people admitted were either unemployed, not looking for work or dependent on social assistance at the time of their admittance. Eight of the people admitted have previously left an abusive situation. In 2009-2010 the We'koqma'q Family Healing Centre had forty-two adult women admissions and thirty children with a total bed stays of 1,528. A total of sixty - three women and forty children utilized the Family Healing Centres and a total of

¹⁵⁸ Boyd-Crowther, 2007; 2010.

seventy-three women received outreach services.¹⁵⁹ The majority of research participants who were involved in situations of family violence directly or indirectly, expressed extreme reluctance to utilize the services of Mi'kmaq Family Healing Centres because of their direct affiliation with Mi'kmaq Family and Children Services and a pervasive belief that reaching out to Mi'kmaq Family Healing would bring unwanted interference from MFCS and the attending risk of child apprehension and court interventions. Many people indicated that they would prefer to stay in high-risk situations in the home rather than expose their families to the surveillance strategies of MFCS.

The Transition House Association of Nova Scotia (THANS) collects data on transition house use in the province, using the Homeless Individuals and Families Information System; however, while the system does have an “Aboriginal indicator” Nova Scotia’s off-reserve transition houses do not ask women to identify themselves as Aboriginal. While it is known that Aboriginal women use THANS shelters, how many, how frequently and in what circumstances, is not known.

The experiences of women and men in Mi'kmaq communities are diverse. Anyone can be a victim of violence in the home, men, women and children, but as the evidence suggests, it is younger couples with children that reveal they experience domestic violence most frequently. This may indicate that older people are less likely to reveal abuse or abuse is less common in that age category. Most people consider violence to be physical acts. Some discussed emotional and psychological violence, but few saw these forms of violence as reasons to get help from others in order to manage or leave their relationships. Most people in situations of violence did not talk about financial

¹⁵⁹ Boyd-Crowther 2010.

abuse per se but all were less likely to leave a situation or violence or found their freedom significantly complicated by a lack of independent financial security.

Reactions and Responses to Family Violence

To gauge reactions and responses to family violence, we spoke with people who experienced violence directly or had their lives affected by violent acts in their homes and families in community forums, focus groups and through interviews. Most Mi'kmaq continue to live in vibrant extended family networks, which profoundly influence their choices and experiences in seeking redress to the problems of violence. It is fairly common for men and women to have children with more than one partner, thus expanding kinship networks, but also creating challenges for parental responsibilities and obligations. The age of first birth tends to be younger than the national average. Grandparents are frequently involved in primary care of their grandchildren particularly when their children are employed, attending school or addicted. Neglect rather than abuse is the main reason children are placed in care. In 2009, there were a total of 359 Aboriginal children in care with Mi'kmaq Family and Children Services in 2010, there were 396 children in the care of the agency.¹⁶⁰ The child protection team in the Indian Brook office received 232 referrals with the precipitating concerns present included: substance abuse (74), domestic violence (30), inadequate supervision (24), inappropriate parenting skills (15), substantial risk of physical harm (20) and request for voluntary services (5).¹⁶¹ Referrals to the child protection office in Eskasoni totaled 342 of which 249 were investigated. Primary reasons for referrals were: parent substance abuse (86.5),

¹⁶⁰ Mi'kmaq Family and Children Services Annual Report 2009-2010 (p.17).

¹⁶¹ Ibid. (p.20).

domestic violence (63), substantial risk of physical harm (52), inadequate supervision (26.5) and inappropriate parenting skills (14).¹⁶² In Nova Scotia, children placed for adoption who speak Mi'kmaq must be placed in an environment where the language is spoken or understood and culturally enriched activities made available to them.

Family violence is serious and fairly widespread, but incidents vary depending on community size and location.¹⁶³ Exact incident rates are impossible to statistically determine because most cases are not reported to police or service providers. The general perception among the participants indicates that violence is increasing and the nature of violence is changing in Mi'kmaq communities. Statements such as, “family violence is not just in the home, it is in the community”, “it is everywhere”, “people are numb to it”, “everyone has seen family violence”, “it is normal”, “we live in shock”, “there is a belief that it doesn't matter because it is normal” were the most common. Some people suggested that their personal safety is more threatened today than in the past because people feel isolated within their communities, “people don't visit anymore,” “I live in fear,” “I lock my doors,” and that violence affects the entire society, “it hurts the community, it affects the whole because we are so close.” While some interviewees said people do talk about violence, few felt that anything satisfactory was ever done about it. Others said that people kept quiet and were ashamed or blamed themselves and therefore remained silent or were taught, “don't talk, don't tell” or “what happens in the home stays in the home.” In the majority of communities, conversations about the problems of sexual violence are prevalent, “sexual abuse is so common but people are too ashamed to talk,” and “many suicides are linked to sexual abuse.” Physical and sexual abuses were

¹⁶² Ibid. (p.20).

¹⁶³ Loppie & Wien, 2007.

the forms of violence most commonly identified by the research participants. There is a general awareness of emotional, financial, verbal, psychological, neglect and hate crimes, but people did not feel these forms of abuse warranted any specific intervention. Elder abuse was raised several times as it is of increasing concern in the broader public and people are familiar with awareness campaigns. Some thought elder abuse was possible in Mi'kmaq communities, but culturally elders are usually held in high esteem and may be somewhat more protected by this status than elderly people otherwise. It is potentially dangerous that there is this supposition of protection and work to raise awareness and provide services for elders is necessary to any holistic approach for community safety, healing and wellbeing.

Many people suggested that violence is experienced inter-generationally and associate violence within families as a consequence of residential school. "It is because of residential school", "people don't know how to parent", "people don't know how to love", "it is cyclical", "family violence is taught", "people who are violent have experienced violence as children", "kids are being violent", "violence is generational", "people carry a lot of issues from the past" are sentiments that point to the embedded nature of family violence. Cycles of violence are observed as inherited, "children who witness violence self-medicate" and often "become violent toward themselves and others." Other examples from survivors include:

"The underlying impact is still there. That is how it is today that underlying feeling don't trust, don't talk." (Cape Breton male).

"My husband comes from an abusive family. His parents abused him, I see that." (Cape Breton female, in relationship).

JM: Was your partner abused?

R1: Yeah, his dad didn't tell him he loved him and all this, and he was hit by a belt.

R2: (nods head yes) Old school way, belts and god knows what else.

R3: My dad was abusive.

“His father used to beat up his mom all the time. He was just turning like him; it was the same kind of relationship. They got along some of the time, but when he did beat her up, he beat her up bad and that is what he (partner) was starting to do to me.” (Cape Breton female, Mi'kmaq Family and Court intervention, relationship terminated).

“I talked to him yesterday to remind his mom's boyfriend had court because he had assaulted his mom. There is a web of violence. He is surrounded entirely by it. He lived it, he lives it, he knows when to anticipate violence. He gets these feelings that something is going down and he has to get ready, be prepared or he has to run away and go to a different place. It is like he can see it, taste it smell.” (Service provider discussing an 18 year old male).

Below is an exchange between a man and a woman at a focus group:

Man: And then unfortunately the domestic violence, is, at least in this community, is a by-product of addictions. That's the reality, no sober person, I can honestly think of, and I know the community only so well. No sober person I know of is going upside somebody else's head. There's something else there, I've never heard of anybody being completely stone cold, dry, sober beating up somebody else.

Woman: I don't know there could be other problems other than addictions because I can tell you I got belted a lot of times by my spouse and he wasn't drinking or intoxicated. And I've got scars to prove it. So it's not only just drugs, it's something that maybe stems back from their childhood that they never dealt with. Maybe they were abused, maybe their parents were abused, and that made them abusers. But it's not always going back to just alcohol and drugs.”

An elder from Indian Brook who had a violent past comments on his current work with youth:

I talk to a lot of these kids, I go down to school, I work at the school every Tuesday I go down there for an hour and I talk to the kids and these are fourth and fifth graders, and, we do our little circle there. We do a talking circle. I use the feather. And they have the same problems, these little kids, they talk about their mom is fighting with their dad, their brothers, their sisters. All the people in the house are drinking, there are people in the house doing drugs. And these are little

kids who are 5th and 6th graders. And when you start hearing it from them you know, you're in deep shit. There are a lot of problems, and a lot of times a lot of people don't want to help.

A woman from Indian Brook noted that violence against young women is generational:

“Our young women are being sexually violated and there is nothing there to help them, they are afraid to get help. It happened to me when I was younger and that is probably why I put on so much weight, to protect this body.”

Strongly associated with these claims are the links people have made between culture loss and violence. Colonization and discriminatory legislation is understood in Mi'kmaq communities to have produced culture loss and damaged customary values, leading to a decline in sacred teachings and in particular a perceived forfeiture of respect for self, others, community and nation. The reasons given as to why violence exists as 'normalized', are that “everyone is angry,” “it is because we have lost our identity”, “it is because of language loss”, “it has caused a breakdown in trust”, “there is denial about the problems”, “no one wants to take responsibility”, “we are too busy trying to survive to take care of others”, “the problems are so big it is hard to move forward”, “there is no sense of belonging”, and “the medicine wheel is out of balance.” In Mi'kmaq communities, people speak of multiple traumas occurring with such frequency that people do not have the time to grieve.

“They dwell on the past. I see a lot of heart ache with them; it is hard for some people to move on. The past has a lot of skeletons. One big thing about Aboriginal people and I feel it myself, is bereavement. It is very hard to give in to it at that time. When we have a death there is so much going on, you forget to grieve and to think about how are we going to move on without them. And then there is another death. A lot of people don't and if you don't overcome it, it just turns into anger and then you act out. I was someone that did that, my mom passed away when I was 11 and I didn't cry at her funeral, but when I had my son, when I was 22, I cried like I lost him” (Mainland female).

I know when my nephew was shot and killed by my other nephew, there was a lot of bad publicity and that just added on because I was grieving and I lost one

nephew to violence and it was an accidental shooting. I can talk about it now, but back then I could not because I did not have the support system. I was into drinking, I was fighting with everyone and I was causing havoc. I had all these losses, I lost my nephew, my other nephew went to jail and not a week later my mother dies and a month later a sister-in-law died and it just kept hitting me and hitting me and I drank a lot and I fought with anyone who got in my way. It took a while to realize, what the hell am I doing. That is when I sat down and said I am going to end up losing my kids and then what? I couldn't function and I did not know how to reach out for help. I had to teach myself to go out there and do it for myself and lot of people don't know how to do that" (Mainland female survivor).

Many people pointed to the distance from culture as being a root cause of violence actions, "he doesn't have his culture", "he doesn't know where he is from", and "the more distant youth are from their culture, the more violent they are," were sentiments raised and shared by many youth and adults with whom we consulted. ¹⁶⁴ "If we had more access to culture, to our language and our rights and ceremony and stuff, I think there would be less violence," is an example of the profound insights of Mi'kmaq youth. These youth also suggested that "mass media and gaming, TV, Hollywood, Face Book and YouTube" significantly influenced increases in violent behavior resulting from general exposure, but also pointed to jealousy, accusations of infidelity and gossip made public on social networks as other sources of conflict. These reasons are seen as frustrating contradictions to what people view as representing Mi'kmaq culture, "family violence is not the Mi'kmaq way", "violence is not part of traditional values" and "violence is worse because the services are not holistic." Fulfillment of customary roles are complicated by poverty and addictions, "it happens because men cannot provide, they feel inadequate", "it is the decline of the traditional male role as protector", "there is a lack of male role models and leadership", even "some of our leaders abuse women." All

¹⁶⁴ See Zahradnik et al (2009) on youth resiliency.

of these statements indicate a break with processes that helped community work together to share, protect and provide for and with each other.

People also point to kinship relations and family dynamics as playing a central role in the continuation or termination of violence. As noted above, the impacts of residential school, centralization, child apprehension policies, and over-incarceration all altered the symbolic nature, structure and function of kinship networks. “Families are breaking down”, “it divides communities and causes family feuds”, “it depends on your relations if you get help or not.” Family is seen as the primary resource for assistance and for some it is the only place to get help as the participants expressed, “family is the only security, there is no where else to go.” “I feel safe only in my mother’s arms.” There is a widely shared sensitivity that if one speaks out against violence that they will be labeled a trouble maker and become ostracized within the community, particularly if they speak out about people in positions of power or against family members.

Participants talked about families as being safe havens, but with limits. In situations where reconciliation is common, and for many of the research participants it is, several family members reported ‘giving up’ or imposing a ‘three strikes rule’ that limits supporting the victim because they always returned to the relationship after “things cool off” or “when they sober up” or “when cheque day comes” or “when Family and Child Services starts getting nosy.” Reconciliation occurs at great risk to continuing the cycle of violence if effective family and community interventions are not put in place. Due to a lack of culturally aligned exit options, “most people just stay, reconciliation is common so the cycle continues because nothing changes”, most people stay because, “they are afraid to lose their kids.” Others rely solely on families to resolve the problems of

violence for them because “there is no way I would call the cops”, “cops are afraid of natives”, “people don’t want to get involved in other peoples’ business.” Instead people look to family members to assist, “my brothers took care of it”, “family takes care of their own”, and often “the women take care of it, the victim’s sisters and cousin, they step in.”

For example, a survivor of multiple violent episodes recounts:

“First time or second time I came (to Family Healing Centre) was with my sister, she was getting beaten up. One time I found her boyfriend hitting her while she was holding her baby, it was Thanksgiving and I just remember my daughter is in the living room and I got so light headed, that is how I was feeling and I snapped out of it and I just remember grabbing his hair and ‘boof’ (hit him), I had to protect my sister. He started fighting me and that is when my sister fought back and I said, “don’t fight my sister” and she started fighting him. I showed him, I got him back. I trashed his house before the cops came. He said ‘I am going to call the cops on you’ and I said ‘go ahead you want a reason to call the cops?’ I started friggig trashing his house. I said to my sister ‘start packing your clothes, you are leaving, I have had enough of him beating you up.’”

Strategies of inter family resolution often involve immediate consequences which may include threats and retaliatory violence, but also utilize restorative approaches including talking it out, elder reprimands, and avoidance or moving away.

Family can have a silencing effect if people in abusive relations are afraid of expanding the network of harm by reporting or involving other family members. A frequent statement was “Violence is a learned behaviour and you were told to shut up and deal with it because that is the life you know and it is as simple as that.” A different example from a survivor of multiple violent episodes depicts a reluctance to tell her family about the situation, a view that was shared by many people we spoke with:

“I did not want the boys getting involved.”

JM: Your brothers?

“Yeah. I did not want to be responsible if somebody got hurt, so I just kept my mouth shut because I know how crazy the boys are.”

Other people reported that families will not intervene or will avoid confrontation, particularly if it is their relative perpetrating the harm on a non-blood relative. Here are two examples to illustrate:

She (his mother) kept an eye on me in other words, but that did not help. The first time he beat me up who was standing there? His mother. There was blood all over the basement in his room and all she told him was 'settle down and go to bed' and she walked away.

JM: Was that the first time?

No, he beat me 19 times (Cape Breton female).

"My mother used to say she was one of those women who would be running down the streets in her slippers, running out of her own house, leaving her kids in the situation and everybody else was doing it. They said oh they are married that is their business. I remember one time I was getting my head kicked in, in the bedroom, and my mother-in-law and father-in-law were in the other room and I am screaming for help and they said no, they are married, they will work it out, that is their belief" (Mainland female).

Everyone we spoke with identified addictions as a contributing factor to family violence and as an explanation for why external responses to family violence are inconsequential particularly if the environment of substance misuse does not change. "I think if you live in a situation long enough you don't know any other way." "It is all about addictions", "we only fight when we are drinking", "it's the pills, those damn prescription drugs, it makes them crazy", "people trade sex for drugs", "something happens, everyone knows, but no one does anything, they just blame it on being high." In all communities people pointed to substance abuse as a primary contributing factor to abusive relationships.¹⁶⁵ Survivors of family violence shared their views and speak to the nature of violence in the next series of comments. They are included here so that the reader can grasp the complexity of these peoples' experiences in their own words and

¹⁶⁵ See Zahradnik et. al (2007) on alcohol misuse amongst Mi'kmaq youth.

take note of the frequency of substance misuse as a trigger or on going part of the cycle of violence:

“I find the root of it all is alcohol and drugs. Other than that they (partners) are fine. If they are sober.” (Cape Breton female).

“The biggest issue is drugs and alcohol. My two best friends married. When they drink, they fight. They know they will fight. Everybody knows they will fight. They know they will fight. If one stops the other has to too. She was embarrassed, everyone was talking about it, she doesn’t remember, she has to stop. Gossip. It can be an eye opener or sometimes it makes it worse” (Cape Breton female).

“Yes, it is a decision you have to make if you want to work things out. Alcohol is the root, when it is removed he is a good father and husband” (Mainland female).

“That is one thing I can say; my daughter never seen it. We were only fighting when she was not around. It was always when he was drunk and on pills and he would not drink when she was around.” (Cape Breton female).

“In my case I was physically beaten, my face was, well you could not tell who I was. I had two black eyes, hairline fracture of my nose, he really flipped out on me and I could not get out of my house. He took my keys. I had an alarm on my keys and I pushed that but no one obviously heard it. Everything was just thrown around. He just flipped out! I had never seen him like that. We had just come home from a wedding and we were drinking and having a good old time. I think he got into some cocaine or crack with his alcohol. I had never seen anyone like that. It was like he was going to kill you. Fortunately he let me up, he had me pinned to the bed. I was thinking what did I do? He thought I was flirting with his cousin. Fortunately my children were not there, they were with a sitter. I got out and went to my mother’s and they called the cops. My younger brother was going to get him, but the cops got there before they did. I was thinking why did he do that to me? Someone I trusted, we had children together, what did I do to get that?” (Mainland female).

“Yeah. I blame alcohol and booze; I mean booze and pills mixed together. Because every time he asks me, he says, “I don’t remember nothing, I don’t remember nothing, what happened?” (Cape Breton female).

“The drugs are bad, that’s why there’s violence. We are known as Pillbrook.” (Millbrook youth).

“If I don’t give him money (for drugs or alcohol) he will start hitting me.” (Cape Breton female, isolated, no police intervention, in relationship).

“I did not stop hitting them (women) until I saw my addiction” (Cape Breton male).

“If they came from an alcoholic family, they never knew how to deal with it.” (Cape Breton male).

“My husband’s family was never there for him, they were alcoholics and he had to raise the kids.” (Mainland female).

“That (violence) in itself ripples outwards. When you live in an environment where that is normal, for a lot of people in our community it is, it sets the stage for the future generations what are we going to tolerate? We are going to tolerate 35-year-old men going out with 13-year-old girls. Because it happened historically, they were raping girls left, right and centre and there was no accountability, everybody was drunk. Like, ‘I was drunk, I didn’t know.’ Some people are up in arms about it and others are like well ‘she asked for it, she wants to go with him.’ There are two totally different schools of what is appropriate and what is not.” (Mainland female).

“Me being, I felt I was young, I was not young, I was 21, but I felt that me being alone with two kids, because I already had a son before that, I took him back because I was like I needed the help, I did not want to ask my parents for help, my mom or my dad. We were living with my parents at the time and they were going through a hard time, divorce and stuff and my mom said, “why don’t you call and get him to help you?” because they were tired of helping me. So that is what I did. I called him and he did not abuse me, we were happy everyday, it is just that he had these snaps that when he did hit me he beat me up bad. So he did not beat me up until I had my next child with him and that as almost two years after. And then he was 8 months old and it was the same thing. My daughter was teething so I was up with her for two days, it was Christmas and I did Santa by myself. I did everything by myself. He was withdrawing from oxycodone, I asked him to quit oxycodone during the holidays because we could not afford it and he did that and he was withdrawing and here I am nagging him to help me and stuff and I am tired because I was up for two days and I stayed with the kids for Christmas and opened their gifts with them and all that. That evening I broke down and asked him to help me. He is holding my daughter and I am trying to go to bed. All I hear is ‘fuck, fuck, fuck’, he is complaining because he does not want to take care of the baby right. The baby’s crying. I get up, I take my daughter and I fell (emotionally) down, I cannot even sleep and I explained I could not even do it because of how tired I was. He just gets up and he starts pounding me on the head and I would not fall down because I was holding my daughter, she was 8 months old right, and I would not fall down, but I slowly went down, I put my daughter on the floor, I pushed her away and I went to go get the phone and he unplugs the phone on me. I was bleeding everywhere, I could not even see because the blood was just going down my eyes.” (Cape Breton female).

Financial troubles, poverty, lack of access to education and training to find sustainable employment, create instability in families and are key sources of conflict.

Gambling within the context of poverty is commonly identified as a root cause of violence.

“Gambling can be a problem that can create violence in our community because I look at people are on welfare and they could take their last little bit of money and go and put it into the machine and then, you know, that creates problems at home because they don’t have the money to buy the extra things you need to last you for two weeks until you get your next check” (Mainland female).

“He gambled all the money and I got pissed and hit her” (Mainland male).

“I was so mad he blew all the money on the machines. I guess I started it” (Cape Breton female).

Unemployment, the inability to provide for one’s children, and reliance on social assistance and family allowances, produce cycles of financial dependency within family units and make leaving volatile domestic situations all the more difficult. Poverty and housing crises exist hand in hand with addictions in every community. “I think it is a multiple jeopardy, one of the biggest things for family violence is the addictions. That leads to family violence and homelessness. We have to deal with them hand in hand.”

A mainland band councilor recounted the following situation:

“A young woman has three little children. For a long time they were living with her parents. It was too crowded so she finally got a house with her boyfriend, and they broke up. Another guy moves in, not the kids’ father. They were drinking. This guy assaults her. The cops come. It is revealed that he is on the child abuse registry so the kids go into care temporarily. The kids’ father is mad at the woman for being involved with a ‘child abuser’ and mad at her the relationship is over so he does not want to be involved. She has to make a choice, either the boyfriend or the kids. She chooses the boyfriend over the kids and now we – the band council – have to get her out of the house because she does not have the need because she has lost her kids.”

The politics of housing are particularly complicated in communities where overcrowding is most serious and people who are marginalized and isolated through family violence have another layer of trauma to deal with when trying to secure and maintain homes to protect themselves and their children. Housing problems (32) more than physical abuse (8) are the stated reasons for women entering Mi'kmaq Family Healing Centres between April 2009 and March 2010.¹⁶⁶ The following comments illustrate the issues:

“There is a whole other political blanket, the laws over the matrimonial home, the kids, police matters, parties who are in the community, who you are, where you are from is all relevant in a small community, it matters where you are from.” (Mainland female).

“The other thing is we don't have human rights on our reserves. We are not allowed. We don't have any rights as citizens. It is up to chief and council and that is hard on women. And that goes back to homelessness. It is left up to the bands to decide who gets the house and most often it is they say we will let the courts deal with it and it becomes a bigger issue because the women are left helpless because they do not have the support from their bands or the support from within the community. So they go back to the homeless situation.” (Mainland female, service provider).

“I have never seen an Emergency Protection Order put into effect on-reserve due to federal jurisdiction over the property” (Naomi society).

“No it is what the bands want, with Indian Brook they have a Band Council Resolution (BCR) or a policy where whoever has the children gets the house. Then it becomes an even more uglier battle because it turns into a he said she said and the women are more likely to feel discouraged and rather than go homeless with their children, they will go back” (Mainland female service provider).

“Where one is a band member and one isn't, that is a big issue, that is who gets the house?” (Cape Breton female service provider).

¹⁶⁶ Boyd-Crowther, Mi'kmaq Family and Children's Services Annual Report 2010 (p. 38). This statistic may reflect the intake procedure forms and individuals reluctance to report abuse as the reason for entering the shelter, particularly when children are in the home and the fears of child apprehension if a victim reports that children were in the home during an episode of violence.

“With homelessness, at least six of my clients are waiting for housing and they are stuck in not great situations because they don’t have a place to live. I think if they did have the housing that would help them change the way they are living with addictions and child welfare and what not” (Mainland female service provider).

“We are seeing more clients who come in, not for addictions, but because of abuse and homelessness” (NADACA).

“No exit options leads to more drugs and alcohol.”

I left the home. Chief and council wouldn’t do anything and no judge would take the case. It was either that or stay home and take the abuse. So my husband got it (the house). And there are lots of cases like that. The women go to court and they are victimized all over again. We know because we take women to court and they are victimized all over again. This is another reason why women do not press charges, it is easier to just let go (Mainland female).

JM: How big of a problem is it?

I think it is a big problem, it is happening a lot and more frequently. On the band’s level they don’t seem to want to address it. We have homelessness because of it. Some incidents here women and children are kicked out their homes so they are left homeless and then there is a court procedure and they don’t want to go through that, so it is a continuous cycle. They stay in the home because they don’t want to be homeless (Mainland female survivor and service provider).

JM: Why is it hard to leave?

“I did not have family support. I could not leave him because I did not know where I was going to go. I did not have anyone to run to. I knew the shelters. I felt I did not feel comfortable in a shelter. It was like admitting I could not take care of myself, I was independent. In the end I told myself it was the only place I have to go, if I do not go I might not make it out of here. It was really, really hard to get out of” (Cape Breton female survivor).

Matrimonial property issues are contentious in each community. In determining who should have the home, perceptions of band council bias and family dynamics play a significant role in the decision-making processes of victims. If there is a perception that the band will favour the perpetrator, or if the victim has had any former disputes with any of the service providing agencies or band council members or their families, victims will often not take any action. Factors that influence perceptions of band council bias include

family members or kinship ties in positions of power and authority, band membership, housing lists, financial and job security, prior conflicts and the silencing of problems or past history of intergenerational trauma in families of band council members.

From the evidence, it is clear that poverty, addictions and culture loss are the primary elements in the perpetuation of family violence as well as the key obstacles to addressing the problems. In Mi'kmaq communities these are critical issues affecting quality of life and are of significant concern. We found that when people did involve outside help, in particular courts and court ordered programs, the majority of participants were extremely dissatisfied and disillusioned by their experiences. Their disappointment was due to a profound lack of cultural respect and relevance and a general sense of alienation leading to feelings of helplessness and disempowerment.

The Adequacies and Inadequacies of Current Approaches

“Jail doesn't help him because he has been there a few times. He needs mental help. He needs to deal with problems he had when he was younger.”

Question: “What kind of help does he need?”

Response: “He needs to see a damn psychiatrist or something but he won't, I know he won't.”

Question: “Where do people go for help?”

Response: “I think it depends on what the individual is like, every individual needs a different kind of help I find. Some people have family support, some people can't have family support because they react, some people just need a close friend and some people need professional help. Even spiritual help, like if somebody is catholic they go to church, if somebody is traditional they go a sweat, I find that helps.”

“I did not want to break my marriage vows; that promise you made in front of god.”

Question: “What would help people, victims or abusers, to get help?”

Response A: “Get off the drugs.”

Response B: “Get off the pills or whatever you are addicted to.”

Response C: “I think when you are ready for help then you get it.”

Question: “What could be created in the community that makes men or women stop abusing others?”

Response A: “Put them on conditions, tell them they have no choice but to go to counseling. I find counseling helps a lot.”

Response B: “I have a counselor, my counselor helps me a lot; he even comes over to my house.”

Response C: “Yeah if they could do that home counseling because a lot of people won’t go to a mental health building because everyone is going to say ‘something is wrong with you’.”

Response A: “Yeah, for me like I have no babysitter right, he comes over my place. That is the best way, home counseling, for me.”

Response C: “A community that has the power to ban somebody from the reserve, I am pretty sure that they have enough power to get somebody to get counseling.”

People who committed violent acts against their partners shared their views:

Question: What kind of help do you want?

Response 1: I find it better to talk with my own people, you know, someone who gets life on the rez and gets where I come from. I couldn’t talk to those white guys they look down on me. Going to those programs did not help me, I just sat in the corner and did not talk to anyone. They don’t speak Mi’kmaq. They don’t understand us.

Question: Did you find the Second Chance (non-Aboriginal marriage and family counseling program) helpful?

Response 2: Not really. I didn’t have much to say to them.

“We have a very difficult time engaging Aboriginal people

Question: Did you get any programming in jail?

Response: No, I just did my time.

Question: Did it help?

Response: There is no help.

In order to assess the adequacies and inadequacies of current responses to family violence in Mi’kmaq communities we asked survivors and perpetrators about their experiences and the services they received. The next section presents views on their involvement with police and the Canadian justice system.

Experiences with Police, Courts and Victim Services

The majority of Mi'kmaq persons interviewed for this project encounter Canadian justice with reluctance, mistrust and trepidation whether they are the accused, witnesses, or victims or a combination of all three. People felt alienated from and tried to avoid the Canadian justice system. Fears of being mistreated, misunderstood, and being put in jail were commonplace, as was the sense that the conventional system does not provide meaningful remedies to Mi'kmaq problems. For years I have heard Mi'kmaq men and women say, "The courts don't take my problems seriously because I am Mi'kmaq."

The Canadian justice system is designed around a set of socially constructed symbols of legal authority endorsed by reasoned laws passed by parliamentary processes, written as statutes, enforced through official institutions and specially trained individuals justifying an adversarial system as justly ensuring people conform to an established order. Mi'kmaq justice systems customarily incorporated seeking justice through consensual decision-making, tangible reparations, mutual forgiveness, and balancing relations, as well as through periodic revenge and avoidance, practices that diminish the efficacy and legitimacy of the court's authority. The restoration of peace and relationships was largely managed internally, often through kinship networks and sometimes through governing council interventions. According to our research, the Canadian approach results in dispositions that more often than not had little meaning beyond reinforcing expressions of colonial oppression and experiences of systemic discrimination and did little to repair harmed relations. Many people reported that sentences in general did not provide effective deterrence or remedy, particularly in domestic assaults, disturbances, and Liquor Control Act violations. Research participants

conveyed that people tend not to report crimes due to community pressure, slow or ineffective police and court responses, and a sense that the community will deal with its own problems or ignore problem and it will go away.¹⁶⁷

People have very mixed feelings about police involvement.¹⁶⁸ Some people are relieved to have the police involved and have the police lay the charges because it removes the burden of responsibility for laying charges from the victim. Some women noted that calling the police could make matters worse because their abusers eventually get released, or the charges do not stay and they are put in a confrontational situation. Others, however, do not trust police, have had bad experiences with them, and see police services as an arm of colonial enforcement and oppression. When this is the case people prefer to manage their own affairs.

“Sometimes it can be helpful and sometimes it can be worse. When they get out they can come up and say ‘why did you call the police on me? I just wanted to talk to you’” (Cape Breton female survivor).

In some cases women are aware that they are extremely vulnerable in the time between calling the police and the police arriving. This is a lesson taught in safety planning. For some the risk is too great and they decide not to call at all.

“That is the dangerous part of it. If he knows you are calling the police and he gets pissed off because you are calling the police, you have that time before the police get there, that is a dangerous time” (Cape Breton female survivor).

“At first we got along a lot better without them involved because we talk. If they got involved it would have escalated everything, it would have made it harder to communicate. And it would have gone straight into court. Now if I call him up, it would have been way different if they got involved” (Mainland female survivor).

¹⁶⁷ See Donald Clairmont and L. Jane McMillan (2001, 2006) for an analysis of perceptions of crime, fear and victimization patterns and community perceptions on reporting crimes.

¹⁶⁸ See Donald Clairmont’s *Case Studies of Effectiveness in First Nations Policing* (2004) and *Policing in Indian Brook* (2000).

“He got angry and said why did you call the cops? I called them more than once”
(Cape Breton survivor).

In some communities, depending on their policing relations, people are less likely to call police for assistance and rely on family and friends or cope on their own.¹⁶⁹

“I never called the police, I called friends.”

JM: Some people feel that they are selling out when they call the cops, what do you think?

“That is the way I thought for the longest time. I can deal with it without the help of a lot of people, just closest friends. That is what I have done. If I need to have that talk again, they (friends) are there. They will judge you (people from outside the community).”

“Some cops are scared of natives.”

There are participants who use police intervention as a tool to distance themselves from their abusers, but also to place control of the situation in the hands of others in order to deflect blame from community, family or abusers, away from themselves and onto the police.

“Once they see the cops they get scared and they don’t want to come around.”

“I was happy because at least I can say ‘I didn’t charge you, the cops did’.”

“I’ve been 10 years with her (daughter). Her father helped me once and that was just a couple of months ago. He bought her \$100 worth of clothes. Not one birthday party has he gone to. He lives two or three streets down from me. His excuse is ‘I hate your mother’ that is because he got charged with assault (victim’s mother had him charged), that’s why he hates her. I said ‘I didn’t charge you, the cops did.’”

“I think its useful having the cops lay the charges.”

“Too many people were charging and dropping them, charging them and dropping them.”

¹⁶⁹ See Clairmont (2004).

“Because they were mad at them. That’s why they have that (police mandatory charges) now too many people charged them and dropped them and charged them and dropped them.”

The Department of Justice has placed greater emphasis on training police officers to recognize and intervene in domestic violence situations in Aboriginal communities. Police services are also actively working within their forces to collaborate with other service providers to assist and protect victims. In several Mi’kmaq communities police are building positive relations with the people they serve through community policing strategies. Several police members expressed frustration and made complaints about untimely transfers. “Just as I am establishing community trust, which often takes more than a year or two, I get transferred and the relationships dissolve.” Community members notice too, “We were just getting to know him and he left. It happens a lot.”

In Millbrook the RCMP runs a successful youth group. In Membertou police services are contracted with the Cape Breton Regional Municipality. In both Membertou CBRM and Eskasoni RCMP detachment officers participate in the Mi’kmaq Venture Program, a youth focused experiential learning program operated by Mi’kmaw Legal Support Network. These types of healthy interactions help build positive community-policing relations that are critical to family violence prevention and intervention. Youth groups seem very receptive to police supported programs that are goal oriented, fun and meet regularly.

Community members suggested it would be helpful if police monitored families reporting domestic violence, “not so much laying charges, but just keeping an eye on people to make sure they know someone is watching.” Eskasoni is currently policed by the Royal Canadian Mounted Police, which has a local detachment with a lock-up

situated in the middle of the community. In 1996, a provincial court was established at Eskasoni Mi'kmaq Community, in response to overwhelming evidence confirming the failures of the Canadian legal system to provide justice for Indigenous peoples, and as a specific recommendation of the Royal Commission on the Donald Marshall Jr.

Prosecution.¹⁷⁰ According to a local Mi'kmaq officer who has worked in the community all of his policing career, the only change he has seen in the last fifteen years of the Eskasoni Provincial court “is the fact that there is more court.” This same officer believes the community is generally more accepting of the court, but that “there is still a lot of resistance: people are charged but they do not come to court, nor do the witnesses.” In part, as he explains, this is because many parties resolve their conflicts before they get to court. As he puts it, “They are fighting one day but the next day they are walking together; they already have *apiqsigtoagen*, they already had forgiveness.” Some people do not show up because they are intimidated by the system: “People do not take justice very well here; the ‘legal jargon’ of the judge and the lawyers is alienating for the people.”¹⁷¹

The police officer points out that the court system does not generate healing; there is no reintegration process. “That is why there are so many repeat offenders: there is no help being offered, no healing for themselves. The community is not involved. You do not have to face each other. The court puts on protection orders and they are all breached in a week or two.” He is in favor of creating more healing circles as the strategy best suited to addressing the issue of responsibility, which may work better in community-focused collective cultures, provided women or victims are protected from harmful

¹⁷⁰ Royal Commission on the Prosecution of Donald Marshall Jr. 1989.

¹⁷¹ McMillan, 2011.

hyper-responsibilization.¹⁷² Court delivered remedies remove responsibility from the community and interrupt opportunities for restoring balance disrupted by the harms done.

The crown prosecutor of the Eskasoni Court questions the efficacy and legitimacy of the court for Eskasoni residents:

“I have been prosecuting there for the last five or six years. It is interesting that there is very little that goes by way of a trial. I attribute it to the fact that everyone is related and has to get along. If someone pleads not guilty, there is a nine-month lag to trial and by the time that rolls around the matter has been settled, hurt feelings mended, apologies made. No one seems to care about the trial. It could also be, though, that no one wants to show that they care. They may wish to avoid the responsibility of having jailed or punished a member of their community. In their justice, everyone has some responsibility, so it is likely difficult to prosecute if the victim feels they are partly responsible and don't wish to be seen as denying their own responsibility. Maybe two or three trials go ahead per year.”

The threat of jail is a limited deterrent. Removing someone from the community and from facing their responsibilities in the reparation of wronged relations does not usually facilitate the reciprocal nature of *apiqsigtoagen*. In focus groups I often heard youth talk about going to jail as a rite of passage. For some members, jail is a favorable alternative to a life mired in poverty, insecurity, and violence because it offers predictability and structure, three meals a day, and a bed.

Mi'kmaw Legal Support Network

The Mi'kmaw Legal Support Network (MLSN) is a registered not-for-profit Aboriginal organization that provides justice support services for all Mi'kmaq and other Aboriginal peoples in Nova Scotia. MLSN administers two main programs the Mi'kmaw Court Worker Program and the Mi'kmaw Customary Law Program. MLSN emerged

¹⁷² Women and the Canadian Legal System is a discussion paper by the Canadian Association of Elizabeth Fry Societies and the Native Women's Association of Canada – Canadian Women's Studies examines the particular circumstances of Aboriginal women with regard to patterns of hyper-responsibility and the criminalization of women.

from native resistance to their unjust treatment “under the law” that was galvanized by the wrongful murder conviction of Donald Marshall Jr., a seventeen-year-old Mi’kmaq, in 1971. After eleven years of imprisonment, his exoneration was followed by a nationally publicized Commission of Inquiry into this terrible miscarriage of justice.¹⁷³ Unsurprisingly, racism was found to be the major contributing factor. Remedies, by way of commission recommendations, included the indigenization of criminal justice in Mi’kmaq communities, support for restorative justice initiatives, the creation of a native criminal court, and comprehensive stakeholder research and policy development dedicated to the cultural reappropriation of the justice enterprise.

MLSN began operations in 2002 under the umbrella of the Confederacy of Mainland Mi’kmaq tribal council. The vision of MLSN is that Mi’kmaq people will have autonomy and control over a sustainable justice support system that addresses inequities, builds strong partnerships and provides culturally aligned justice services. The organization has worked very hard to provide consistent and effective assistance to offenders and is considered to be one of the leading edge Indigenous customary law providers in the country. However, MLSN has been constrained by grant based funding dependency and by hesitant and conservative approaches to restorative justice within mainstream Nova Scotia.¹⁷⁴ Regardless of the constraints, MLSN has overcome many logistical obstacles and is the longest running Aboriginal justice program in Atlantic Canada. In 2010, no longer under the umbrella of a tribal council, MLSN became a stand-alone organization sanctioned by the Assembly of Nova Scotia Chiefs. Initially an

¹⁷³ The Commission found that the criminal justice system failed him at every turn due in part to the fact that he is Native (Royal Commission on the Donald Marshall, Jr., Prosecution 1989, 1).

¹⁷⁴ See Clairmont and McMillan (2006).

offender based support service, MLSN, in keeping with its mandate to provide culturally aligned services, is now building capacity to provide holistic justice support for all Mi'kmaq persons, victims and offenders alike. MLSN is working to intervene in disputes with information and assistance to empower victims and communities to better understand justice processes and their rights and to offer opportunities for dispute management that are rooted in Mi'kmaq customs.

The court workers have the difficult job of translating the authenticity of Canadian Justice System for their Mi'kmaq clients. A female court worker for Eskasoni notes that:

“The cultural barrier is still quite strong. A lot of them are not guilty and they just want to plead guilty. Some know the whole process already because they are going back. Some don't have respect; they don't care about anything. They say, “I will just go to jail,” or “I will not pay my fines.” They will not show up for court and they don't care, they go to correctional. Some are really embarrassed by what the judge has to say after sentencing, but there are some people who just do not care.”

In addition to these barriers, the survivors of family violence that shared their experiences with us found peace bonds and restraining orders to have minimal effect in terms of protection and their enforcement.

JM: Have you ever gone to court with this guy?

Yeah, they told me, “you guys to keep separate.”

JM: That is what the court said?

Yeah.

JM: That was all that the court said?

Yeah and we live across the road so it is impossible, unless I move away (Cape Breton survivor).

JM: Is that the court's solution a lot of the time to say ‘just stay away?’

Or they say go put a peace bond on him.

JM: How useful is that?

R 1: Not really. The first time, not the first time, but the second last time there was a restraining order and they found him on the street trying to break my neck.

R 2: The final time, when I almost died, he had a restraining order not to come near me or my address, and he broke into my house and attacked me when I was asleep.

R 3: Our boyfriends know if we are not going to enforce that, like we need to enforce those restraining orders, because if we let them in we are like here, allowing them.

R 4: When they smacked the 1000 feet don't come near me or where I work, that just went whoosh because he had intentions of going back out with me, telling me we are going to get back together.

We asked people to share their court experiences and their reactions to the outcomes when they pursued convictions against their abusers. Most participants were quick with their initial responses stating, "The justice system is unfair." As they gave the details of their incidents, the reasons for their frustration and disappointments became apparent. The length of time, the lack of support, the guilt, the public shame, the family stress and psychological trauma and emotional confusion, coupled with the lack of cultural alignment of the processes and the service provision, made people very unhappy with the outcomes whether they received convictions, incarcerations, conditions, or their cases collapsed and they reconciled.

"When we went to court they showed him the pictures. And I knew he was not himself when he did it, the alcohol and the drugs. It took awhile to forgive him. We are still married. It was a hard decision. He said he would never do it again and I take his word for it. He had a peace bond. He could not come around at the time. I had to give him time to think about what he did. He got a year of probation, and a fine. He should have got time and the judge gave him probation. I was not too pleased about that, he should have got time to learn a lesson" (Mainland female).

"Most of the time it is just a slap on the wrist. It is what it feels like. When they do it a second time they get jail over night, it is still a slap on the wrist" (Cape Breton female).

"The first time my boyfriend, my ex boyfriend, beat me up, I had just had our first son, he was 2 weeks old and I was pregnant for 9 months so I never got to go out with my friends and stuff. So I was invited to out to Sydney to a couple of movies

and stuff with my friends. So I told him I am going out with my friends and he did not want me to go and I told him I am going to go, I am going to do what I want anyways, right. Me and him, I got pregnant the first time I had sex with him so I did not even know him and I started a family with him. So I broke his gold chain and that is the last thing I remember, I woke up, he had knocked me down to the floor and my face was all bruised up. He thought he had killed me and he got scared and he called the ambulance and the cops. So when I woke up he hands me my son and the bottle and he says 'I've got to leave' and he ran off. He goes 'the ambulance is coming'. So when the ambulance came everybody started coming and the cops and I was taken to the hospital and my cousin took my baby and so he went to court and he beat me up when I was feeding my son too, he was two weeks old and all he got was probation for the first offense" (Cape Breton female).

"My family was mad he abused me. They told the cops 'if we find him first before you do, we are going to kill him'. So they surrounded his house and they waited and waited about three hours until he finally left his house and they got him right away and he got six months for that, his second offense" (Cape Breton female).

JM: How did that make you feel, him getting six months?

"I was sad, I was depressed, because I loved him. It was not always bad and I felt like I was alone. Twice I had a kid with him and every time I have a kid with him he beats me up. He was writing me these letters from jail, 'I love you' whatever, and I am crying reading them and I am like 'I love you too' you know. But I think jail would help him. That was the first time he was in jail that long, six months, he is miserable, he is missing me and he is miserable. He did not hit me again until two months ago, but he left me a few times. While he was writing those letters to me from jail he was also writing to another ex girlfriend" (Cape Breton female).

"The judge did not want to release him because it was a really bad beating. They said they had not even seen a murder that gruesome, so much blood, so much injuries. I had multiple injuries, multiple stab wounds. I was brain damaged there for a bit, short-term memory loss. I could not see my kid for a few months. It took me long to heal because I am diabetic and he is still tried to see me, writing me letters in jail. I signed myself (out of the hospital) for court because I wanted the judge to see me right there and then how I looked" (Cape Breton female).

JM: You wanted them to see the severity of it. What were you hoping for?

"Nothing, I just got sick and tired of being beaten up. I said "here, you want to laugh about it? You think it is funny?" I said, "I am going to court. I had had enough." So I went to the court with my brother and his girlfriend and a few of my family members. Back then they had to shut the court down because my family as going crazy. I tried to tell the judge it is not just his fault, I fought him back too, I tried to protect myself. (The judge said)'No, it was a one-sided matter no matter' what I tried to tell the judge. He said, 'I don't believe you', I said 'I am to blame

too, I was there too. It takes two to tango'. I said, 'I protected myself, I fought back' and he kept telling me, 'no the evidence says this.' I guess he got sick and tired of me going through this bullshit and said I had had enough. After 8 months of him being in remand it took them two days to figure out if they were going to let him out. They were looking at all these past Aboriginal people that were fought and they said it was common for Aboriginal women to get beat up. It is not surprising" (Cape Breton female).

"He (court worker) knew why I was there, he asked me straight up. And he said 'this is what is going to happen and this is what is going happen and this is what happened ...' and I said 'oh yeah, I am just here because I want to hear the judge say it, I don't want to hear somebody else say it, I want to hear it from the judge's mouth. I am the kind of person who believes nothing you hear and half of what you say. So I was pretty pissed off with everything in the end, and then when they made it all (public), they kept sending it to the newspapers, it kept going to the newspapers or the news, it frigging mentally drained me out, and I was publicly humiliated. "Man Denied Bail" they had it in big bold letters and like holy shit my kid reads the newspaper that is all I was thinking about. My grandmother, I was thinking about her, and she was sick. I was worried about my family, what if they see it, that is going to trigger them off" (Cape Breton female).

"I said well jail doesn't help him because he has been there a few times. He needs mental help. He needs to deal with problems he had when he was younger. So he was in Halifax for a month doing analysis or something. I was thinking he would get more then that. He only got two months. He is out today" (Cape Breton female).

Jane: do you think prison is the right thing?

"It makes them more crazy" (Cape Breton female).

Overwhelmingly people are dissatisfied with the outcomes of court and as such there is significant opposition to using the Canadian justice system to manage disputes. People in conflict generally want an acknowledgement and validation of harm done, an explanation of why they were harmed, assurances it will not happen again, an apology and restitution. "I don't want to go to court or call the cops, I just want it to stop." There is an urgent immediacy for successful intervention for Mi'kmaq people, however, far too often events get caught up in paperwork and court scheduling and ultimately the incident gets lost in the legal process, causing further obstacles to wellbeing. These conditions

generate perceptions that nothing gets done about family violence. Trials are very challenging for victims and often they feel so intimidated by the process, the offender, and their families, that they are compelled to drop the charges or recant. The Canadian justice system is not fully equipped to provide opportunities for positive interaction. Indeed, Mi'kmaw Legal Support Network service providers suggested a correlation exists between suicides and attendance at court where victims and perpetrators of violence are at high risk for suicide pre, during and post testimony.

Nova Scotia Victims' Services

Nova Scotia Victims' Services (NSVS) assist victims of crime who go through the criminal justice system. Their services start with the police laying the charge and end with sentencing. They prepare people for court, assist with victim impact statements, provide a specialized program for children going through court, and offer counseling to victims of crime through the counseling unit. Victims' Services prioritize sexual offences and any high harm offences such as assault causing bodily harm, aggravated assault, anything with a weapon, children's files and domestic violence, which, according to the Sydney office, is the bulk of their caseload. Domestic violence case files have increased "dramatically in the past two years. Our case load is predominantly domestic violence and that is new," according to NSVS. 95% of the referrals are from the police. When the police make a referral the service has a duty to call the victim.

"In the domestic cases it depends, I don't think the question is how many want it, it is how many sustain it? Because they mostly want it in the beginning because they are in some type of crisis and then time passes. We offer them everything in the beginning and then we set a trial date. For incidents that occur now, they are setting trial dates for two and three years down the road. When we try to call them back as their court date approaches, because that is the next time when we kick back in again, they do not want our services."

JM: Is there reconciliation or have they moved on?

“It is over for them. They do not want to go to court, they have moved on.

JM: So they just don't appear?

“They report it did not happen, or the recant, they do a lot of different things. When they recant, they recant by saying ‘oh I was drunk and I don't remember what happened’, so their credibility is gone. And if you are smart you know that once you say you were drunk and you don't remember what happened, and we have that on the stand all the time. Or they may ‘I was just really mad at him that night, he did not really do that,’ or a bunch of different things happen and the case is gone. So that is where the problem is, it is in sustaining them, it is not in the beginning, but it is certainly in the sustaining” (NSVS employee).

As noted above, far more cases collapse than proceed and far more incidents of violence occur than are reported and processed. Mi'kmaq victims entering into the Canadian justice system carry the historical baggage of colonialism and encounter systemic discrimination both overtly and indirectly. Referral services follow up, and after care are areas of critical concern for all involved in family violence interventions.

When considering Gladue principles at sentencing, the courts have very limited culturally aligned referral options in Nova Scotia. The same problem plagues Victims' Services. The few choices for social work and counseling supports that are Mi'kmaq, or that offer programs that have some component of culturally competency and relevance, are often overwhelmed with their caseloads. Funding inadequacies impact the frequency with which programs can be offered, program consistency and the number of staff available for outreach, which directly affect victim experiences and satisfaction in a pro-charge, pro-conviction environment. Victims' Services has a list of approved counselors that clients can pick from if they are approved for this type of support under the NSVS program. “Approval is a big thing, there are certain offences that qualify and others that don't. Sexual assault is one.” On the Cape Breton list there are no Mi'kmaq social workers listed. A social worker has to request placement on the list. The only time NSVS

actively reaches out to place a person on the list is when a client comes to them and to say they are seeing someone who is not on the list. NSVS may then invite the social worker to get on the list so they can be paid for counseling under the Victims' Services mandate. For victims who qualify, "It is \$2000 worth of counseling and it can go higher if they need more. The counselor does everything, makes the calls, the victim does not have to do anything." One of the challenges of attracting Mi'kmaq social workers to the NSVS is described:

"In order to do that piece of work you have to be in another job because being on the list is not enough work. You already need to have an established practice and not many people I know of in Mi'kmaq communities have a role as a counselor. People who are on our list are already counselors with a practice. That is probably what is missing. It is definitely a gap."

Additionally, service delivery is uneven between Mi'kmaq communities. A research respondent suggested that Membertou's proximity to the services in Sydney was an advantage for clients and their familiarity levels in dealing with 'mainstream' facilities, but Eskasoni clients experienced greater language and access to service barriers.

"In Membertou I do not have any trouble connecting clients to service. In Eskasoni it is very difficult. It is my problem and I am trying. One guy said, 'I don't know who that woman is that called me, all I know is that she talked fast and I did not know what she said' and that is a really good lesson for me. I thought I reached that guy, I did not know I did not reach him until he said something to the Mi'kmaq worker."

The problem of adequate service provision is raised again in high-risk case management coordination. The high-risk protocol came into effect in Cape Breton in 2003. As mentioned above, the ODARA tool is used by police services to assess risk in cases of domestic violence. Once a high-risk designation is made, it triggers a referral process to high-risk case management where interagency service providers meet to

discuss the case and build safety plans. RCMP services started high-risk protocols in Eskasoni in 2009. In cities with interagency, where service providers collaborate to make determinations for safety planning and referrals, there are more options for assistance. In Mi'kmaq communities there are fewer options for appropriate agency referrals and greater costs associated with interventions, not the least of which are interpersonal costs when interventions are imposed from outside, culturally irrelevant or unsustainable. Police working in Mi'kmaq communities have greater access to community programs than service providers working outside and thus have greater opportunities to use their discretion when directing the course of action when cases of family violence are reported. When conducting interviews for this research it was found that non-Aboriginal health and justice service providers operating outside of Mi'kmaq communities have very low levels of awareness of Mi'kmaq programs and services. For example, a domestic violence case coordinator had no experience or knowledge of Mi'kmaw Legal Support Network services.

Participation in the legal system through courts, police and victims' services courts tend to agitate fragile kin networks of victims and perpetrators. As the evidence implies, justice mechanisms are very active in the communities through kinship networks; retaliation, shunning, shame, gossip, threats, silence and denial are present in every community. These mechanisms produce deterrent effects on seeking help from these services, but also act as a deterrent to obtaining help within communities and families. Service providers suggest that community notions of responsibility and ingrained codes of silence make it difficult to confront and combat violence using the adversarial criminal justice system.

Furthermore, the courts place unreasonable conditions on offenders waiting for hearings which result in system generated breaches and lead to higher incarceration rates without addressing the problems of abuse. The courts and other health and justice facilities would benefit from greater communication with community members and service providers regarding the individuals before them. At the very least the justice community has the responsibility to learn about the reality of the life on reserve in terms of the applicability and enforceability of non-contact orders, the frequency with which couples reconcile and the systemic issues at play in the charges before the court. Additionally, research participants complained that there are too few Aboriginal people working in the Canadian justice system. While there are more people than in the past, there are still many positions, which should be occupied by Aboriginal people in probation, corrections, referral services, victims' services, men's intervention programs and as judges, defense, legal aid and crown counsels. Systemic discrimination and the adversarial justice system are at odds with the nature and extent of family violence in Mi'kmaq communities. Everyone agrees that the current governance of social services and legal processes, their policies and products, are not producing adequate responses when addressing the problems of family violence in Mi'kma'ki. In order to provide effective intervention and prevention, these inadequacies must be tackled.

Mi'kmaq Experiences with Community-Based Services

The Mi'kmaw Legal Support Network (MLSN), Mi'kmaw Family and Children Services (MFCS), Mi'kmaw Victims' Services, Native Alcohol and Drug Abuse Counseling Association (NADACA), Mi'kmaw Family Healing Centres, police services and many other community based social work, mental health and wellness organizations,

like Outreach Residential School Atlantic Committee (ORSAC), face extraordinary challenges in program delivery. It has taken many years for community services to rebound from the consequences of colonization, forced assimilation and systemic discrimination and it is evident in this research that much remains to be done in order to provide coordinated responses to family violence that communities members can trust and rely upon. Each Mi'kmaq service organization has its supporters and detractors. Key factors that contribute to inadequacies and challenge legitimacy are chronic underfunding and understaffing of community-based justice and social services. These problems interfere with the provision of consistent quality services and the opportunities for skill building and retention of personnel.

Mi'kmaq people are very concerned with issues of confidentiality and find it very difficult to reach out for help amidst fears of being judged by other community members, qualms about being denied services and terrors of losing their kids. Victims of violence are particularly concerned about privacy as they encounter police, victims' services and the courts. High turn over of staff due to pilot project funding termination, burn out or lateral transfers mean that throughout the course of an interaction victims may encounter several case workers. People are very reluctant to agree to recommendations from high-risk case management because they do not want anyone, or at least not everyone, to know their family business. In addition to being a consequence of intergenerational trauma, there is a prevailing attitude in all of Nova Scotia that what happens in the home stays in the home and this attitude is socially accepted. Despite the fact that all agencies operate with codes of confidentiality, victims are very concerned that they will be stigmatized for utilizing community services. "When women are concerned about confidentiality they

want to go where they have a certain anonymity in close knit community that is almost impossible.”

Services providers are particularly challenged by the complexity of familial and political dynamics, the cultural capacity of their staff and programs, and the complexities of expectations of those they serve, as well as their funders. These challenges are not insurmountable. Each of the organizations serving Mi’kmaq communities have made tremendous contributions in terms of prevention, intervention and remedies for family violence within their niches, however, the nature and extent, the reactions and responses to family violence indicate that more must be done.

Three core organizations MLSN, MFCS, and NADACA operate in most Mi’kmaq communities and are among the longest running programs to serve Aboriginal persons across Nova Scotia. In the past few years some communities have opted out of NADACA services and operate separate addictions and mental health services in their communities. In terms access, NADACA’s policies were seen as an obstacle to getting help for offenders and victims. Many incidents of violence are related to substance use and most people think addiction treatment is part of the package for family violence prevention and intervention. Individuals in court processes are denied access to NADACA service; however, the courts demand that people on bail and probation have jobs, attend programs and maintain sobriety as part of their conditions of release. These policy constraints heighten recidivism and breaches of conditions. The three core organizations and their satellite programs are now working together to create policies that enable collaborative approaches to combat violence. All organizations in Mi’kmaq communities, whether they are health, education, social or justice focused, provide services in some form to

perpetrators, victims and witnesses of family violence. Each association intersects daily with the conditions of poverty, addictions and culture loss that are identified as key factors contributing to the prevalence of family violence.

Mi'kmaw Family and Community Healing

In 1985, the Mi'kmaw Family and Children Services of Nova Scotia (MFCS) was established to provide child welfare and family services to all on-reserve men, women and children. Today it is a private child welfare agency under the Children and Family Services Act that provides child welfare, family services and family violence shelter programs for Mi'kmaq women, men and children across Nova Scotia. Importantly, MFCS operates on culturally competent child placement principles that are in direct opposition to the principles of assimilation upheld by previous child welfare policies in the province. Numerous effective child protection services are delivered, including the child welfare programs, apprehension, supervision, permanent care, voluntary care, adoption, early intervention, family support, and semi-independent living programming for youth exiting care. They also provide a wide variety of activities for kids in care like the summer camps program.

Mi'kmaq Family and Children Services run two key programs for family violence prevention and intervention under their family healing branch: family outreach and support and two family healing centers located in Millbrook and We'koqma'q. Originally the shelters were called treatment centres and were created through the efforts of the National Aboriginal Circle Against Family Violence to bridge gaps between governmental and non-governmental services. The Family and Community Healing Program oversees the operation of the two Mi'kmaw Family Healing Centers or

Transition Houses; one provides shelter services to mainland Mi'kmaw and the other provides shelter for Cape Breton and Paqtnekek communities. Each centre has four units, which can accommodate up to 16 beds for abused women and their children. They are staffed 24 hours a day, seven days a week. The Family and Community Healing programs face great challenges in distancing itself from community anger, frustration and fears regarding Mi'kmaq Family Children Services' child apprehension program. The structure of the program impacts reporting of family violence because the shelter services are directly linked to MFCS and the Nova Scotia Domestic Violence Act requires service providers to report incidents of violence when children are in the home to the police and the apprehension service. Supervision orders currently always involve the courts. The following interview excerpts detail the history of the Family and Community Healing Centres and explain the relationship between MFCS and the shelters.

“When we first set up the treatment centres we did not have any policies at that time. We were the first ones (Aboriginal shelter) that I knew of in the Atlantic area. We had no policies about procedure or personnel. We developed our own. The ones that we developed with the workers at the time, going through different scenarios and over time the needs of the workers changed. We started working with Mi'kmaq Family quite a bit because the legislation of the time that children should not be exposed to it (violence). Mi'kmaq Family had a lot of cases that were related to that part of the legislation and we were able to support the social workers and at the same time the women that were coming in. We were open to anything really. One of the things we also did, there was a young boy who was suicidal at the time and we had no place for him. So we started doing emergency placements because we realized there were no foster homes for emergencies. Foster homes are very hard to come by at the last minute, in an emergency, if it is a very needy case like this boy. So we put him in a shelter and had a suicide watch on him, even though he was a boy. He was 15. We made it safe for the women. We had him housed downstairs so the workers could keep an eye on him.”

JM: In the beginning were they a place for women and their children?

“Yes in the beginning and then it started developing into other stuff. We did emergency placements of young children. We had an emergency foster mother who would come to the shelter and take care of a child (s) when we could not find

a foster home. It was a temporary situation until they get a placement. Some of them are voluntary placements and they are not too bad, but sometimes we also had access visits and we thought it was a good thing to support the women. It was also to teach them different ways of parenting. When they come into the shelter there is a schedule and structure, which a lot of them do not have when they get into these situations. When they came in as an access visit we try and teach them parenting skills.”

Today, service providers employed by Mi’kmaw Family and Children’s Services of Nova Scotia place an emphasis on domestic violence and other women’s issues as well as maintaining their status as a visible resource on reserves. However, because of their position as both shelter coordinators and child welfare agents and the stigma surrounding child apprehension, several barriers to effective prevention and intervention exist. Fully aware of these challenges, the staff and director have conducted the research and received extensive training on the impact of exposure to domestic violence and have worked hard to integrate the cultural factors and realities into their responses to family violence. The core objectives of Mi’kmaw Family and Community Healing are to strengthen families and address family violence using culturally significant prevention tools.¹⁷⁵ However, further steps must be taken to distance these services from MFCS before community members experiencing violence will feel confident in soliciting their help.

The Mi’kmaq Family Healing Centre has a high-risk protocol and works with police services using High Risk for Lethality assessment tools, namely ODARA, to provide immediate assistance and coordinate case management. The Centre’s protocol was designed to improve cooperative working relationships between the Family Healing

¹⁷⁵ For example, “The Healing Journey” toolkit designed by Gignoo Transition House in Fredericton NB with support from Public Legal Education and Information Service of NB, provides comprehensive information on the roots of interpersonal violence, family violence resources and networks, safety plans, family law information and other resource materials.

Centres and the RCMP. It clarifies roles and expectations in high-risk case management by enabling client information sharing to assist criminal investigations and to better meet the safety needs of abused women while trying to protect confidentiality.

Women in situations of family violence who seek shelter assistance do not necessarily want to leave their communities or their families.

JM: How often do women go to non-Aboriginal shelters?

“Not too often. The ones that I spoke to about going off reserve felt they would be too isolated because their kids were not in school because they could not get back to the reserve to go to school. Another thing is that women feel cut off from their family, because they are not allowed to come in here and visit them or they cannot get out there to visit them. They are pretty well isolated. Now high-risk cases, where she was really concerned about her own safety and her kids we would place them somewhere else. Mostly they agree with it because we did not hide where these shelters were in the communities, how can you?”

JM: Some people in crisis want to avoid using shelters, why is that?

“It could be different issues. One time it was because of the workers, a lot of women were not comfortable with the workers that were there. If there is a worker that they know they would not come to the shelter because they are scared that this particular worker would tell, start gossiping. Or if there were other residents in the shelter that they know they would not come in. So we were always trying to help them by taking them to Millbrook and placing them in the shelter there where they do not know anybody or to the Cape Breton Transition house if they agree to that or the one in Port Hawkesbury. We have different options. We just don't totally shut the door on them.”

JM: Is there a stigma attached to going to a shelter?

“Yes. I think a lot of it was, especially in native communities, the way women look at themselves, once they go to a shelter, that they are not good parents. Sometimes they feel they are betraying their own families when they go there, like the men in their families. I find in Aboriginal communities you are expected to take care of your own stuff at home and not run to a shelter.”

A service provider comments on community views of the MFCS approach.

“When a woman or man have fights, they come into the home to do risk assessments, Jacqueline Campbell, when we do high risk assessments they are notified or when there is an assault on a child, we call and let them know. But

instead of helping the family they say, “I don’t like people coming in and threatening we are going to take your kids if you don’t leave him”, or whatever, that kind of mean approach. But if there was something subtle like, my client comes back to me and tells me they did this and they threatened to take the kids and it really scares them and they are more afraid of so much loss. It causes more friction and stress. I understand. If someone was more nice and getting the point across without threatening, we care about you losing your children, but if you stay there is a big possibility of that happening, instead of saying “we are taking your kids the next time he beats you up.” They will put these women in the shelter and they are watched, whatever she says is used against him.”

The Family and Community Healing Centres work very hard to reduce these obstacles and decrease stigma by enhancing access to parenting programs and early intervention to diminish child neglect, which is the number one reason for apprehension in Mi’kmaq communities. As one worker point out, there is still work to be done to dismantle the stereotypes.

“I think the children in the schools need to be educated on the different service providers in the community because a lot of children, and I see it not just in this community, in all the communities, there’s a stereotype. When I do a program for youth or a program for parents, and I’ll introduce myself and who I work for, Mi’kmaw Family and Children Services and it’s “oh no, I can’t tell you anything because my mother said you’d just come take us.” You know, so it’s stereotypes and it’s the same with NADACA. Oh yeah, “we don’t want nothing to do with NADACA, nobody’s drunk in our house,” do you know what I mean? So it’s just stereotyping, and it’s different. Educating the youth in the schools that you know, Mi’kmaw Family is there to help the child. You know, to help the child and the children, they’re our priority.”

In the past four years MFCS restructured its programs to better meet the needs of families experiencing violence by prioritizing community-based initiatives that emphasize Indigenous ways of being with regard to safety, shelter, counseling, outreach and public education. The Family Support Program delivers holistic models of healing that are respectful of Mi’kmaq values and customary teaching. The program provides home based support, guidance and information on parenting skills, life skills and access

to community resources which enhance family strengths, contribute to community capacity building and break cycles of violence by addressing root and systemic causes through prevention education and healing plans. With funding from the INAC Family Violence Prevention Project, Mi'kmaw Family and Community Healing established an effective campaign to engage communities in understanding the issues of violence and abuse and empowering communities to utilize Indigenous knowledge and practices to restore balance and promote healing and well-being.

We interviewed clients of the Mi'kmaw Family and Healing Centres and people who participated in their community outreach programs. Women had mixed feelings regarding their experiences at the Family Healing Centres because they were all deeply immersed in traumatic experiences when they were using the services. All indicated they better understood the signs and cycles of violence after attending the programs and benefitted from the education they received. The majority of responses were positive and most shared comments on how the program helped change their lives when they decide to leave relationships, or better equipped them for safety when they decide to stay. Some women are confident that they can rely on MFCS to intervene in their family situations when things are getting out of hand.

“They have really good programs here (at the shelter). They have a really good parenting program here. The family violence program, the outreach really helps, after you leave and you get yourself on your feet. If I did not have it I do not think I would have made it. If you do not have someone to talk to it is hard. If I did not have the outreach I would not have made, I probably would have gone back.”

“What helps now, MFCS are now involved because I called the cops because he was drinking day in and day out and I was exhausted and then he got caught drinking and driving and that was his fault. They just want to make sure that he is not drinking. He has to take urine testing three times a week and we are doing Bridges right now.”

“I understand the cycles of abuse. How it works and runs and affected my family and other things. It is a great understanding.”

While women appreciated the services available to them, they articulated concerns over the lack of programs available for men.

“I would like the men to go through the family violence program because it is not only happening to women, it is also men being abused and they don’t understand the cycle of abuse because they don’t learn as fast as women do.”

“I find it is more demanding for women to have to take all these courses. I think the men should have to take all of these programs too, individually or together.”

“Men should have a shelter too.”

“I think a co-ed thing, to help both. It is not only men that are abusive there are women that are abusive too.”

“The women get the house because of the children. Where do the men go? Back to their mothers. I have seen it so many times. Why not build something for them. If they have no family where do they go?”

JM: Is there ever at time when you would like to see the men removed from the community?

“No, the children need their father too.”

Periodically men’s programs were initiated through MFCS, however funding cuts made maintaining consistent and effective programming impossible. There are a number of mainstream men’s programs that do not provide relevant information, training and motivation for Mi’kmaq persons involved in family violence. Service providers and participants indicate that Mi’kmaq men have difficulties sharing in and benefitting from such programs. A Mi’kmaq man shares his experience:

“An example the feeling of being excluded? I walked in and there are all these social workers, and not too many of us. And we all stuck together in this corner and no one would interact with us, no one would communicate with us. It was like they got their seats, okay just keep on going. Simple things like that minorities pick up on. Feeling of no connectedness. Like we are not included. We are all there for the same purpose but they think of us, like, they are just here don’t worry

about them, sort of deal. The way someone would sit. No one would sit with you” (Cape Breton male).

With its emphasis on family healing, the Mi’kmaw Family and Community Healing program is moving away from gendered separation of services generally promoted by non-Aboriginal anti-violence organizations and moving toward a strong cultural emphasis on family. Clients, other service agencies, and community members want services that make sense in the Mi’kmaq context. Some service providers reported that people seek out their programs to avoid jail or dealing with MFCS, but do not benefit from the domestic violence prevention education as a family. Moratoriums on restorative justice for domestic violence, avoidance of mediation for abused women, pro-charge and pro-conviction stances do not serve the interests of Mi’kmaq families, do not help men and tend to contradict Mi’kmaq cultural practices and ways of being that are communally oriented.

The nature and extent of the problems as reported by service providers confirm the “normalization” of doing nothing about family violence is largely a product of intergenerational colonization and systemic discrimination. People experience multidimensional abuse based on systemic discrimination, gender, age, family background and residential school experiences. In situations of family violence the community often agrees as a whole to let it just go away. There is a high tolerance for violent acts facilitated by local norms and values of non-interference, prescribed ethos not to show emotion and the desire for handling matters for themselves without outside interference. Codes of silence are reinforced daily by ideas like, “you have to be careful of what you say because the wind will hear you,” “don’t talk, don’t tell” and “what goes around comes around.” Involvement with Mi’kmaw Family and Children Services is

feared more than it is embraced. Victims are taught to wait for other influences to take over and rebalance relationships and perpetrators take the risks of carrying out harmful acts, assuming that nothing will be done to demand they take responsibility for their behaviour. Service providers also experience first hand the inadequacies and contradictions of Canadian justice system responses to family violence incidents that perpetuate the problems.

Throughout the research process, community members and service providers alike indicated the great need for men's programs, services for victims and something in the communities to help families. Everyone agreed that organizations must work together to better meet the diverse and extensive needs of their communities. NADACA staff have long experience in working with Mi'kmaq communities. They recognize that the key to establishing a positive reputation is to put respect into action by delivering consistent, reliable, responsible programming that members can count on being there when they need them. They emphasized the necessity and right that social services be available in Mi'kmaq and compatible with Mi'kmaq values and teachings. Timeliness is critical to dispute management and thus Mi'kmaq communities are in much better positions to deal with matters immediately than are the courts or outside service agencies, but in order to do so, the responsibilities of each organization need to be clarified and communicated to everyone. Communication between service agencies, courts, health services detailing their program offerings, schedules and training is sporadic and ineffective. Program transparency and accountability suffer from poor messaging. This is a great obstacle that must be addressed if effective community collaboration and legitimation of services is to occur.

Assessing the Potential for Creating a Community-based Response Strategy:

In the focus groups, community forums, interviews and follow up feedback sessions people had many great ideas to combat family violence. People in Potlotek said, “Have peace talks” others suggested, “more gatherings and feasts, waltzes night or language classes.” Some people focused on “educating people how to recognize the cycle of violence” or “reach out to elders more” and “return to the land, and teachings.” In all of our sessions people wanted holistic supports, peer mediation, and workshops because they thought that education was the best deterrent to family violence. Others had concerns that “community-based justice might be good in the old days, but it will not work now – it is too hard, kids don’t care” others saw it as “too easy, a get out of jail free card.” Many people raised the point that if you were healthy and not in a crisis that there was no money for programs for you or your children, no opportunities to go to camp or a retreat. Again and again were heard people talk about parenting, about helping men, and about the fact that conflicts within their communities and families do not reflect who they are as Mi’kmaq people. These points reflect just the surface of the complexities of daily life where the realization of dreams and aspirations are commonly hindered by poverty, addictions, violence and a pervasive sense of culture loss. Community tensions fluctuate between volatile extremes of disempowerment, concealment and solitude to widespread disclosure and discovery that may lead to discontent or celebration.

“Our elders tell us we don’t have identity, we don’t know who we are because we don’t have our things, and I think that is the main problem is that because we don’t have our culture and we don’t have our identity, which means that we cannot overtake anything because we cannot even overtake our own communities because we don’t know what we are, because we don’t have identity” (Mi’kmaq youth).

“I think there are a lot of people who have their head twisted on, like our parents because there are a lot of us in school, like this year we have the highest number of graduates this year and I find that our generation, a lot of us, are setting up good goals, but there are a lot of parents here who are just drunks and they do not have very good jobs and that stuff” (Mi’kmaq youth).

In this final section we examine the potentials for creating a collaborative community-based response strategy. We engaged the expertise of Mi’kmaq service providers to help sort out the challenges, obstacles and best practices for prevention, intervention and potential remedies for family violence across Nova Scotia and we asked communities members what they wanted. The concerns of service providers who work with victims, perpetrators and the kin networks within the web of family violence are diverse and complex, however there are commonalities regarding the strategies and requirements for community health and safety. The biggest challenges are breaking the “codes of silence”, encouraging people to get help and making certain the help they need is there.

“Breaking down the silos” of service provision is the other critical piece. Service providers are keenly aware of the challenges of working within the narrow mandates of the complicated bureaucracy of Indian Affairs, the *Indian Act*, band politics and their attending funding structures. As such all service providers indicate that their organizations tend to operate divisively in silos rather than collectively or communally, and structurally they mirror the bureaucracies that fund them. Thus their policies tend to be contradictory and in competition with one another for limited funding creating gaps where individuals fall through. Organizations that are grant based make holistic, comprehensive service provision impossible and people in need fall through the gaps. Agency linkages are interrupted through human resource draining funding competitions,

which are divisive, oppressive and unsustainable. Mi'kmaq agencies themselves are victims of state structural hegemony. Grant based models create circumstance where decision making is short term and nonstrategic, where funders outside of the communities set the development agenda and where development is treated as primarily an economic problem with Indigenous culture considered as an obstacle to, rather than the framework for, healing and wellbeing. When programs are forced to focus on the short term fix, service provision is difficult to maintain because incremental building cannot take place, decision making occurs remotely resulting in a top-down approach where organizations have limited power to determine how their resources are used and they remain dependent on external resources. Furthermore, the evaluation processes required by funders do not take into consideration the significant time programs need to build trust and capacity.

Key factors to addressing family violence within Mi'kmaq communities include the provision of regular, consistent opportunities for engagement with healing so that trust can be established and results observed and openly shared because the history of failed enterprises undermines community self-confidence, resulting in frustration and hopelessness and the 'normalization of violence'. Impressions of incompetence and chaos undermine the defense of sovereignty and continue poverty and cultural stress. Three critical paths for prevention, intervention and remedy emerged from our community sessions.

1. Men's intervention
2. Victims' services
3. Customary Law and Family Group Conferencing

Men's Intervention Programs

In our conversations with women as survivors of violence, front line workers and community members, the issue of support services for men was raised time and again. We were told repeatedly, "Help the men." If the long-term objective is to reduce the incidence of family violence, prevention and protection services must be available for men. By increasing the range of culturally appropriate training tools and treatment models perpetrators of violence will have better opportunities for healing and breaking the cycles of harm. The men in our research indicated they were often victims of abuse.

"Working with a problem there are usually two sides when we work with one side we neglect the other and that is usually the men. There are no programs available for men. So what we are doing is helping them (women) become stronger individuals but then they go back to the situation they come from and that kind of sucks to be them" (Cape Breton male)

"Men don't have self esteem so they deal with it by doing something to their wives, they don't feel powerful enough so they pick on her. In our culture self esteem and having self worth is doing good for your family and each other, it is not about having good looks or having the best material things. It is about how you are in the community and how you treat your family and your children. That is how it is in our culture."

JM: What can be done to help regain their self-esteem?

"Educate the people especially about their history. The language and all the culture and all the practices and how we view things is in that language. There are so many things in the language that helps us or gives us our voice and are feelings. Maybe I am wrong, but I am just thinking, if I did not have this language I do not think I would feel Mi'kmaq because having the language helps me become a better person. Having the language helps me to think and feel in my language and express myself so much deeper. If we were having this conversation in Mi'kmaq it would be so different so deeper. That language is so vital." (Cape Breton female)

As mentioned above the need for men's programming is not new and several attempts to establish sustainable intervention were thwarted by funding inadequacies that prioritized women's needs over men's.

In our preliminary findings we noted that accessing intervention programs was very difficult for Mi'kmaq men unless they were court ordered. Even when ordered by the court waiting lists were a deterrent to participation. Finding information about local Nova Scotia services proved challenging for a fourth year university student who had access to the internet and research training who commented,

“I put myself in the position of a male who had no prior knowledge of these programs and I did not use specific names of the programs. I feel most men looking for first time treatment would not have that knowledge. Without the names of the programs it took me hours to surf through the inapplicable resources to finally arrive at the sites listing treatment programs in Nova Scotia.”

There are a number of counseling programs for men who batter in Nova Scotia but there are no Aboriginal specific programs. The people who provide men's programs provincially noted that they had difficulties reaching out to and including the needs and experiences of Aboriginal men in their curriculum. In response to our preliminary findings, Mi'kmaw Family and Community Healing reinvigorated its efforts to implement a culturally aligned men's intervention program and partnered with Second Chance to deliver a pilot project in Eskasoni. Second Chance is a men's therapeutic and educational domestic violence counseling program for adults based in Sydney. Staff of the program have taken Aboriginal 'sensitivity programs' in the United States offered by Anderson and Anderson, but they felt they were not able to reach Mi'kmaq clients. Mi'kmaq men were the men mostly likely to drop out of the Second Chance program.

Led by the director of Mi'kmaw Family and Community Healing, a Men's Intervention Project Committee was struck. Membership included representation from Mi'kmaw Family, NADACA, Mi'kmaw Legal Support Network, RCMP, mental health, Unama'ki case management and elders, who met with Second Chance to design a

protocol. Obstacles to effective service delivery are cultural content and relevance, transportation and location of the program, so it was decided to host the program in Eskasoni rather than Sydney. Funding was obtained from INAC's Family Violence Prevention Fund.

The committee explored all facets of the pilot project including the terms of reference, length and framework, and the nature and structure of the content. They examined the need for incorporating standardized domestic violence intervention models based on reality and narrative therapy, with Indigenous ways of knowing. The referral process and the provision of additional supports were worked out with the service agencies. It was hoped that referrals could come from NADACA, justice, child welfare, mental health and self-referrals. A Mi'kmaq men's intervention worker who had strong clinical experience, a fluent Mi'kmaw speaker and grounded in traditional knowledge, was hired and the pressure was on to get the program up and running due to the funding timelines of INAC grants.

The approach decided upon by the group was to use this pilot as an empowerment strategy for men and have them play a central role in the production of its content and design. With the guidance of Mi'kmaq Family Healing and Second Chance, the men chose the topics for each meeting. Once the consultations were completed and referrals in place, the first meeting was held in February 2011. According to the coordinator from Second Chance,

“The men responded very well. I saw more in this one night than Second Chance sessions see from Aboriginal men in an entire 10-12 week program. Using their own language and their own people to lead with men from their own community...wow, wonderful...brought tears to my eyes. I wanted this for so long ... now its real. Let's keep it going.”

The pilot program held its last session on May 2, 2011 with ten men graduating. Mi'kmaw Family is seeking funding to ensure men's intervention can continue and an MOU with Eskasoni social work is in place as a temporary measure until core funding can sustain the much-needed program. The director of Mi'kmaw Family and Community Healing plans to expand the program to Membertou, Paqtnkek, Indian Brook and Millbrook in September. The final report of the pilot program will be available in September 2011.

The Men's Intervention Program is an excellent example of a coordinated comprehensive family violence strategy that provides culturally relevant prevention and mediation of problems. MLSN court workers, NADACA and MFCS have significant roles to play in referring and ensuring men are getting assessments and access to follow up programs. All Mi'kmaq organizations can contribute to curriculum development, mentoring and help with compliance monitoring. The promotional and educational curriculum developed here can reinvigorate Mi'kmaq concepts of justice and family, which can then be reinforced by other agencies. Creating collaborative protocols with the Canadian justice system helps facilitate awareness and respect for Mi'kmaq principles. This particular service can potentially aid the courts in terms of fulfilling their obligations as instructed by s 718.2(2) and Gladue sentencing, as well as providing vital services for corrections, probation and aftercare.

Research participants suggested that housing issues affect men and the creation of a men's shelter may help with family violence intervention. Housing, access to children, transparency and equity in welfare, family allowance and tax credits were problems raised by victims and offenders. Women were the strongest advocates for men's

programming in this research. Men's intervention is a key piece in addressing family violence that must be supported and complimented by a comprehensive Mi'kmaq Victims' Service. Community-based men's interventions can be used to coordinate reconciliation and reintegration strategies. Preliminary results of the pilot project signify its potential success in reducing family violence.

Mi'kmaq Victims' Services

The Nova Scotia Department of Justice recognized the need to improve services for Aboriginal victims of crime in order to reduce the risk of re-traumatization through court processes. In 2008, the department received federal funding from the Department of Justice Victims Fund to undertake a three-year project to better meet the needs of Aboriginal victims of crime. The Aboriginal Outreach Pilot Project was designed to attend to the unique needs of Aboriginal victims of crime through a specialized service delivery model within the strict mandate of Victim Services in Nova Scotia; a program legislated under the *Victims' Rights and Services Act*, 1990. The overall goals of Victim Services are to promote the rights and interests of victims of crime; to advise government on issues related to victims of crime; to provide province-wide standardized services for victims of crime; and to facilitate an integrated and comprehensive approach in response to the needs of victims of crime. In addition to all of the services provided by Victim Services, the Aboriginal Outreach Project was designed to address Mi'kmaq cultural concerns both within the Canadian Justice System and within Mi'kmaq communities.

Some of the challenges facing Mi'kmaq victims are pre-existing disadvantages, stereotyping, prejudice and heightened vulnerability resulting from innate legacies of colonization. Often victims of abuse live in 'survival mode' and they may not be aware of

their rights nor of the alternatives available to them, they likely cannot articulate the system factors affecting their lives and see the justice system as another form of oppression. In order to address these problems, community consultation with elders and an assets assessment of Eskasoni were conducted. Meetings were held with Mi'kmaq and Canadian justice officials and front line workers to determine the nature and structure of the Mi'kmaq Victims' Service position. A fluent Mi'kmaq speaker with justice experience was hired to provide victim support services to Eskasoni. The mandate of her position remained under Nova Scotia Victims' Services and she assisted victims who were referred by the police to the head office in Sydney or who reached out through a 1-800 number. Advertising detailing the contact and service information was distributed. A special medal was designed by Mi'kmaq artist Kathy Denny to give to victims of crime who testify or go through court. On one side of the medal the words Ketlowoqn (truth), Melkita'mk (courage), Kepmitetaqn (honour) and Nepisimk (healing) represent Mi'kmaq worldviews. The other side has four animals and four sacred colours representing the four stages of life, the four directions and the four seasons. The medals give the holder strength, courage, honour and healing and symbolize the teachings of the Mi'kmaq ancestors.

The Mi'kmaq Victims' Services program in Eskasoni is an important effort to assist victims within the criminal justice process. It tracks offenders and informs victims' of their progress through the legal system. Nova Scotia victims' services found that informing victims tends to increase their participation in the justice system. However, courts are offender focused and slow. Victims often reported that they do not feel their rights are protected. Many victims are pressured by their families not to go to court.

Victims feel they have no voice in the legal process due to the adversarial system and due to internalized and systemic racism often challenges their credibility. If non-Aboriginal offenders are involved victims tends to get more community support. If offenders are Aboriginal the offender's relatives, often his female siblings, pressure the woman not to proceed.

The new victim services office helped increase the use of victim impact statements. Filling out forms is a systemic challenge in oral cultures because the writing down of an event seems to minimize and trap it in time and space. All of the referrals to Mi'kmaq Victims' Service come from the courts. The worker attended court in Eskasoni every Tuesday and thus provided a court worker service.

JM: Are your client's voices heard in courts?

"Through victim impact statements."

JM: Is everyone coming through your office getting impact statements done?

"I asked the Crown, he said he is seeing more impact statements then ever before. Before it was like ten a year and now it is triple. So he has seen a difference. What I found from the victim impact statements is people feel like they are judging people, they think it is a judgment. I have to explain to them in Mi'kmaq that it is not that, it is how they feel about it."

JM: Once you explain, what do they think it is?

"I say this is your voice, this is you telling everyone in the court, even the accused, how you felt when they did that to you. And they say, 'I did not know that.' It is an eye opener."

JM: Do people worry about the judge reading how they really feel and he will sentence the person more harshly?

"They think that whatever they say the judge is going to take that and increase the judgment and they do not want to do it."

The Mi'kmaq Victims' Service worker provided critical court worker assistance.

"Some people don't really understand the court system. They do not understand it."

JM: So most of your work is directed at helping people get through the court system?

"The victims yeah that is what we do court orientation, court information, accessing information about their cases, safety planning for family violence

situations. We offer how to plan, what kind of plan are put in place for abusive relations, safety issues.”

As evidenced throughout the research, many people experiencing family violence reconcile by the time their cases get to court.

JM: Do a lot of your clients go off reserve for help?

“Yes.”

JM: Where do you send them?

“We have the CIC critical intervention counseling for the women only, run by the province at victim services office.”

JM: Is there anything remotely Mi’kmaq in that counseling?

“I don’t think, but then we have this place, Eskasoni mental health.”

JM: When you refer clients and when you do your follow up, do they tell you if they have gone to counseling?

“At sentencing this is what we usually get from our clients. There is a sentencing today and I call them and tell them they have court today and they say we are going to marriage counseling.”

“We should have a Mi’kmaq victim services in every court. It is not there, the support.”

JM: Victim satisfaction with the court system is?

“Minimum, they get really pissed off if they get probation after they have been through a lot of revictimizing and all of the stuff that goes on, the fear. I do not think it is recognized.”

JM: Does the court process revictimize?

“Like when they are going through trial or preliminaries, yeah.”

JM: Can you envision a community process that would reduce the amount of victimization?

“Yes.”

Family dynamics and substance misuse play significant roles in the nature and extent of victims’ participation in the legal system.

JM: What are some of the safety issues for your clients?

“Living on the reserve, I get this from my clients, I ask them ‘what are your fears, are you afraid he is going to come here, bother the kids or what?’ I find most of them are afraid, but if they have family around like an aunt lives here or your uncle or a brother lives here they feel more protected in that little nest of family around them and they think they are protected.”

JM: How do you support people that return to abusive homes?

“I am there if they need me, if they need liaison with other agencies I give them that. I do not hunt them out because I know this is what happens with our people. If you stay with an abusive husband you can get shut out by the family. I see a lot of families turn away after the 10th time or whatever. Mostly they stay for the kids and after they leave for the kids. I have one client, her boyfriend beat the shit out of her and strangled her and she went back to him. When I close a file I go back after 3 months to see what is going on, check up on them, what changed? They have a fight, he leaves, or he goes to jail and 3 months later they are back – the honeymoon stage. During court I find the victims do not want to pursue the courts. I have a few cases where they say ‘oh he did not really hit me,’ or ‘we are going to counseling now.’ But as soon as the honeymoon is over and he left or went out with someone else, she is back on the phone saying ‘I want to do this – charge him, (ustinultijik) asita:teket¹⁷⁶ – revenge – do things which cause more harm (asgo’tg) to him or her. Like a revenge.”

“I find a lot of stuff is going on in the reserve. Deaths, suicides and so much drugs and alcohol and all those mental issues that plague our people. I always say anybody can bet on me with this, I find 99% of the time people end up in courts because they are on something, because otherwise they would not be in trouble. I believe in the humanistic approach to people, they are human especially Mi’kmaq people, we respect each other, we cooperate, we try to help each other as much as we can, but when there is drugs and alcohol involved it is like we don’t give a shit. There is something not there. When I go to court I do not see the drug person I see the human. Sometimes it was conflict for me to help the victim, not the accused because I am cut off from them. It makes me uncomfortable.”

Mi’kmaq customary law is not structurally adversarial, it does not create a dichotomous relationship between offender and victim. Rather, the victim services program is another piece in the intricate web of Mi’kmaq justice. For years those working in the area of customary law have expressed an imbalance and that the true nature of Mi’kmaq justice is much more inclusive than the Canadian system. The Mi’kmaq approach takes care of everyone – the wrongdoer, the survivor of wrongdoings and everyone affected. But this is not reflected in the services available for Mi’kmaq people as they encounter mainstream justice and as a result many more injustices are perpetrated.

¹⁷⁶ DeBlois (1996).

The plan of the pilot project was to expand Mi'kmaq Victims' Services to mainland communities where the degree of suspicion and distrust of the victims' services available is very high and have it administered by the Mi'kmaw Legal Support Network. This move would release the service from the strict provincial mandate and increase its intervention impact. MLSN aims to provide a holistic support service, grounded in Mi'kmaq custom, yet collaborating and interfacing with the formal justice system in order to improve access to justice for Aboriginal victims of crime. The mandate held by MLSN and its expertise in customary law processes, situates it as the logical enterprise to house a victim support program that can serve as a central vehicle of community change. Two additional people were hired and trained to take on the positions of Mi'kmaq Victims' Support workers to help Mi'kmaq victims participate effectively in justice processes and to address the specific needs and unique situations of Aboriginal victims. The referral system was to expand from Nova Scotia Victim Services to include Crown, Police and direct referrals from victims and communities. The pilot project concluded at the end of the fiscal year 2011, and funding was no longer available for the program. Newly hired staff expressed extreme frustration and concern that this vital program may not be sustained just as it is gaining momentum and worried that their commitment and training may be for nothing. Fortunately interim funding was secured at the last minute, but insecurity regarding the future of the program remains because patterns of cost off loading onto communities have not been resolved at the federal and provincial levels. Despite these significant obstacles, Mi'kmaw Legal Support Network and Mi'kmaq Family and Community Healing are continuing to collaborative on a consensual

comprehensive strategy to provide community-based restorative processes utilizing customary law to address family violence.

Customary Law and Family Group Conferencing

The Mi'kmaw Legal Support Network has provided customary law programs for close to a decade. MLSN is a leader in Aboriginal justice initiatives. Nova Scotia provides a unique context organizationally in having the well-functioning Tripartite Working Justice Committee and the province-wide MLSN. The province-wide character provides a strong Mi'kmaq visibility and services to smaller FNs that otherwise they probably would never receive and its separation from any tribal organization enhances its neutrality. It provides opportunities for use of Aboriginal facilitators and other specialists from outside any specific band or Mi'kmaq agency, thereby reducing the problem of conflicts of interest. In terms of the programs – the Court Worker Program with its recent Gladue reports and the Customary Law Program with its range of referral sources – MLSN is well known and well regarded in justice communities. On the other hand, the focus is offender-based, on a segment of justice, and in some respects the program is still significantly short of the Marshall Commission's 1990 recommendations and of RCAP's 1996 vision.¹⁷⁷ Calls for a holistic, fair, inclusive, integrative and culturally aligned approaches to justice are being answered by MLSN with their expansion into victims' services, civil, family and regulatory law. MLSN has an extensive community-based

¹⁷⁷ Clairmont and McMillan (2006).

justice history that positions it well to expand its caseload to manage cooperatively, with relevant service agencies, family violence dispute management.¹⁷⁸

Starting in 2005, the Mi'kmaw Family and Children Service agency promotes Family Group Conferencing which is a culturally aligned strategy for family healing that uses a healing circle format to assist families in open protection cases, cases before the courts, children in care and kinship placement in foster care and adoption.¹⁷⁹ Based on customary practices Family Group Conferencing (FGC) offers families the opportunity to develop plans to access services and generate the necessary protection within kinship networks rather than having a child taken into care, placed in a Foster home or engaging in a family court processes.¹⁸⁰

“They found it very effective and a lot of the families benefited from this type of approach, there was more satisfaction, more communication between the social worker, the agency itself and the parents and the children that are involved, and also involving the extended family of the clients of the agency. It is basically an old idea, like the restorative justice with MLSN, but that is with youth involved in crime. Well here it would be families that are involved with the agency, whether it be child protection, or children in care, adoption, customary adoptions, foster care breakdowns, they could all be applied to the restorative approach of family group conferencing. Pretty much all cases could be applied. The social workers would identify whether or not they would like the FGC to take place and then the clients would be approached and told about this process. If they were interested they would fill out a referral form, and they would direct it to the FCG facilitator.”

¹⁷⁸ One could well expect that restorative justice intervention in cases of serious offending would require much more preparation before bringing the offender and the victim together (the programming based on experience of the famous Hollow Water First Nation's decade-old initiative illustrates this point well) and, relatedly, one would expect that victim satisfaction would be more problematic assuming the offence has generated a more severe reaction on the victim's part. The results of some recent studies conflict over the issue of seriousness of the offence and victim satisfaction with the RJ intervention. Clairmont and McMillan (2006).

¹⁷⁹ Kristen Basque, Family Group Conferencing Annual Report (2010: 21).

¹⁸⁰ MacDonald, Gloade and Wien.

FCG is now available on intake and helps the family and community to work cooperatively to address the risk to the child in ways that nurture sustainable wellbeing and the service is expanding across Atlantic Aboriginal communities. FGC can take referrals from the Family Support Department and the Family and Community Healing Centres and can manage cases at intake, pregnancy in both protection and children in care, children exiting care, court case closings, placement issues, comprehensive plan of care meeting (involving siblings who are separated in different placements in a yearly basis), unresolved conflicts currently not being resolved by the case plan, customary adoptions and permanency planning.¹⁸¹ According to the 2010 MFCS report:

“The Family Group Conference very much resembles the healing circle and talking circles of our culture. For many Mi’kmaq and other Aboriginal peoples the circle is a powerful symbol of connectivity and completeness. The healing circle / talking circle has long been a place where everyone is equal, where all can have a say. It is a healing circle where the heart can be unburdened, and words of consolation can be freely spoken. Everyone in the circle has a piece of truth and everyone’s contribution is needed to make it whole.”

There were 11 FCG in Indian Brook and 23 in Eskasoni in 2010.¹⁸² A new FGC coordinator was hired to serve mainland Nova Scotia in April 2010. The Family Group Conferencing program operated by MCFS is a potential model program for dealing with family violence at the pre-charge stage. Through outreach, community awareness and education, family members could self refer, or through band council resolutions, the doors could be opened to community referrals. The family group conference consists of parents, children and extended families coming together with counselors and service providers to create a family plan to protect and care for children. Parents commit to the

¹⁸¹ Leeann Higgins, Mi’kmaw Family and Children’s Services of Nova Scotia Annual Report 2009-2010: 22.

¹⁸² Kristen Basque Mi’kmaw Family and Children’s Services of Nova Scotia Annual Report 2009-2010: 21.

plan and compliance is monitored and when breached children are taken into care. This is a model that could be replicated for those in situations of violence, but wish to remain together. Members of households could commit to a healing plan inclusive of appropriate services and clearly laid out consequences for that particular individual should they fail to comply. Participants in the plan, service providers, RCMP, or other police services, and band councils must closely monitor compliance. Immediate action must be taken in the event of a breach to ensure safety of family members. This process reduces the number of court applications and the number of children placed into care. It is a model built on consensus where the goal is reunification.

Traditionally talk is a keystone to Mi'kmaq justice. "Talking it out" was a strategy employed by family members and community, through elders, Grand Council, and other authority figures, when bad behaviour interfered with daily lives. Talk therapy, talking to friends and talking circles are invaluable in healing processes. However, people also want to avoid being talked about. Gossip exerts tremendous social pressure in smaller, tight knit communities and people in heightened states of vulnerability are more susceptible to the consequences of negative talk and those disempowered by violence may be more easily coerced to comply to those more powerful be they friends, family, abuser and abusers' network, the service providers, the police or courts.

Healing circles and other community based customary law practices like Family Group Conferencing, must take into consideration the spectrum of family / community dynamics for the participants and the process. Many service providers report that families ostracize their members if they choose to remain in violent relations rather than maintaining support. Some people spoke of a 'three strike rule' in which families

demonstrated support during the first three incidents of violence, but refused further help if the parties remained in the relationship and the violence continued. This results in an individual's isolation within the relationship and a greater likelihood of further violence. In order to combat cyclical violence and isolation, reintegration is a key component of Mi'kmaq customary practices and potentially will reduce the collateral damage in extended kin networks.

“It is hard when you live on reserve because they will have friends and family here and they are going to want to stay just as much as you do. You have to have programs men and women's and family counseling in the community. Mediation.”

Service providers report that some community members see using the Family Healing Centre as a 'copout' because there is a cultural construct that suggests that individuals must help themselves. There is also societal pressure on mothers to make relationships work. This same pressure is not present with respect to father's responsibilities. Furthermore, wife beating faces little public disgrace, in part due to the widely accepted practice of the victim taking the blame for the assaults. This imbalance should be addressed in men's programs and broadcast to communities that ending violence is everyone's responsibility if there is hope to disrupt intergenerational violence. Attitudes toward getting help need to change, but will only change if there are relevant and effective mechanisms for safety and healing in place. Often the person seeking help whether through police, social services, customary law or band councils is ostracized. In order to build effective reintegration programs this attitude needs to be transformed to where seeking help is an act of empowerment. There is a significant shortfall of trained personnel in grief counseling, Mi'kmaq social workers, marriage counselors, psychologists, psychiatrists, health care professionals, career and guidance counselors

who understand Mi'kmaq experiences, community power dynamics and life ways and can help access sustainable support.

“There are addictions counselors coming into the health center. No marriage counselors around here. That would be good. Mix in the culture because the non-natives tend to judge not by our culture but by what they see and they could totally misunderstand everything. Maybe seeing a Mi'kmaq marriage counselor would be a good thing. So many people come to me and say things you would not believe. They just want to talk it out. They need someone just to be there to listen. And maybe offer just a little advice.”

All service providers are concerned with re-victimization through any interventions, be it courts or community based customary law. As a result very few processes for healing circles or seeing charges through to completion to address violence and sexual offences are put into action because situations are so volatile it seems easier and safer to just ignore the problem until it goes away or until it gets worse. This is unacceptable to everyone.

“With Aboriginal women in talking with them one of the things I have had that might be different is that sometimes they feel they can take care of themselves or that family will take care of them – when he came around they would take it into their own hands and beat him up. Other times when I spoke with women they have said that nothing will mean anything to that guy because he is powerful in the community and they will lose everything because they are not powerful and it will put them in danger if they take action.”

“There is a sense of powerlessness in their community. One woman told me that if she did not let him back in the house she would lose her home, or that he had powerful relatives. The other place I have had concern for safety is, I had a particular client, high risk, she had been hurt very badly, several incidents. His lawyer asked the judge for a healing circle, the healing circle was to take place, and I did not know what it was, and I have not been part of one and coming from the background of when you put a victim and abuser in the same place there is an unequal power balance. I think it is an amazing idea and it can be a powerful healing event for both, but I am not sure of the authenticity of the abuser – because the nature of the abuser is manipulating.”

“Afterwards she talked with the girl a week later and she was telling her how amazed she was with the whole process and the girl said she only did it because

she felt pressured and that she did not have much choice and if she did not do it people would think badly of her. Victims are eager to find reasons for their offenders not to be punished; they take on the responsibility.”

“She coerced, maybe just from herself, a cultural responsibility. Or the people who approached her about it – they may be well intended but my understanding is that if you try to put yourself in the position it would be really hard to say no, if you did not have the ability to say no.”

JM: What is good about going to a talking circle?

“Well talking about things, you get to let your feelings out so it does not build up. If they let it build up it usually leads to the wrong thing like suicide and all of that, like more drugs” (Mi’kmaq youth).

“Yeah if you can talk about it and bring a family too that is beating them, say a kid did not like something that happened and a kid addressing it, like in our culture the talking circles you have a stick, so I can get the stick so obviously no one is going to interrupt you so if you have something to say you can say it” (Mi’kmaq youth).

Despite the many challenges, be they fiscal, political or jurisdictional, the need for Mi’kmaq participation in justice processes remains paramount. Leadership, respect, courage, honour and truth are themes recurring throughout out fieldwork in Mi’kmaq communities. Mi’kmaq justice means Mi’kmaq self-determination and self-determination requires capacity building and capacity building requires community healing. There are ways of doing justice that are inherently Mi’kmaq and we see them at work when we recognize the increasing momentum, the gathering strength of Mi’kmaq culture and communities today. Respect is a keystone to Mi’kmaq justice. Respect for Mi’kmaq ways of doing things and for reinvigorating those ways everyday. Respect is given for the advice and wisdom given by elders within justice processes because their teachings are powerful and transformative. It takes courage to try new ways to work through problems, to take risks in order to better a community, to recognize that there is not one law for all. The courage to build sustainable, culturally accessible programs – it requires a great deal

of courage and energy to overcome the obstacles of centuries of colonization. We know that law was the cutting edge of colonization and it takes courage to repair those wrongs. Honouring the voices of the communities happens through consultation, conversations, and knowledge sharing encourages people to take responsibility for healing themselves and helping each other.

Universally service providers report that healthy communities require healthy leadership and would like to see Chiefs and councils taking a lead role in raising awareness of family violence issues in their communities by participating in healing programs and acting as role models by taking responsibility for their actions, repairing any harms done and leading the way to safe, healthy relationships in all levels of governance. In this time of Truth and Reconciliation there is onus on the Province of Nova Scotia, the Department of Aboriginal Affairs, the Department of Justice and the Federal government to foster the momentum of nation rebuilding. There is extraordinary potential in Mi'kmaq communities to create paths to justice. A holistic approach to justice is required in Mi'kmaq communities, the reconciliation of Mi'kmaq rights are dependent upon the integration of land, community, polity and spirituality. The keys to holistic approaches rest in language, youth and economic opportunities. Capacity-building social programs that produce infrastructure to address Mi'kmaq family violence are not only possible, they are present.

Conclusion

This research concludes that there are three critical paths to addressing the problem of family violence in Mi'kmaq communities. First is the understanding that the cultural health of Mi'kmaq people requires recognition of Mi'kmaq rights and title,

meaningful consultation and fulfillment of the fiduciary obligations of the Crown.

Without rights education and the implementation of Mi'kmaq historical and contemporary treaties, systemic discrimination and poverty will continue to contribute to the experiences family violence.

A second path is to strategically continue to improve Mi'kmaq experiences within the mainstream justice system through the expansion and enhanced collaboration of the services of Mi'kmaw Legal Support Network, Mi'kmaq Victims Services, Mi'kmaq Family Healing Programs and other wellness programs. It has been 20 years since the report of the Royal Commission on the Wrongful Prosecution of Donald Marshall Jr., was released; the 82 recommendations are far from being fully realized. There are no Mi'kmaq probation officers, no Mi'kmaq judges or prosecutors and very few Mi'kmaq defense counsel. No native criminal court has ever been established and only one provincial court sits on a reserve. The Mi'kmaw Legal Support Program provides court worker and customary law services critical to the prevention and intervention strategies established in this research to address family violence, but is seriously under resourced and currently does not have the capacity to assist Mi'kmaq facing family court where its services direly needed. In fact incarceration rates of Aboriginal peoples continue to rise despite the introduction of section 718.2 (e) to the Canadian Criminal code and the Supreme Court of Canada *Gladue* decision which instructs sentencing judges to take into consideration “all available sanctions other than imprisonment that are reasonable in the circumstances, ... with particular attention to the circumstances of aboriginal offenders.” However, there are few culturally aligned referral programs available to the courts to

meet these sentencing obligations.¹⁸³ Aboriginal peoples continue to have less access to parole and rehabilitation. With greater attention, these legal reforms can create an excellent space for collaboration between police, Mi'kmaq communities and Aboriginal and non-Aboriginal service providers to build community capacity through the creation of culturally legitimate, effective and consequential alternative sanctions and this leads us to the third and perhaps most important path.

The third path helps fulfill the goals of the first two paths by creating and implementing meaningful, flexible and culturally appropriate mechanisms for community prevention, intervention and remedy through a collaborative, consensual, comprehensive strategy that reinvigorates Mi'kmaq law ways to answer the problems of family violence. A holistic approach involving Mi'kmaq justice, education, health, and political institutions working together to address poverty, addictions and culture loss will improve familial relations, cultural safety and provide consistent, reliable support for people who do not wish leave volatile domestic situations and for those who do not wish to seek remedies in the Canadian justice system. Working in conjunction with Mi'kmaq Legal Support Network, Native Women of Nova Scotia, Mi'kmaq Family and Children Services, RCMP and NADACA, the Mi'kmaq plan to expand their customary law and family group conferencing wellness programs to assist families in crisis. Community based men's intervention programs are the top priority for implementation as perpetrators consistently reported that working with people in Mi'kmaq, who understood Mi'kmaq life and family dynamics were the most effective in helping them recognize their issues and in providing support. Expanded Family Group Conferencing services have the

¹⁸³ R. v. Gladue [1999] 1 S.C.R 688; R. v Kakekagamick [2006] 40 C. R. (6th) 383; R. v. Wells [2000] 1 S.C.R 2007.

potential to address underreporting due to fears of child apprehension, reduce isolation of women in challenging situations and foster communities of care to support partner reconciliation and dissolution.

The research found that service providers in Mi'kmaq communities often work in silos and are forced to compete for scarce resources, modify programs in order to meet external funding requirements and thus are challenged by funding insecurity and program inconsistency which create problems in terms of building community trust and confidence. Additionally the lack of a comprehensive confidentiality policy prohibits effective information sharing and perpetuates inadequate communication between service providers diminishing the quality of service provision and client satisfaction.

Part of the move toward self-government and autonomy includes the re-conceptualization or retooling of traditional justice philosophies and practices in order to deal effectively with crime and social disorder in Aboriginal communities. A Senate committee responding to RCAP is considering the creation of an Aboriginal court with powers equal to a federal court and guided by Aboriginal cultures and traditions. While these considerations are very slow to come to fruition, the Mi'kmaq continue to develop and utilize groundbreaking mechanisms for crime prevention, intervention and resolution.

Cautiously the Canadian justice system is absorbing these changes through modest recognition of restorative justice practices, and a slight shift toward community based sentencing due to greater awareness of section 718.2(e) and *Gladue* applications.¹⁸⁴ Indigenous communities across Canada explore the translation of traditional justice knowledge in contemporary settings; however most have avoided using restorative justice

¹⁸⁴ See for example, Roach and Rudin (2000).

models to address family violence.¹⁸⁵ This avoidance is due in large part to broad based moratoriums prohibiting domestic violence cases in non-Aboriginal restorative justice programs, proposed and maintained by equality seeking feminist groups over concerns of victim safety, power and gender inequities and revictimization, and a pro-charge, pro-conviction stance supported by Provincial Domestic Violence Acts and hence service providers and police.¹⁸⁶ As a result of the moratorium in Nova Scotia, funds were not made available to address family violence using traditional restorative justice methods in Mi'kmaq country. Collaboration with non-Aboriginal service providers was impeded due to incompatible world-views and a wholesale dismissal of customary law processes was uncritically accepted as appropriate by the state. Several reports emerging from non-Aboriginal anti-violence feminist groups presumed to speak for the entire Mi'kmaq community when they indicated Aboriginal women support pro-charge and pro-incarceration approaches and reject community-based restorative and mediation processes to manage their situations domestic violence.¹⁸⁷ These reports did not fully reflect the voices of grassroots community members, instead engaging women working with transitions houses or living in urban centres. The consequences of such well-intended but misguided stances further silenced and marginalized Aboriginal women and

¹⁸⁵ See John Borrows' (2010) analysis of the sources and scopes of Indigenous legal tradition. He convincingly argues that sacred, natural, deliberative, positivistic and customary sources of law provide foundational intersections for recognizing and including the values of Indigenous legal traditions in Canadian law.

¹⁸⁶ Clare Dalton and Elizabeth Schneider (2001) examine battered-women's-syndrome defense and the primary legal remedies that have been developed to impose responsibility on batterers and keep women safe such as civil protection orders and criminal prosecutions. See also Balfour, 2008; Cameron, 2006, 2007.

¹⁸⁷ For example, "Abused Women in Family Mediation: A Nova Scotia Snapshot" (2000) and Rubin (2003).

resulted in decreased recourses to produce culturally aligned prevention, intervention and meaningful resolution.

In June 2008, the Minister of Justice and Community Services created the Domestic Violence Prevention Committee to make recommendations to the Deputy Ministers' Leadership Committee on Family Violence. The June 2009 report indicates a sea change away from the moratorium by recommending that the Province "support ongoing initiatives regarding Aboriginal models of restorative justice, First Nation tribunal and specialized court processes (e.g. Gladue), and perpetrator intervention" (16). The report also recommends a review of jurisdictional mandates and responsibilities that create additional barriers for Aboriginal victims seeking services and that holistic, culturally relevant supports be provided for on and off reserve victims through collaborative approaches and protocols established between police and Aboriginal service providers. The 2010 Domestic Violence Action Plan is proof that the recommendations of the committee were accepted and the provincial government will support ongoing restorative justice initiatives. Furthermore, the Action Plan states the province will:

- Establish collaborative relationships between police and First Nations service providers so appropriate approaches and protocols are set up for dealing with Aboriginal people who experience domestic violence.
- Review how jurisdictional mandates and responsibilities create additional barriers for Aboriginal victims seeking services.
- Support holistic models of service delivery, particularly to the Aboriginal community.
- Facilitate links between governments (provincial, federal, and First Nation) and Aboriginal organizations so that the needs of Aboriginal people experiencing domestic violence can be addressed through timely and effective programs and services.
- Support Aboriginal and other diverse communities in developing programs that deal with the prevention of domestic violence. Offer this support in a holistic way that is relevant to their culture.¹⁸⁸

¹⁸⁸ Domestic Violence Action Plan (2010).

Reinvigorating customary law through community based restorative justice has the greatest potential for mobilizing and sustaining healthy community relations and facilitating safe dissolution or reconciliation of families in conflict. Aboriginal communities in Nova Scotia vary widely in their ability, capacity and desire to use traditional dispute management strategies. Each community has different historical, political, familial, economic and cultural characteristics that influence how local legal consciousness is constructed. While goals and approaches will be diverse, the priorities of the process remain constant: to prioritize victim safety; offer material and social supports for victims in a coordinated community response – that ensures follow up, monitors compliance with healing plans and foregrounds reintegration for all parties; to engage in normative judgments that oppose gendered domination and violence; to work with state resources when necessary and to operate on the premise that forgiveness is not a goal of the process, but may be an outcome.¹⁸⁹

Mi'kmaq justice models are based on talking it out to address root causes. Seeking and receiving counsel, elder reprimands and teachings, shame and shunning, restitution, reintegration and reconciliation are part of the matrix that may lead to mutual forgiveness or avoidance. The process is based on respectful, timely, inclusion of victims, offenders and the community collaborating for remedies by holding people accountable and sharing responsibility. The participatory process results in a healing plan and a compliance monitoring strategy complete with consequences for non-compliance. Mi'kmaq justice practices are legitimized through flexible, visible, transparent and

¹⁸⁹ Coker, 2006.

meaningfully integrative consequences that help facilitate safe reconciliation and dissolution of relationships

Effective collaboration involves systemic change, expanded referral entry points, coordinated case management, accountability models in healing plans and reciprocal access to resources to adequately to meet the realities of Mi'kmaq daily life.

Communities are empowered to create policies to compel participation. Externally derived emergency protection and no contact orders are rarely effective or enforceable. ODARA high-risk designations were found to be culturally dubious. Some people were relieved that the police would press charges because it took the onus off the victim for “selling out.” For example we often heard of victims telling their abusers that it wasn't their fault they went to jail because it was “the cops that charged you, not me.” Others remain skeptical that the police could offer assistance because “some cops are scared of natives.” Police services in general are seen as instruments of colonial authority. They are seen as ‘the bad guys’, even if they are Aboriginal and doing good work.

Violence is not a Mi'kmaq cultural norm. That the predominate observation of our research participants was that violence was normal in its frequency and severity is most troubling, particularly for the community members themselves. The experience of normalcy does not presume apathy; on the contrary, the realization of the prevalence of violence has triggered recognition of Mi'kmaq resilience and has instigated empowering innovations to address culture loss and poverty. The extraordinary resilience of Mi'kmaq people must be celebrated. We are all treaty people. Our ancestors, our governments, our courts have entered into treaty arrangements which are constitutionally recognized. As treaty people we have an obligation to educate ourselves on the responsibilities inherent

in such relations, a duty to learn the history and consequences of colonization so that we can understand what is happening today. We can commiserate by acknowledging and understanding the harms done and we can work together to facilitate cultural reinvigoration, community healing and peaceful relations.

Next Steps

The next steps are based on community consultations. They are divided into 3 categories: intervention, prevention and reintegration

Intervention is the critical first step to help people in crisis and give them culturally meaningful solutions to their problems by making the following services available and accessible:

1. Access the resources to fulfill the recommendations of the Domestic Violence Prevention Committee as they pertain to Aboriginal interests in the Domestic Violence Action Plan.
2. Provide specialized assistance for those seeking to prosecute.
3. Provide specialized assistance for those seeking a Mi'kmaq customary community-based remedy.
4. Support and expand the Men's Intervention Pilot Project currently in operation by Mi'kmaq Family Healing Program.
5. Support and expand Mi'kmaq Victims' Services Program currently in operation by Mi'kmaw Legal Support Network.
6. Link Mi'kmaw Legal Support Network Customary Law program to Men's Intervention Program, Family Group Conferencing and Mi'kmaq Victims' Services.
7. Consider alternative family group conferencing programs to assist couples with children in situations of reconciliation.
8. Link Mental Health Services, Wellness Programs, Survivors' Programs and NADACA Services and training, to the Men's Intervention Program.
9. Create a comprehensive, collaborative confidentiality code to more effectively assist community members and form family healing plans with appropriate support network and follow up.
10. Build a men's shelter or space for crisis intervention, educational programming, community service order fulfillment, and family healing plan monitoring.
11. In conjunction with Interagency and Case Management recommendations, consider Band Council Resolution strategies to compel people to participate in designated anti-violence education programs (Band Council ratified community service orders).
12. Support Family Court – court worker positions for mainland and Cape Breton.

13. Working with the Department of Justice and in consideration of the Marshall Inquiry recommendations, develop and sustain consistent, community-based alternative sentencing programs in response to section 718.2(e) of the Canadian Criminal Code that states by law, a judge must consider the unique circumstances of the Aboriginal offender and where possible, find alternatives to incarceration. This requires collaboration of all relevant Mi'kmaq service providers.
14. Careful monitoring of compliance with family healing plans.
15. Create a strategy of visibly consistent consequences for non-compliance with family healing plans and enforce regularly with appropriate authorities and services.
16. Provide services / materials in Mi'kmaq language.
17. Collaborate with RCMP and other policing services to address concerns regarding high-risk for lethality designations and to coordinate community safety and wellness programs.
18. Work with the Department of Justice, the Barrister's Society and other legal entities to raise awareness of the programs and services available in communities to enhance access to justice for all Mi'kmaq.

Prevention: Violence is not a Mi'kmaq cultural norm; the best way to combat violence is to normalize anti-violence by reinvigorating Mi'kmaq concepts of justice, family, community and nation.

1. Positive education curriculum explaining and celebrating Mi'kmaq rights.
2. Directed anti-violence education curriculum for youth delivered by community-based organizations such as Nova Scotia Native Women's association and their affiliates.
3. Support the creation of a Mi'kmaq – centric Neighbours, Friends and Family program in each community and at urban Friendship centres.
4. Community recognition programs for anti-violent behaviour.
5. Widespread promotion of services available for victims of violence.
6. Widespread instruction of the causes and consequences of family violence.
7. Mentoring, afterschool, and connecting with Elders programs.
8. Transparent community accountability processes for alternatives to incarceration and customary law remedies.
9. Create substance use avoidance strategy.
10. Expand mental health and counseling services – particularly marriage counseling.
11. Work with other prevention and intervention programs to train personnel.
12. Careful monitoring of compliance with family healing plans.

Reintegration:

1. Support and expand “Building Bridges” program to assist incarcerated members to access programming necessary for healing, skill development and rehabilitation.
2. Design a community customary circle process to help community and former inmate to form new patterns of interaction.
3. Carefully monitor and enforce reintegration and family healing plans.

4. Create zero tolerance for anything but anti-violence in each community.
5. Create youth driven campaign for anti-violence life style choices (films, commercials, essays, plays).

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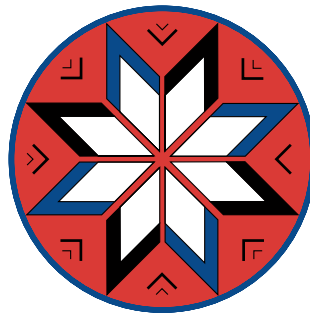
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