

ELSIPOGTOG RESTORATIVE JUSTICE:

AN ASSESSMENT

PREPARED FOR

**THE ELSIPOGTOG JUSTICE ADVISORY COMMITTEE AND THE
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Executive Summary

The Elsipogtog Restorative Justice program (ERJP) has been in existence since 2000, funded essentially by the federal Aboriginal Justice Strategy. Evidence from this modest assessment indicates that it has met its goals and objectives in a significant fashion. The approach of going forward slowly but steadily and not overreaching its resources or extent of the community and external support has been the correct strategy. The ERJP has been a well-managed initiative and by being so has built credibility in the community, among the CJS officials and with its oversight committees. Its reports have been timely, the response to CJS deadlines very good, and the adherence to standards, which sometimes has meant returning cases to the referral agents for non-compliance, has earned it credit. The evidence has shown that it has been effective (i.e., there has been low recidivism at least within the program though that may be partly a function of referral protocol) and contributed to the collective efficacy of Elsipogtog, a community that has to grapple with a very high level of serious crime and social problems. All the different interests and groupings considered in this assessment – the CJS officials, the community at large, the ERJP volunteers and other local agencies' staff, the offender-clients, and the EJAC oversight committee – have been positive in their assessments. Clearly, too, the ERJP has pioneered restorative justice in New Brunswick, as no FN or mainstream community in the province has such an extensive program of extra-judicial sanctions. At the same time, it is also true that the program's referrals are for minor offenses and not for chronic offenders.

The ERJP caseload has spiked in the past eighteen months and the referral sources in the CJS (police, crown, judicial) expect that there will be more growth in referrals in the future. The increased caseload has meant more serious offenses and offenders, especially at the adult level, are being referred to the ERJP, especially as a result of the significant increase in the post-charge referrals by the crown prosecutor. Under the current realities, the ERJP is now at serious risk of being overloaded. The coordinator has responsibility to do all the case management, be the facilitator at all the healing circles, handle all the communications, see to all the training and so forth. Under these circumstances, the coordinator is very pressed to handle that caseload never mind respond to new challenges and opportunities that recent contextual changes have brought to bear on the restorative justice service in Elsipogtog. The program in short is busting at the seams and in clear need of additional staff resources. The number one priority then is an additional full-time staff person who can assist in the basic RJ activities (i.e., case management and facilitation), reducing the overload, and also leaving the coordinator some opportunity to examine the larger picture and develop strategies for responding to its demands and possibilities.

It has been observed too that in the comprehensive ten-year strategic action plan for justice in Elsipogtog, elaboration in the ERJP is the pivotal take-off point. This elaboration would entail dealing with serious offending (e.g., sexual assault, repeat offenders) and using more complex restorative justice interventions (e.g., sentencing circles). Insofar as such advance is not made, the argument could and has been made that the ERJP service is more half-empty than have-filled. And when the current 'half-empty'

aboriginal RJ service is also as little formally institutionalized as it is, then it totters on being marginal despite its successes. The lack of institutionalization is indicated by the need for frequent renewal, the dependence for referrals on enthusiastic supporters in the CJS (police and crown), and the absence of formal mandate to facilitate the elaboration of the program. Clearly a priority is action on the part of the provincial government to effect a greater institutionalization of the program.

The increased demands on the ERJP are not just coming from the community's concerns with serious criminal offending. Implementation of the Supreme Court of Canada's Gladue principles would seem to require that the CJS encourage the development of alternatives to incarceration and that would imply a major role for restorative justice in cases of serious offending (i.e., where a prison term might otherwise be the only resort available). Should there be a circuit type Aboriginal court in New Brunswick, the subject of much current speculation, its demands would underline the need for a more robust restorative justice service. The expansion of Aboriginal justice into the areas of family court and regulatory justice areas also are creating demand for new responsiveness in restorative justice and conflict resolution programs throughout Canada. The fact, too, as described in the text, that Elsipogtog has enhanced its collective efficacy through initiatives such the Apigsitogan project and the Eastern Door FASD program means that responding to these demands and opportunities is increasingly feasible. This circumstance underlines the need for more ERJP resources so that the program (and its coordinator) can meet these challenge effectively.

It is also clear that some effective responses to the challenges noted may require, in the long run, province-wide collaboration among New Brunswick's FNs as has happened in Nova Scotia. Given that Elsipogtog has the most developed Aboriginal justice initiatives and receives the most significant level of funding for justice matters, a priority might well be for it to take on more of a mentor role in facilitating restorative justice in the other FNs, just as the Eastern Door initiative in Elsipogtog has done with respect to FASD diagnosis and treatment. Such activity would be congruent with the steps laid out in the community's strategic action plan.

There are other suggestions that bear mentioning. One would be to improve the recruitment and training of volunteers, a "catch-22" sometimes for an agency since that task requires much effort even while it promises needed assistance. But, as the ERJP increasingly become involved in more serious offending and more demanding interventions, such as the sentencing circles, there is an increased need for both training and debriefing. There also is a need for a more comprehensive evaluation / assessment of the ERJP in the near future, one that would entail interviews with offenders, victims, and others and would gather and analyse data concerning possible recidivism and the impact of the RJ experience for all parties to the healing circle or possibly the sentencing circles. Overall, then, the ERJP has become better, more salient to the community's concerns and the criminal justice system's wishes, and poised to assume an even greater significance but it will need some more resources to do so.

INTRODUCTION

“Restorative Justice is an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime - victim(s), offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm” (Cormier, 2002).

“We can keep toying with the system but the solution is staring right at us: restorative justice” (Front-line staff focus group, 2006)

“The way things are now, we are always the ‘visiting team’ in the mainstream system. We never have home ice, the restorative justice program being the exception. We need to do things our own way and on our turf. We are ready as a community to take on more turf” (Program managers' focus group, 2006)

The Elsipogtog First Nation is the largest First Nation in New Brunswick and the second largest Mi'kmaq community in Canada. It is a community on the move in that there have been impressive economic developments in recent years (e.g., fisheries, forestry), continued significant growth in the human capital of its residents (e.g., involvement in higher education, training programs), and over the past decade a basic infrastructure for health and related treatment programming has been put in place. On the justice side, several programs have complemented initiatives in probation services and RCMP policing, such as the Elsipogtog restorative justice and victim assistance projects. In addition, the community has created coordinating committees such as the Elsipogtog Justice Advisory Committee and the Violence and Abuse Committee to focus community efforts and foster inter-agency problem solving in these areas.

Unfortunately, there are many serious underlying problems too. There is still much unemployment and welfare-dependency. Most salient for this write-up there is still a very high level of crime and substance abuse. While neighbouring communities have seen their crime rates decline over the past several years, those of Elsipogtog have remained high. Of particular concern the offenses have been more likely than in neighbouring communities to involve inter-personal violence. There also appears to be a strong pattern of repeat offending among the young adults who account for the large majority of the crime. These facts, plus the extremely large number of persons arrested under the Mental Health Act (again most common among young adults), point to major problems in interpersonal relations and also in the re-integration of offenders into their families, positive social networks and the community at large.

The three quotations that introduce this modest assessment of restorative justice in Elsipogtog point to the significance of the restorative justice initiative there. There has been a serious degree of crime and social problems in Elsipogtog for the last decade (available data collaborating this statement do not go back beyond 1998). Restorative justice, as noted in the first quotation, seeks to deal with offending behaviour by involving the victim, the offender and the community, empowering the parties to obtain a more in-depth and holistic appreciation of the harm done, why it may have been done, and how, while underscoring accountability, to properly set things right. The ultimate ends of restorative justice are accountability, healing, crime prevention and an enhancement of collective efficacy. As First Nations (FNs) struggle to achieve the promise of greater autonomy and cultural salience in matters of justice, restorative justice initiatives have been seen as pivotal as the second and third quotations indicate. The restorative justice approach has been seen by many native persons as an effective response to offending that is quintessentially and ideally the Aboriginal way and, to the extent that it is not marginalized or trivialized, the path through which revitalized FNs can establish their special identity and place in Canadian society. It is far more symbolically than simply the diversion of minor offenses from court processing.

This assessment is a follow-up to the more in-depth evaluation of the Elsipogtog Restorative Justice Program (ERJP) carried out by the writer in 2003-2004. The central objective has been to determine how the ERJP has evolved since that time and met the challenges identified in the earlier evaluation. Other objectives, more dimensions of the central one, have been to consider the contextual changes that may have impacted on the restorative justice program, to highlight the changing features of the program (e.g., caseload, type of cases dealt with), to identify the special features of the program, and to discuss its current major challenges and suggest possible future directions and program requirements.

THE APPROACH FOLLOWED

As in the 2003-2004 evaluation, the research strategy or methodology has included (1) gathering and assessing contextual information about community characteristics, crime patterns and community capacity to increasingly administer justice programs; (2) examination of the program's activities and "stats" for the past two fiscal years, 2006-2007 and 2007-2008 in order to identify evolutionary patterns vis-à-vis the early years of its operation; (3) one-on-one interview with the ERJP staff and some of its volunteers; (4) one-on-one interviews with key criminal justice system (CJS) officials positioned to provide referrals to the ERJP; (6) examination of the ERJP reports and evaluation sheets obtained from participants in the healing circles, and (7) placing the restorative justice initiative in the wider context of the community, the restorative justice movement and Aboriginal justice developments.

THE RESTORATIVE JUSTICE MOVEMENT IN CANADA

In its current modern guise – there was an earlier phase in the 1960s and 1970s – restorative justice (RJ), community-based justice, has become more entrenched in Canada and other societies. It has stronger roots now in governmental policies, and is reinforced by kindred social movements in the justice field such as ‘the problem-solving court’ and community-based policing, not to mention developments in aboriginal rights and so forth. As Rugge (2006) and others have commented, restorative justice has gained considerable momentum in the past decade and while not yet a standard option in the criminal justice system, especially not for adults, the legislative and related groundwork is in place.

From the point of view of theoretical development, the restorative justice approach does not seem to be “thick” and the research side is still in its infancy. The pioneering work of Braithwaite – the perspective of reintegrative shaming – remains dominant with its central tenet of “shame is more effective [than punishment or simple tolerance] when it is felt in the presence of loved ones and in the eyes of those we respect and trust”. RJ theory retains its ideal typical character (i.e. restorative justice good, court processing / CJS bad) and its proselytizing sentiment. Research has been surprisingly limited, focused mostly around offender recidivism despite the policy emphasis on the benefits for victims and the “community”, a fact which underlines RJ dependence on the criminal justice system. Crucial operational considerations now focus on (1) the institutionalization question (i.e., how best should restorative justice philosophy and programming be rooted and what should be the appropriate connection to the conventional processing of offenders and victims), (2) on the service delivery mode that should be adopted (e.g., what is the desirable and feasible mix of paid staff, volunteers and community representatives in RJ and what RJ formats can have value in addressing harm under what circumstances), and (3) how might RJ best respond to serious offending (cases of serious harm, chronic offenders) and to special constituencies (e.g., age groups, the socio-economically disadvantaged, youths with behavioural problems, immigrant subcultures etc). These questions are particularly salient for the assessment of RJ in large, complex metropolitan areas because they are indeed the defining issues for the future of RJ in this milieu. They are increasingly focused upon in RJ circles elsewhere too since there appears to be a broad consensus that the extra-judicial sanctions approach to low level offenses among first and second time offenders having caring supporters and reasonably adequate socio-economic backgrounds, has become widely accepted, and so the central question becomes “how far can we take this approach?”

A review of the literature and short site visits to Canadian urban centers where interesting RJ initiatives are taking place has provided some insights. The vast majority of RJ or alternative measures (AM) programs and projects in Canada pertain to minor offences committed by young offenders who are not chronic offenders to say the least. There are RJ projects afoot that are indeed directed at serious offending, ‘experimenting’ with strategies for developing governmental – community partnerships, and utilizing

innovative service delivery models. The Collaborative Justice program in Ottawa has pioneered the use of RJ for serious offending among youths and adults where incarceration presumably would have been the outcome in conventional court. The Peace Builders organization in Toronto has developed a community-based restorative justice project in the Regent Park area, a milieu well-known for its criminal gangs and serious crime. In Winnipeg, RJ initiatives are in place which complements RJ programming for minor offences by first or second time offenders, by focusing on more serious offences and victims who have been significantly harmed. In Regina, an RJ project has been established directed at specific serious offences such as break and enter and auto theft, and in the Vancouver area a long-standing RJ initiative has pioneered victim-offender 'reconciliation' in serious offending and where the offender typically is or has been incarcerated.

There are other examples of leading edge RJ projects that could be cited (e.g., the social development approach of RJ in Calgary). While interesting, there are some major limitations concerning their contribution to further appreciating the issues or challenges cited above. First, most of the projects appear to be struggling with their funding and their securing of referrals from the conventional justice system. Secondly, with one exception, the projects are indeed projects, operating on a short-term basis and not well-established (not institutionalized) vis-à-vis the justice system. Given these latter two facets, it perhaps is not surprising that their staff persons looked with some envy upon the Nova Scotia Restorative Justice program (NSRJ), discussed with them by this writer, since in Nova Scotia the RJ program is secure, well-funded and coordinated by the Department of Justice. In a word RJ is institutionalized there. Institutionalization means programs not projects, facilitates referrals, and allows for planning to deal with expected as well as unanticipated challenges to the successful implementation of RJ. It may also be noted here that the NSRJ program is unique in Atlantic Canada as well. There is no RJ programming in the region that has anywhere near the funding, vision and scope, and organizational structure that characterizes the Nova Scotian approach. At the same time, in practice the program is limited to young offenders and only the Aboriginal partner – the Customary Law Program (CLP) of the Mi'kmaq Legal Support Network, (MLSN) a province-wide organization – deals also with adult offenders and collaborates in managing sentencing circles.

The literature on RJ is growing rapidly and the three issues identified earlier have been increasingly highlighted. This literature can only be touched upon so suffice it here to note that the literature does not present as yet a coherent, evidence-based accounting of the three issues. For example, there is ambiguity with respect to the implications of the level of RJ implementation. The widely held expectation, based on RJ theory, would be that the fully restorative implementation involving most if not all parties (offender, victim, supporter, community representative) would yield better outcomes (e.g., less recidivism, more satisfaction, improved physical or psychological well-being) than less restorative ones (i.e., accountability sessions where no victim is present, 'shuttle' RJ where the facilitator only meets with the parties separately). The evidence is however ambiguous and a recent well-design study has found no significance differences related to level of RJ implementation (Rugge, 2006). Another example would be the impact for and

of RJ in cases of serious offending, whether cases involved serious harm or merely chronic offenders. One could well expect that RJ intervention in cases of serious offending would require much more preparation before bringing the offender and the victim together (the programming based on experience of the famous Hollow Water First Nation's decade-old initiative illustrates this point well) and, relatedly, one would expect that victim satisfaction would be more problematic assuming the offence has generated a more severe reaction on the victim's part. The results of some recent studies conflict on the strength of the correlation between the seriousness of the offence and the victim satisfaction with the RJ intervention.

GENERAL DIRECTIONS IN ABORIGINAL JUSTICE

There have been many interesting developments in Aboriginal justice initiatives over the past decade and the reader is referred for detail to Future Directions in Mi'kmaq Justice (Clairmont and McMillan, 2006). For example, there are now a number of more or less conventional provincial criminal courts sitting in several First Nations in Canada. Two interesting ones are the T'suu T'ina's Peacemaker Court and the Akwesasne Mohawk Community Court operated by the Akwesasne Department of Justice. Both these courts go beyond the concept of a provincial criminal sitting on reserve as for example is found in Eskasoni, Nova Scotia, but they do so in different ways. The Akwesasne Department of Justice's court is engaged in all justice areas, namely criminal, family/civil, and regulatory, while the Akwesasne Department of Justice itself has also been engaged in law making, outside the band bylaw format. The Akwesasne court and its Department of Justice in practice have limited scope thus far but a wide potential reach. The T'suu T'ina Peacemaker Court is a provincial court on reserve which attempts to incorporate a role for elders, and encourages both restorative justice for criminal matters and alternative dispute resolution approaches for civil ones.

Arguably the most dramatic new courts are the several Gladue courts now operating in Ontario, where the emphasis is on conducting conventional court business informed by the adherence to the principles of Supreme Court of Canada's 1999 Gladue decision. Central principles of Gladue include greater appreciation for sentencing of the unique legacy and situation of Aboriginal people and the Aboriginal offender, and an emphasis on avoiding or reducing incarceration where feasible. In its decision the SCC wrote "If an aboriginal community has a program or tradition of alternative sanctions, and support and supervision are available to the offender, it may be easier to find and impose an alternative sentence". The SCC's Gladue argument strongly reinforces the view that Aboriginal restorative justice programs are indeed important and should extend to serious offending.

There are other interesting aboriginal justice initiatives that could impact on future developments in justice. In the Canadian North there is the one-stop, legal support centre concept, a full service centre featuring legal aid lawyers, court workers and related services. In Toronto the well-known Aboriginal Legal Services (ALS) has pioneered a number of arrangements with justice officials (e.g. established a protocol with the

coroner's office whereby ALS is contacted by the coroner and privy to all pertinent information in the event of certain aboriginal deaths) and has a central role in the operation of the Gladue courts there. Elsewhere in Ontario, the Friendship Centres have been active in establishing justice programs (e.g., Three Fires Program in the Niagara area, Thunderbird program in the Greenstone Region and the N'Amerind program in the London area). These programs are similar in depending much on volunteers, receiving pre and post charge referrals for youth and adults, developing healing plans by consensus from the circles held, and incorporating Aboriginal cultural features in the restorative justice processes. They report considerable success in involving the local Aboriginal community, identifying the underlying problems for the offenders, re-connecting the offender with his / her Aboriginal identity, and having a high rate of compliance with the agreed-upon healing plan.

There are some interesting developments as well among FNs in the Atlantic Provinces. Mi'kmaq people in Elsipogtog N.B. have that province's most far-reaching alternative justice program. In practice it does not have the depth of the MLSN's CLP in Nova Scotia (i.e., it deals primarily with minor offences and has not carried out any sentencing circles) but it is engaging the RCMP as an advocate in its attempts to obtain referrals at the post-charge levels, and, in cooperation with Children and Family Services and the RCMP, does obtain referrals and utilize restorative justice processes for youth under twelve years of age. Elsipogtog also has recently begun an intensive offender reintegration program (referred to by a Mi'kmaq term which means "coming home in a good way") which entails not only 'section 84' parole release agreements generated by the "circles" but also treatment programs and healing circles for offenders, victims and families. In PEI the Mi'kmaq Confederacy has launched a restorative justice initiative using as facilitators "circle keepers" who have received significant training and certificates from the university; in November 2007 a full-fledged sentencing circle was held in the Summerside area. The sentencing circle, despite controversy (especially by some Inuit spokespersons) has come to be defined as quintessentially Aboriginal and has considerable symbolic value for many Aboriginal communities seeking a greater direction over justice services. The sentencing circle – a post-conviction restorative justice intervention – is very demanding of resources and planning especially if it is of the full-fledged type where CJS officials, offenders, victims, their supporters, key local agency personnel and others are involved. Accordingly, it is not an RJ tool that would be frequently utilized (even in Nova Scotia where MLSN has pioneered the sentencing circle, there have been less than ten in the past five years) but its symbolic importance should not be underestimated. In Atlantic Canada at least, sentencing circles have been limited to the Aboriginal communities.

Related to the symbolic importance of sentencing circles, has been a major issue for Aboriginal restorative justice, namely how penetrating the programs may be with respect to the serious offending issues in the various FNs. The famous Hollow Water approach has been to avoid minor offending and its associated possible marginalization of the service vis-à-vis the issues of grave concern to the community. It deals only with offending that is serious and perceived to lie at the heart of the community's serious social problems (e.g., incest, sexual assault etc). This issue is certainly seen by many

Elsipogtog residents as crucial and there are differences of opinion here, and elsewhere among FNs, on the best way to develop restorative justice so that the service avoids marginalization.

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

"A Mi'kmaq word used to describe a ceremony that in past decades was a very powerful ritual engaged in by individuals wherein they would ask for another's forgiveness for a transgression, offence or omission. Thereafter, according to Mi'kmaq custom and tradition, once a person once a person engaged in this ceremony and sincerely asked for forgiveness from another person or the community, the person or the community was obliged by the social mores governing society within the Mi'kmaq Nation to comply by granting forgiveness to the perpetrator"(The Apigsitogan Project 2006-2007).

At present all of the above conflict resolution initiatives have basically been readied but not implemented to any significant degree. It is not clear why there is this hiatus between training and utilization but there is an indication perhaps of some ambivalence and ambiguity with respect to self-government and the appropriateness of reconstructed traditions. Walker ("Decolonizing Conflict Resolution", American Indian Quarterly, Vol 28 #3, 2004) has argued that indigenous forms of conflict resolution are quite different from modern western ones but are given short shrift. They differ she claims in that modern western one is individualistic and atomic and focused on technique while the other is holistic, focused on process and relationships, and is spiritual. It remains unclear if Aboriginal forms of conflict resolution will be substantially different in implementation and how effective they may be at the local community level.

There are other justice initiatives in Atlantic Canada as well that merit attention. In Nova Scotia MLSN has recently (2008) added a victim services dimension to its programming. In New Brunswick only one community (Elsipogtog) has a victim services employee, advising and supporting residents who have been victims of crime.

Interestingly, though, several other FNs in that province have been funded by the province for “para-legals” who work with victims and liaise with New Brunswick’s Victim Services; apparently the “para-legals” receive a very modest monthly honorarium of several hundred dollars but it may be a feasible and acceptable way of responding to small scattered populations. Recently, too, under the sponsorship of the federal Aboriginal Justice Strategy, persons involved in directing justice initiatives from across the region have been meeting and discussing future directions. A report of the E.A.S.T. (Eastern AJS Steering Team) 2006 based on these deliberations highlighted the need for (and value of) more cross-cultural training for non-aboriginal justice staff, more aboriginal staff in all areas of the justice system, and more attention to victim services (to achieve a “natural law based balance”). The draft report went on to call for extension of the circle approach to regulatory offenses. These emphases were reiterated in the E.A.S.T. Action Plan, September 2006 where also emphasized is ‘more community involvement in planning, decision-making and service delivery’ and ‘more aboriginal advisory groups’. Another point that might be underscored is the imperative noted there “to constantly scan the horizon for opportunities to advance the aboriginal justice agenda through win-win relationships” – these exists in the criminal justice areas (e.g., offender reintegration, wellness courts) and also in the family and regulatory justice areas.

CONTEXT

POPULATION AND EDUCATION

As indicated in the table below, the total registered population of Elsipogtog has grown by over 2% per year since 1995. The growing population – a sharp contrast to the surrounding communities in the region – has a high proportion of youth, estimated to be about 40% aged 17 or under or twice the provincial percentage. The total numbers of males and females in the total registered population (on and off reserve) were quite similar, namely 1406 and 1420. It does appear that females emigrate more; in 1995 off-reserve, there were 222 females and only 166 males, and in 2000 it was 252 to 184 respectively. The 2006 data were not available but reportedly the pattern of gender difference in migration has continued, presumably fuelled by pursuit of higher education and marriage.

The number of Elsipogtog residents funded in post-secondary academic institutions (there could be an occasional trade program participant funded under the band’s discretion) in the past two fiscal years is provided in Table 1. The figures for the two First Nations in PEI are also provided for comparison purposes. The number of post-secondary enrollments has increased in Elsipogtog (over 60 in fiscal 2006-2007) but more improvement can be expected as can be deduced from the percentages in post-secondary education in the other First Nations.

Table 1

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

First Nation*	2005 ~ 2006	2006 ~ 2007
Lennox Island (362 to 805)	20	25
Abegweit (176 to 312)	9	10
Elsipogtog (2131 to 2826)	50	63

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

*Source: INAC - Atlantic

Table 2

Elsipogtog Population

1995	2000	2006
1700 On-reserve (Own Band)	1924 On-reserve (Own Band)	2131 On-reserve (Own Band)
51 On-reserve (Other Bands)	59 On-reserve (Other Bands)	38 On-reserve (Other Bands)
1751 Total On-reserve	1974 Total On-reserve	2169 Total On-reserve
388 (18%) Off-reserve	436 (18%) Off-reserve	657 (24%) Off-reserve
2139 Total	2410 Total	2826 Total

*INAC's Indian registration system, July 2007

POLITICAL ECONOMY*

It is clear that significant economic development has taken place in many FNs over the past decade and newspaper accounts have celebrated major economic growth in FNs such as Akwesasne, Six Nations of the Grand River, Membertou and Millbrook. Much entrepreneurial activity has occurred in a variety of sectors including resource development, tourism / hospitality and light manufacturing (Clairmont and Potts, 2006). Fisheries has been particularly highlighted in British Columbia, Ontario and Atlantic Canada (Coyle, 2005, DFO 2005). While Aboriginal fisheries activities through Department of Fisheries and Oceans (DFO) programs may have preceded the SCC Marshall decision, there is little doubt that a qualitative change occurred as a result of it, especially in Atlantic Canada. Recently (Mail Star, February 27, 2006), a DFO official reported, “that [since 2000] more than 1000 FN people are employed in an orderly fishery and hundred more fisheries-related jobs have been created. Unemployment has dropped 4% (in absolute terms) from 2000 and fishing licenses held by FN people have generated economic return of roughly \$41 million in 2004 or \$4000 per household, an increase of more than 300% from the return generated from licenses held in 2000”. A spokesperson for the Atlantic Policy Congress of FN Chiefs, interviewed on the same news item, noted that, despite inefficiencies in the way DFO paid out monies after the SCC decisions, “the money has had a positive effect on Aboriginal communities. Our communities have a new sense of hope. It is not a money thing. It’s a whole mindset. And it has fundamentally changed our communities forever and that is really good”.

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

The developments in the fishery have reinforced other economic development in some FNs. Additional, important initiatives aimed at diversifying Mi’kmaq economies have come with INAC’s Marshall Phase 11 Development program (INAC Report, NEDG, November, 2005). The objectives of this program were fourfold, namely increase access to economic development and capacity building opportunities, enhance Mi’kmaq and Maliseet expertise and capacity to carry on negotiations, increase the land base of FNs (the Mi’kmaq and Maliseet FNs were cited as having among the highest on-reserve social assistance and smallest reserve land per capita in the country), and, fourthly, create co-management opportunities. The program has apparently been quite well-received and considered beneficial by FN leaders. The report’s recommendations call for more attention to the “aggregate” (the program funds had been competitive among FNs) and to

facilitating inter-band economic relationships; also emphasized was “moving the program delivery to a more partnership approach consistent with greater self-government and with a view to reducing dependency”. A Marshall Phase 111 Program is anticipated by Mi’kmaq leaders, reportedly having similar objectives and aimed at diversification of FN economies, “given the tenuous state of the Atlantic fishery and the political reluctance to allocate more quota to the Mi’kmaq”.

The implications for Mi’kmaq justice are interesting. Improved economic well-being and an optimistic mindset about the future are usually associated with less crime and social disorder. At the same time, to the extent that the economic improvement and perceived future prospects are not well distributed, socio-economic disparities may set in which may marginalize offenders (i.e., offenders may be increasingly drawn from a decreasing pool of the socio-economic disadvantaged). Growing socio-economic differentiation coupled with a decline of communitarian sentiments (a strong correlate of modernization) could generate social problems and conflict, especially where there is no formal mechanism such as a taxation policy to attenuate the inequalities. Protests on behalf of the less advantaged could take many forms, including that of challenges in terms of individual versus collective Aboriginal rights, a matter which federal and provincial governments may presume has been settled (Ontario Native Secretariat, 2005) but which, in the absence of treaty agreements and other FN-level consensus building may be quite controversial (see the divergent views on this issue articulated by prominent Mi’kmaq leaders prior to the anticipated 2006 SCC decision on logging).

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

Since the 1960s, when the role of the Indian Agent was eliminated by Indian Affairs, there has been an irreversible trend towards band self-administration in Canada. The major political development over the next decade will likely have to do with tripartite (federal, provincial and FNs) treaty negotiations which are in progress in Nova

Scotia and which are emerging in New Brunswick and PEI. Approximately twenty six years after their proposal for discussions on Aboriginal title was rejected by government, the realities of court decisions (especially the SCC Marshall decision it appears) and other factors, spawned a new milieu and led to an umbrella agreement between Mi'kmaq leaders in Nova Scotia (the 13 chiefs) and federal and provincial officials (ministers of INAC and Aboriginal Affairs respectively) in 2002 to begin to address the larger Mi'kmaq concerns. The umbrella agreement commits all parties to "good faith negotiations" and has three central foci, namely Aboriginal title, treaty rights and consultation. It was decided to take this entire process out of the on-going tripartite forum process established as a result of the Marshall Inquiry in 1991. A subsequent three-stage process has been envisaged, namely agreeing on the negotiations framework (a framework agreement), substantive negotiations / negotiating a draft agreement, and a final formal sign-off / execution phase. This process is on-going and currently both the federal and provincial governments have agreed to the tentative framework agreement while Mi'kmaq leadership is working through community consultation seeking consensus among the thirteen bands, explaining the framework agreement and getting the input from communities before any framework agreement is signed. Since the format of this negotiation process differs from the treaty negotiations format followed by the federal government elsewhere, it has been dubbed the "Made in Nova Scotia" process.

Perhaps influenced by these developments in Nova Scotia, a similar tripartite treaty negotiation process appears to be emerging in both New Brunswick and PEI. The new provincial government in the former has proposed a series of meeting between the premier and cabinet ministers and the thirteen FNs there. In PEI, there has been a similar development. In 2006 the MCPEI in its annual report referred to an emerging tripartite process. In 2007 the newly formed provincial government, following up on spade work done by the previous administration, announced the creation of a new post, Aboriginal Affairs Officer, and an Aboriginal Affairs Secretariat under the Office of the Attorney General (long the designated government department for Aboriginal affairs). The news release stated that this new structure would make it easier for Aboriginal individuals and communities to deal with the provincial government. The FN chiefs hailed the announcement and one was quoted as saying, "It is our hope this will lay the groundwork for greater cooperation between all levels of government – provincial, federal and Mi'kmaq – in areas of common interests" (The Province, October 18, 2007). While there is as yet no full-blown treaty process as in Nova Scotia, the announcement is promising. Of course, all this political development underlines the important of the views of Aboriginal leaders that it is important to exercise legitimate authority in areas where they will be negotiating agreements and that in turn makes it imperative, in the long run, that community-based ways to resolve conflict and deal with violators of band rules and commitments, such as through circle justice, can be effective.

POLICE STATISTICS

In examining crime, violence and public safety patterns in Elsipogtog over the past decade it is important to bear in mind three considerations, namely

1. Police-recorded incidents do not always entail the formal laying of charges. Police engagement under the Mental Health Act, for example, may require arrests but seldom result in formal charges being laid.
2. Not all offenses and threats to public safety are reported to the police so police statistics always have to be supplemented by victimization surveys and other types of community surveys in order to provide an accurate and comprehensive picture. For example, family violence and drug abuse are usually much under-reported.
3. For a variety of reasons (e.g., the short-term effects of arrests and incarceration) it is usually desirable to take multi-year averages in order to detect trends. In the case of Elsipogtog the strategy for analyses here is to adopt two year averages in part because Elsipogtog was policed by a band constable service acting as special constables in tandem with the RCMP until 2002. In late 2002 the federal government (i.e., the Aboriginal Policing Directorate), the provincial government, and the Elsipogtog band council signed a community tripartite agreement (i.e., a CTA) whereby the RCMP became the sole police service in the community.

1998 to 2002

Tables 3 and 4 present data for the years 1998 through 2002 when Elsipogtog had the special constable (band constables) arrangement with the RCMP. There was some variation between 1998 / 1999 and 2000 / 2001 but overall the level of incidents in the reporting categories was quite similar. Assaults, whether common assault, aggravated assault or spousal assault, declined appreciably in the latter period while property damage and response under the Mental Health Act – usually involving a person threatening to harm himself or herself – increased. The high level of offenses in Elsipogtog throughout this period is evident in comparison to the combined totals of Richibucto and St. Louis, which together constituted a slightly larger though older population than Elsipogtog. In both two year periods Elsipogtog had at least seven times as many arrests under the Mental Health Act, six times as many spousal assaults, ten times as many attempted suicides, four times as many reported incidents of property damage, eight times as many aggravated assaults, and four times as many common assaults.

As noted, 2002 was a transition year to full RCMP policing so it is considered separately here. There was a significant increase in reported offenses that year in Elsipogtog. Common and aggravated assaults showed a sharp rise from an average of 162 and 41 respectively in 2000 and 2001 to 250 and 49 in 2002. Arrests under the Mental Health Act increased from 144 to 172 and incidents of recorded property damage increased from 125 to 149. Reported spousal assaults and attempted suicides declined, the latter appreciably falling to 32 from an average of 76 in the earlier years. The 2002

comparisons with the combined total of Richibucto and St. Louis were even more striking than in previous years with assaults of all kinds being between eight and over forty times as great while incidents of property damage were eighteen times as great and arrests under the Mental Health Act eighty times as frequent.

Table 4 presents data for specific offenses over the years 2000, 2001 and 2002. An upward trend can be noted for crimes against the person (e.g., assaults), for breaches and for drug offenses. Property offenses and liquor violations (except impaired driving) merely fluctuated while the number of young offenders declined in each year. Some of the variation in the number of reported offenses in 2002, compared with previous years, may well be attributed to the greater presence of the RCMP on reserve beginning in that year.

2003 and 2004

These years represent the first two years of complete, exclusive RCMP policing of Elsipogtog. The two year averages for the different offense are quite similar to the high levels of 2002 with a few offenses declining in number such as common assault (i.e., from 250 to 212) and arrests under the Mental Health Act (i.e., from 172 to 132) while property damage and reported spousal assaults increased. The differences vis-à-vis the comparison combination of Richibucto and St. Louis were less dramatic than in 2002 but still substantial for virtually all offenses especially aggravated assault (ten times as many in Elsipogtog) and spousal assault (sixteen times as many).

Overall, then, the RCMP data on offenses for the five year period from 1998 to 2004 inclusive show three central points, namely (a) the very high level of serious offenses in Elsipogtog; (b) while crime was generally decreasing across the country, it remained very high still in Elsipogtog; (c) that the rates were especially high in comparison to neighbouring communities.

Table 3

RCMP Crime Statistics Richibucto Detachment

	Elsipogtog		Richibucto		St. Louis	
RCMP Estimated Population	2200		1400		1000	
Year	1998	1999	1998	1999	1998	1999
Sexual Assault	19	14	3	4	3	1
Assault Level I	183	179	31	40	10	15
Assault Level II	54	41	1	0	1	5
Damage to Property	117	117	9	10	12	19
Suicides	2	2	0	1	0	0
Attempted Suicides	54	98	5	2	3	3
Spousal Assault (Male Offender)	16	32	2	4	3	0
Spousal Assault (Female Offender)	2	8	0	1	0	0
Total Mental Health Act	110	107	9	5	9	3

	Elsipogtog			Richibucto			St. Louis		
	YTD			YTD			YTD		
Year	2000	2001	2002	2000	2001	2002	2000	2001	2002
Sexual Assault	10	14	16	11	2	0	3	2	0
Assault Level I	148	177	250	41	29	0	13	10	14Est*
Assault Level II	44	37	49	2	2	0	3	3	0
Damage to Property	109	141	149	32	29	1	14	20	16Est*
Suicides	2	4	4Est*	0	0	0	0	0	0
Attempted Suicides*	54	101	32Est*	4	7	1	2	2	0
Spousal Assault (Male Offender)*	21	7	8	2	1	0	0	1	0
Spousal Assault (Female Offender)*	2	0	2	0	0	0	0	0	0
Mental Health Act	134	153	172	16	13	1	7	8	4Est*

*Est refers to estimated which in turn reflected the incomplete data available for the dates and categories where it is noted.

Table 4

Selected RCMP Statistics Elsipogtog: 2000 to 2002

	2000	2001	2002
Total Person Offences	230	255	332
Break and Enter Residential	45	48	52
Theft Under	69	118	103
Total Property	182	221	181
Peace Bonds*	10	33	32
Breach of Peace*	53	178	220
Total Drugs	7	20	31
Child Welfare	17	27	29
Liquor Offences	128	167	155
Impaired Driving	32	44	54
False/Abandoned 911s	123	114	123
False Alarms	95	124	140
Young Offenders	53	45	33

- Peace bonds and breach of peace are recorded as non-offences in the RCMP mayor's report.

Table 5

Offenses	Elsipogtog (pop. 2200)		Richibucto (pop. 1400)		St. Louis (pop. 1000)	
	2003	2004	2003	2004	2003	2004
Sexual Assault	18	14	2	3	2	2
Assault Level I	265	159	46	22	13	12
Assault Level II	60	42	6	2	3	0
Damage to Property	162	173	31	45	32	31
Suicides	0	1	0	1	0	0
Attempted Suicides	5	27	2	0	0	1
Spousal Assault (Male offender)	10	22	0	1	1	0
Spousal Assault (Female offender)	2	0	0	1	0	0
Mental Health Act	152	112	19	29	9	9

2005 TO 2006

It is with caution that comparisons may be drawn between these two years and earlier police reports since there were significant changes in the RCMP reporting system beginning in 2005. Nevertheless, it would appear that there has been a significant reduction in reported offences as depicted in tables 6 and 7. Assaults declined significantly from well over 250 in previous years to but sixty-six in 2005 and 147 in 2006. Sexual assaults declined by 50% and arrests under the Mental Health Act went from 172 in 2002 and 132 over 2003 and 2004 to only 30 in 2005 and 76 in 2006. Thefts under \$5000 also declined sharply. In these respects, Elsipogtog was following the national trends, though more dramatically; the level of decline in Elsipogtog may also have reflected the greater effectiveness of the larger and more settled-in RCMP presence.

The data do show, however, that there was a significant increase in recorded occurrences in 2006 as compared with 2005, almost a doubling or more of incidents with respect to “Intoxicated Persons Detention Act” (from 26 to 48), the “Mental Health Act” (from 30 to 75), “disturbing the peace” (from 36 to 56), “resisting arrest or obstruction” (from 3 to 12), “harassing phone calls” (from 5 to 9), “breach of peace” (from 34 to 111), “robbery/extortion/threats” (from 19 to 52), “total assaults excluding sexual assaults” (from 66 to 147), “theft under \$5000” (from 27 to 52), “break and enter” (from 32 to 71), and “crime against property” (from 52 to 102). It is not clear why the large jump in incidents took place but generally the increase occurred at the low end of the offence category, that is, common assault not aggravated assault, uttering threats not robbery, and theft of property under \$5000 not other theft categories. This suggests greater police activity was a crucial factor, whether by design (e.g., a crackdown) or greater police presence (e.g., more officers available) or both. It will be necessary to examine the data for 2007 and 2008 to determine whether there is a trend towards the level of offenses that characterized the period 2000 to 2004 inclusive.

The tables for 2005 and 2006 also indicate the continuing sharp difference in violations and incidents between Elsipogtog and its neighbouring communities. Elsipogtog is roughly the same population size as Bouctouche (Elsipogtog is slightly smaller but has a younger population thus balancing out the primary causal considerations) but recorded 45 times as many cases under the Intoxicated Person Detention Act, 12 times as many under the Mental Health Act, 19 times as many in disturbing the peace, 19 times as many in breaching the peace, 7 times as many for robbery and threats, 13 times as many in total assaults, and 12 times as many in break and enter. Similar large percentage differences were indicated in virtually all other offence categories.

Overall, then, the police statistics indicated that the incidence of most offenses had fallen from the high levels of 2002 to 2004, and that young offenders, in particular, seem to have become much less common. It is not clear how stable the downward trend for adults will be. It is clear that Elsipogtog continues to have much higher levels of violations and serious offenses than its neighbouring communities do. There is then a serious problem of offending in Elsipogtog and it should not be surprising that in the

Elsipogtog community survey and focus groups (2006, Appendix A), the respondents called attention to the high level of offending and expressed much fear and worry about being victimized. At the meeting with the band council in 2006, where the survey and focus group results were discussed, there was much talk about “the increasing violence and theft in Elsipogtog and the need for consequences”. Since 2006 these problems of offending have remained significant in the community discourse. The level of drug abuse has reportedly grown. In the early summer of 2008, 43 persons were receiving daily doses of methadone at the community health clinic (a priority being pregnant women with an opiate addiction), a very high number for a community of only roughly 2200 people. Another community issue has been how to respond to a small number of youth under twelve years of age (i.e., not subject to criminal prosecution) who have engaged in significant property damage and arson

Table 6

Elsipogtog and Neighbouring Communities:
A Comparison of Police Statistics for 2005 and 2006

VIOLATION (2006)	Elsipogtog (pop 2400)	Bouctouche MUN (pop 2500)	Richibucto MUN (pop 1400)
Intoxicated Persons Detention Act - Offences Only	2	1	2
Intoxicated Persons Detention Act - Other Activities	45	1	13
Mental Health Act - Offences Only	1	1	1
Mental Health Act - Other Activities	75	6	7
Fail to comply w/ condition of undertaking or recognizance...	8	1	1
Disturbing the peace	56	3	24
Resists/obstructs peace officer	12	1	3
Fail to comply probation order (3520)	8	3	0
Harassing phone calls	12	2	4
Uttering Threats Against Property or an Animal	9	1	0
Breach of Peace	111	6	13
Public Mischief	6	0	2
Drug Offences – Trafficking	8	1	0
Total Sexual Offences	6	1	0
Robbery/Extortion/Harassment/Threats	52	8	15
Assault on Police Officer	6	1	2
Aggravated Assault/Assault with Weapon or Causing Bodily Harm	21	0	4
Total Assaults (Excl. sexual assaults, Incl. Aggravated Assault, Assault with Weapon, Assault Police)	147	11	21
Total theft under \$5000.00	52	40	15
Break and Enter	71	6	5
False Alarms	51	38	14
Crime against property - Mischief (exclu. Offences related to death)	102	14	32

Table 7

Elsipogtog and Neighbouring Communities:
A Comparison of Police Statistics for 2005 and 2006

VIOLATION (2005)	Elsipogtog (pop 2400)	Bouctouche MUN (pop 2500)	Richibucto MUN (pop 1400)
Intoxicated Persons Detention Act - Offences Only	3	0	1
Intoxicated Persons Detention Act - Other Activities	26	1	9
Mental Health Act - Offences Only	0	0	0
Mental Health Act - Other Activities	30	1	8
Fail to comply w/ condition of undertaking or recognizance...	1	0	1
Disturbing the peace	36	4	6
Resists/obstructs peace officer	3	0	0
Fail to comply probation order	3	1	2
Harassing phone calls	5	1	0
Uttering Threats Against Property or an Animal	3	0	0
Breach of Peace	34	4	3
Public Mischief	2	0	0
Drug Offences – Trafficking	0	0	1
Total Sexual Offences	5	0	1
Robbery/Extortion/Harassment/Threats	19	3	6
Assault on Police Officer	1	0	1
Aggravated Assault/Assault with Weapon or Causing Bodily Harm	18	0	1
Total Assaults (Excl. sexual assaults, Incl. Aggravated Assault, Assault with Weapon, Assault Police)	66	2	1
Total theft under \$5000.00	27	9	10
Break and Enter	32	3	5
False Alarms	31	0	9
Crime against property - Mischief (exclu. Offences related to death)	52	2	21

THE 2003 EVALUATION AND ITS AFTERMATH

The ERJP was launched with exclusively federal government funding (The Aboriginal Justice Strategy) in 2000. The 2003-2004 report, whose findings and suggestions for future directions are appended to this brief interim overview, concluded:

“The ERJP project has successfully integrated two powerful social movements, aboriginal justice and restorative justice, in implementing a program that is unique in New Brunswick. It has put into place a well-managed, highly credible healing circle system which handles minor offences, avoids the court process and has more of a healing dimension than the alternative measures programming available elsewhere in the province. By so doing, it has saved resources for the CJS (both court processing savings and reduced workload for Corrections (Probation) Services) and has provided a more meaningful experience for Elsipogtog offenders and victims as well as other healing circle participants. The ERJP has been implemented as a community-based organization, drawing on, and providing training to, an impressive group of volunteers. All phases of case processing from pre-session case development to healing circle to post-session supervision of agreements have been done well. It has also effectively communicated, by its various symbols and practices, that it is a Mi'kmaq program. In both these latter respects, then, it could well be said to have contributed to community empowerment. Evidence presented in this evaluation establishes that the ERJP is well-regarded by both CJS and community leaders and stakeholders. Interviews and questionnaire data have established also that participants in the healing circles, whatever their roles, found the ERJ process to be fair and effective and would recommend it readily to others where similar types of offenses and offenders were involved”.

In the early months of its existence, the basic strategy of the ERJP leadership was established, namely "be selective, conservative, take it slow, and be open to options". That clearly was the hall-mark of the ERJP over the first three and a half years. It remained focused on its principal mandate, dealt well with the modest number of cases involving minor offenses referred to it by police, and built up competence, community resources, and credibility within both the CJS and the community. As a result of the strategy being effectively put into operation, it was deemed in 2003 / 2004 that Elsipogtog had a solid foundation on which to elaborate upon the restorative justice program, and through it, enhance its ownership of criminal justice matters for its residents, should that be a desired objective.

It was noted at the time (2003-2004) that the main issue was whether, and with what implications for resources, training, and community support and so on, the ERJP should expand its mandate to deal with post-charge referrals (crown and judicial level referrals) and a wider range of offending behaviours, given the serious major crime / offending issues facing the community. It was commented that “Community stakeholders most active in the ERJP celebrate its contribution but typically all believe that it has to evolve and deal with more serious and complex matters if it to realize larger objectives for crime prevention, community healing and First Nation ownership”.

An evolution of the ERJP into more complex offending (post-charge, sexual assaults, family violence) and more demanding restorative justice interventions (e.g., sentencing circles) would of course have to be gradual and would require much more of the program in terms of case preparation, victim support, training for staff and volunteers, community consensus and community capacity building. As well, the 2003-2004 evaluation report advanced some more specific, less macro-level recommendations for the ERJP, including more debriefing of staff and volunteers after the healing circles, greater feedback about the cases to the criminal justice system referral agents, and more “community conversations” about the future of the program.

DEVELOPMENTS SINCE 2004 IN THE CONTEXT FOR THE ERJP

The context for the ERJP has remained similar in some respects and dramatically changed in others. As noted, the crime levels in the community remain very high and indeed since 2003 the drug problem has increased significantly. The ERJP remains quite singular in New Brunswick not only among the First Nations but also in comparison to the mainstream society where the more restricted mandated Alternative Measures remains the typical extra-judicial program. No other community, rural or urban, utilizes restorative justice as expansively as in Elsipogtog. It is clearly the leader in the province in alternative justice or extra judicial sanctions. The context is similar to the early years also in the ERJP being a stimulant to community capacity, as discussion, centered on its future mandate, led to a major justice planning undertaking by the Elsipogtog Justice Advisory Committee between 2004 and 2006 which issued in a strategic action plan for justice initiatives in Elsipogtog (see Appendix B). It is similar, too, in that the ERJP continues to incorporate and expand upon the place of Mi’kmaq tradition and symbolism in the restorative justice processes and the specific healing techniques (e.g., sweats, one-on-one with elders and offenders).

Easily the most significant new context is that under the guidance of the EJAC, there has been in the past three years the development of **a strategic action plan (SAP) for justice in Elsipogtog**. The SAP was the result of an assessment / discussion process that included in-depth interviews with ERJP and EJAC members, Justice officials, a large in-depth representative survey of one adult in every three households, and focus groups with elders, youth and neighbourhoods then with local service providers. A document was prepared incorporating description and analysis of these various approaches and advancing a strategic action plan for the next ten years with respect to justice initiatives. The SAP was vetted through chief and council (securing a supportive band council resolution) and public gatherings and there were presentations to and discussions with New Brunswick Justice Officials. The SAP is appended to this brief interim report and the full 2006 report is available upon request. Clearly, Elsipogtog as a community has invested heavily in developing a thoroughly considered, consensus and evidence-based blueprint for its justice future and the expansion of the ERJP is its centerpiece.

There been other developments in the intervening years that reinforce the ERJP and strengthen community capacity to successfully manage needed justice initiatives. These include most notably perhaps the Apigsigtoagen program cited above which among other things trains participants to problem-solve and mediate civil and other disputes (neighbour disputes, elder-elder disputes) drawing upon Mi'kmaq traditional approaches as well as certain contemporary mainstream approaches (a train the trainers model has been the guiding goal). About a dozen community service providers (including ERJP staff) have gone through the program and are moving now to use those skills in complement to the restorative justice focus on the criminal justice matters. The cross-fertilization among such programs should be considerable. In addition, the EJAC has developed a Youth Justice Strategy which also complements the ERJP.

The community capacity to responsibly and effectively assume a greater role in justice matters, and in restorative justice in particular, has grown considerably. In addition to the SAP process and the new programs just cited, the community has become the leader in Atlantic Canada in diagnosing and treating FASD; its Eastern Door program for FASD brings together skilled medical professionals and dedicated and very knowledgeable community practitioners and builds on much experience developed at the local school with its well-known Nogemag FASD project. In addition to the Apigsigtoagen program and the Eastern Door, the community's professional psychologists and traditional healing experts provide depth to programs such as Alcohol and Drug programs. Moreover, the community now has a full-time victim services staff member.

THE ERJP INITIATIVE TODAY

The ERJP coordinator, an LL.B graduate, has been with the program, apart from temporary absences for maternity leave, since its beginnings in 2000. She is responsible for conducting all the case management and case monitoring as well as all the facilitation at the healing circles (usually with some assistance of the volunteers). In addition, she handles all the communications and outreach activities whether to the community or to role players in the criminal justice system (e.g., monthly visits with the police, contact – usually by phone or mail – with the crown prosecutor and the provincial court judge). Given that the duties of the coordinator involve planning and exploring future directions, it is not surprising that there is much involvement with local agencies and other justice-related Elsipogtog subcommittees (e.g., anti-violence) and that her official designation is Justice Coordinator. As is the case of other justice programs, the ERJP operates under the oversight of the Elsipogtog Justice Advisory Committee (EJAC) and the Justice Coordinator is a member of and regularly reports to the EJAC; also, there is a steering committee, consisting of federal and provincial justice officials as well as certain members of the EJAC, which meets twice or more annually. Since 2007 a part-time administrative assistant has been engaged. There is connected to the RJ program – though funded differently and multi-tasked – a full-time victim services staff person whose responsibility is to contact and work with victims in the cases of RJ referrals as well as to provide services to victims in the conventional court processing of cases. Finally, there has been a stable group of ERJP volunteers. In cases where the coordinator has reason to

think there may be special requirements / needs (e.g., psychological, security etc), several specific persons are invited to the healing circle – they are also volunteers but are engaged full-time in providing services such as psychological counseling or alcohol and drug counsel to band members.

The ERJP has experienced considerable multi-dimensional development over the past three years. There have been interventions with respect to the offending behaviour of children under 12 years of age and in family disputes but of course the main developments have been in the mandated area of providing healing circles in response to referrals from police and other CJS officials. The number of referrals has grown from an annual figure of about 15 to approximately 62 in fiscal 2007-2008 and according to the referral agents such as the local RCMP detachment commander, there will be continued growth in the number of referrals. In the past fiscal year, the referrals were also evenly split between pre-charge and post-charge referrals, the latter being virtually all from the crown prosecutor's office. That office, like the RCMP, has indicated that future growth is likely still. The caseload for the ERJP is almost evenly split between male and female, and, perhaps most importantly, between youth and adults (typically but definitely not only, young adults). The adult and post-charge referrals mean more complex cases are being referred to the ERJP and constitute excellent indicators of the respect and confidence with which the ERJP is held.

Clearly, the ERJP has now become more salient to the criminal justice system and to the crime problems in Elsipogtog. Interestingly, and again indicative of the success of the ERJP, examination of the files for 2007-2008 revealed but one repeater among the ERJP referrals. Not only are repeaters few, suggestive of an effective intervention, but, when coupled with the significant percentage of cases returned for non-compliance or non-contact (which shows the RJ program is serious and not just issuing "free passes"), it indicates the solid work that has been done. It should be noted that a number of adult cases have had to do with resisting arrest and assaulting a police officer, so the lack of repeaters is quite meaningful in comparison with programs that largely deal with minor property theft such as shoplifting and mischief. The range of the extra-judicial sanctions, or the substance of the RJ agreements, is impressive with everything from an apology to counseling which is monitored.

There was little opportunity in this modest evaluation to interview offenders and victims but forms completed by offenders subsequent to the healing circles revealed that almost all persons rated the process and outcomes very positively with respect to fairness, opportunity to express one's views, and sense that justice was done. Most respondents also answered an open-ended question about what justice meant to them in phrases roughly approximate to "taking responsibility for your own actions". It is unknown how representative these respondents were of the overall client group. It appears, too, that adults, and especially male adults, were the most likely to reject the restorative justice option in favour of going through the court process. In future assessments, especially if the ERJP expands further into dealing with serious offending and using more demanding restorative justice interventions (e.g., domestic violence, sentencing circles), it will be

crucial for appreciating the impact of the ERJP intervention and learning from it, to do in-depth interviews and outcomes analysis with offenders, victims and others.

In terms of meeting the challenges identified in the 2003-2004 assessment, the ERJP has stepped up its role in justice matters for Elsipogtog residents in workload, type of offenses dealt with, successful intervention and so on. It has also met the other challenges laid out in the 2003-2004 report. There has been much more feedback to the Criminal Justice officials, especially the police where the pattern of monthly meetings has become established (meetings with the judge and crown are on a more annual basis). There also has been regular feedback to the community through six yearly columns in the local monthly newspaper, public talks (e.g., the schools) and the wide distribution of brochures explaining the program. There has been close collaboration with other local service providers as for example in the Anti-violence subcommittee which meets regularly. In a variety of ways – the SAP, EJAC, service providers' collaboration – the ERJP contributes to and draws from the enhanced community capacity, helping to nurture a “collective efficacy” in Elsipogtog. Beyond the debatable issue of how much progress has been made in becoming engaged with the community's instances of serious offending, the only 2003-2004 recommendation not achieved was that calling for debriefing of ERJP interveners in the healing circle, subsequent to the session, in order to maximize the gains of experience, an understandable shortfall given the caseload but something which should be inaugurated in the future especially with the more complex cases being processed.

In comparison to restorative justice programming elsewhere in Atlantic Canada – this reviewer has examined all of them in his role as official evaluator of the Nova Scotia restorative justice program and researcher on Aboriginal justice strategies in PEI, Nova Scotia and Labrador – the ERJP carries now a very large and sophisticated caseload in relation to its staffing. As noted, there is but one full-time staff member and she performs a slew of duties including pre-session case management, chief facilitator at all the healing circles, follow-up and monitoring the agreements, all report writing, recruiting and training the volunteers, networking at the community and criminal justice system, and attending and reporting to all the oversight committees. It is a heavy and demanding load which threatens the successful “take-off” that the ERJP seems poised to realize and limits its future development. Working with both youth and adults, in serious crimes, is another rather unique feature of the ERJP – it is not unheard of but it is certainly not usual. In Nova Scotia which has one of the most developed restorative justice systems in Canada, only youth are clients in the mainstream RJ agencies and there are only a few adult clients in the aboriginal program there (i.e., Mi'kmaq Legal Support System's Customary Law Program). The ERJP's mandate is one that requires time and a deft hand by the ERJP coordinator for many reasons (e.g., safety, volunteers in other milieus are often reluctant to participate when adult offenders are involved). The high ratio of post-crown level referrals is also somewhat unusual as is the substance of the extra-judicial sanctions featured in the agreements of the healing circles.

The stakeholders interviewed for this modest assessment of the ERJP were very positive about the program and its future. The RCMP detachment officer-in-charge,

appointed in the fall of 2006, has been a strong advocate of restorative justice programming. He noted that “Since my arrival ... restorative justice referrals forwarded by the Police and Crown have doubled ... restorative justice has been accepted by all RCMP members working in the local detachment. I see 2008/2009 being a very busy year, surpassing the 48 referrals [in 2007/2008] and hopefully doubling”. Indicative of the RCMP support is the fact that a number of "obstruction / assault of a police officer" charges were referred to the ERJP rather than processed in court. The veteran crown prosecutor for the Elsipogtog / Richibucto area called attention to the developments within the past few years, noting that “the community of Elsipogtog has benefited from the Restorative Justice Program” and indicated that “I am of the view that this program should continue and maybe even be expanded as it is very beneficial to the native community”. As noted above, his words have been accompanied by action as perhaps the most important external CJS development in recent years with the ERJP has been the considerable increase in post-charge, crown-level referrals. The area judge echoed these positive views, suggesting too that he would welcome a short proposal from Elsipogtog on the sentencing circle option, dealing with the type of offence where it would be recommended, the format of the sentencing circle and any associated protocols. It was appreciated that a sentencing circle would be demanding of time and resources so would have to be limited to cases more complex than dealt with in the usual healing circle.

There were several reasons for the supportive views of the CJS officials. The recent build-up of the RCMP complement and the Elsipogtog unit having its own sergeant appears to have led to more direct contact between police and crown than when the detachment commander was stationed in Richibucto, with the result that, as the crown prosecutor observed, “There is more awareness on everyone’s part about the [ERJP] program”. They did indicate that the ERJP was proving beneficial to the community and by implication to the court system. It was considered effective and responsive to Elsipogtog “culture and beliefs”. As the RCMP detachment commander wrote, “In the long-run Restorative Justice practices should prove to be a more cost-effective method for resolving conflict. Every person affected by an incident is given the opportunity to share their reactions to the crime and how it has affected their lives. This includes victims, parents, friends, witnesses and anyone else directly involved”. They were also sensitive to the fact that the community had developed a comprehensive strategic action plan (SAP) for justice initiatives and had communicated that effectively to governmental officials as well as CJS role players in specially convened meetings; the SAP was perceived as indicative of the improvement in Elsipogtog’s collective efficacy. They readily wrote letters of support, for continuance and increase in the resources available to the ERJP, to accompany the 2007-2008 annual report to the Aboriginal Justice Directorate by the ERJP coordinator. Clearly, the CJS officials appear committed to the ERJP and anticipate its continued growth in referrals and with respect to more complex cases.

Other stakeholders interviewed briefly were staff members with the community’s health and social services, all five of whom were also volunteers with the ERJP. A person with Children and Family Services had participated in a handful of healing circles, where he described the cases as involving young offenders and minor offenses. He noted that there have been a few cases where the ERJP provided mediation service in conflict /

dispute over the custody and access for children; reportedly, the mediation milieu worked well and some people “opened up when there”. In his view the ERJP should extend to sentencing circles since there is now real capacity in community and the voluntary supporters, such as himself, are available. That was essentially the position of all these stakeholders. An alcohol and drug counselor, who has been active as a volunteer in the ERJP healing circles, commented that, while the ERJP has focused on minor offenses to date, “the capacity is now there for more ... we are ready for it [sentencing circles for example]”. Other stakeholders, including the psychologist, a leading community elder, and another Alcohol and Drug staff person emphasized as well the cultural dimension (the link to tradition) and the importance of some community ownership of justice that the ERJP has effected.

The 2005-2006 community survey referred to above indicated that the residents were solidly in support of the ERJP and wanted to extend its reach. As shown in the appended tables, two-thirds of the Elsipogtog households (adults) reported that they were familiar with the ERJP (perhaps not as impressive a percentage as one might expect but higher than the awareness indicated for other community justice endeavors as shown in the responses for question 16), and over 80% considered that programs such as the ERJP were “very much” important to the community (see the responses for question 18). In question 20 of the appended tables, approximately 75% of the community sample considered it important to extend Aboriginal restorative justice techniques to civil matters (neighbour-neighbour disputes), non-compliance with band bylaws and regulations, and victim-offender mediation and reconciliation.

The position of the ERJP’s oversight committee, the Elsipogtog Justice Advisory Committee (EJAC), has been that the ERJP “has the highest number of referrals in the province of New Brunswick for the fiscal year 2007-2008 and there is a need to expand and build upon the program by (1) adding more entry points for referral, and (2) dealing with more serious offences”. While noting that crown referrals (i.e., post-charge referrals) have been increasing, it was observed that “the crown makes referrals on a courtesy basis” rather than on a mandated basis. The oversight committee considered that it would be appropriate to have a mandate for both crown and judicial referrals (the later post-conviction, sentencing circles). In general, the EJAC considered that the ERJP is at a take-off stage and can and should deal with more serious offenders and offences in order to benefit the community which continues to have a high level of serious offending. The committee also emphasized that “there are many services in the community that clients can be directly referred to “ if the ERJP was elaborated – services such as traditional and mainstream counseling and treatment, alcohol and drug prevention, children and family services, and social assistance.

The interviews and analyses of the ERJP experiences did indicate a number of areas where the ERJP could be improved such as debriefing (beyond the learning value of debriefing, the coordinator acknowledged that sometimes she and some volunteers may get depressed after a session and debriefing would likely be good for morale as well), involving community members more in the healing circles and perhaps the monitoring of agreements negotiated in the circles, and continuing efforts to obtain more

participation by the victims. But the central concerns – valid concerns in this writer’s view – were to increase the resources available to the ERJP given the current caseload, and enabling it to expand its service to more serious offenses and thereby make it a more central player in dealing with the community’s problems.

MEETING THE OBJECTIVES

The main goals of the ERJP have been identified in its documents as (1) developing a community-based, alternative justice delivery for Elsipogtog, (2) developing appropriate programming so as to encourage respect for people and property within the local community and the larger society, (3) strengthening knowledge of traditional justice values and approaches within the overall Canadian justice system, and (4) developing appropriate partnerships and linkages with other justice stakeholders and service providers in order to facilitate the implementation of various justice measures. Clearly, the ERJP has met these objectives to a significant degree. A community-based alternative justice delivery system has been established that is considered by stakeholders to be effective and reflective of Mi’kmaq cultural and tradition. Solid partnerships with CJS officials and local service providers have been established. And since 2003 there has been an elaboration of the program which has entailed dealing with post-charge cases (which usually entail more serious offending than pre-charge referrals do) and applying the restorative justice skills and processes in areas such as family conflict and inappropriate behaviour by children under 12 years of age. The ERJP is definitely less restricted and marginalized vis-à-vis the community’s serious offending than it was in the period up to 2004. Just as clearly though, there is still a long way to go if it to make an impressive contribution to community ownership over local justice matters and to the realization of the potential of a Mi’kmaq-directed complement to the mainstream system.

Other restorative justice programs in the larger society typically (e.g., the Nova Scotia restorative justice program) emphasize objectives that are implicit in the ERJP objectives, namely reducing recidivism, increasing victim satisfaction, strengthening communities, and increasing public confidence in the justice system. While a full and in-depth evaluation would be required to determine how well the ERJP would stack up on these objectives, the evidence from this modest assessment suggests that it has met these objectives to a significant degree. There appears to be little recidivism at least within the ERJP though no data are available on whether offenders subsequently re-offended and were court-processed. On the basis of the 2007-2008, it appears that in about half the cases dealt with by the ERJP where there was an identified victim (aside from the community as a whole), the victim did participate in the healing circle, a percentage that compares favourably to the restorative justice experience throughout Nova Scotia. It would be important to directly measure the impact for victims through in-depth interviews and considering short-term and long-term impact. The views of the stakeholders, the EJAC members, the volunteers and the community survey of 2005 did indicate a widespread view that the program had contributed to the collective efficacy in Elsipogtog and the question really is how much and in what ways, something that would

require more detailed data and analyses. That same conclusion would apply to the objective of increasing confidence in the justice system.

FUTURE DIRECTIONS

The ERJP has steadily developed in the four years since the 2003-2004 evaluation. The ERJP has met its goals and objectives in a significant fashion. The approach of going forward slowly but steadily and not overreaching its resources or extent of the community and external support has been the correct strategy. The ERJP has been a well-managed initiative and by being so has built credibility in the community, among the CJS officials and with its oversight committees. Its reports have been timely, the response to CJS deadlines very good, and the adherence to standards, which sometimes has meant returning cases to the referral agents for non-compliance, has earned it credit. The evidence presented above in relation to meeting its objectives has shown that it has been effective (i.e., low recidivism) and contributed to the collective efficacy of Elsipogtog, a community that has to grapple with a very high level of serious crime and social problems. All the different interests and groupings considered in this assessment – the CJS officials, the community at large, the ERJP volunteers and other local agencies' staff, the offender-clients, and the EJAC oversight committee – have been positive in their assessments. Clearly, too, the ERJP has pioneered restorative justice in New Brunswick as no FN or mainstream community in the province has such an extensive program of extra-judicial sanctions.

The ERJP caseload has spiked in the past eighteen months and the referral sources in the CJS (police, crown, judicial) expect that there will be more growth in referrals in the future. Interestingly, too, the increased caseload has meant more serious offenses and offenders, especially at the adult level, are being referred to the ERJP, especially as a result of the significant increase in the post-charge referrals by the crown prosecutor. Under the current realities, the ERJP is now overloaded. The coordinator has responsibility to do all the case management, be the facilitator at all the healing circles, handle all the communications, see to all the training and so forth. Under these circumstances, the coordinator is very pressed to handle that caseload never mind respond to new challenges and opportunities that recent contextual changes have brought to bear on the restorative justice service in Elsipogtog. The program in short is busting at the seams and in clear need of additional staff resources. The number one priority then is an additional full-time staff person who can assist in the basic RJ activities (i.e., case management and facilitation), reducing the overload and also leaving the coordinator some opportunity to examine the larger picture and develop strategies for responding to its demands and possibilities.

While the ERJP has been a successful initiative, there is also a strong sense in the community and among its EJAC oversight committee – not to speak of CJS officials -

that it has to become more salient to the serious crime and social problems in the community and that it has to be a flagship for hopes and the expectation for a more Mi'kmaq justice system in Elsipogtog. This means going beyond the mandated "minor" offenses into areas such as sexual and domestic assault, and collaborating with CJS officials in more sophisticated and demanding RJ interventions such as sentencing circles. These are crucial for many Elsipogtog people since ERJP would then be dealing directly with the community's serious concerns and their underlying issues. As for the RJ process, the sentencing circle intervention as noted has considerable symbolic meaning for contemporary Aboriginal justice. There are varieties of sentencing circles ranging from the "full monty" when CJS officials are present and the sentence is determined at the circle, to a sentencing circle which acts like a sophisticated pre-sentence report forwarding recommendations to the judge (the Nova Scotian experience is that judges general follow the recommendations if they are seen as consensual); but whatever the type, a sentencing circle is demanding on resources and exemplifies some community ownership.

It has been observed too that in the comprehensive ten-year strategic action plan for justice in Elsipogtog, elaboration in the ERJP is the pivotal take-off point. This elaboration would entail dealing with serious offending (e.g., sexual assault, repeat offenders) and using more complex restorative justice interventions (e.g., sentencing circles). Insofar as such advance is not made, the argument could and has been made that the ERJP service is more half-empty than have-filled. And when the current 'half-empty' aboriginal RJ service is also as little formally institutionalized as it is, then it totters on being marginal despite its successes. The lack of institutionalization is indicated by the need for frequent renewal (unlike in Nova Scotia where the RJ program is an integral part of the Department of Justice's budget), the dependence for referrals on enthusiastic supporters in the CJS (police and crown), and the absence of formal mandate to facilitate the elaboration of the program. Clearly a priority is action on the part of the provincial government to effect a great institutionalization of the program.

The increased demands on the ERJP are not just coming from the community's concerns with serious criminal offending. Implementation of the Supreme Court of Canada's Gladue principles, as observed above, would seem to require that the CJS encourage the development of alternatives to incarceration and that would imply a major role for restorative justice in cases of serious offending (i.e., where a prison might otherwise be the only resort available). Should there be a circuit type Aboriginal court in New Brunswick, the subject of much current speculation, its demands would underline the need for a more robust restorative justice service. The expansion of Aboriginal justice into the areas of family court and regulatory justice areas also are creating demand for new responsiveness in restorative justice and conflict resolution programs throughout Canada. The fact, too, as described above, that Elsipogtog has enhanced its collective efficacy through initiatives such the Apigsitogan project and the Eastern Door program means that responding to these demands and opportunities is increasingly feasible. This circumstance underlines the need for more ERJP resources so that the program (and its coordinator) can meet these challenge effectively.

It is also clear that some effective responses to the challenges noted may require, in the long run, province-wide collaboration among New Brunswick's FNs as has happened in Nova Scotia. Given that Elsipogtog has the most developed Aboriginal justice initiatives and receives the most significant level of funding for justice matters, a priority might well be for it to take on more of a mentor role in facilitating restorative justice in the other FNs, just as the Elsipogtog Eastern Door program has done with respect to FASD diagnosis and treatment. Such activity would be congruent with the steps laid out in the community's strategic action plan.

There are other suggestions that bear mentioning. One would be to improve the recruitment and training of volunteers, a "catch-22" sometimes for an agency since that task requires much effort even while it promises needed assistance. But, as the ERJP increasingly become involved in more serious offending and more demanding interventions such as the sentencing circles there is an increased need for both training and debriefing. There also is a need for a more comprehensive evaluation / assessment of the ERJP in the near future, one that would entail interviews with offenders, victims, and others and would gather and analyse data concerning possible recidivism and the impact of the RJ experience for all parties to the healing circle or possibly the sentencing circles. Overall, then, the ERJP has become better, more salient to the community's concerns and the criminal justice system's wishes and poised to assume an even greater significance but more resources are required if it is to do so.