

Examining Police Policies and Practices in Mi'kma'ki – Pathways to Positive Policing Relationships

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Executive Summary

Indigenous peoples and their relationships with policing services have been the subject of many inquiries and commissions including: the Marshall Inquiry (1989), Aboriginal Justice Inquiry of Manitoba (1991), Royal Commission on Aboriginal Peoples (1996), Stonechild (2004), Ipperwash Inquiry (2007), Thunder Bay Police Services Board Investigation (2018) and the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019) and the Viens Commission (2019) to name only a few. All of these investigations point to serious systemic flaws and racial discrimination within the justice system overall and within policing services specifically.

In collaboration with the Mi'kmaw Legal Support Network and the Mi'kmaw Native Friendship Society this research involved community-engaged participatory

action methodologies. This collaboration was designed to inform policy and transform policing practices to the benefit of Indigenous communities. The goal of the research is to directly benefit the safety and wellbeing of Indigenous women and girls by foregrounding the participants experiences and desired priorities and presenting them to the policy makers.

The project involved: forming a research team; a successful application to StFX research ethics board; a detailed literature and document review of previous studies; a mapping exercise of current policing arrangements, including Community Tripartite Agreements between First Nation Bands and RCMP and municipal police services; and a series of 15 interviews with key stakeholders and subject matter experts; and ten community-based knowledge gathering / sharing circles in Mi'kmaw communities across the province, on and off reserve, including Halifax.

Between June and December 2019, fifteen interviews were conducted in person and on the phone with stakeholders and subject matter experts (front line service providers; political leaders including chiefs, band council and Mi'kmaw grand council members; Mi'kmaw, provincial and federal service providers, former and current Indigenous police and other enforcement agency officers; people involved in supporting the families of missing and murdered women and girls; Nova Scotia Family Information Liaison Unit; health outreach providers; Mi'kmaw victims' service personnel; Elizabeth Fry staff; former inmates; parole and probation officers and policing liaisons). The interviews were directed toward a) assessing current best practices in policing and community assets for policing, b) identifying challenge areas and resource gaps in policing services and practices, and c) tabulating Indigenous communities' priorities for improving policing relationships, and d) illuminating concrete community-based solutions to reduce violence against women and girls.

Between August and December 2019, ten knowledge gathering / sharing circles were held. The sharing circles were held in locations across the province convenient to

participants (two at the Mi'kmaw Friendship Centre Halifax, Membertou, two gatherings in Eskasoni, Wagmatcook, Paqtnkek, Sipekne'katik, Millbrook and We'koqma'q). The gatherings were designed to, a] ascertain community-based assets, b] identify gaps in services, and c] to generate community priorities for improved policing relationships on and off reserve in Nova Scotia. The sharing circle participants identified gaps and explored opportunities for culturally grounded best practices to reduce racism, sexism and discrimination in policing services. The sessions were audio-recorded with permission of the participants, to allow for accurate post-session analysis. Facilitation was provided as an in-kind contribution by MNFS and MLSN. All sessions were conducted with opening and closing ceremonies, smudging, prayer and feasting. Translation was provided by Mi'kmaw Legal Support Network when needed.

The questions asked in the interviews and sharing circles were generated with the Mi'kmaw Legal Support Network and the Mi'kmaw Friendship Centre in consultation with Elders and community advisory committee members. In circles, we generally asked:

- 1. What are your experiences (positive and negative) with police services?**
- 2. What are the key challenges you would like addressed?**
- 3. What are the most important teachings we can share with Public Safety Canada to help them deliver culturally safe police services?**

Every community in Mi'kma'ki, on or off reserve, is unique, and such diversity must be addressed when developing and implementing services for safety, security, redressing harms and protection. The demographic, geographic, political, economic, cultural and social realities of each of the 13 First Nation communities in Mi'kma'ki and the populations living in urban centres such as Halifax, impact the types of policing and services desired and required.

Our findings align with those of the Expert Panel on Policing in Indigenous Communities:

A comprehensive understanding of safety and well-being in Indigenous communities requires multi-dimensional thinking, including attention to social and cultural factors. This understanding provides an opportunity for policing approaches that reflect holistic views of safety and well-being that are already embedded in Indigenous cultures. Policing in Indigenous communities is embedded in a complex legal and policy context marked by a growing emphasis on Indigenous self-determination and the need to recognize Indigenous rights and laws. While efforts have been made to improve policing for Indigenous communities in Canada in recent decades, many continue to receive policing services that do not meet their safety and security needs.

In both Indigenous and non-Indigenous communities, the most promising ways to promote safety and well-being involve relationships among police, other service providers, and community members. Effective relationship-based approaches are community-led and provide opportunities for police to assist in mobilizing communities and to earn their trust. Opportunities for change begin with providing meaningful choices for policing arrangements that support self-determination. These choices require resources that allow for sustainability and that can be facilitated by systemic reforms aligned with the need for safety and well-being in Indigenous communities.¹

In both urban and reserve populations, trust was the most commonly uttered term in all of the sharing circles. There remains a profound mistrust of police services. The research team was struck by how many people have been impacted by patterns of tragedies within their immediate families. A significant number of the participants had

¹ Expert Panel on Policing in Indigenous Communities (2019) *Toward Peace, Harmony and Well-Being: Policing in Indigenous Communities* (Ottawa: Council of Canadian Academies).

family members who are missing or who have been murdered. Many of these participants expressed, in extraordinary detail, how they perceive police services to have failed to protect their family members and how they have failed to adequately investigate and resolve crimes against them. Dissatisfaction was common across age, gender, spiritual orientation, language, economic and political orientations. People are also concerned with the capacity of officers to cope with the lived realities of reserve life and that the current level of resources to collaboratively improve health and wellness are not sufficient to optimizing service delivery or promoting community justice initiatives.

Almost universally participants articulated having greater trust and better rapport with Indigenous officers whether they were Mi'kmaw or from another community. There was a strong sense that the nature of policing has changed over time and that there is a distance from the community policing of the past and people would like to see a return to community policing with additional services such as on call mental health navigators, safe spaces and supports for reporting crimes and complaints, greater transparency and communication, visible presence and attendance at community events, ride along and mentoring programs.

Community members want the police to work with the youth and schools more often to provide public safety training, suicide prevention and anti-drug awareness. The moose hunt camps started by one group of Mi'kmaw RCMP officers was a great success but the financial burden rests on band funds and does not resolve inequities. Band councils and service providers want better youth programming, greater cultural competency, better response times and more thorough investigations, and regular updates on investigations and they see this as a right. Communities clearly favour those officers who will put up wigwams and work with the kids.

Priorities for most communities include deep cultural preparation and training prior to coming to work in the First Nation. They want Mi'kmaw speaking officers who

understand the social and systemic barriers their members face including poverty, substance misuse, intergenerational trauma, systemic discrimination, and interpersonal violence, as well as the many aspirations within the community for healing and wellbeing. They want officers to live in the community. They do not like it when officers treat policing as a “9-4 job, leave the community at the end of the day and forget about it. We have to live here.” In all of the sharing circles people expressed frustration at the transitory nature of policing. “Just as we get to know and trust someone, they are transferred.” Some bands are willing to provide housing for officers as part of the CTA agreements.

In addition to living on reserve, communities are interested in having officer orientation programs where new officers are mentored by well-liked officers who can introduce them to the community. Many people suggested having welcome ceremonies for officers and everyone agreed that police should go around the community to meet with and learn from the Elders who could help train them in culturally informed anti-bias ways.

Participants in this research discussed under protection and over policing and articulated experiences of systemic discrimination and racism through the topics of reporting, communication, case management, use of force, visibility and response timeliness and efficacy. Cultural competency training and indigenization are only partial remedies to these problems. The majority of participants would like to see a return to tribal policing provided it is well resourced.

Participants recognized serious structural obstacles impeding the implementation of the Marshall Inquiry, TRC and MMIW recommendations and the exercise of their treaty rights. These were identified as: a profound lack of knowledge regarding Indigenous treaty rights, failure to identify and respect the Mi'kmaw as a nation, and the denial by settlers of the legitimacy of Mi'kmaw governance and legal principles in the management their lands and resources. Mi'kmaw community

criticisms pointed to insidious systemic discrimination. In terms of policy development, it is important to keep the historical consequences of colonization and the contextual circumstances of Indigenous resurgence and rights to self-determination front and centre, so that community engagement and collaboration will be respectful, meaningful and produce substantive, equalizing changes.

Together the TRC calls to action and the MMIW calls for justice and the Marshall Inquiry recommendations create a foundation upon which to build systemic change. There are many assets in Mi'kma'ki such as the Mi'kmaw Friendship Centre and Mi'kmaw Legal Support Networks and their networks of allies, experts and knowledge holders, for Public Safety to draw upon if they are committed to build collaborative relationships to encourage, sustain and foster honest and open dialogue. Police services in Mi'kma'ki need a major infusion of support and comprehensive collaboration in order to be able to provide sustainable, responsive, consistent and safe services for communities, offenders, victims and families, that are aligned with Mi'kmaw legal principles and Mi'kmaw governance. With the mandate of the Minister of Public Safety and Emergency Preparedness to co-develop with the Minister of Indigenous Services, a legislative framework for First Nations policing, which **recognizes First Nations policing as an essential service**, and work with interested communities to expand the number of communities served by First Nations policing, the systemic problems outlined by the participants of this research can be addressed and a decolonized police service can become reality in Mi'kma'ki.

Acknowledgements

Many thanks to Pam Glode Desrochers and staff (MFCS) and Paula Marshall and staff (MLSN) for their tremendous support and contributions to this work. We are grateful to all of the community members who participated and shared so thoughtfully and openly in our circles, the Elders for their wisdom and ceremonial teachings, the caterers for the beautiful sustenance, the translators and the support staff who helped

L. Jane McMillan with
Pam Glode-Desrochers, Paula Marshall

make the sharing circles safe. Thanks to Kashya Young, Cheyla Rogers, Devann Sylvester, Scott Lekas, Tammy Williams and all of the people at Nova Scotia Native Women's Association and Elizabeth Fry for the incredible assistance in bringing us together to hear the voices and learn from the experiences. Many thanks to all of the current and former police officers for their insights. Special thanks Don Clairmont for his ongoing inspiration and to Daniel Cunningham at Public Safety for his support. Thank you to StFX financial and research grants offices. Welalioq.

1. Introduction

Public Safety Canada's Policy Development Contribution Program launched the "Examining Police Policies and Practices with Regards to Indigenous Peoples" research program in 2018, as part of Canada's response to the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG). Daniel Cunningham, Analyst, Aboriginal Policing Policy Division of Public Safety Canada approached Dr. L. Jane McMillan, a faculty member of Saint Francis Xavier University, and Pam Glode-Desrochers, executive director of the Mi'kmaw Native Friendship Society (MNFS), Halifax, in the fall of 2018 to submit a proposal to conduct a review of the police policies and practices as they impact Indigenous peoples living on and off reserve in Nova Scotia. "The purpose of the review is to identify problematic police conduct which may take the form of racism, sexism, discrimination or other detrimental conduct with a view of identifying best practices to improve relations between police services and Indigenous peoples."²

Glode and McMillan contacted Paula Marshall, executive director of the Mi'kmaw Legal Support Network (MLSN), to join the team and to design the project. MNFS executive Director Pam Glode-Desrochers and MLSN Executive Director Paula Marshall and L. Jane McMillan (StFX) have collaborated on a variety of policy impact studies, program evaluations, and knowledge mobilization activities in the past decade, including: Addressing Mi'kmaw Family Violence; An Evaluation of the Implementation and Efficacy of the Marshall Inquiry Recommendations; Urban Aboriginal Wellbeing, Wellness and Justice: A Mi'kmaw Native Friendship Centre Needs Assessment Study

² Review of Police Policies and Practices Initiative Proposal (Public Safety Canada, 2018).

for Creating a Collaborative Indigenous Mental Resiliency, Addictions and Justice Strategy; and a number of Tripartite Forum funded projects related to by-law enforcement, translation services, addictions response strategies. Most recently we partnered on L'nuwey Tplutaqan, a SSHRC funded connections grant to bring multiple stakeholders together to discuss community priorities for research to direct the implementation of the Truth and Reconciliation Commission calls to action #42 and #50 on recognition and implementation of Indigenous justice systems and establishing Indigenous legal institutions. Our collective mandate (MLSN, MNFC, StFX) is to conduct collaborative research that enhances Indigenous research capacity and training and that will directly benefit Indigenous communities using participatory action and decolonizing methodologies.

Positive policing relations are vital to the communities we work with. Having witnessed first-hand the impacts of colonization, the intergenerational effects of residential school and child welfare policies, systemic discrimination and racism, Donald Marshall Junior's wrongful conviction, and many incidents involving police in the contexts of criminal, civil, regulatory and treaty rights confrontations, we are well positioned to review police policies and practices. We participated in the Truth and Reconciliation Commission (TRC) and the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIW) and our work is directly informed by those experiences and our efforts are geared to ensuring the recommendations of all Indigenous inquiries are implemented. Through our review, we offer community-based insights to improve relations between police services and Indigenous peoples and we identify concrete solutions for reducing violence against Indigenous peoples, men, women, girls, and 2SLGBTQQIA to carry forward the calls to justice of the MMIW and the calls to action of the TRC.

2. Methodology and Research Design

Indigenous peoples and their relationships with policing services have been the subject of many inquiries and commissions including: the Marshall Inquiry (1989), Aboriginal Justice Inquiry of Manitoba (1991), Royal Commission on Aboriginal Peoples (1996), Stonechild (2004), Ipperwash Inquiry (2007), Thunder Bay Police Services Board Investigation (2018) and the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019) and the Viens Commission (2019) to name only a few. All of these investigations point to serious systemic flaws and racial discrimination within the justice system overall and with policing specifically.

Social research designs and techniques that assure comprehensive and representational documentation, in particular, offer considerable promise, especially if these are informed by and embody Indigenous knowledge about how to engage in learning, to participate in conversations, to ask questions, and to record experiences. Working in partnership with the Mi'kmaw Legal Support Network and the Mi'kmaw Native Friendship Society, the Pathways to Positive Relationships Project (L. Jane McMillan project lead) examines policing policies and practices on and off reserve throughout Nova Scotia. The Mi'kmaq Legal Support Network (MLSN) is a stand-alone, non-corporate justice service provider that operates federally and provincially cost-shared court worker, customary law, victims' services, and other access to justice programs, for Indigenous peoples throughout Nova Scotia. MLSN has offices in Eskasoni, Millbrook and the Halifax Regional Municipality. The needs of MLSN clients are diverse and services are provided to ensure Indigenous peoples receive equal treatment and are not discriminated against at any stage of contact with the Canadian justice system, as such, positive policing relationships and meaningful police participation are critical to the efficacy of MLSN's program delivery.

The Mi'kmaw Native Friendship Society (MNFS) provides structured, social-based programming for the use and benefit of urban Indigenous peoples to promote the

educational, cultural, and economic advancement of Indigenous peoples and works with government and other organizations to create mutual understanding and positive relationship between Indigenous peoples and others. MNFS facilitates inmate reintegration programs, community assisted parole hearings, victims' services, early childhood education, housing, adult learning programs and a host of cultural services. The centre is based in Halifax, two blocks away from the Halifax Regional Police Headquarters.

In collaboration with the Mi'kmaw Legal Support Network and the Mi'kmaw Native Friendship Society this research involved community-engaged participatory action methodologies. This collaboration was designed to inform policy and transform policing practices to the benefit of Indigenous communities. The goal of the research is to directly benefit the safety and wellbeing of Indigenous women and girls by foregrounding the participants experiences and desired priorities and presenting them to the policy makers.

The project involved: forming a research team; a successful application to StFX research ethics board; a detailed literature and document review of previous studies; a mapping exercise of current policing arrangements, including Community Tripartite Agreements between First Nation Bands and RCMP and municipal police services; and a series of 10 interviews with key stakeholders and subject matter experts; and ten community-based knowledge gathering / sharing circles in Mi'kmaw communities across the province, on and off reserve, including Halifax. Originally eight knowledge gathering / sharing circles were planned, but in late November the team received requests to hold two more circles, one in We'koqma'q First Nation, in the aftermath of the murder of 22 year old Cassidy Bernard (2018) and a highly-publicized tracking of the police investigation and arrest a year later (2019). An additional circle with women members of the Friendship Centre community who provided additional insights on policing services within urban setting took place December 19, 2019. With an extension

of the contribution agreement we were able to include these important engagement sessions in this report.

Between June and December 2019, fifteen interviews were conducted in person and on the phone with stakeholders and subject matter experts (front line service providers; political leaders including chiefs, band council and Mi'kmaw grand council members; Mi'kmaw, provincial and federal service providers, former and current Indigenous police and other enforcement agency officers; people involved in supporting the families of missing and murdered women and girls; Nova Scotia Family Information Liaison Unit; health outreach providers; Mi'kmaw victims' service personnel; Elizabeth Fry staff; former inmates; parole and probation officers and policing liaisons). The interviews were directed toward a) assessing current best practices in policing and community assets for policing, b) identifying challenge areas and resource gaps in policing services and practices, and c) tabulating Indigenous communities' priorities for improving policing relationships, and d) illuminating concrete community-based solutions to reduce violence against women and girls.

Between August and December 2019, ten knowledge gathering / sharing circles were held. The sharing circles were held in locations across the province convenient to participants (two at the Mi'kmaw Friendship Centre Halifax, Membertou, two gatherings in Eskasoni, Wagmatcook, Paqtnkek, Sipekne'katik, Millbrook and We'koqma'q). The gatherings were designed to a) ascertain community-based assets, b) identify gaps in services, and c) to generate community priorities for improved policing relationships on and off reserve in Nova Scotia. The sharing circle participants identified gaps and explored opportunities for culturally grounded best practices to reduce racism, sexism and discrimination in policing services. The sessions were audio-recorded with permission of the participants, to allow for accurate post-session analysis. Facilitation was provided as an in-kind contribution by MNFS and MLSN. All sessions

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Sitting in circle is a ceremonial engagement that facilitates a non-hierarchical environment for research engagement. It is an honour to sit in circle and to witness the sharing that occurred. People generously gave their stories to this research report to help Public Safety improve policing relationships and it is a great honour and responsibility of the research team to carry these stories forward. The knowledge gathering events were inclusive and productive processes in which participants shared their general perspectives on policing relationships and their deeply personal experiences with police services in a variety of contexts.

Participants were identified by the project partners the Mi'kmaw Native Friendship Centre (MNFC) and Mi'kmaw Legal Support Network (MLSN) and with assistance from the Nova Scotia Native Women's Association. Participants included invited community members, family members of missing and murdered Mi'kmaw people, Elders, Indigenous services providers, band councils, police and enforcement officers, and members from Mi'kmaw organizations, such as the Nova Scotia Native Women's Association, Mi'kmaw Women's Leadership Network, Mi'kmaw Family Children Services, Seven Sparks Healing Path Program (offender reintegration), the Membertou Men's Society, the Enhanced Child Family Initiative, Paqtnekek Sexual

Violence Response Committee, Elizabeth Fry clients, and those working to address violence against women and girls.

Collectively the activities of this research design led to an overview of the history of policing, an up-to-date map of policing services and policies in place in Mi'kma'ki (Nova Scotia), an inventory of cultural safety training programs and an assessment of those programs, and narratives from approximately 150 Indigenous participants, the majority of whom are members of the Mi'kmaw nation, to help identify best practices and gaps, and to inform the development of tools and resources to address gaps in the delivery of culturally competent and safe police services. The research team is deeply grateful for the generosity and courage of each respondent.³

3. A Short History of Policing in Mi'kma'ki Nova Scotia, Canada

In order to understand the current landscape of policing policies and practices as experienced by Mi'kmaw and other Indigenous, Inuit, and Métis peoples in Nova Scotia it is critical to examine the global and local impacts of colonization, systemic discrimination and racism on Indigenous peoples.⁴ Indigenous policing, crime, victimization and incarceration have been well studied in the Royal Commission on the Donald Marshall Jr., Prosecution (1989), the Manitoba Justice Inquiry (1991) Royal Commission on Aboriginal Peoples (1996), the Truth and Reconciliation Commission (2015), the Thunder Bay Police Services Board Investigation (2018), the National Inquiry

³ The research team was comprised of L. Jane McMillan, PhD (lead investigator) four Mi'kmaw scholars, Kashya Young, B.A., Cheyla Rogers (student), Devann Sylvester B.A., B.Ed., Tammy Williams, B.A.. The team was assisted by Scott Lekas, Karen Pictou, Karen Bernard, Carlie Gloade, the Mi'kmaw Legal Support Network staff, the Mi'kmaw Native Friendship Society staff, and the Nova Scotia Native Women's Association.

⁴ Expert Panel on Policing in Indigenous Communities (2019) *Toward Peace, Harmony and Well-Being: Policing in Indigenous Communities* (Ottawa: Council of Canadian Academies): 14.

into Missing and Murdered Indigenous Women and Girls (2019), the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Quebec: listening, reconciliation and progress (2019), and the Expert Panel on Policing in Indigenous Communities' Peace, Harmony and Wellbeing (2019). These and many other inquiries indicate that in order for Indigenous peoples to experience justice, we cannot ignore the colonial legacy. For the purposes of this report, this section provides a historical overview of pre-colonial and colonial relations in Mi'kma'ki to better understand the context of over-policing and under-protection that the participants of this study reported experiencing.

Pre-Confederation Policing

Indigenous peoples have lived in Mi'kma'ki, the territory now known as the Atlantic provinces, including Nova Scotia, for more than 14000 according to the current archaeological evidence gathered at Debert. The first peoples developed a sacred connection to their territories and its resources. Through their connections to the land they generated highly complex and innovative societies that had laws, culture, religion and governance. Customs and values that governed behaviour and interactions, enabling people to live, work and flourish as nations, were integrated into every facet of community life. When problems occurred, mechanisms were available for managing disputes, for reintegrating wrongdoers back into family and community, and for restoring harmed relations. Responsibility for maintaining peace was communal; everyone had a role to play in finding a resolution and facilitating reconciliation, communal survival depended upon it. Talking it out was a key strategy; every person choosing to participate had a voice. Elders and leaders provided guidance through teachings highlighting respectful relations. Spiritual sanctions and purification rituals helped heal rifts between individuals, families, and communities.⁵

⁵ McMillan (2014) "Addressing Mi'kmaq Family Violence: Innovation, Resilience and

Prior to colonial domination Mi'kmaq peoples were well equipped and well adapted to their environment. In addition to their material culture and resource strategies, they had corresponding, culturally imbued ways of living with each other within their environments to ensure survival. Community cohesiveness and value sharing formed the basis for the translation of cultural teachings, through Mi'kmaq oral traditions. How to live right was first transmitted within Mi'kmaq families. Adults taught children rules and etiquette in the extended family household, which grandparents, and other members further reinforced. The central values, represented today as the "seven sacred teachings" reflect concepts of love, honesty, humility, respect, truth, patience and wisdom.⁶ Teachings included protocols for showing children respect for their elders and how behave toward each other and the how to honour the world around them. The Mi'kmaq had ideas about what had to be done to keep the world in balance, and how to treat each other justly. Social norms in Mi'kmaq culture existed without the sustaining force of courts, police, or other such expressions of authority.⁷

Peace and Friendship Treaties

Due to their geographic location, the Mi'kmaq have endured the longest period of colonization. Sustained contact with French and then English settlers started in the early 1600s. To quiet the disruption of settler incursion, the Mi'kmaq engaged in Peace and Friendship treaties with the British Crown in order to protect their sacred

Empowerment" in Menzies, Lavallée (eds.) *Journey to Healing: Working with Canada's Indigenous Peoples with Addictions and Mental Health Issues*. Toronto: Centre for Addiction and Mental Health (315-328).

⁶ See Murdena Marshall's Mi'kmaq Sacred Teachings describing the seven stages of life with the seven gifts.

⁷ See L. Jane McMillan (2018) *Truth and Conviction: Donald Marshall Jr. and the Mi'kmaq Quest for Justice* for more details on Mi'kmaq legal traditions and the impacts of colonization on those traditions.

connections to their territories and its resources. The agreements were to ensure Indigenous nations were able to carry on their social organization and livelihoods unmolested. Actively resisting the expropriation of their land and settler interference in their affairs, they signed a chain of treaties with the British between 1725 and 1779, and throughout the process they emphasized that they were the first inhabitants and rightful owners of the land.⁸ But the treaties altered long-standing Mi'kmaw dispute-management techniques. A clause in the 1726 treaty stated: "In case of any misunderstanding, Quarrel or Injury between the English and the Indians, no private Revenge shall be taken, but Application shall be made for redress according to his Majesty's Laws." The British assumed, when the Mi'kmaq signed treaties, that they would submit to a judicial process based on the British rule of law and punishment. To access justice, people would make complaints to the governor, the King's representative and responsible for mediating disputes with the Mi'kmaq. In 1749, Edward Cornwallis, the governor of Nova Scotia and a man known for his brutality, opened a commission that made him, along with a council and an assembly, the lawmaker of the colony. In 1752, when the Crown signed another treaty with the Mi'kmaq, it stipulated that all disputes between Mi'kmaw and British settlers would be tried in "His Majesty's Courts of Civil Judicature where the Indians shall have the same benefits, advantages and privileges as any other of His Majesty's subjects."⁹ The Mi'kmaq, however, continued to resist British domination and, perhaps wisely, avoided the British courts as Scalping

⁸ Joe B. Marshall and Jaime Battiste (2016), "Treaty Advocacy and Treaty Imperative Through Mi'kmaw Leadership: Remembering with Joe B. Marshall" *Living Treaties* (Sydney: Cape Breton University Press, (138-165).

⁹ "Treaty Texts – 1752 Peace and Friendship Treaty," Government of Canada, Indigenous and Northern Affairs Canada, <https://www.aadnc-aandc.gc.ca/eng/1100100029040/1100100029041>.

Proclamations offered that “a reward of ten Guineas be granted for every Indian Micmac (sic) taken or killed.”¹⁰

By the time Christianity and alcohol were widely available in Mi'kmaq society, the nation was in crisis due to dramatic population declines resulting from “endemic diseases brought on by dietary changes following sixteenth century contact and trade with Europeans.”¹¹ Diseases contracted from Europeans and starvation undoubtedly distorted cultural practices. Rapid population decline dissolved kinship networks, disrupted political succession, interrupted seasonal mobility and food procurement and security strategies. Social order mechanisms were disrupted because knowledge bearers died prematurely without their teachings being passed on to, and upheld by, the next generations. The laws of the Mi'kmaq were breaking down as the settler society imposed their rules and social orders largely through the criminalization of Indigenous ways of life.

In the past two centuries, many Indigenous communities experienced excessive surveillance through high contact rates with federal Indian agents acting as police, in their monitoring of everyday acts of living as part of the ‘Indian civilization’ program. Emerging from the *Royal Proclamation* of 1763, the tenets of the civilizing mission were to protect from settlers, improve life conditions, and assimilate Indigenous peoples. The *Royal Proclamation* of 1763, stated:

It is just and reasonable, and essential to our interest, and the security of our colonies, that the several Nations or Tribes of Indians with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as,

¹⁰ Daniel Paul (2006) *We Were Not the Savages* (Halifax: Nimbus): 115.

¹¹ Virginia P. Miller (1976) “Aboriginal Micmac Population: A Review of the Evidence.” In *Ethnohistory* 23/2 (Spring) (117-127) 117.

not having been ceded to our purchased by Us, are reserved to them or any of them as their Hunting Grounds.¹²ⁱ

Nearly a hundred years after the signing of the first Peace and Friendship treaty, Judge T.C. Haliburton noted in 1823, that Mi'kmaw have "a code of traditionary and customary laws among themselves."¹³ Only two cases that did go before the bench in the 1800s brought about a ban on the sale of liquor to Mi'kmaw and protected their right to hunt porpoise. The Mi'kmaq who turned to the British justice system to protect their lands or interests, however, found little support. Noting that squatters had violated all of the reserves in Nova Scotia except two, H.W. Crawley, an Indian commissioner in Cape Breton in 1849, reported:

Under present circumstances no adequate protection can be obtained for the Indian property. It would be in vain to seek a verdict from any jury in this Island against the trespassers on the reserves; nor perhaps would a member of the Bar be found willingly and effectually to advocate the cause of the Indians, inasmuch as he would thereby injure his own prospects, by damaging his popularity.¹⁴

Most British subjects thought Indigenous persons were incapable of giving evidence and swearing oaths in courts of law because they were not "civilized" and Christian. The Mi'kmaq were not allowed to swear oaths to their deities, and the courts made no allowances for their language or oral traditions. Mi'kmaw evidence, if translated at all, was generally reduced to a written English statement that could not be read to and verified by the witnesses. Mi'kmaq people were ordered to put their marks (signatures) on statements, regardless of the accuracy.

¹² Royal Proclamation 1763 <https://www.aadnc.aandc.gc.ca/eng/1370355181092/1370355203645#a6>

¹³ Sidney L. Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: Osgoode Society for Canadian Legal History, 1998), 178.

¹⁴ *Ibid.*, 181.

The Mi'kmaq were not passive, simply accepting the insufficiencies of the imposed legal system. On the contrary they resisted in a variety of ways, ranging from avoidance, to refusal to participate in legal cases, to active resistance using petitions and protest. For more than a century, the Mi'kmaq determinedly made petitions to Crown officials in England against British violation of the treaties, which the Mi'kmaq articulated as violations of sacred relationships. Petitions made in 1814, 1841, 1854, 1860 (and even in 1982) cited numerous infractions of human rights and instances of racial discrimination, theft of property, confiscation of land, and violations of persons. They also noted the extreme poverty and poor health in which the Mi'kmaq lived as a consequence of British colonization. The petitions largely went unanswered.¹⁵

Policing to Assimilate in the Era of Confederation

As settler populations expanded, Indigenous populations in Canada were supposed to disappear. The machine of colonization, the laws, policies and experiments were largely predicated on this assumption. Eager to quickly get rid of the “Indian problem”, that is to get Indigenous peoples to be trained to be like White settlers, an *Act to encourage the gradual civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians* was given royal assent in 1857. The act was intended to remove any legal distinctions between Indigenous peoples and other subjects of Her Majesty, facilitate the acquisition of property, and after a period of probation, to enfranchise those of “good moral character and free from debt...who shall no longer be deemed an Indian”.¹⁶ The act defined who was an “Indian” and thus diminished any community-based authority for determining membership in the eyes of the state and substantively

¹⁵ McMillan (2018) *Truth and Conviction: Donald Marshall Jr. and the Mi'kmaq Quest for Justice* (Vancouver: UBC Press).

¹⁶ An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians [June 10, 1857] s. 3.

began the erasure of Indigenous diversity. In 1859, the *Gradual Civilization Act* was amended to include further “protections”. A section was added, which prohibited the sale, barter, exchange or giving to any, “Indian, man, woman or child any kind of spirituous liquors in any manner or way”, unless under a doctor’s orders.

The *British North America Act* in 1867 included the provision that, “Indians and land reserved for the Indians” would be under the legislative authority of the federal Parliament of Canada in Section 91(24). This marked the institutionalization of a jurisdictional divide between federal and provincial responsibilities, launching numerous loopholes in which accountability and responsibility vanished. This jurisdictional approach did not factor in any necessity to honour the peace and friendship treaty obligations by the Crown and settler society and treaty exclusion significantly disempowered Mi’kmaw peoples’ rights and freedoms. Section 91(24) significantly impacted the evolution and delivery of police services to Indigenous peoples.

In 1869, Canada passed *An Act for the Gradual Enfranchisement of Indians* to impose a political structure that gave parliament the authority to remove decision-making abilities from Indigenous communities.¹⁷ Governors could remove elected leaders without the consent of the community. The influence of pre-colonial traditional governing bodies, like the Mi’kmaq grand council, of Indigenous nations across the country were consequently destabilized and delegitimized by settler society. The scope of the authority of those enforcing legislation, and maintaining order increased and policing services moved from colonial appointed constabularies, local folks who acted in civilian seasonal watchmen roles, toward institutionalized, uniformed and armed quasi-military forces designed to quash rebellions and riots and to guard the properties

¹⁷ An Act respecting Civilization and Enfranchisement of certain Indians. CAP IX p. 163 (1859) 13,14 V. c. 74, s.6.

of the state while patrolling the frontier. In western Canada, the North-West Mounted Police was created in 1873 as a paramilitary organization that served as “an extension of state authority onto a sparse civilian or Indigenous population.”

In 1876, the Department of the Interior of Canada consolidated laws related to Indians and expanded their compass by codifying Eurocentric and racialized attitudes of patrilineal descent and land-based economies focused on agriculture in the first *Indian Act*. In the definition of terms under Section 12, “the term “person” means an individual other than an Indian, unless the context clearly requires another construction”.¹⁸ Under this legislation the government determined who was an Indian and which Indians could become citizens. Any Indian woman marrying any other than an Indian or a non-treaty Indian ceased to be an Indian.¹⁹

Law was the cutting edge of colonization, a rapidly imposed system of administration to promote assimilation affected every facet of the lives of Indigenous peoples and resulted in the disruption of cultural fabrics woven over thousands of years. Often framed as a benevolent administration of Indigenous peoples, the policies legislated discrimination from pre-confederation to its consolidation in the *Indian Act* 1876 and onward. In the early 1880s, several Acts to amend the first *Indian Act*, by the newly named Department of Indian Affairs, were given royal assent. These amendments added to the list of regulatory powers of the Governor in Council and included the ability to control Indigenous produce such as grain, root crops or other products.²⁰ Indian agents could prohibit the sale of and allow seizure of Indigenous

¹⁸ Section 12 *An Act to amend and consolidate the laws respecting Indians* [April 12, 1876].

¹⁹ Section 3.1 c. 1876.

²⁰ A further statutory amendment was enacted in 1941 in *An Act to Amend the Indian Act*, S.C. 1940-1941, c.19, that restricted the sale of wild animals and furs. The agricultural products provision initially focused on western “Indians” was broadened in the 1951 amendments to make all transactions void unless approved by the Superintendent in writing.

produce and impose penalties for its purchase. Every Indian Commissioner, Assistant Indian Commissioner, Indian Superintendent, Indian Inspector or Indian Agents were formally declared as ex officio Justices of the Peace.²¹

To further containment, a new section was added to the *Act* that affected Indigenous mobility and use of their traditional territories by regulating land use through the issuance of licenses given by the Superintendent General to band members. It became illegal for Indigenous peoples to hunt or live near their hunting grounds unless they were members of the local band and had received a license. The Superintendent General or any literate person he deputized had “the same powers as in the execution of criminal process” and could remove the party and extract any expenses for the removal from them.²² This legislation led to the criminalization of Indigenous livelihoods and created the foundations of poverty and food insecurity present today.

In 1884, *An Act for conferring certain privileges on the more advanced Bands of the Indians of Canada, with the view of training them for the exercise of municipal powers* was given assent on April 19th. This was known as the *Indian Advancement Act* and set out in greater detail the elections and business structures of band councils. The councils were able to make certain by-laws, rules and regulations, which if approved and confirmed by the Superintendent General had force as law on reserve and any people living on reserve. The scope of by-laws included the religious denomination of the schools, health care, peace and order at assemblies, appointment of constables, repression of intemperance and profligacy, division of property and common use lands, maintenance

²¹ Article 12. Chap. 17. An Act to amend “The Indian Act, 1880.” <https://www.aadnc-aandc.gc.ca/eng/1100100010280/110010001028>

²² New section 23. Chap. 17. An Act to amend “The Indian Act, 1880.” <https://www.aadnc-aandc.gc.ca/eng/1100100010280/1100100010282>

of buildings, roads, water, woods and taxes. Any fines collected for by-law infractions were paid to the Indian agent, who acted also as treasurer, for the use of the band.

Additional amendments to the *Act* were designed to further repress Indigenous cultures by making the exercise of Indigenous legal traditions, such as those embedded in ceremonies, a criminal offence. Section 3 of *An Act to Further Amend the Indian Act, 1880* reads:

Every Indian or other person who engages in or assists in celebrating the Indian festival known as the “Potlatch” or in the Indian dance... is guilty of a misdemeanor, and shall be liable to imprisonment...and any Indian or other person who encourages, directly or indirectly, an Indian or Indians to get up such a festival or dance, or to celebrate the same, or who shall insist in the celebration of the same is guilty of a like offence, and shall be liable to the same punishment.²³

The criminalization of Indigenous spirituality and healing ceremonies, combined with the effects of residential schools and other assimilation policies that undermined livelihoods, profoundly and negatively impacted Indigenous legal traditions and intergenerational cultural wellbeing.²⁴

As the Government of Canada proceeded with the settling of the country amendments were added to facilitate the removal of Indigenous peoples if it was perceived they were in the way of development of towns, roads and railways. The

²³ S.C. 1884, c. 27. Wendy Moss, Elaine Gardner-O’Toole, Law and Government Division assembled the history of federal and provincial law applicable to aboriginal peoples in “Aboriginal People: History of Discriminatory Laws” 1987 (BP-175E) Ottawa: Publications Law and Government Division. See also Chief Joe Mathias and Gary R. Yabsley “Conspiracy of Legislation: The Suppression of Indian Rights in Canada” in *BC Studies*, no. 89, Spring 1991.

²⁴ Monchalin, Lisa. 2016. *The Colonial Problem: An Indigenous Perspective on Crime and Injustice in Canada*. Toronto: University of Toronto Press.

forced relocation of the Mi'kmaq occurred in many places throughout Nova Scotia including King's Road in Sydney as ordered by the court in 1916, and areas of Halifax. Police carried out these relocations.

In the early 1900s Indian Agents provided annual reports that variously commented on the condition of the reserve, vital statistics, health, occupations, education, religion, characteristics and progress and temperance of morality. From the Indian agents in Mi'kmaq country, general remarks included statements such as "intemperance is held in check by the better meaning ones assisted by the fear of exposure by law."²⁵ The law and its enforcers were not seen as allies of the Mi'kmaw, they were the enemy. The Nova Scotia Police, the provincial police body for the province, dissolved in 1932 when it was replaced by "H" Division of the Royal Canadian Mounted Police.²⁶

Consider for a moment the violence, the assault on identity that occurred through the criminalization of livelihoods, belief systems and kinship networks. Laws were imposed by outsiders that restricted mobility, inverted gender roles, diminished food security, interrupted cultural safety, outlawed ceremony, eroded knowledge systems, erased life and liberty and tore families apart. Indigenous peoples were being systematically erased from society, their presence denied, the extraordinary diversity, resilience and richness of their cultures muted and exoticized in the place of Canadian history and in the education of generations to come.

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

²⁵ Chas E. McManus, Indian Agent, Nova Scotia, Micmacs of Hants County, Shubenacadie, October 8, 1904. <http://central.bac-lac.gc.ca/.item/?id=1904-IAAR-RAAI&op=pdf&app=indianaffairs>

²⁶ Greg Marquis (1990) "The History of Policing in the Maritime Provinces: Themes and Prospects" *Urban History Review* 19(2):84-89. The NWMP merged with the Dominion Police and in 1920 was renamed the Royal Canadian Mounted Police.

deflated Indigenous expressions of sovereignty and denied their human rights.

Residential schools served as the primary settler apparatus for Indigenous child welfare in Canada.²⁷ In Nova Scotia, the Indian Residential School (IRS) at Shubenacadie opened under Deputy Minister of Indian Affairs Duncan Campbell Scott in 1929.²⁸ Scott held the position that there was an “Indian problem” and the only way to eradicate that problem was through aggressive assimilation. The schools are now recognized to be institutes of cultural genocide where physical abuse, torture, sexual violence and starvation were common. Framed as benevolent establishments of settler society, the schools worked to destroy kinship networks, interrupt transmission of Indigenous knowledge and shame cultural practices through vigorous religious proselytism. An *Indian Act* amendment in 1920 made attendance at state sponsored schools (day, residential, institutional) mandatory for those between 7 and 15 years.²⁹ More than 2000 Mi’kmaq children attended residential school by the time it closed in 1968.³⁰ Approximately 750 direct survivors and thousands of descendants are alive today. A 1951 amendment to the *Indian Act* Section 88 made it possible to enforce provincial child welfare legislation on reserve, resulting in a sharp national increase of Indigenous children in care and marking the beginning of what is known today as “the sixties scoop”.³¹

Reservations, residential schools and the “sixties scoop” created to hasten assimilation, destroyed Indigenous families, cultural practices and languages and

²⁷ John Milloy (2017) *A National Crime: The Canadian Government and the Residential School System* (Winnipeg: University of Manitoba Press).

²⁸ Chris Benjamin (2014) *Indian School Road: Legacies of the Shubenacadie Residential School* (Halifax: Nimbus).

²⁹ Act to amend the *Indian act*, 1920 A10

³⁰ Benjamin 2014, 29.

³¹ MacDonald, N. & MacDonald, J. (2007). Reflections of a Mi’kmaq social worker on a quarter of a century work in First Nations child welfare. *First Peoples Child & Family Review* 3 (1) (pp.34-45).

constituted the most heinous actions ever perpetrated in Canadian history.³² Further consequences of colonization have variously disrupted gender and generational roles and women have become targets of violence, intimidation and neglect, even in communities where they once held considerable power.³³ Police forces in Canada were key agents executing these assimilation policies for the government by rounding up students to deliver to residential school, hunting and capturing those that escaped, serving as truant officers for day schools, and participating in child apprehensions for social services.³⁴ Contributors to this project recall traumatic witnessing of police actions that violently separated families and interfered with their livelihoods.³⁵

In the 1940s, Canada began experimenting with the concept of centralization, another assimilation process that was to have profound and lasting impacts on Mi'kmaw families throughout Nova Scotia. The federal government decided to centralize nineteen existing Mi'kmaw communities into two locations (Eskasoni and

³² Castellano, M., Archibald, L. & DeGagne, M. (2008) *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*. Ottawa: Aboriginal Healing Foundation.

³³ MacDonald & MacDonald, 2007.

³⁴ RCMP Commissioner Zaccardelli apologized to Indigenous Peoples for the RCMP's involvement in the IRS system, May 2004 <http://www.rcmp-grc.gc.ca/aboriginal-autochtone/apo-reg-eng.htm>

³⁵ In 2011, the Truth and Reconciliation Commission hosted the Atlantic National Event in Halifax. At that gathering the RCMP released its report *The Role of the Royal Canadian Mounted Police During the Indian Residential School System* (Ottawa: Royal Canadian Mounted Police) detailing its involvement in the residential school system to mixed reactions from the Mi'kmaw community and from residential school survivors in particular who were offended by comments such as "The RCMP also provided a social presence beyond the scope of their policing duties, actions that are sometimes expected from police officers, but rarely applauded in a public forum or in the literature on the Indian Residential School system" (LeBeuf 2011:172).

Sipenkne'katik). The rationale was administrative efficiency, cost savings and better monitoring and supervision partly motivated by a persistent belief that decades of government relief spending had been wasted and assimilation needed more efficient policing. Government reports advocated for amalgamation of reserves in central locations, a process that could be paid for by "the sale and disposal of all present reserves which are not suitable for settlement, or which are not occupied by Mi'kmaq". In order to persuade families to move, Indian agents, threatened them with jail, fines, child apprehension, burning their churches, and tearing down their homes. They were promised new homes, schools, churches and jobs if they left. These promises we never realized. Kinship reckoning became distorted, overcrowding caused health and social problems, fear and mistrust of police increased, as did incarceration rates.

In the past, federal and provincial governments provided policing to First Nations without the involvement of Indigenous peoples. The historical narratives recounting the relationships between Indigenous peoples and policing services detail cultural, political, geographic, social, economic and legal challenges framed by colonialism and its consequences, namely systemic discrimination, racism, the enforcement of assimilation policies and the production of devastating inequality. In the decades following confederation, Canada viewed policing in First Nations communities as its exclusive responsibility as aligned with Section 91(24).³⁶ In the last 50 plus years a shift in Canada's position holds policing on reserve as a joint responsibility with the provinces.³⁷ The cost off-loading of federal responsibility to

³⁶ See for example, Chapter 2, "Policing Indigenous Peoples: History and the Colonial Legacy" in Expert Panel on Indigenous Communities, *Toward Peace, Harmony, and Well-Being: Policing in Indigenous Communities* (Ottawa, Ontario: Canadian Council of Academies, April 2019).

³⁷ Don Clairmont, *Aboriginal Policing in Canada: An Overview of Developments in First Nations Communities (Commissioned by the Ipperwash Inquiry)*. Toronto (ON): Government of Ontario.

provide services and protections to Indigenous peoples onto provinces and municipalities was, and remains, a source of conflict. Jurisdictional confusion often resulted in uneven, inefficient, inconsistent and under resourced policing on and off reserve and it was the community members who suffered.

Band Constables

Prior to 1950 the RCMP provided policing services to all Indigenous and Inuit peoples. In the late 1960s, the RCMP announced its withdrawal from policing First Nations communities in Ontario and Quebec as band councils began managing their own affairs. Circular 34, published April 28, 1969 and later refined by Circular 55 outlined the band constable program under Indian and Northern Affairs Canada (INAC). Under this program bands were permitted to hire their own First Nation constables, funded by INAC, and usually directed by the band council with guidance from the RCMP or other provincial police services. Often working closely with a band's chief and council, the special constables, were not restricted to policing band by-laws and could supplement, but not replace, senior police in the local area. Option 3b, Scout Venture and summer student initiatives were designed to increase the number of Indigenous peoples in police service. In many instances the band constable was considered a lesser rank than their non-Indigenous colleagues.

In Mi'kma'ki several bands appointed a constable and some communities shared a constable. Such appointments were given to trusted men who had good reputations within the communities, spoke the language and were willing to act as taxi driver or help people obtain groceries, counsel those grieving, give intoxicated people a safe ride home, and skilled at mediating disputes. In some communities, it was difficult to keep the band constable position filled. Communities were frequently without any local police service when appointment contracts expired and there were often delays in getting new agreements signed. The constables were often tasked with the unpopular

job of dog control. People began to complain that crimes within communities are not being fully investigated.³⁸

Despite the presence of band constables, community members were increasingly having interactions with city police or RCMP through the enforcement of *Indian Act* prohibitions and other social control practices such as curfew laws which fined parents whose children were taken home by police if they were “caught” outside beyond 7:30 pm Monday to Friday.³⁹ The police conducted what the locals called ‘round-ups’ on the reserve where they picked up adults with unpaid fines, most frequently resulting from charges of public intoxication, and took them to the county jail. Mi’kmaw youth sometimes made a game of tormenting the police, often resulting in chases. There was an expectation of violence on being caught. When there was trouble between settlers and Mi’kmaw it was the Mi’kmaw person who got the blame. The settlers were sent home; the Mi’kmaw were sent to jail.

Mi’kmaw people did not experience equal representation in Nova Scotia’s economy, polity or education system. Instead, relations were marked by long-term marginalization and isolation, prejudice and discrimination – all symptoms of colonial mindsets that characterized the Mi’kmaw as a dangerous, lawless underclass. For example, Membertou and Sydney communities were physically segregated, culturally and socially alienated.⁴⁰ Once the laws prohibiting Indigenous peoples from purchasing liquor were repealed in the 1960s and around the same time they got the right to vote - and curfews were lifted, Mi’kmaw began frequenting the city bars and attending local dances. Still, socialization across social and racial boundaries was relatively rare.

³⁸ Micmac News “Constable Appointed” Volume 1, No. 9, August 1971: 6.

³⁹ Micmac New “Curfew Laws” Volume 2, No.6-7, September 1966.

⁴⁰ A study undertaken as part of the Marshall Inquiry found that black persons were also effectively excluded from participation in the mainstream Nova Scotia society. Wilson Head and Don Clairmont, *Discrimination Against Blacks in Nova Scotia*. (Nova Scotia: The Royal Commission on the Donald Marshall, Jr., Prosecution Volume 4).

Donald Marshall Junior and the Sydney Police

In April of 1971, Indian Affairs Minister Jean Chrétien flew to Sydney, Nova Scotia to oversee an agreement between the City of Sydney and the Department of Indian Affairs and to meet with the Chiefs and Councils of the Union of Nova Scotia Indians. Under the agreement, the city was to provide the services of police and fire protection, streets, sewers, lighting and all other municipal services to Membertou reserve. The federal government would pay the costs for the services. It was one of the first such agreements in the country. It was this policing service that led to Donald Marshall's wrongful prosecution and life sentence for a murder he did not commit

Donald Marshall was a 17 year old Mi'kmaq boy from Membertou when he was charged for the murder of Sandy Seale, a 17 year old black youth from Sydney Pier. Donald and Sandy ran into each other in Wentworth Park, Sydney, on the night of May 28, 1971. A short time later they encountered two men, a confrontation ensued, both boys were stabbed by Roy Ebsary. Sandy Seale's wounds were fatal.

Both boys were from good families. Donald's mother was a very hard worker who cleaned at St. Rita's hospital and in the homes of Sydney's wealthy. She was an expert basket maker, a devout Catholic, a centralization survivor and worked tirelessly raising her 13 children. Donald was the eldest son of the Grand Chief of the Mi'kmaw nation Donald Marshall Sr. The Grand Chief is a highly respected and important position. His father travelled all over the Maritimes. He owned a successful dry-wall business, bowled in the town leagues, he was well regarded by the Knights of Columbus. Normally the position of Grand Chief is hereditary and the ideal candidate is considered to be the eldest son of the chief. But this was a position that Donald Jr. could not fulfill because his wrongful incarceration denied him the opportunity to carry forward the customary honour.

Donald was a typical kid. He played ball, chased girls and got into mischief, did not like school so much. He spoke fluent Mi'kmaw, he had a job – he also liked drinking

and fighting. The police in Sydney were hostile to Donald and his pals. Several recounted the times they would be chased back home by the cops who were not so keen to come onto the reserve to do police work but were interested in keeping the Mi'kmaw kids out of town.

When settler kids got into it with the reserve kids – it was more likely the Membertou boys who got tossed in jail overnight and the white kids got sent home. Things were tense. There was no community policing by the city force or the RCMP. The police instilled fear – they were the ones who picked people up and took them away – to residential school, to jail, for small things – like fine payments – or they tore families apart in child apprehension cases. The police did not understand the language or the cultural practices and they did not make any effort to do so. They did not come in for tea or to celebrate community events – they prowled about on the outskirts of the reserve, menacingly.

During the eleven years Donald Marshall was imprisoned for a crime he did not commit, policing relations and perceptions of police services in Mi'kma'ki did not improve. Membertou still had a contract with the City of Sydney for police and fire protection, but the band council complained regularly to Indian Affairs that the municipal police services were inadequate and that they were not meeting their obligations.⁴¹ In a similar contract, Truro town police service was extended to Millbrook First Nation in 1973 return for reimbursement for the estimated costs of the services.⁴²

There was a rising rights consciousness among Indigenous peoples across the country and in the aftermath of collective resistance to the White Paper of 1969 many tribal associations formed in the 1970s. Indigenous peoples across Canada were organizing demonstrations to remind settlers of the need to recognize Indigenous rights

⁴¹ Micmac News, "Membertou and City to Review Agreement" Volume 2, No. 10, October 1972: 6.

⁴² In 1995 Millbrook entered into a CTA with the RCMP.

and honour Indigenous lands. Policing and justice matters were a high priority. Mi'kmaw people wanted better protection and were speaking out against inequality, homelessness, welfare dependency, lack of access to education and health care, and the discrimination they experienced by Children's Aid and the police.

Racism and discrimination persisted however, and on and off-reserve members were reluctant to report crimes or cooperate with any outside enforcement agencies. The Micmac Nation news, a monthly paper, began publishing legal information articles about what to do when approached by police and knowing your rights during searches and arrests.⁴³ The paper also reported on numerous shootings of Indigenous people by police across the country.⁴⁴ Headlines such as "Poor Policing in Membertou" or "Discrimination???" were common in the Micmac news because communities felt that requests for investigations were ignored and when they did go to court they were treated more harshly, their evidence was used against them, they received longer sentences or greater fines, than non-Indigenous peoples for the same offenses.⁴⁵

The special constable program continued on reserve throughout Nova Scotia in the 1970s, but it was wildly under resourced. Officers had to use their own cars, they had no office space, no desks, and they were unarmed. Several news reports tell of the assaults suffered by the unarmed special constables.

With band constables, unable to meet community expectations, mistrust of the RCMP was simultaneously expressed through avoidance, a lack of reporting and non-cooperation during investigations, or through direct confrontation as well as in

⁴³ Micmac News "The Police and You" Volume 1, No.7, June 1971: 5.

⁴⁴ See for example Micmac News Volume 1, No. 10, September 1971 which includes stories about the shooting deaths of John Toney, and Chief Ed Bird and the use of excessive force of security guards on Indigenous teenagers.

⁴⁵ Micmac News, "Discrimination???" Volume 2, No. 4, April 1972: 2.

vandalism and graffiti.⁴⁶ The RCMP and municipal police services responded to the conflicts and dissatisfaction by trying to indigenize their forces. Efforts to improve recruitment of Indigenous members resulted in several special constables being sent for advanced training at the Maritime Police College in Prince Edward Island and at Depot in Regina. The RCMP began to attend youth camps to try to build positive relationships amongst young people and to encourage them to see their future as officers of the law.

In addition to centuries of colonial domination and discriminatory treatment, Donald Marshall's wrongful conviction significantly impacted Mi'kmaw perceptions of all police services. Donald Marshall's exoneration was Canada's first acknowledgement of a factually wrongful conviction for murder. The terrible ease with which this tragic miscarriage occurred and, in particular, the role of racism in its prosecution, has since resonated through the criminal justice system.

4. Contextualizing the current policing landscape: From the Marshall Inquiry to the Present

Donald Marshall Jr.'s wrongful prosecution was due in large part to the fact that he was Indigenous and as such he was a target of police tunnel vision and systemic bias throughout the Canadian justice system. Many factors contributed to Marshall's wrongful conviction: police tunnel vision, language barriers, lawyer incompetency, false testimony, witness bullying, failure to disclose evidence, judicial errors as well as systemic bias. He was not tried by a jury of his peers. He was denied a fair trial. His appeal in 1983 was tainted by the same racism that infected his prosecution.⁴⁷

⁴⁶ Micmac News "Eskasoni School Damage Geared Toward Police" Volume 2, No.1 January, 1972: 3.

⁴⁷ For a detailed analysis of Donald Marshall's wrongful conviction and subsequent Inquiry see McMillan (2018) *Truth and Conviction: Donald Marshall Jr. and the Mi'kmaw Quest for Justice* (Vancouver: UBC Press).

Donald Marshall steadfastly maintained his innocence for the eleven years he was incarcerated, but was trapped in a system that would not release him unless he admitted guilt and showed remorse. How do you do express remorse for a murder you did not commit? In his fight for freedom, Marshall encountered obstacle after obstacle, compounding the outrageous miscarriages of justice. His highly publicized wrongful conviction resulted in a Royal Commission Inquiry to find out what went wrong. It identified Donald Marshall's Indigeneity - the fact that he was Mi'kmaw - as a root cause in his wrongful prosecution.

The criminal justice system failed Donald Marshall, Jr. at virtually every turn, from his arrest and wrongful conviction for murder in 1971 up to and even beyond his acquittal by the Court of Appeal in 1983. The tragedy of the failure is compounded by evidence that this miscarriage of justice could – and should – have been prevented, or at least corrected quickly, if those involved in the system had carried out their duties in a professional and/or competent manner. That they did not is due in part at least to the fact that Donald Marshall, Jr. is a native.⁴⁸

The Marshall Inquiry found fault at trial with the Crown prosecutor, defense counsel and the trial judge. The Crown failed to disclose inconsistent statements of its witnesses. The defense did not provide adequate professional representation, did not conduct any independent investigation, ignored evidence and did not seek disclosure. The trial judge denied Donald Marshall a fair trial through the cumulative effect of incorrect rulings, and a misinterpretation of the *Canada Evidence Act* cost him an acquittal. The Court of Appeal, defense and Crown counsel all committed errors when

⁴⁸ Royal Commission on the Donald Marshall, Jr. Prosecution. Digest of Findings and Recommendations (1989). Chair Chief Justice Hickman and Commissioners Associate Chief Justice Poitras and the Honourable Mr. Gregory Evans. Halifax: Province of Nova Scotia.

Mr. Marshall appealed his conviction and the Commission found a serious breach of the standard of professional conduct expected.

During a reinvestigation of the case in 1982, a reference under the *Criminal Code* was made to the Court of Appeal, which blamed Mr. Marshall for his wrongful conviction in its attempts to vindicate the justice system from any evocation of failure by suggesting, "Any miscarriage of justice is, however, more apparent than real." Such gratuitous comments by the Court, "created difficulties for Marshall both in terms of his negotiation of compensation and public acceptance of his acquittal."⁴⁹ The Commission also found that the Attorney General, the RCMP and the Sydney Police all failed Donald Marshall.

Marshall Inquiry Recommendations

The Royal Commission provided 82 recommendations to correct systemic faults in the administration of justice.⁵⁰ Many of the recommendations dealing with the administration of justice and policing were taken seriously at the time. In 1987, the office of the Solicitor General was reestablished as a department of the government responsible for policing and corrections, separating these services from the Attorney General's office. The Solicitor General's office was charged with implementing the recommendations relevant to the Administration of Criminal Justice and in particular the recommendations concerning Police and Policing (recommendations 46-82). The former director of the office of the Solicitor General recalls working hard to "tick off all

⁴⁹ Bruce Wildsmith (2009). *Reflections: 20 Years after the Marshall Inquiry*. The Society Record. Volume 27 (4).

⁵⁰ Clairmont and McMillan 2006 Directions in Mi'kmaq Justice: Notes on the Assessment of the Mi'kmaq Legal Support Network. Atlantic Criminology Institute (140 pages).
Sociologyandsocialanthropology.dal.ca/Files/DIRECTIONS_IN_MI'KMAQ_JUSTICE_-_2006_Complete_Report.doc

of the boxes” of the Marshall recommendations to improve systemic problems in police and correctional services. In 1990, the *Public Prosecutions Act* c.21, s.1 established an independent Director of Public Prosecutions and the public prosecution service. Attempts to sustain the independence of those laying the charges and those prosecuting them have varied in their efficacy. In 1993, the Department of the Solicitor General was abolished and its functions were resumed by the Department of Justice.

Marshall’s wrongful conviction epitomized systemic discrimination and racism experienced by Indigenous peoples during the 20th and now 21st centuries. Colonial processes and policies have disrupted and interfered with Indigenous traditional laws for hundreds of years. The release of the Royal Commission on the Donald Marshall, Jr., Prosecution in 1989, was an empowering turning point for the Mi’kmaw to regain authority over all aspects of their lives, to counter colonization, and to govern themselves. The Marshall Inquiry reports made real the racism many Mi’kmaw experienced in the Canadian justice system.

The Marshall Inquiry recommendations, along with other inquiry reports across the country (for example Aboriginal Justice Inquiry 1991, Royal Commission on Aboriginal Peoples 1996), confirmed the fact that Mi’kmaw and all other Indigenous nations, have distinct cultural understandings and ways of being that require alternative sets of institutions to accommodate and sustain those realities. Mi’kmaw political organizations utilized the report, with varying success, as a powerful negotiating tool to bring about social change in their communities. The eighty-two recommendations gave the Mi’kmaw tangible ways to frame their demands for the right to control their own justice processes.

Monitoring the implementation of the recommendations provided a means by which the Mi’kmaw could measure their legal entitlements against those that had been removed from them through colonial and contemporary discriminatory legislation and practices. The momentum for nation rebuilding, and the breaking of colonial attitudes,

had solid foundations in the public consciousness, legal and otherwise, as a result of the Marshall Inquiry. It was clear everyone wanted significant changes to the adversarial justice system and the majority wanted community based programs to better reflect their unique circumstances, values and life experiences. Most importantly all Mi'kmaw parties wanted to be directly involved in the consultations surrounding program and policy development. They were taking a stand against the unilateral imposition of guidelines by provincial and federal agencies.

Volume two of the seven volume report of the Royal Commission on the Donald Marshall, Jr., Prosecution was titled Public Policing in Nova Scotia, an extensive study by Richard Apostle and Philip Stenning. They examined the organization of policing, issues of control and accountability with regards to policing and the role of the provincial government, the role of municipal agencies, public complaints against the police, recruitment, training, serious crime investigations and police / minority relations and came up with fifty recommendations which informed the commissioners' final report.⁵¹ Of the 82 recommendations of the Marshall Inquiry many are directed at police. Police training with content on police/minority concerns and sensitivity at intake and as continuing education was emphasized throughout. Clarification of police roles in investigations and in the laying of charges were to be articulated in Crown prosecutor manuals and clear policies for each force regarding resolving disagreements over laying of charges, confidentiality of investigations, and a "system of post-charge screening to ensure that no charges which are not strictly necessary in accordance with the evidence and the public interest shall go forward."⁵² Recommendation #42 police duty to disclose aligned with the Attorney General's directive on disclosure and

⁵¹ Apostle and Stenning (1989) Public Policing in Nova Scotia, *The Royal Commission on the Donald Marshall Jr., Prosecution* (Halifax: Province of Nova Scotia).

⁵² Hickman, Poitras, Evans (1989) Digest of Findings and Recommendations, *The Royal Commission on the Donald Marshall Jr., Prosecution* (Halifax: Province of Nova Scotia): 32.

required compliance with its principles in relations between police and prosecutors and that continuing police training include information on the necessity of compliance with disclosure policy.⁵³ Under the heading "Police and Policing" were thirty-seven recommendations dealing with police commissions policies, structures, independence, assessments and scope of activities, issues of resources and funding, liaisons with police boards, and several dedicated to training, standards, investigative procedures, cultural sensitivity, and a number dealing with recruitment and promotion of Indigenous members.

Prior to Marshall's wrongful conviction there were no restorative justice processes, no Mi'kmaq lawyers or legal professionals, very few Mi'kmaq police officers and certainly no Indigenous justice programs authorized or recognized by the federal or provincial governments. Courts did not sit in Mi'kmaq communities and policing was fraught with racism, over-surveillance and the criminalization of Mi'kmaq livelihoods.⁵⁴ Things needed to change.

Two main threads emerged in the Mi'kmaq discourses post Marshall Inquiry, one was a rights discourse that entailed treaty, constitutional and human rights arguments for self-determination and thus the right to control their own justice system. The other thread entailed the cultural necessity to control a separate justice system that could meaningfully manage disputes in Mi'kmaq country by relying concepts of collaborative and restorative justice. The Mi'kmaq also welcomed any efforts to indigenize the system but cautioned, "An indigenization of the present system will only serve to improve the administration of a non-Mi'kmaq form of justice, law enforcement and incarceration upon the Mi'kmaq".⁵⁵ This approach was not seen as a solution by the

⁵³ Ibid. 35.

⁵⁴ See Clairmont (1999) and Christie (2007) for excellent discussions of police – Indigenous relations.

⁵⁵ Union of Nova Scotia Indians Reponse to the Marshall Inquiry 1990:2-3.

Mi'kmaq political leadership, they wanted to define and operationalize Mi'kmaq justice on their own terms.

It is an understatement to suggest that there were serious problems when Mi'kmaq encountered Canadian government police services. The Marshall Inquiry highlighted critical concerns throughout the policing of Indigenous communities in Nova Scotia. Systemic discrimination, racism, criminal stereotyping, cultural incompetency and a lack of Indigenous police members were a few of the issues identified.⁵⁶

Following the Marshall Inquiry, the Union of Nova Scotia Indians, now called the Union of Nova Scotia Mi'kmaw asked Professor Don Clairmont of the Atlantic Institute of Criminology to study the views and experiences of Mi'kmaq with the court and policing systems to guide policy and program implementation to meet the needs articulated by Mi'kmaq communities. The objectives were to determine the policing requirements for on and off reserve Mi'kmaq and a needs assessment for a court worker program and its attendant roles and functions. Clairmont's analysis of the policing survey results found:

[A] need for profound change especially in policing style, cultural sensitivity, indigenization and direction of the policing effort, there appear to be three main obstacles to their accommodation by policing authorities. Police sometimes mistake friendliness and approachability for substantial community involvement; natives often acknowledged the former while strongly demanding the latter. Secondly the minor nature and modest levels of native offences may

⁵⁶ Richard Apostle and Philip Stenning, *Public Policing in Nova Scotia: A Research Study*, Volume 2 *The Royal Commission on the Donald Marshall Jr., Prosecution* (Halifax: Canadian Cataloguing in Publication Data, 1989), viii-ix. As noted in the *Public Policing in Nova Scotia* volume of the Royal Commission's reports, negative attitudes framed police/visible minority relations. Another major issue was the desperate need for police officers from minority groups.

suggest to police that there is no problem but native expectations of the policing role go well beyond these surface matters. Thirdly, policing authorities appear committed ideologically to a universalistic policing mode whereas many native people emphasize their distinctiveness and special needs and situations. These three obstacles appear especially prominent among MPD⁵⁷ [municipal police departments such as Membertou and Millbrook] where, despite the Marshall Inquiry's recommendations, no major effort appears to have been directed at systematic community problem-solving with native people, cultural sensitivity training, recruitment of native people or understanding special native rights. Among the RCMP while much more has been acknowledged at an official level and an agenda has been established for implementation, there is still a major problem of effecting the proposed changes at the operational level. Finally, it was noted that native self-government issues have added a new dimension to the agenda for policing which goes beyond the adequacy of the service provided.⁵⁸

Policing literature has underlined the simultaneous under and over policing and the appropriateness of a community-based policing philosophy with its emphasis on problem-solving and police / community collaboration in setting policing priorities.

Clairmont's study clearly indicated a need to address policing by making

⁵⁷ There are three different types of policing in Nova Scotia which are location dependent. RCMP police all reserves except for Millbrook and Membertou which are reserves within city boundaries and are policed by Municipal departments [MPD]. At the time of Clairmont's study in 1992 Eskasoni and Chapel Island, two Cape Breton rural reserves, had band constable systems (BCS) - which are now defunct. Both municipal and RCMP forces have undergone significant transitions in the last decade. With the demise of the Unama'ki Tribal Police Service, which served the five Cape Breton bands for approximately five years until 2001, Sydney town police and the RCMP were asked to submit bids to Membertou band for policing service.

⁵⁸ Don Clairmont (1992) *Native Justice in Nova Scotia* – Volume 1 – Executive Summary of a Report Submitted to the Tripartite Forum on Nova Scotia (Truro: Tripartite Forum): 12.

fourteen police oriented recommendations with a strong emphasis on the development of a community-based policing arrangement among those forces serving native communities. In addition to cultural sensitivity training, improved police professionalism, and recruitment of Aboriginal officers, especially female officers, Clairmont urged the 37 recommendations directed at policing in the Marshall Inquiry be implemented as soon as possible. It was also suggested that satellite RCMP offices on reserves be established to help facilitate community-based initiatives.⁵⁹ To address training needs, the short-lived Community Legal Issues Facilitators (CLIF) Demonstration Project performed cultural sensitivity training for three years in Nova Scotia, and certain agencies, such as the Halifax Police Department made efforts to provide training to their officers. However, CLIF, at the time, felt that sensitivity training alone does not adequately prepare officers for dealing with cultural differences.⁶⁰ CLIF programming was then absorbed into the Mi'kmaq Justice Institute (MJI) which was to take over the court worker program and develop Mi'kmaw law, acting as an administrative umbrella for all programs associated with Indigenous justice.

MJI was intended to take on all court services, translation services, the creation of the customary law program, Band by-law development, wills and estates, treaty rights, legal education and training for all of these programs, plus community outreach and

⁵⁹ Ibid. 37-38.

⁶⁰ Turpel, Mary Ellen (1992) Reflections on Thinking Concretely about Criminal Justice Reform. In Continuing Poundmaker and Riel's Quest: Presentations made at a Conference on Aboriginal Peoples and Justice. Richard Goose, James Youngblood Henderson and Roger Carter, eds. Pp. 206-211. Saskatoon: Purich Publishing. See also: Aboriginal and Diversity Policing: http://www.rcmp-grc.gc.ca/ns/prog_services/community-policing-police-communautaire/adps-spai/index-eng.htm and Carlson, Ray (1996) Final Evaluation Report of the Community Legal Issues Facilitators Demonstration Project. Mi'kmaq/Nova Scotia/Canada Tripartite Forum. Truro: Tripartite Forum.

the provision of cultural sensitivity training for provincial agencies. The vision was remarkable, but the capacity to carry out the vision was limited in resources, personnel and by jurisdictional and institutional bureaucracy. Building trust in community based justice processes and building better relationships with police and the Canadian justice system takes a great deal of time, energy and people power.

First Nations Policing Policy

In 1989, the same year of the release of the Marshall Inquiry report, RCMP Assistant Commissioner Robert Head released *Policing for Aboriginal Canadians: The RCMP Role*. This significant report called for major changes in all aspects of RCMP policies as they related to Aboriginal Policing. Following Head's report, a federal Indian Policing Policy Review Task Force conveyed in 1990 that Canada had not exercised its s. 91(24) authority to regulate First Nations policing and as such emphasized provincial jurisdiction through s. 92(14) and the application of provincial laws on reserve through s. 88 of the *Indian Act*.⁶¹ The First Nations policing portfolio was transferred from Indian and Northern Affairs Canada (now Indigenous Services Canada) to the Solicitor General of Canada (now Public Safety Canada).

In 1991, the Government of Canada announced the First Nations Policing Policy (FNPP) to enhance policing services to First Nations with the federal government agreeing to pay 52% of a First Nation's costs while the province contributes 48%. This program replaced the band constable program and 3B with the Aboriginal Community Constable Program. The FNPP was designed to supplement existing provincial police services by funding positions for dedicated officers or special constables to a First Nation community through a Community Tripartite Agreement (CTA) or by creating a specific First Nation police service through a Self-Administration Agreement (SA). The intent was to engage proactive and preventative approaches to policing in order to

⁶¹ Indian Policing Policy Review Task Force Report (1990), at p. 9-11.

avoid over reaction to Indigenous concerns and to reduce the potential for violent conflicts and confrontations.⁶² The thematic areas to reconsider approaches to policing included mediation/negotiation tactics, community involvement and partnerships, training, cultural awareness, and participation of First Nations officers. 1992 was the year that Aboriginal Policing Directorate was established under the Solicitor General Canada and also marked creation of the First Nations Chiefs of Police Association.⁶³

Unama'ki Tribal Police

Since the 1970s, the Mi'kmaq have lobbied for control over how their communities were policed. It was not until the Royal Commission on the Donald Marshall Jr. Prosecution that the demands were taken seriously. Over the past decades a number of important justice initiatives emerging from the Marshall Inquiry recommendations have been implemented in Mi'kmaw communities ranging from the indigenization of mainstream programs, to court worker programs, from creating dispute management strategies using customary law to exploring options for control over resource regulation, from community assisted parole hearings to culturally aligned corrections programs, from crime prevention initiatives to programs of justice as healing and victims services.⁶⁴ But most of these were pilot projects that were unsustainable, destabilizing or merely indigenizing the Canadian justice system.

⁶² These changes were precipitated in part by the Oka Crisis land dispute standoff in 1990 and validated by the findings of the Royal Commission on Aboriginal Peoples and other such commissions.

⁶³ Don Clairmont (2006) *Aboriginal Policing in Canada: An Overview of Developments in First Nations*. <http://capg.ca/wp-content/uploads/2013/05/Clairmont-Aboriginal-Policing-in-Canada.pdf>

⁶⁴ Stutz, J. 2008 What Gets Done and Why: Implementing the Recommendations of Public Inquiries. *Canadian Public Administration* 51 (3): 501-521.
And McMillan, L.J 2011. Colonial Traditions, Cooptations, and Mi'kmaq Legal Consciousness." *Law and Social Inquiry* Journal of the American Bar Foundation, Chicago. 36:1(171-200).

In response to, but not as a direct recommendation of the Marshall Inquiry, the Self-Administered Unama'ki Tribal Police was created 1994, under the umbrella of the federal First Nations Policing Policy (FNPP) to provide policing services to the five Mi'kmaq communities located on Cape Breton Island: Potlotek; Eskasoni; We'koqma'q; Wagmatcook; and Membertou. The goals of the Unama'ki Police were to, "provide First Nations with professional, effective, and culturally responsive police services; to improve safety and security in on-reserve communities; to give First Nations communities a strong voice in the administration of justice as they assume greater control and responsibility for matters that affect their communities; and to ensure that the First Nations police services are accountable to the communities they serve."⁶⁵ As such, the Unama'ki Tribal Police was thought to enhance Mi'kmaq control of and access to justice.

Control over policing was perceived as a catalyst toward self-governance for Mi'kmaq First Nations by the nation's leadership. It was hoped that Unama'ki Tribal Police Services officers would rely on culturally imbued analyses of incidents of crime. Tribal Police would use community-policing methods to reveal root causes of crime and employ appropriate Indigenous legal traditions as measures to resolve problems, using customary law to facilitate reconciliation, restore broken relationships and promote community healing. Tribal Police practices were to be holistic, community-driven and re-integrative rather than the settler society's adversarial approach – the removal and incarceration of offenders – which denies community participation in dispute management decision-making. They would work with the Mi'kmaq Justice Institute to bring wrap around justice services to Mi'kmaq communities.

⁶⁵ KPMG Final Report of the Community Legal Issues Facilitator Program (Truro: Tripartite Forum) 1998: 4-5.

Members of the Unama'ki Tribal Police force were former special constables. With expanded powers and responsibilities in their new roles, they enjoyed being more than just eyes for the RCMP. They did their own investigations, had their own files and the autonomy allowed them to break out of the paternalistic arrangement of non-Indigenous officers' constant surveillance. The Tribal Police embraced the responsibilities of helping their communities get on healing paths, to reinvigorating Mi'kmaw legal principles as they find solutions for victims and offenders. They understood the poverty, the kinship networks, patterns of violence and the consequences of colonization – the racism and systemic discrimination - that their communities faced every day; they lived it too.

Within the first three years of its operation the Unama'ki Tribal Police Service had three different chiefs of police. The job was extremely challenging because the force envisioned it their responsibility to create a model of policing that was uniquely Indigenous, but met with profound resistance from the government in garnering respect for the proposed systemic shift Indigenous community policing required. Inadequate staffing to effectively police the areas under its jurisdiction and inadequate funding to provide training and salary incentives to retain staff was just the tip of the iceberg. They were constantly fighting to gain legitimacy in the communities and faced opposition both internally and externally. The main police station was located in Eskasoni, at least a thirty-minute drive from Membertou and forty-five minutes from We'koqma'q. Community members complained about poor response times and the lack of visibility in communities without 24-hour services.

In a letter to the Aboriginal Policing Directorate, Unama'ki Tribal Police Services described the challenges they faced:

The Unama'ki Policing Service is committed to providing quality policing, and especially community-based policing philosophy and practice, in all the First Nation communities it serves on Cape Breton Island. This is a significant

challenge for our newly created police service since resources are quite strained, community expectations are quite high, and the levels of social problems and conventional crime are very high in our jurisdictions. The base complement is scarcely adequate for policing geographically dispersed communities where the level of conventional crimes and crimes of violence as auditors have shown is at least five times the levels encountered in the RCMP jurisdictions and three times that found in Municipal jurisdictions in Nova Scotia. As in many First Nation communities the demand/expectation for policing is quite high; calls for service have increased 400% since the Unama'ki Policing Service began in December 1994.⁶⁶

Communities policed by Unama'ki Tribal reported crimes more often than when they were policed by settler agencies – comfort and trust levels were much higher with an Indigenous agency. Increased reporting required the availability of more police services and greater access to customary dispute management processes informed by Indigenous legal traditions which were being institutionalized through the implementation of Marshall Inquiry recommendations calling for the creation of a Native Justice Institute, Native Justice Committees and a Native Criminal Court.

In October 1998, the Unama'ki police station and lock up located on the main street of Membertou opened for business. Immediately it became the target of vandalism and set on fire by several disgruntled youths. That same year the Unama'ki Tribal Police Business Plan identified numerous concerns regarding the force's ability to effectively police the Cape Breton communities. Understaffed with limited incentives for advancement and a large geographical area to patrol with insufficient resources

⁶⁶ This letter resulted in a needs assessment and a community survey on community perceptions of policing and justice issues. Don Clairmont, *Community Perceptions of Policing and Justice Issues: A Survey Conducted on Behalf of the Unama'ki Tribal Police* (Halifax: Atlantic Institute of Criminology, 1999): 7–66.

resulted in poor on-reserve presence, low staff morale and “inadequate service to communities.”⁶⁷ At the end of the five-year funding agreement the Unama’ki Tribal Police folded in 2001, a significant disappointment to proponents of self-determination. Suffering from the same shortfalls the Mi’kmaq Justice Institute had closed the year before creating significant gaps in services and cultural literacy / competency training opportunities. In 2002, tripartite agreements were signed reestablishing the RCMP as the police service in all of the Cape Breton First Nations.⁶⁸

The stories of the Unama’ki Tribal Police and the Mi’kmaq Justice Institute align directly with the themes found by Clairmont and Murphy (1998) in their study of the “Self-Administered First Nations’ Policing: An Overview of Organizational and Managerial Issues”.⁶⁹ They identified the unique circumstances of FN policing and specific challenges in meeting community expectations with limited resources, as well as the reality of political interference in police work, the isolation of on-reserve forces, and difficulties in recruitment and retention. Importantly the report notes that while some FN police services had better police to population ratios than non-FN counterparts, the “funding formula utilized by governments did not factor in all the relevant considerations and did not yield sufficient officer complements to allow for crime prevention and problem-solving activity, let alone a distinctive aboriginal policing style.”⁷⁰ Self-administered police services can experience vulnerability because the tripartite agreements are usually restricted to three or five year periods giving them a “project status” and thus a sense of “being set up for failure” is common because:

⁶⁷ KPMG 1998: 9-11.

⁶⁸ <http://capg.ca/wp-content/uploads/2013/05/Clairmont-Aboriginal-Policing-in-Canada.pdf>

⁶⁹ Don Clairmont and Chris Murphy (1998) *Self-Administered First Nations’ Policing: An Overview of Organizational and Managerial Issues* (Halifax: Atlantic Centre for Criminology).

⁷⁰ Ibid. 60.

FN police services have been established with lofty objectives and high community expectations but with such inadequate resources that community disillusionment and the service's failure to achieve well even conventional policing objectives are likely leading to the resumption of policing by provincial organizations.⁷¹

Recruitment and retention of First Nations officers, while often heralded as the resolution to cultural incompetency and communication problems, is difficult in communities with a limited pool of interested candidates and limited access to training. "Provincial policing academies training presumably does not take into account the realities of reserve social conditions, and expectation and controversies about policing."⁷²Indigenizing Canadian police services is not a sufficient fix to the systemic realities of discrimination.

The Marshall Fishing Decision

In trying to recover from the trauma of his wrongful conviction Donald Marshall turned to his culture and traditions for healing and he went fishing for eels. The significance of Mi'kmaq relationships with the sea were incorporated in every facet of their life for thousands of years, from cosmological belief systems to political and family organization. The premises of Mi'kmaq traditional fisheries were both spiritual and practical, focusing mainly on the wellbeing and survival of families and community members. The Mi'kmaq fished, hunted and collected. Their subsistence activities were governed by the concept of *netukulimk*, which guided harvesting practices aimed at co-existence. In fishing and selling eels, Marshall was carrying out livelihood activities as had his ancestors before him.

⁷¹ Ibid. 59.

⁷² Ibid. 63.

In fishing and selling eels, Donald Marshall was carrying out what he believed to be his treaty right to earn a livelihood unmolested. However, the relief Donald Marshall experienced exercising his treaty rights as an eel fisher was short-lived as he was charged with illegal fishing. This incident became the focus of a treaty test case that considerably altered Indigenous and settler resource relations in the Atlantic Provinces of Canada.

In 1999, the Supreme Court of Canada recognized the 1760-1761 treaties in *R. v Marshall* as a right to livelihood. This case was significantly transformative for the Mi'kmaq nation. It substantiated the Made-in-Nova Scotia process first organized in 1997 when the Mi'kmaq Chiefs of Nova Scotia, the Government of Nova Scotia, and the Government of Canada signed the Tripartite Memorandum of Understanding (MOU), which was an agreement between the three parties to begin discussions regarding issues and 'matters of mutual concern'. The Tripartite Forum approach was based on one of the 82 recommendations of the Royal Commission on the Donald Marshall Jr. Prosecution (1989).

The *Marshall* decision instigated a redistribution of access to natural resources, allowing for increased opportunities for economic development and autonomy. The potential to remedy patterns of dependency and subjugation for Mi'kmaq communities and other Indigenous peoples across the country, in favour of sustainable community advancement, through the affirmation of treaty and Aboriginal rights, and through the substantiation of traditional knowledge, marks an unprecedented turn in colonial relations.⁷³ The decision reverberated across the country, inspiring Indigenous communities to unite in collective action to secure their rights to resources. The federal

⁷³ McMillan 2016 "Living Legal Traditions: Mi'kmaw Justice in Nova Scotia" *University of New Brunswick Journal of Law* Vol. 67 (187-210).

government, the Department of Fisheries and Oceans, and non-Aboriginal fishers were not prepared for the decision. The judgment led to immediate conflict and controversy in the Maritimes, grabbing international headlines and marring the Mi'kmaq's legal victory. Non-Aboriginal fishers resisted the Supreme Court findings on the grounds that they believed they held traditional rights to the waters and were unwilling to share the strained – but lucrative – resources with anyone, especially “Indians.” The Mi'kmaq nation in Nova Scotia leveraged the *Marshall* decision and their livelihood treaty rights to demand predictable, productive, and respectful consultation and negotiation relationships with proponents.⁷⁴

The Marshall decision sparked increased surveillance and monitoring for all fishers. Heightened fear and competition strained Indigenous and settler relations preempting any potential for cooperation and collaboration in fishery access and co-management. Given the fragile state of the fishery economy, acrimony had increased not only between settler and Indigenous peoples but within these groups as well. Despite the opinion of the Supreme Court, Mi'kmaw claims to territories, resource management, and equitable access were in practice denied. Media accounts propelled animosity toward Indigenous harvesters by perpetuating negative stereotypes and exaggerating instances of overfishing and the use of illegal gear. Tensions persist today as the Mi'kmaw exercise their livelihood rights and the policing of treaty implementation requires attention by all enforcement agencies.

Marshall Inquiry Review

In the mid 2000s the RCMP “H” Division faced barriers and was criticized within Mi'kmaw communities and by the general public for not meeting the needs of the

⁷⁴ Ken Coates (2019) “The Marshall Decision at 20: Two Decades of Commercial Re-Empowerment of the Mi'kmaq and Maliseet (MacDonald Laurier Institute)
https://macdonaldlaurier.ca/files/pdf/20191015_Marshall_Decision_20th_Coates_PAPE_R_FWeb.pdf

Mi'kmaw nation. One band council issued a band council resolution to transfer a culturally insensitive policing member out of their community. In another community RCMP, unable to deal with angry community members, were barricaded for a short period of time at the scene of a homicide and were later unable to sustain the security of the scene. In yet another community, an Elder's sacred medicine bundle was desecrated when her residence was subject to a search warrant due to a targeted drug investigation of her grandson. People were outraged by RCMP shooting death of Mr. John Simon, 44, in his home on Wagmatcook Mi'kmaw Community December 2, 2008, which resulted in a Chair-Initiated Complaint and Public Interest Investigation into the conduct of the RCMP members present. Incidents involving the treatment of Mi'kmaw individuals in prison also raised community concerns. A second high-profile tragedy concerned the investigation of the circumstances pertaining to Ms. Victoria Paul, 44, of Indian Brook, mother of one, and her involvement with the Truro Police Service when she suffered an ischemic stroke while in Truro police custody in August 2009, and later died in hospital.

The Victoria Rose Paul Investigation was carried out by the Nova Scotia Office of the Police Complaints Commissioner in collaboration with the Truro Police Service, the Police Association of Nova Scotia, Halifax Regional Police (HRP), the Paul family, the president of the Native Women's Association, and members of the Mi'kmaw community, including a Minister appointed "native observer". Together, with the investigators they examined the broader issues concerning Ms. Paul's arrest and subsequent death. The investigation focused on whether the Truro Police followed appropriate policies and practices; whether medical assistance was provided when needed; whether the force's guidelines around intoxicated persons are adequate; and whether the HRP's investigation was free of bias.

In the final report, the Complaints Commissioner found, "that there were many inconsistent practices and confusion among officers and custodians with respect to carrying out their duties at the lock-up facility. She noted that while officers and

custodians may have performed the required number of welfare checks on Ms. Paul, the quality of the checks “was lacking.” The author raised the question of institutional racism in her report. Cooper Mont pointed out that from the perspective of many Mi’kmaq community members, Ms. Paul was treated badly because she was an Indigenous person. While the investigator had no conclusive evidence to support claims of racism, she noted that how Victoria Paul was treated “is not normal practice”. In her conclusion, the Complaints Commissioner argued that, “it is critical to improve existing standards, training, and policies to help reduce these tragic occurrences.”⁷⁵

A third tragedy concerned the murder of Ms. Tanya Jean Brooks, a 36-year old Mi’kmaq woman and mother of five who lived in the Millbrook First Nation. Ms. Brooks was found murdered in a window well of the St. Patrick’s Alexandra School in Halifax, Nova Scotia on May 11th, 2009. She was last seen leaving the Halifax Regional Police Headquarters on May 10th, 2009. This major crime case remains unsolved. First Nations communities and organizations were mobilizing and demanding that the Federal government take affirmative action to end violence against women. The Native Women’s Association of Canada (NWAC) and its provincial chapters held a meeting in July of 2012 to discuss the issues of missing and murdered Aboriginal women. By December 2012 the Idle No More movement was spreading across the Country.

After these high-profile police involved tragedies in Mi’kma’ki, calls for an evaluation of the implementation of the Marshall Inquiry recommendations gathered strength. Mi’kmaq were asking, “if the Marshall recommendations had been implemented, would these tragedies have occurred?” In a province-wide review the implementation of the recommendations of Marshall Inquiry at its 25th anniversary for the Tripartite Forum, Mi’kmaq peoples shared deeply intimate accounts of their

⁷⁵ Nadine Cooper Mont (2012) *Victoria Rose Paul: Investigation Report* (Halifax: Province of Nova Scotia in McMillan (2014).

experiences with the Canadian justice system. With alarming regularity people spoke about painful incidents where they felt they were mistreated and misunderstood by police, lawyers, judges and service providers.

McMillan and her research team found, “Systemic discrimination and racism are still perceived within policing services today. Indigenous officers reported experiences of marginalization and a devaluation of their local expertise. The competency books used by RCMP are culturally constrained and would be more effective with greater inclusion of the perspectives of Indigenous police and the communities they serve”.⁷⁶ Non-Indigenous officers are often perceived by community members as “doing time” on-reserve postings and are noted to be rapidly promoted, whereas Indigenous officers serving Indigenous communities do not have the same opportunity or success in promotion.

In the evaluation of the Marshall Inquiry recommendations, Mi’kmaw communities reported anecdotes of excessive use of force, unreasonable searches, profiling, unjust treatment, over charging, use of threats and bullying by police, power tripping, mistrust, fear, and anger toward police. “We heard several accounts of specific threats of child apprehension being inappropriately made by police. Community members said police were not proactive and did not talk with people. They suggested that by talking with people on a regular, friendly basis, the need for any force would be greatly reduced because people would be willing to help out or at least avoid confrontation. Conversation is also a way to reduce the negative perception of surveillance that was widely reported.”⁷⁷

The Marshall evaluation concluded all communities have serious concerns

⁷⁶ McMillan (2014) “An Evaluation of the Implementation and Efficacy of the Marshall Inquiry Recommendations in Nova Scotia” (Truro: Mi’kmaq/Nova Scotia/Canada Tripartite Forum).

⁷⁷ Ibid. 84.

regarding policing.⁷⁸ There was high demand for officers who can speak Mi'kmaw. Police need to understand kinship relations. Many participants wanted tribal police to be reconsidered and while most participants do not want police involved in their lives, they do want them visibly present in communities. Most people will avoid reporting crimes even if they are victims, unless pressed to do so. All communities prefer Indigenous officers as more trustworthy and understanding of life on reserve and expressed greater willingness to call on Indigenous officers for help. Most communities wanted greater and more effective police intervention in drug trafficking. The majority of incidents involve people under the influence of alcohol and/or drugs. Many people read the Marshall Inquiry recommendations as including a Tribal Police force and would like to see a well-resourced and well trained force in place.

Consistently people identified both the Marshall Inquiry recommendations (1989) and the Supreme Court decision in *R v. Marshall* [1999] as foundational to establishing a Mi'kmaw justice system and imperative to self-determination, but they recognized serious structural obstacles impeding the implementation of the recommendations and the exercise of their treaty rights. These were identified as: **a profound lack of knowledge regarding Indigenous treaty rights, failure to identify and respect the Mi'kmaw as a nation, and the denial by settlers of the legitimacy of Mi'kmaw governance and legal principles in the management their lands and resources.** Mi'kmaw community criticisms pointed to insidious systemic discrimination. In terms of policy development, it is important to keep the historical consequences of colonization and the contextual circumstances of Indigenous resurgence and rights to self-determination front and centre, so that community engagement and collaboration will be respectful, meaningful and produce substantive, equalizing changes.

⁷⁸ Ibid. 82.

5. Mapping police services in Mi'kma'ki today

First Nations governments are working hard to change the colonial models of policing that fails many Indigenous communities and contributes to over-representation in Canadian courts and jails. The Nova Scotia RCMP established the Community, Aboriginal & Diversity Policing Services (CADPS) position to enhance policing services to First Nations focusing on evidence based enforcement, intervention and crime prevention. In order to enhance services, emphasis was placed on engaging front line members through Community Policing Officers (CPOs) and School Safety Resource Officers (SSROs) to steer at risk youth away from an overburdened criminal justice system. An RCMP Aboriginal Domestic Violence Liaison position was created in 2010 under the CADPS initiative to address service gaps in family violence by providing coordinated and consistent services to survivors of domestic violence and their families.

Police services in Nova Scotia have also undertaken a number of initiatives to address Mi'kmaw community needs in partnership with community-based organizations where the community organizations pick up the costs. For example, "Project Safe Keeping" was a three-year collaboration with "H" Division and the Nova Scotia Native Women's Association to create awareness and education around human trafficking of Aboriginal women in First Nation Communities.⁷⁹

In its 2009-2010 Directional Statement, the Minister of Public Safety asked the RCMP to explore alternative approaches to the FNPP such as an appropriate form of community policing service delivery to support provincial policing in First Nations communities. However, according to a 2014-2015 evaluation of the First Nations Policing Program, in many CTA communities, the intent of having dedicated FNPP

⁷⁹ <https://www.publicsafety.gc.ca/cnt/cntrng-crm/plcng/cnmcs-plcng/ndx/dtls-en.aspx?n=472&wbdisable=true>

officers has been eroded because officers are not embedded in the communities.⁸⁰ Police are spending their time getting to and from communities, or on other policing priorities rather than on FNPP activities. With regards to professionalism, police services funded by FNPP are meeting provincial policing policies and standards. However, officers working under SAs have limited access to ongoing training and limited resources for job related tools, compared to police officers working under CTAs.

The evaluation found that contribution agreements are not the ideal delivery mechanism for FNPP. This was also noted in the 2010 evaluation and the 2014 Office of the Auditor General report. Contribution agreements require frequent renewals and there is a heavy administrative burden associated with each renewal. This factor and funding uncertainty precludes communities and police services from conducting long-term forward planning.⁸¹

The Auditor General of Canada found that the FNPP was not designed to adequately deliver policing services on reserve in a manner consistent with the Policing Principles, and Public Safety Canada needed to work with First Nations communities, provinces and policing service providers on the future of the FNPP.⁸²

In 2016, the Assembly of First Nations and the RCMP signed a “Relationship Building Protocol” to ensure public safety without discrimination, promote respect for fundamental rights of First Nations as nations, peoples, communities and individuals, to develop strategies to facilitate healing and reconciliation, to develop appropriate recruiting strategies for First Nation members, to continue the development of cultural

⁸⁰ <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/vltn-frst-ntns-plcng-2015/index-en.aspx>, November 9, 2019.

⁸¹ <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/vltn-frst-ntns-plcng-2015/index-en.aspx>, November 9, 2019.

⁸² Spring Report of the Auditor General of Canada: Chapter 5 – First Nations Policing Program – Public Safety Canada (2014).

awareness and anti-discrimination training of RCMP, and to support action to address the safety and security of Indigenous women and girls. Annual reports are to set out issues, priorities, objectives, initiatives being jointly undertaken pursuant to the protocol and evaluate the effectiveness of the protocol on addressing public safety issues in First Nations communities.

The priorities identified by the Assembly of First Nations are recognition of First Nations Police Services as essential services, protection of Aboriginal and Treaty rights regarding amendments to firearms legislation, and the impacts of legislation overhauling Canada's national security framework, and addressing "prevalent" discrimination in Canadian police services.⁸³ AFN Resolution 45/2017 "Federal Investments in First Nations Policing Services" and subsequent resolutions, 107/2017 and 44/2018 urge the government to recognize First Nations police services as essential services. The First Nations Policing Program is classified as a discretionary program which permits its underfunding in comparison to municipal and provincial police forces.⁸⁴ The Assembly of First Nations wants First Nations police services to be funded equitably as other non-First Nation police agencies.

As per the Relationship Building Protocol of 2016, the Assembly of First Nations and Public Safety are jointly producing a gap-analysis report on issues facing First Nations police services and are developing a strategic response to the issues of racism and discrimination. In order to address gaps in First Nations policing the Assembly passed a resolution (01/2017) to establish a multilateral table to promote community safety and eliminate racism and violence encountered by First Nations in urban areas (March 2019, 1). In its First Nations Policing and Public Safety Issue Update, the Assembly of First Nations noted that Public Safety Canada is currently funding the First

⁸³ Assembly of First Nations Working Together: Our Rights, Our Way, Our Future – Annual Report 2017-2018, 88-89.

⁸⁴ First Nations Policing and Public Safety March 2019, 2.

Nations Policing Program (FNPP). According to Public Safety Canada, in 2018-2019, the department provided over \$146 million under the FNPP to support 1,322 negotiated police officer positions in over 450 First Nation and Inuit communities in Canada.⁸⁵ In 2018 an additional \$291.2 million was made available to address chronic underfunding for equipment, salaries and infrastructure. The long term federal funding commitment includes a 2.75% annual escalator to address inflation. \$44.8 million is to be released 2019-2020 to recruit up to 110 additional officer positions, a portion of which over five years will be provided to RCMP to pay for services provided according to Community Tripartite Agreements (CTA) and will be shared with Self-Administered Agreements (SA) and Municipal Agreements. The federal government's total five-year investment in the First Nations Policing Program was \$813.7 million. As these are cost shared agreements the provincial government will be asked to increase their funding to maintain their share of 48% of the costs of the program.⁸⁶

RCMP Employment Equity annual report for fiscal year 2017-2018, states that it has met its overall legislated employment equity obligations for representation in the workforce as it applies to Indigenous peoples. 6.8% of its workforce identify as Indigenous, compared with Canadian workforce availability of Indigenous peoples at 4%. Of the Indigenous peoples employed by the RCMP 7.8% are regular members, 3.9% are civilian members, 5.7% are public servants, with 4% being the Canadian workforce availability. Indigenous peoples are employed in administrative services and clerical and regulatory services which are entry-level positions in the Public Service. Indigenous peoples are underrepresented in the economics and social sciences and financial management. The economic and social science classification group is responsible for

⁸⁵ Public Safety Canada.

⁸⁶ https://www.canada.ca/en/public-safety-canada/news/2018/01/291_2_million_tobeinvestedinthefafetyandsecurityofindigenoussom.html. November 9, 2019.

conducting research and providing strategic advice on economic, socio-economic and social policy and legislation. Therefore, under representation in this sector means Indigenous input to policy and legislation is limited.⁸⁷ In terms of hires and departures, there is a negative net change in regular members and civilian members. Twenty-nine people who identify as Indigenous were hired as regular members but 77 departed.⁸⁸

In Nova Scotia, of the 1410 RCMP employees, 139 people identify as Indigenous. Women are underrepresented in the RCMP workforce. One person was hired as a civilian member, but ten left. Public service employees increased by four. The low growth rate of Indigenous peoples aligns with community perspectives that there are very few recruits entering the RCMP and this has implications for recruitment and retention.

In terms of representation by rank and level there is a declining representation of Indigenous peoples at progressively higher levels. Indigenous people are underrepresented in the Officer group and Executive ranks. “Quick fixes to achieve representation numbers often results in the accumulation of equity-seeking employees in lower-level positions, with low morale and limited ability to make positive contributions, further strengthening misconceptions and stereotyping.”⁸⁹ This aligns with the perceptions of Indigenous regular members interviewed for this project who note that there are barriers to advancement including few efforts to promote mobility, minimal mentorship opportunities due to underrepresentation in higher ranks and reinforcement of negative stereotypes about ability and work ethic discussed below.

⁸⁷ RCMP Employment Equity Annual Report 2017-2018, 7-10.

⁸⁸ RCMP Employment Equity Annual Report 2017-2018, 13.

⁸⁹ Taskforce on Diversity and Inclusion – The Joint Union / Management Task Force on Diversity and Inclusion in the Public Service, 2017 in RCMP Employment Equity Annual Report 2017-2018, 18.

According to the 2016 Census, Statistics Canada reported that 51,495 or 5.7% of the Nova Scotia population are Aboriginal. 25,380 identify as First Nations and 795 identify as Inuit. 23,310 people identify as Métis – which is a source of controversy amongst First Nations leadership. 53.3% of the Aboriginal population lives in rural communities, 23.8% live in small population centres and 22.9% in large population centres. Close to 60% (59.9%) of First Nations people with registered Indian status live on reserve, 40.1% live off reserve. The top five census metropolitan areas and census agglomerations by Aboriginal identity are Halifax (15,815), Cape Breton (7,675), Truro (2,455), New Glasgow (1,415), and Kentville (1,165).⁹⁰

Age distribution continues the trend of a younger Aboriginal population with 22.4% of the total aged 14 or under, and the average age for First Nations people is 31.8 years compared with non-Aboriginal population average age of 43.5 years. Just over 20% of First Nations people have the ability to conduct a conversation in an Aboriginal language and approximately 17% have an Aboriginal mother tongue with the most common being Mi'kmaq with just over 4,300 speakers.⁹¹

Today the RCMP provides police services at federal, provincial and municipal levels and are under contract to serve more than 600 Indigenous communities.⁹² Community Tripartite Agreements are negotiated between Canada through the Minister of Public Safety and Emergency Preparedness, the province as represented by the Minister of Justice and Attorney General and First Nations bands as represented by Chief and Council. There are no Self-Administered Agreements in Nova Scotia at present. Currently there are seven Community Tripartite Policing Agreements with

⁹⁰ Statistics Canada. 2017. *Focus on Geography Series, 2016 Census*. Statistics Canada Catalogue no. 98-404-X2016001. Ottawa, Ontario. Data products, 2016 Census.

⁹¹ Statistics Canada. 2017. *Focus on Geography Series, 2016 Census*. Statistics Canada Catalogue no. 98-404-X2016001. Ottawa, Ontario. Data products, 2016 Census.

⁹² RCMP Employment Equity Annual Report 2017-2018, 4.

RCMP (CTA) and one with the Cape Breton Regional Municipality in Nova Scotia. Chief and Councils receive monthly activity / call reports from police services.

The CTA negotiation and renewal processes are sometimes contentious and uncertain. First Nations in Mi'kma'ki have experienced serious gaps in services between the end date and the renewal of a contract. Many factors impact the CTA process: trust, changes in leadership, high turnover rates in RCMP and other policing units, election cycles, crime rates, changing legislation, by-law development, treaty right implementation, self-determination capacity, economic landscapes and demographic shifts. Funding precarity and jurisdictional confusion at federal, provincial and local levels add to the challenges of meeting community expectations in policing and effective recruitment and retention of Indigenous officers. As per the legal rule relating to Jordan's Principle, communities are demanding substantive equality and culturally appropriate services in all sectors.

CTAs set out the number of officers assigned to a community and the commitments of the RCMP or municipal police departments. The goal is to assign Indigenous officers and those familiar with the culture and unique circumstances of the community, but there is no guarantee that these positions will be filled by Indigenous officers. CTAs are intended to be structured so that officers assigned to First Nations communities spend 100% of their regular working hours on the policing needs of the community.⁹³ The CTAs also require the establishment of Community Consultative Groups (CCG), made up of a certain number of band members depending on the size of the community, who are to meet regularly. Their duties can include: 1) identifying policing issues and concerns of the First Nation and bring these to attention of the RCMP; 2) work with RCMP members to develop objectives, priorities, goals and

⁹³ Illustrative Case Studies of First Nations Policing Program Models, Research Report: 2016-R014, Public Safety Canada, by J. Kiedrowski et al, at pg. 23-24.

strategies for community policing; 3) participate in periodic evaluation of police services to address specific community issues; 4) identify desirable attributes for the RCMP deployed in community; and 5) complete the annual non-financial report where the CCG provides feedback on policing services in the community. CTAs also require CCG to provide a Letter of Expectation to RCMP officers in order formalize, in writing, the community's expectations of policing priorities regarding the types of service the community will receive and the type of working relationship and experience with the police officer(s) assigned to the community.⁹⁴ This research found that in communities where there is an active, inclusive, and transparent Community Consultative Group, the communities feel a greater sense of control over the nature and quality of policing activities.

Indigenous police members report concerns over self-identification as problematic and potentially using that identity to access jobs and opportunities set aside for Indigenous peoples. In recent years, there are many individuals self-identifying as Mi'kmaq or Métis in Nova Scotia who do not have an legitimate claim to do so. The Mi'kmaw nation is undertaking a Mi'kmaw process to define who they are by their own rules and in their own way – wula na kinu "This is Who We Are". The enrollment process requires that a person must have ancestral connections. Demonstrated ancestry to at least one of the Mi'kmaw families recognized in Nova Scotia family is a rule for eligibility. A second rule is that the Mi'kmaw Nation must accept an individual as Mi'kmaw.⁹⁵

The RCMP relies on national advisory committees to discuss workplace issues and barriers with employees who identify as Indigenous. In 2017-2018 the RCMP Indigenous Employee Council focused on improving access to services to support

⁹⁴ Naomi Metallic (2019) *Mi'kmaq Jurisdictional Authority Over By-Laws, Phase 1* (Millbrook: Tripartite Forum Justice Committee).

⁹⁵ <https://www.mikmawns.ca/frequently-asked-questions/>

culturally appropriate mental health interventions and to generate a list of elder circles to encourage consultation with Indigenous communities. It conducted a review of the RCMP's mentorship program for Indigenous applicants. There is also a Commissioner's National Aboriginal Advisory Committee that advises on recruitment, training, inter-cultural relations and service delivery to Indigenous communities

"There are about eighty people who self-identify as Indigenous people serving in Nova Scotia, of those less than twenty-five RCMP officers identify as Mi'kmaw with community connections. There are imminent retirements of at least seven long serving and well trusted Mi'kmaw members and very few, if any incoming recruits who identify as L'nu (Mi'kmaw)".⁹⁶

Indigenous officers contacted for this project discussed how they embrace and understand the value of community-based policing; however, policy and paperwork demands make the business of community policing impossible without the support and respect of upper management. Indigenous RCMP and Municipal police members are local experts, well trained in standoff and crisis preparation, but are frustrated by a chain of command that fetters their discretion to effectively diffuse situations and by the cultural burden demands placed on them by non-Indigenous colleagues who expect their Indigenous colleagues to be cultural translators and mediators.

The Truth and Reconciliation Commission investigating the impacts of the Canadian Indian Residential school system released its report in 2015 and produced 94 Calls to Action which have mobilized governments, institutions and organizations across Canada to consider their relationships with Indigenous peoples and create strategies to address the intergenerational and systemic harms that are a consequence of colonization. RCMP and municipal departments that serve Mi'kmaw communities actively pursued ways to improve relations.

⁹⁶ Subject matter expert interview September 3, 2019.

The Nova Scotia RCMP unveiled the Eagle Feather initiative in 2017, the first of its kind in Canada, which allows victims, witnesses and police officers the option to swear legal oaths on an eagle feather. This initiative was the brainchild of RCMP Cpl. Dee-Anne Sack, a Mi'kmaw member of "H" division and Aboriginal policing analyst. The feather, wrapped in red serge cases, smudged in ceremony by Elder Dr. Jane Abram, are present in each detachment serving thirteen Mi'kmaw communities in the province. Eagle feathers are considered a sacred symbol of First Nations' spirituality. Following the RCMP's lead, the Nova Scotia judiciary introduced eagle feathers to all of its courts in 2018. During Mi'kmaw history month October 2018, "H" division erected a wigwam and displayed a red dress to honour missing and murdered Indigenous women and girls. Cpl. Sack then worked with knowledge holders from her community to bring sacred teachings to the Division and unveiled a sweat lodge for Indigenous and non-Indigenous members to come together in a very sacred space to learn about and experience Mi'kmaw healing ceremonies.⁹⁷ While these are important symbolic steps toward reconciliation, Mi'kmaw communities, both urban and on-reserve members are concerned with the quality of policing, the shrinking Mi'kmaw complement of officers, the decline of community policing, and those with CTAs question whether or not they are getting their money's worth.

An Expert Panel on Policing in Indigenous Communities wrote in the spring of 2019, that the FNPP does not provide First Nations communities with meaningful choice over their policing models, governance, or funding arrangements and the future of First Nations policing must move in a direction that embraces self-determination, a new funding framework and a new and renewed relationship.⁹⁸

⁹⁷ <https://www.cbc.ca/news/indigenous/rcmp-sweat-lodge-dartmouth-nova-scotia-1.4857627>

⁹⁸ CCA Report, Chapter 7, "Towards Change."

The National Inquiry into Missing and Murdered Indigenous Women and Girls released its final report, *Reclaiming Power and Place*, on Monday June 3, 2019. The Inquiry criticized Canada's police services, particularly the RCMP, and calls for police educators to teach their members about the history of police in the oppression and genocide of Indigenous peoples. The Inquiry found that "systemic patterns of thinking such as racism, sexism, and colonialism also result in institutional violence. Institutional violence is perpetrated by institutions such as the military, the church, the educational system, the health system, police and emergency responders, and the justice system. Because these institutions are generally well regarded within society, and operate on specific rules, institutional violence can easily become the status quo. This makes them more difficult to challenge or change."⁹⁹ Police discrimination, gaps in police services, jurisdictional barriers, high turnover of service providers and serious problems of mistrust in police, are highlighted throughout the report.

In their Principles for Change and 231 Calls for Justice, the commission argues for a decolonizing approach to culturally safe, trauma-informed, self-determined and Indigenous-led solutions and services. Calls for Justice 9.1-9.11 deal with police services and call for improvements and changes in funding, recruitment, training, service co-ordination and cultural competency.¹⁰⁰

In his December 2019 mandate letter to the Minister of Public Safety and Emergency Preparedness, Prime Minister Trudeau directed Minister Blair, "with the Minister of Indigenous Services, co-develop a legislative framework for First Nations policing, which **recognizes First Nations policing as an essential service**, and work

⁹⁹ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place – Executive Summary of the Final Report* (2019:77).

¹⁰⁰ Ibid.190-193.

with interested communities to expand the number of communities served by First Nations policing.”¹⁰¹

Figure 1: Police Services by Community in Mi'kma'ki

Community	Police Service: On Reserve/ Off Reserve	RCMP or Municipal provider	Detachment distance from community
Acadia – Yarmouth #33	Off	RCMP	Yarmouth Rural detachment, 4km
Ponhook lake #10	Off	RCMP	Bridgewater detachment, 63 km
Medway #11	Off	RCMP	Liverpool detachment, 31.8 km
Gold River #21	Off	RCMP	Chester detachment, 10.3 km
Wild Cat #12	Off	RCMP	Liverpool detachment, 47.8 km
Annapolis Valley – Cambridge #32	Off	RCMP	New Minas, 18.6 km
St. Croix #34	Off	RCMP	Windsor, 21.7 km

¹⁰¹ <https://pm.gc.ca/en/mandate-letters/minister-public-safety-and-emergency-preparedness-mandate-letter>. December 16, 2019.

Bear River - #6	Off	RCMP	Digby, 19.4 km
Bear River - #6A	Off	RCMP	Bridgetown, 30.6 km
Bear River - #6B	Off	RCMP	Bridgetown, 25.2 km
Eskasoni - #3, #3a - CTA	On	RCMP	On reserve 24 hour service
Malagawatch #4	Off	RCMP	We'koqma'q, 28.7 km
Glooscap #35	Off	RCMP	Wolfville, 19.4 km
Membertou #28b - CTA	On	Cape Breton Regional Police	Sub office
Caribou Marsh #29	Off	CBRP	Membertou, 9.7 km
Sydney #28A	UNPOPULATED	UNPOPULATED	UNPOPULATED
Malagawatch #4	Off	RCMP	We'koqma'q, 28.7 km
Millbrook #27 - CTA	On	RCMP	On reserve
Millbrook #27a, #27b, #27c	UNPOPULATED	UNPOPULATED	UNPOPULATED
Beaver Lake #17	Off	RCMP	Sheet Harbour, 21.5 km
Cole Harbour #30	Off	RCMP	Cole Harbour, 3.5 km
Sheet Harbour #36	Off	RCMP	Sheet Harbour, 2.1 km
Paqtnkek #23	Off	RCMP	Antigonish – 23km
Franklin Manor #22	UNPOPULATED	UNPOPULATED	UNPOPULATED
Summerside #38	Off	RCMP	Antigonish, 21.4 km

Pictou Landing - Fishers Grant #24 - CTA	Off	RCMP	Stellarton, 17.9 km (trailer on reserve)
Fishers Grant #24g	UNPOPULATED	UNPOPULATED	UNPOPULATED
Boat Harbour #37	UNPOPULATED	UNPOPULATED	UNPOPULATED
Merigomish Harbour 31	UNPOPULATED	UNPOPULATED	UNPOPULATED
Franklin Manor #22	UNPOPULATED	UNPOPULATED	UNPOPULATED
Potlotek - Chapel Island #5 - CTA	On	Satellite Office - RCMP	St. Peters, 10.5 km
Malagawatch #4	Off	RCMP	We'koqma'q, 28.7 km
Sipekne'katik #13 - CTA	Off	RCMP	Enfield, 19.5 km
Indian Brook #14	On	RCMP	On reserve
Pennal #19	Off	RCMP	Chester, 33.5 km
New Ross #20	UNPOPULATED	UNPOPULATED	UNPOPULATED
Wagmatcook #1 - CTA	On	RCMP	Sub office on reserve
Malagawatch #4	Off	RCMP	We'koqma'q, 28.7 km
Margaree #25	Off	RCMP	Inverness, 30 km
We'koqma'q #2 - CTA	On	RCMP	Sub office on reserve
Malagawatch #4	Off	RCMP	We'koqma'q, 28.7 km

Compiled by Cheyla Rogers (2019).

6. First Voices First Voices: Findings from the interviews and knowledge gathering / sharing circles

Between September and December 2019, ten facilitated sessions with community members were held with people in Sipekne'katik, Wagmatcook, Millbrook, Membertou, Paqtnkek, Eskasoni (2 gatherings), We'koqma'q, and Kjiptuk or Halifax (2 gatherings). We originally planned for eight sessions, but received direct requests from Nova Scotia Native Women's Association to hold a gathering in We'koqma'q and from the Friendship Centre community to hold a second gathering at the Friendship Centre in Kjiptuk. Approximately 150 adults who identify as Mi'kmaw joined these sharing circles to share their experiences and ideas about policing in their communities. Several participants identified as Inuit and several self-identified as belonging to Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual (2SLGBTQIA) communities. Another fifteen people, the majority Mi'kmaw with experienced in police services, community leaders, justice and victims' service providers, participated in one-to-one interviews as stakeholders and subject matter experts.

After reviewing the invitation to participate, discussing the details of the project and the scope of confidentiality and anonymity, gatherings generally began with an Elder guiding the participants in smudging ceremonies and prayer. We sat in circles and the researchers explained the purpose of the project, reviewed the invitation to participate and confirmed consent to participate. At each round in the sharing circle the participants were asked to respond to a series of questions. We asked people to share their experiences engaging with police services, to identify what services were working for them, to detail any challenges, and then to suggest any remedies to improve policing relations in Mi'kma'ki. Circles were closed with a final reflection round exploring community priorities for policing. Participants were generous and thoughtful in their

responses and many of the conversations were emotional and difficult. It was an honour to hear their sacred stories.

Every community in Mi'kma'ki, on or off reserve, is unique, and such diversity must be addressed when developing and implementing services for safety, security, redressing harms and protection. The demographic, geographic, political, economic, cultural and social realities of each of the 13 First Nation communities in Mi'kma'ki and the populations living in urban centres such as Halifax, impact the types of policing and services desired and required.

In order to maintain the anonymity and confidentiality of the participants, the findings from the knowledge gathering / sharing circles have been collated and organized thematically. After transcribing and coding the sessions, a number of key issues were identified as commonly experienced.

The first section reports on the policing practices and policies identified by participants living in the Halifax region. The second section reports the findings from the reserve-based participants. The third section reports on the perspectives of current and retired Indigenous law enforcement agents.

Policies and Practices in Mi'kma'ki – the Halifax Experiences

In the city of Halifax, the Mi'kmaw Native Friendship Society (MNFS) is a focal point of Indigenous community engagement, offering social and cultural programming to Indigenous, Inuit, Métis and other community members. It first opened on September 17th 1973, and it is now one of the one hundred and nineteen Friendship Centres with affiliation to the National Association of Friendship Centres across Canada. The Mi'kmaw Native Friendship Society was incorporated on June 2nd, 1975 and has since provided support services, referrals and programming to all urban Indigenous peoples. It is a non-profit, community elected board-governed society that operates as a Friendship Centre and as a service provider for Mi'kmaq Child

Development Centre, the Kijipuktuk Aboriginal College and a Connections Career Centre for employment support.

In addition to the core programs, the Centre also serves the cultural distinctiveness of the urban Indigenous population with components of Indigenous knowledge and practices incorporated within their delivery models. The mission of the MNFS is to provide structured social-based programming for urban Indigenous peoples in Halifax and is a safe gathering point for the urban community for cultural exchange events. The MNFS practices an open-door policy; services are available to all people regardless of their background or cultural affiliation. The Centre is dedicated to fostering wellness and resilience and to improve the lives of Indigenous peoples living in an urban environment through social and cultural programming. The Society creates an environment of inclusiveness, openness, transparency and accountability, and are committed to working in a respectful way that is responsive to the needs of the community.

The police force serving the centre is the Halifax Regional Police (HRP) and their headquarters are two blocks away from the inner city centre. A new Chief of Police was sworn in July. At the time of writing the Chief had not yet made contact with the Friendship Centre. Staff at the centre have noticed a change in client attitudes toward police over the last several years. In the past when police came to the centre people would run and hide and avoid contact at all costs. Today the community police officers are welcomed to the centre. They are invited and encouraged to participate in the powwows, feasts, cultural gatherings and events offered by the centre. Staff of the centre would like to see the greater attendance by who could officers drop in for tea to have casual conversations with their clients or participate in the many activities as ways to improve trust and to improve their cultural awareness of Indigenous, Inuit and Métis peoples living in the city. The centre has annual marches to commemorate missing and murdered women and girls as part of the Sisters in Spirit campaign and they host a

walk honouring the late Tanya Brooks. The officers involved in the Brooks investigation attend the ceremonies and their support is appreciated by the community.

Sustaining positive and trusting relations are mutual responsibilities, but the Friendship centre community tends to carry the burden. Once trusting relations are improved, and resources secured, the Friendship Centre may be able to assist in recruiting future members, continue with cultural training activities, assist police services with navigating and participating in restorative justice processes, partner with additional community services to prevent crime and reduce violence against Indigenous women, men, and 2SLGBTQQIA people and thus positively impact over representation of Indigenous peoples in the Canadian justice system.

At present Friendship Centre staff are not aware of any Indigenous officers serving the area but they are familiar with a well-liked community based officer who does participate in some events.

Friendship Centre Resources for Police

One of the greatest resources provided by the Mi'kmaw Native Friendship Society is access to an urban Indigenous family. The MNFS is a place that connects Indigenous people with each other and their cultures. At the heart of Indigenous cultures is kinship. Familial and cultural bonds are at the root of wellness and wellbeing according to the participants in the programs and services. For over forty years the MNFS has offered a number of programs to help individuals produce healthy families and as a result, the programs and people, have created a healthy urban Indigenous kinship network with the MNFS as its home base. Generations of families have entered the Friendship Centre and many continue to be active in the urban community.

An Elder of the Friendship Centre is the co-chair of the police diversity working group for HRP. The Elder is often called to police meetings and cadet graduation ceremonies to conduct opening prayers and to help honour fallen officers. The Friendship Centre has provided cultural literacy and competency training for more than

1200 police officers. Elders employed by the centre designed a two-hour program they call Native 101. As part of their professional development the officers learn about smudging, proper management of medicine bundles and other sacred items, communication styles, language, and residential schools. In the last several years the Elders have conducted more than 350 “Kairos blanket exercises” with cadets as part of their one day diversity training. While they are happy to do the outreach, and provide the training, they feel the training sessions are too short and thus too superficial to get at the deep issues that lead Indigenous peoples to have high contact with the law. Ideally all officers who are serving Indigenous communities should take in-depth long term training prior to entering the urban or on reserve communities. The classroom setting is very different from the street. Training curricula should be designed with local people and be experiential, immersive, with role playing how to interact with those suffering from mental health, addictions, intergenerational trauma, poverty, and those who are Mi’kmaw speakers.

Training should be continuous throughout the careers of enforcement officers, “you cannot learn everything in one session,” “proper training is not just ticking a box.” The Elders suggest that all detachments should have an Indigenous advisor to help when speaking with victims or negotiating protests. Having Elders and knowledge keepers who respect and understand the complexity of situations, the kinship networks, the political, social and treaty issues, can significantly help diffuse situations both on and off reserve.

Seven Sparks Healing Path

The Seven Sparks Healing Path is a program of the Mi’kmaq Friendship Centre in Halifax, Nova Scotia. The Aboriginal Corrections Policy Unit (ACPU), a division of Public Safety Canada, funded Seven Sparks as a demonstration project to support the healing and reintegration of Indigenous federal offenders upon their release as aligned with the objectives of the Aboriginal Community Corrections Initiative (ACCI) by

reducing recidivism among Aboriginal offenders and supporting individual, family and community healing processes. After a disruptive hiatus, the program is in its second iteration thanks to funding from the province. Service interruption is particularly hard for the most vulnerable people, those starting a healing journey as they transition from prison to community. Seven Sparks provides valuable reconnection post incarceration through talking circles, cultural teachings, and on the land learning. Vitally, Seven Sparks is a conduit to healing ceremonies (sweat lodge, smudging and so on) that inmates get exposed to in prison, but do not generally have sustained access to upon release. Studies have found that maintaining spiritual and ceremonial connections first learned in prison are key to successful reintegration. It also helps clients navigate urban health, education, employment, housing and addictions programs. Consistency and predictability in program availability are critical to successful harm reduction, staunching recidivism and facilitating positive reintegration.

The Halifax Regional Police (HRP) had two community officers who did participate in the initial program and sat on the advisory committee for Seven Sparks, but those officers transferred and no replacements were established. In the reinvigoration of the program there has not been any contact with the HRP to fill the positions. This is a common challenge where Indigenous programs are tied to limited term funding and have limited resources for maintaining relationships with police services every time there is a mandate or program change or project funds run out. The services providers indicate that they would appreciate police departments being proactive in committing community officers to regular contact and participation in their programming rather than having the burden of outreach placed on the Indigenous service providers. Better lines of communication are needed to overcome the obstacles and gaps created by turnover and it should be a matter of day to day operation for a commanding officer to make sure community outreach is occurring regularly, frequently and is impactful.

Seven Sparks has developed strong relations with parole and probation services as trust has grown with program consistency and the increased efficacy of community assisted parole hearings. High risk clients come to the centre in advance of their hearings for orientation on Escorted Temporary Passes. Positive policing relationships enhance community assisted parole and probation. The parole and probation officers find the talking circle approach helpful in reducing officer isolation through collective and collaborative decision-making. This approach helps share the responsibility of decision making for parole orders and holds the offender more meaningfully accountable to the community rather than just the system.

Seven Sparks would like to have RCMP and HRP involved in the land-based healing work of their clients. Community officers could join the sweet grass picking and sweat lodge ceremony outings out of uniform so that clients and officers could experience each other in positive and safe contexts. The program would also like to set up engagement sessions, talking circles, with willing clients so that they could express their experiences with police in order to help police services understand how to approach them and to help police services combat the perceived racism that is engrained in the local lore.

Many clients of the Friendship Centre and from reserve communities would benefit from greater understandings of the law. Officers could come to the centre and provide learning lodges about the roles and limits of police, how to report a crime, what to expect when you report, what happens when you are charged with a crime, how to avoid being charged and so on, with those willing to participate. Officers would benefit from learning about the ongoing changes in legislation as it impacts Indigenous peoples. Learning lodges on emergency protection orders, by-laws, child welfare legislation, matrimonial real property, taxation, treaty rights and livelihood rights and how to enforce laws and protect Indigenous peoples in the exercise of their rights are all subjects for consideration. Defined service agreements or CTAs between the HRP and

RCMP and the Friendship centre may help provide a framework for working collaboratively to recruit Indigenous officers, address victims' needs, to reduce crime, to enhance the cultural capacity of police services and to substantively answer the calls to action and calls to justice of the TRC and MMIW.

Victims' Services

Securing adequate, predictable, sustainable resources for Indigenous victims' services has long been a challenge in Mi'kma'ki. The demand for services is ever increasing and non-Indigenous victims' services, overwhelmed with their own caseloads, do not have adequate cultural capacity or resources to help with the unique and complex experiences of Indigenous survivors. The Friendship Centre has recently partnered with the Nova Scotia Status of Women, Elizabeth Fry and the Mi'kmaw Legal Support Network (MLSN) to fund the Victim Support Navigator position. The navigator receives referrals from the Avalon Sexual Assault Centre, Halifax Regional Police, urban universities, and MLSN. There is an open-door policy and clients meet with a triage support person who helps people new to the city to find resources. Part of the role of the navigator is to develop networks of support and to raise awareness of the Friendship Centre programs. She also sits on the Nova Scotia Trafficking Elimination Partnership (NSTEP) which is a YWCA advocacy group grounded in feminist practices to address root causes of poverty, inequality, and violence. The navigator works closely with RCMP and HRP. The current navigator is a former member of a tribal police service and has generously shared her insights regarding policing perceptions from the point of view of Indigenous women.

My clients would say 90% of their experiences with police are negative. They are in abusive relationships and when they call the police they feel they are treated disrespectfully and discriminated against. Because they defended themselves they get charged and they are treated as the guilty ones and there is a lot of distrust because of negative interactions. They would rather not call the police.

When we talk about the high rate of missing or murdered, the high rate is due to negative police interaction. The police don't take it seriously, or they say maybe they are drunk and they will come back when they sober up or run out of money. They feel they are not being heard or being respected or that the police take the other person's side. I have had a number of women say they are not going to call police next time.

It is critical to improve relations between the women, men, and 2SLGBTQQIA peoples of the Friendship Centre and the HRP and RCMP. The navigator provides cultural sensitivity training and blanket exercises. She identifies a need for officer training on how to do first contact with Indigenous women in crisis and would like to develop training that contextualizes Indigenous experiences of victimization and criminalization.

It is very difficult to help women fleeing violence. If she has an emergency protection order, and if they have bad interactions with the police, they will not call the police if the person breaches the order. They are fearful of being judged and they are fearful of having their children apprehended. Breaking the cycle is very difficult. Lots of women go back (to abusive partners) and due to residential school, there is a lot of violence in the home. When there is violence in the home, police, by law, have to call in child services. The women go under surveillance and even if they are doing everything they are supposed to do, counselling, programming, cultural supports and so, they still don't get a break and are trapped in the system.

Friendship Centre clients are going through the Domestic Violence Court. The DV court has done blanket exercise training to help build their capacity, but like police need to have expanded, culturally specific, trauma informed training. The navigator expresses the need to eliminate any barriers for women going through the system.

"They are battling mental health, addiction, maybe they have life skills and education

issues or come from a home life with lots of violence. We need to be able to respect that woman to help her. There is a lot of racism and discrimination that is alive and well in the HRM and they are faced with it every day.”

The many challenges related to the lack of reporting by Indigenous peoples, on and off reserve, are tied to trust and fear. The victim support navigator would like to create a safe space for reporting at the Friendship Centre where women could safely meet with officers and have support before, during, and after they report. This would require innovative changes in the ways in which police receive and take statements. The HRP does send female officers to the centre to help with female victims of crime and it is appreciated. Police are encouraged to allow support people to attend when victims are giving their statements. “Having another Indigenous person in the room helps create calmness.”

We have to get to a place where when there is an emergency women will not hesitate to call the police. There are so many people who do not report. The mistrust is an underlying issue. If someone is on some kind of order for alcohol or drugs or curfew and if something happens, that (those conditions) prevents a lot of people from reporting. Police could change their policies, but it comes with individual officers, if they are trauma informed, if they have that sensitivity with how they approach and talk with Indigenous women. Sometimes they are cold and callous and shift the blame – were you drinking, what were you wearing, were you asking for it? How do we change the way police interact with women? More training, more cultural sensitivity is needed. A lot of the officers are old school. New officers are trained in a specific way. Maybe the training in depot will include greater cultural sensitivity.

In terms of the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women recommendations that navigator “hopes the police and higher ups read them so they can build a relationship with our communities.

Truth and reconciliation is really important but it is their actions, there is still a lot of racism. There are still a lot of people who think “we should just get over it and be like them.”

Nova Scotia Family Information Liaison Unit (FILU)

In partnership with the federal and provincial departments of justice, the Nova Scotia Native Women’s Association support the Family Information Liaison Unit, a new single point of contact to help families access available information about their missing and murdered loved ones from multiple government sources (police, prosecutions, corrections, social services, child protection, health, and other FILUs). The Aboriginal Victim Case Coordinator and the Community Outreach Specialist help any family members (blood and non-blood) who ask for assistance in gathering case specific information about police investigation, court proceedings, medical examiners’ investigations or inquest. They connect families with Elders and Indigenous knowledge keepers, healers and mainstream trauma counselling and supports and collaborate with liaison units in other jurisdictions who may have information. FILU will direct those wishing to lodge a formal complaint of professional misconduct to the appropriate agency but they do not undertake investigations, provide legal advice or participate in any legal proceedings.

The FILU workers provide community members with checklists, detailed description sheets, communication logs, media advisory and poster templates, and prevention and safety tips. They have a guide to working with the police, what to expect, what to prepare and how to have a positive relationship by encouraging people to “try to deal clearly and respectfully with the police.” “If it happens that you have a concern about police behaviour you will be better able to address your concern if you can show that you have done your part to build a positive relationship with police.” What to expect: you have rights, ask for your police contact’s name and badge number, ask for the case file number, ask what follow ups police will do, ask if similar cases have

been reported, you can give consent to check if your loved ones identification has been used nationwide (driver's license, credit and bank cards), call missing persons with your case number and ask for updates or clarifying information, request police to do media updates or Crime Stoppers video or other awareness campaigns, try to remember small details, "even small details can be very significant for police so do not hesitate to tell them everything," ask any questions, if offering a reward make police aware of the details as it may impact the number of tips. Police are not responsible for offering rewards, nor will they communicate the details of the reward that is being offered.

The community outreach specialist engaged with police detachments across the province to raise awareness of the FILU program and received welcoming support from approximately 50% of the those contacted. The response of other 50% was cold and showed no interest in building a rapport the service.

Again, the biggest articulated issue is trust. Families are anxious for information but also do not want to contact police because of the lack of trust. In the support work, families complain of having to press for updates and that length of time between updates is too long. They often express that their cases are not being investigated thoroughly, but if they express frustration relations deteriorate quickly. The liaison tries to soften the load of what the police do by helping parents grieve and encouraging the police toward compassion, but she finds the police do not demonstrate sensitivity for the families, appear standoffish, and judgmental, and still need more training to understand stigma, kinship networks and how to overcome the perception that they do not care. Police would do well to take time to sit with families, to explain the process, to speak with rather than at the person, to use non-technical, non-legal terminology, to demonstrate patience, to make sure they understand what is happening and what will come next, encourage families to come together as a group to meet with police for the updates, establish regular check-ins. Abrupt service calls run counter to the dialogic

nature of the culture and give people the sense that their matters are not important. Grief and trauma informed workshops are recommended to help police improve their service delivery. Liaisons also help access traditional healing and ceremonies for victims and may be a conduit for police seeking such services. The program's funding is set to end March 2020.

In terms of communicating with family members it is important to navigate between what constitutes a crime and individual rights to privacy. It is not a crime to be missing. Adults can choose to leave home and cut off all contact with friends and family. Law enforcement is limited in what it can do in these situations. Even if law enforcement locates a missing person, they cannot divulge any information about that person without specific permission from that person. Family members who report missing persons need to understand these issues at the front end of engagement with police. Police need to better help people set reasonable expectations about what is it the police can actually do.

Friendship Centre Community Voices

In the sharing circles were people who had been arrested, served time, or have had family members arrested. "I don't trust the cops" was the most common statement throughout the course of this research on and off reserve. The clients of Seven Sparks and Victims' services and many clients of the other Friendship Centre programs have historical relations with police and generally want to avoid any future interactions. These are often traumatic experiences which are compounded by intergenerational experiences of police conflicts with extended family members, parents, grandparents and so on. The detail with which people described their encounters with police illuminate examples of mistreatment. Men and women who had been in and out of jail shared in the circles their feelings of being targeted and harassed by police. People who were arrested due to their roles in treaty rights protection feel they are constantly under surveillance and are particularly defensive and untrusting of the police.

The majority of the participants indicated they have mental health issues and struggle with addictions and would prefer to deal with Indigenous and other police who are understanding of addictions and have mental health training. “It would be better to release people without alcohol conditions, they are just setting people up to fail” is a commonly heard sentiment and people are frustrated with the criminalization of their addictions and their mental health.

Women clearly expressed the need for trauma informed training and feel more comfortable with officers who have been “educated on us as Aboriginal people.” Young women do not go to the police as a safe option and this creates a safety gap. If the police response is not working, what should be the alternative? Young Indigenous women and 2SLGBTQQIA are particularly vulnerable to violence. Increasingly women are being charged with domestic violence if they are the more emotional (read as less rational) party or appear as a dominant aggressor. Police are lacking in gender-based analyses training and stereotypes that define incidents as being a “classic case of woman scorned” still appear in files. Police are also constrained by policies which give them no choice but to charge and thus maintain the need to rely on such stereotypes in order to justify their actions. In general, there is a lack of understanding of the underlying factors of Indigenous victim / perpetrator experiences.

There are specialized officers for mental health court, but more education is needed for officers on the street. The victims’ services mobile unit officers and the sexual assault team are not all trauma informed. In several cases discussed in the circles, the police were extremely rude and the women sharing their stories spoke of being labelled, stigmatized and “roughed up.” Women with a criminalized past felt particularly vulnerable to negative treatment. Women also expressed situations of bullying by police in order to get them to testify against abusers in domestic violence cases and several said they were threatened with charges if they don’t testify.

Multiple women felt neglected by police in their experiences of sexual

victimization. Comments such as, “they did not believe me” or police assumed “they thought I was asking for it” or dismissed their allegations because “you were drunk,” were pervasive. People reported that police did not collect evidence in a timely or professional way when they were sexually assaulted. Understanding the intersection of being labelled a criminal and sexual victimization and the consequences this has for police procedure is important. Women want more female officers and more women in higher ranks.

First contact by police at an incident is a critical time. The participants want officers to consider that the person they are approaching is likely a person carrying historical trauma of police brutality and to factor in flexibility and adaptability, to be less threatening or biased. Many reported that officers who approach them with confrontational authority automatically escalate a situation. Those who approach a situation with a dialogical approach tend to resolve issues with less harm.

As mentioned above it is common for people not to report when they have been victims of crime, it is even more difficult for people to report mistreatment by police. The perception of police as an untouchable authority is widely held. For example, “I never had any fair treatment by police. I have nothing positive to say about them. As I mature, I do not see them as individuals, I see them as a whole, I think they are the biggest gang.”

Others are very suspicious of police surveillance and record keeping. Some Friendship Centre clients expressed discomfort with what they described as profiling on their CPIC sheets, “they put things in your paperwork that is not true, without evidence. They don’t treat you as a human being.” “Once your information is in the system, it follows you. It gives people the opportunity to go into a situation with racism in their hearts.”

Frequently people talked about the racism they encountered and several have the perception that the police working in the city, “do not want to have anything to do with

us.” “They tell us, “go back to the reservation.” “I tell them, you are standing on my reservation.”

The Friendship Centre clients’ advice to police officers includes encouraging officers to talk about the root causes of their crimes, to avoid using sirens and force. If they need to be questioned, do it in a safe space. They understand the limits of the job and recognize their responsibilities when behaving disorderly, but they would prefer police to “not be so cocky.” The participants in these circles would like to sit in circle with police officers to share their experiences, “so they could better know who we are and stop judging us.”

The police complaints process was a popular subject in the circles. Many people who articulated complaints had no knowledge of how to instigate a complaint. For those that had, or wanted to lodge a complaint found that the time limit to do so was unreasonable and ask that the policy change to extend the time period. People experiencing trauma are unlikely to have the resources, psychological and material, to sustain them through the lengthy process.

The idea of establishing a Friendship Centre based community liaison with RCMP and HRM was widely supported. The liaison would help with reporting and reduce intimidation and fear of police. The liaison, similar to the victims’ service role, could work with community police officers. Another suggestion was to create a telephone hotline for Indigenous women to call that would connect them with Indigenous female first responders and crisis intervention.

Unanimously participants in this project call for an urban healing lodge with a community sweat and access to Elder teachings. A fulltime Elder and lodge could assist all service providers and facilitate the Aboriginal continuing care model utilized by Corrections Services Canada as people reintegrate into healthy communities. Halfway houses serving Indigenous clients often fall into jurisdictional waste lands as provincial or federal governments jockey to avoid directing funding. The categories used to define

services and their eligibility criteria are a policy problem that limits Indigenous clients in accessing the healing services they need.

An urban healing lodge could be a training ground for all police personnel and a hub for cultural exchange and crime prevention. Directing resources to healing lodges will impact offending because they help ameliorate the experiences of guilt, shame, anger and frustration as people transition out of institutions. Lodges, like the Friendship Centre provide access to healthy family networks. Foster care and child welfare services are considered a prison pipeline. Reinvigorating kinship networks for those who have experienced the foster care system is key to individual and collective healing. Talking issues through with Elders also decreases suspension rates according to parole officers. A lodge could provide a venue for restorative justice and holistic justice services. Police services have an important support role to play in this kinship network.

Mi'kmaq Legal Support Network

Mi'kmaq Legal Support Network (MLSN), founded in 2002, is a collection of programs meant to ensure fair treatment for all Mi'kmaq and Indigenous people who come into contact with the Nova Scotia justice system. The Native Court Worker Program, Customary Law Program, and Victim's Services are the three main services running under the umbrella of MLSN. Programs are available to both on-reserve and off-reserve Indigenous peoples. The main office is in Eskasoni and sub-offices are in Millbrook, and Dartmouth. In their aim to bridge the gap between the court system and Indigenous peoples, MLSN Court Workers accompany clients to court, provide information on community resources, such as drug and alcohol counseling and educational and employment options, and facilitate communication between justice officials and clients, write Gladue reports, and assist with victim impact statements. The purpose of the Customary Law Program is to increase Mi'kmaq ownership of justice initiatives in their communities. The main components of the Customary Law Program

are justice and sentencing circles, which are designed to craft community service orders and assist in the management of disputes that are diverted from the court and help reintegrate wrongdoers into the community.

In order to maximize their efficacy MLSN needs to have positive, transparent and effective collaboration with police services. The protocols for working with MLSN should be clearly laid out in CTAs and community justice committee or the advisory committees to the CTA could provide oversight of police procedure, case management and diversion and help to substantiate the terms of the agreements.

Like all Indigenous service providers, MLSN has very limited and insecure funding which impact the quality and consistency of communication and interaction with various police services. MLSN has a diverse clientele and deals with a broad spectrum of legal issues from simple to the most complex cases across the province. They are experts on cultural sensitivity and cultural training, but do not have the personnel to deliver needed programming because their limited staff carry significant caseloads. As with other Indigenous service providers, MLSN cannot keep up with the turnover of police officers to maintain awareness of its programs and consistent collaboration. New members who work in First Nations should be trained immediately in restorative justice processes and in making referrals to MLSN. Detachments should accommodate officer participation in the justice and sentencing circles and should have officers dedicated to improving the referral process to diversion programs to help reduce the number of charges.

Due to the nature of its service to Mi'kma'ki, MLSN is in a unique position to observe patterns and trends in community / police relations. Over the years, they note that crime rates in First Nations communities have gone up and wonder if this is a result of increased reporting or other factors such as increased addiction and mental health issues exasperated by poverty and intergenerational consequences of colonization and cultural genocide. They do note that policing services have not been

adequately resourced to deal with increasing crime. In Cape Breton, the Unama'ki tribal police was severely underfunded, but when they switched over to RCMP, the funding for a single detachment was more than double the budget for the entire tribal service that was responsible for five bands, indicating significant inequality and reinforcing the idea of "being set up to fail." Tribal communities are underfunded and unable to react to crime trends or conduct meaningful crime prevention. Even though the majority of communities prefer to have tribal police services, they cannot afford them on their own. MLSN would like to look at the legislation supporting Aboriginal policing and the establishment of Aboriginal police forces. The special constables are gone and the level of community policing in place is inadequate.

Under protection and over policing are key concerns in communities that do not have a regular police presence. All communities report under protection in terms of poor response times as contributing to the general distrust of police. Even in communities that have sub-offices or detachments, they are often poorly staffed. Those communities who do not have detachments have even slower response times and those without CTAs would like to see significant improvements in community presence, response time, case follow up, crime prevention and cultural competency.

On the other hand, over policing is a common experience on and off reserve such as when a small incident is responded to with an abundance of resources, for example "we had someone have a car repossessed in our area. There were sheriffs, lights everywhere, 8-10 cops, 4 or 5 cars to just pick up a car. It was ridiculous. We thought something was going on. But they were just picking up a car, I wonder how much that cost? That was a waste."

There is a lack of crime prevention in the police detachments, even the "well-funded" RCMP detachments. They have specialized officers for prevention, such as in family violence, but the service providers, such as MLSN are not sure of the impact of that work on domestic violence cases and their resolution. Police training has occurred

but the impacts are unclear.

In terms of substance abuse, which is reportedly increasing, the police had run the DARE program for kids, but that rarely happens today. There is a great need for prevention programs in policing in order to help them connect with the communities and reduce crime.

The lack of cultural sensitivity amongst police officers is a widespread problem for on reserve participants. According to MLSN there is a small pamphlet for training detachments on policing in Indigenous communities but it is not thorough, it does give them appropriate exposure. The Aboriginal Perceptions training course is available twice a year for a small number of officers, but those that need the training most, those working on reserves, are not attending because the demands of the communities are too great to take the time away. "There are no standards across the country, there is no continuity amongst the Divisions."

Jurisdiction can be a complicated factor for members of First Nations. For example, Membertou is policed by Cape Breton Regional, but Eskasoni is policed by RCMP. If a resident of one community is picked up by a police force in another there is some uncertainty as to case management and sometimes vulnerable people fall through the gaps. Drug cases are particularly complicated regarding Municipal and RCMP detachments, not just in terms of jurisdiction, but territoriality, and overlaps and conflicts occur throughout the province. Jurisdiction is also an issue in determining who has the responsibility to protect treaty rights and to prevent non-Indigenous peoples from interfering with the implementation of treaty rights. A comprehensive strategy is needed for all enforcement agencies to work together to enhance their treaty education and to work with the Mi'kmaw nation to facilitate their safety in the exercise of the constitutionally protected rights.

Recruitment of Indigenous police officers is a central concern of MLSN. "RCMP says they have about 70 Indigenous police officers but when you look at the list many of

them are from other jurisdictions or they are people who self-identified and that gives people an advantage. We are looking at recruitment and Indigenous women. RCMP says it is a human rights violation to ask people to put up their credentials, so that is an issue. There should be some stipulation that people who are doing the policing have some sort of connection to a first nations community.”

In Nova Scotia, MLSN could, and should, be a primary resource to assist police services in answering the TRC Calls to Action and the MMIW Calls to Justice, provided they are appropriately funded and mandated. Unfortunately, with officer turnover and lack of resources it is difficult for MLSN to do regular outreach to maintain contact with police services. Municipal departments are referring more cases to MLSN, but policies and protocols are needed to build and sustain police involvement with MLSN and its customary law programs and should be considered as part of RCMP, Municipal and other enforcement agencies responsibility to reconciliation.

Policies and Practices in Mi'kma'ki - Perspectives from on-reserve participants

Mi'kmaw communities in Nova Scotia are fairly small and very close knit and as such there is a great deal of collective grieving experienced day to day and fostered by mobility of extensive kin networks between communities. People share information quickly. The nature and extent of the problems as reported by participants confirm that the “normalization” of doing nothing about crime, family violence and addictions, are largely products of intergenerational colonization and systemic discrimination. People experience multidimensional abuse based on systemic discrimination, gender, age, family background and residential school experiences.

Local norms and values of non-interference, prescribed ethos to not show emotion, and the desire for handling matters for themselves without outside interference produce an appearance of the normalization of tragedy and the normalization of not getting results when asking for assistance from police or the Canadian justice system. Codes of silence are reinforced daily by ideas like, “you have

to be careful of what you say because the wind will hear you," "don't talk, don't tell" and "what goes around comes around." Involvement with police and Mi'kmaw Family and Children Services are feared more than embraced and most people will do anything they can to avoid them. Victims are taught to wait for other influences to take over and rebalance relationships and perpetrators take the risks of carrying out harmful acts, assuming that nothing will be done to demand they take responsibility for their behaviour. Participants experience firsthand the inadequacies and contradictions of Canadian justice system and police responses to crimes and to family violence incidents that perpetuate the problems of racism and discrimination.

As with the urban population trust was the most commonly uttered term in all of the sharing circles. There remains a profound mistrust of police services. The research team was struck by how many people have been impacted by patterns of tragedies within their immediate families. A significant number of the participants had family members who are missing or who have been murdered. Many of these participants expressed, in extraordinary detail, how they perceive police services to have failed to protect their family members and how they have failed to adequately investigate and resolve crimes against them. Dissatisfaction was common across age, gender, spiritual orientation, language, economic and political orientations. People are also concerned with the capacity of officers to cope with the lived realities of reserve life.

Cops lived sheltered lives they have not been exposed to what we have been exposed to living in the Mi'kmaw community, being traumatized over and over again. We move on to the next murder, the next death, we are like robots. It does not bother us as much. I have seen a lot of cops show a lot of emotion like crying and we are family and we are not even crying, why are they crying? They have never been exposed. They might have lost only one person to death in their lives and here we are at a suicide and she does not know how to handle it.

"We are normalized to it but they have culture shock."

Inadequacies of police services were highlighted throughout the circles:

When I speak about MMIW I say the policing issue is the biggest issue. We have inadequate police services in We'koqma'q there are 3 members that serve the community and region up to Cheticamp which is 2 hours away. We have a minimum 1 hour response time or maybe 1 day or 2 days. Someone was breaking into my house, I called the police they did not show up until the next day. There are so many issues. If you call the police looking for help, referrals, protection and that service is not provided then your life is in jeopardy. Cassidy Bernard called the police five days before she died looking for help. She turned to the police to get assistance, she wanted to file a complaint and 5 days later she is dead.

Despite the many shortcomings brought forward in the circles, all but a very few people understood the necessity and importance of trauma informed, culturally appropriate police services and recognized that "police have a job to do." Those that fully rejected the validity of police services tended to be those most traumatized by excessive force during raids and child apprehensions. Interestingly, family members who witnessed previous generations fight for treaty and Indigenous rights, resulting in many confrontations with police and multiple incarcerations, were generally optimistic about the potential for police services to improve if they were fully decolonized and anti-racist.

Indigenized Community Policing

Almost universally participants articulated having greater trust and better rapport with Indigenous officers whether they were Mi'kmaw or from another community. There was a strong sense that the nature of policing has changed over time

and that there is a distance from the community policing of the past and people would like to see a return to community policing.

My dad was a police officer many years ago. I heard stories from him. Policing is so different today than it was back then. The community part of policing is starting to fade and there is no relationship between the people and the police. The only time you have any police interaction is when they think something is wrong. You don't see the police going about anymore trying to make positive relationships. Back then you did not have to wear side arm because you trusted the people and they trusted you. as years went on the trust between the two the general public and the police got affected and now you see police with every kind of weapon they can have on themselves. They do have a protocol that they have to follow, sometimes they over step that, they act before they speak. There is just no communication. The communication part of it is not there.

Community members want to know the officers serving the community and want to see them out in the community. They want officers to be friendly and to be able to speak the language. If there is a problem with their kids they would like police to call the parents rather than arrest them or ignore the problems. Many participants thought on-reserve police avoid dealing with problems and do not respond to calls from the community when kids are acting up, or drinking. Community members want the police work with the youth and schools more often to provide public safety training, suicide prevention and anti-drug awareness. The moose hunt camps started by one group of Mi'kmaw RCMP officers was a great success but the financial burden rests on the band. Building youth programming within RCMP and Municipal police service delivery would be welcomed. Such programming could help police gain greater cultural competency. Communities clearly favour those officers who will put up wigwams and work with the kids.

Priorities for most communities include deep cultural preparation and training prior to coming to work in the First Nation. They want Mi'kmaw speaking officers who understand the social and systemic barriers their members face including poverty, substance misuse, intergenerational trauma, systemic discrimination, and interpersonal violence, as well as the many aspirations within the community for healing and wellbeing. They want officers to live in the community. They do not like it when officers treat policing as a "9-4 job, leave the community at the end of the day and forget about it. We have to live here." In all of the sharing circles people expressed frustration at the transitory nature of policing. "Just as we get to know and trust someone, they are transferred." Some bands are willing to provide housing for officers as part of the CTA agreements.

In addition to living on reserve, communities are interested in having officer orientation programs where new officers are mentored by well-liked officers who can introduce them to the community. Many people suggested having welcome ceremonies for officers and everyone agreed that police should go around the community to meet with and learn from the Elders who could help train them in culturally informed anti-bias ways.

"We want to see the police here." Visibility is a key priority. Community members unanimously favoured the officers who go on foot patrol and lament the fort-like nature of detachments, where officers "hide from view" in the "cave" and "all they do is play cards". Community members regularly report that they like the officers who do foot patrols, that walk around and meet and greet folks, who are outgoing and friendly. Community events are generally open to everyone. Being part of a community mean participating in the events as a matter of courtesy, but also as an opportunity to meet new people, learn about the cultural dynamics and build rapport and respect. People want approachable police in their communities. Participants expressed gratitude when police members attended the wakes, salutes and funerals of loved ones.

Some communities have interagency meetings where all the local service providers come together to do case management. Those who have interagency welcome police participation and find they are a good tool for communication and community planning to address crime and social problems. For communities who do not have interagency the police could participate in helping to set up such meetings. Service providers and community members alike would prefer greater interaction with police. Some police units limit their community interaction to the Chief and band council level and information is not always shared beyond the band council to the community, leaving community members in the dark and potentially fostering the spread of misinformation.

In addition to participating in interagency meetings, community members suggested that police could get involved with and actively support grass roots organizations such as the Membertou men's group and other men's groups, youth programs such as LOVE and Red Road, they could also help sponsor drum groups and help reinvigorate cultural teachings.

Communication & Reporting Challenges

Most participants do not want to go to the detachments or sub-offices in their communities, "I hate walking in there." There is a commonly shared fear of being misunderstood, or being treated rudely, or worse, being dismissed after summoning the courage to report a crime or to ask for help. For those communities that do not have a station getting help can be very difficult.

We had a situation this week and every person who called back for this case it was a different officer each time they called and you have to explain the whole thing all over again and it is re-traumatizing. Why can't we just deal with one person?

There is a significant need for navigators to assist in reporting crimes. A large number of participants expressed frustration at being misunderstood and "not being

taken seriously.” In several circles people shared the difficulties they had in reporting serious crimes, such as historical sexual assaults and having their complaints shut down by the person at the front desk, who does not take time to help the person understand what is needed to pursue a charge. A few harsh words can quickly crush the confidence of someone who has the courage to approach the police. “We feel victimized all the time and we can’t speak out because no one is listening to us.”

In communities where there are victims support and crisis response teams, interactions with the police tend to be more favourable. In times of death it is customary for family and close friends to stay with the body and have certain community members pray over the body if that is the belief of the family. It is an important process that can be accommodated with some innovation in deaths such as suicide, homicide or accidents that require investigation, if officers are aware of the practice. Preventing the ritual access can escalate tensions, permitting the ritual without disturbing a scene can facilitate an investigation.

Whether in the city or on –reserve, official reporting and police communication styles are different from the general population and Indigenous communication styles add more layers that require translation in order for communication to be clear. Language retention is high in some communities and translating legal language into Mi’kmaw is an imperative for all members in Cape Breton communities. Calling for help is challenging when centralized dispatch asks too many or complicated questions. Participants want to be able to call someone for help that knows the community and can respond quickly and safely to trouble. For example, “it took years after the shooting death of John Simon for people to reach out to the RCMP, even today many still prefer to call the Chief for help in a crisis.” Following the shooting, a number of communities did not want RCMP to attend their calls, today the memories are still strong.

Learning to ask the right questions in the right way is a skill of cultural proficiency. Encouraging support people to assist in translating, whether in English or

Indigenous languages is key to making sure encounters with reporting are more positive. The community members would like to have people designated to attend police calls to act as mental health interpreters and to facilitate dialogue in order to deescalate situations.

In cases of missing children and custody disputes several participants reported being frustrated by jurisdictional confusion regarding 'district of occurrence' (where event happened) and who would normally investigate these reports unless the child is in immediate danger of bodily harm. One father was particularly concerned about his daughters and reported an incident but was shuffled from one detachment to another without getting any help in the end. He read the police response as not taking him seriously because he had a history of drug addiction. The safety of the child was an issue and he believed that the child was going to be taken out of province, or the country and was left helpless.

The following commentary is representative of the perspectives of on-reserve participants:

There are always good ones and bad ones. I had my share in dealing with cops and RCMP and justice system. It has a lot to do with how they approach us. If they are too demanding and they are going to be like hey I got the power, then sure enough our people are going to retaliate. I have seen them, it happened to me and the cops come and think they are all high and mighty and it just gets that person more pissed off than ever. I have also seen cops who come in and just by the tone of their voice can get the women to settled down to talk. That is the kind of cops we need.

A lot of them come here and they don't have the so-called sensitivity program. They should all go through that. They don't know what we are really like. In our community, it is important to understand where our people are coming from and what they are like. If you don't know the background or the culture traditions in

the community they are not going to like you and you are going to know and you are not going to stick around here too long, just like a doctor. You mistreat us, say nasty things or not treat us right we are going to stop going to you.

speaks Mi'kmaw.

They did not treat us with respect as native people. These people who come to your house have to treat you with respect and listen to both stories.

The good one will help solve the problem faster than the one that thinks they are high and mighty. You need to come with a calm voice and sit that person down and listen in a proper way.

Case Management and Investigations

Frequently participants in the circles commented being unhappy with police investigations. An alarming number of participants said they were not convinced that the deaths of family members were properly characterized as suicides or accidents.

There is a perception that police do not thoroughly investigate Indigenous deaths, and are quick to say they are suicides or accidents in order to close case files. For example:

I believe my nephew got murdered by someone. The investigators told us that is was suicide, but it was not suicide. He told me he was coming back tonight. He bought his groceries and came back that day. Why do these city cops not believe in anything else but suicide? The city cops don't believe anything but suicide.

The RCMP are a good help to me, but the city police are not a good help to me. I believe my nephew was murdered instead of suicide. We told the police about it, the city police, and they absolutely refused to reinvestigate it, or speak to the person who (has information), or the grandmother, that this file was closed and there was no opening it back up again.

In another case a mother was very unhappy with the handling of her daughter's death:

My daughter went missing They told me if I know anything or anyone who might know anything to let them know. I felt like they were ignoring me. I hear

nothing. Finally, they found my daughter and she had died. It was awful. They were saying she died of exposure but I don't think so. The cops had the case open and they said they will let me know if they close it, but they did not let me know. I had to find out on the news. I was angry. I was mad at them. I still don't know what happened to my daughter.

A number of people shared stories of their experiences of excessive force:

My experiences with cops, more than a few. When they mostly are called is when I am having a breakdown and they came and they treated me with brutality. All I would need at the time was someone to listen or talk to. They would come in and make you more mad, more pissed off. They make like you are in the wrong just looking for help. They don't understand. The last incident I had I was tased and held at gunpoint. Now it makes me so scared to call the cops because I think next time maybe they will shoot me. That does not feel good. Next time if cops are called to anything like that maybe they could show some compassion and be more calm. It was my bad experience. One time they were called on me and the kids I was babysitting because we had an incident with the neighbour. They came and automatically made us to be the bad guys without getting our story first. They threatened me and said if they have to come over again they will charge me with failing to keep the peace. They did not do their job. They didn't get both sides of the story. They should not make you feel like the bad guy, they are not the judge.

Policies for communicating developments in cases that better reflect the complex realities of community and kinship dynamics are needed. Families in crisis may require assistance in coordinating interfamily communications. Several narratives recounted miscommunications between family members in missing person cases. Selecting to tell information to one member is not sufficient unless the officers have worked with the family and come to a communication agreement.

Timeliness of response is another common criticism. "Police will not come and take victims statements until months after the incident and people forget things or rushing them to make a statement and putting words in peoples' mouths. Sometimes the English language, for fluent and non-fluent speakers (of Mi'kmaw) is hard to navigate. When someone is giving a question from non-Indigenous point of view."

The experiences of under protection and over policing through profiling, were present in every sharing circle.

I've seen tons of prejudice, lack of support, lack of information. Living in a First Nation we are over policed, we have lots of spot checks. On welfare day, we have cops waiting for people, they know they are on the move and people get stopped and that is the day their problems get worse. You get used to being harassed.

In another community, "they come on cheque day and do road blocks. I think they come onto the reserve because they have a quota to fulfill and it is easier for them to fill it on the reserve. Why do they come to where they are not wanted?"

Others shared stories of being racially profiled,

I had a personal situation where I was pulled over and they automatically got out the breathalyzer, without cause. Cop said my breath smelled like gum. He was very arrogant, shocked that my breath did not smell like alcohol. I felt stereotyped. I want to brain storm on policies and procedures to move on in a good way, with so many cases of MMIW and not having answers. I am fearful for myself and my children. I feel like we would be stereotyped the quickest and have judgment passed on us.

Frequently we heard comments such as, "historically we have all witnessed the insincerity of how Indigenous people are treated. Growing up when you need cops to help they were nowhere to be seen. In the meantime, what these cops do for you is drop

off your drunken parent in a snow bank in your driveway. That is what I remember growing up.”

One young woman shared her story:

My experiences with police have not been good because my dad has a long history with the cops. He was an alcoholic, he was very violent toward the cops. When I was a teenager I got pulled over for DUIs. Any time my name was on the scanner they sent five cars. They were really rough with me, and never had any women officers. 2nd sentence I got I was in my room passed out, naked and two men (male police officers) came into my room, ripped the blanket off me and dragged me out of the bed. The cops did not have any women with them. Finally, woman (officer) showed up and wrapped a blanket on me and then took me to cells and put a white suit on me. As soon as they hear you are from the reserve they act aggressive. If they just spoke to me I would have complied. They are always rough, I always end up with bruises. They cuff me really hard. They never read me my rights. I never resisted arrest. I know I am in the wrong, but to them because I have a violent history through my family, they treated me violently. I could have fought the last two sentences but I just wanted to get it over with. I figured I am never going to work in the government so what difference does it make, I am never going to get that far.

Alarming, many people shared deeply personal stories in the circles of violent crimes that were never resolved and experiences of harassment:

I remember a young girl being viciously raped and dumped in a snowbank and no one did anything about it. Nothing ever came of it. I remember how we were just an “Indian” then just as we are just an “Indian” now. The challenges that I see, my father was a very big activist fighting for Indigenous rights. My father was constantly being arrested, constantly being harassed, he could not even

leave the house without being drive off the highway by the police. He was chased all the time.

Most people who participated in this research had very little faith in the police to help when they needed it. "I would never tell a victim of sexual violence to go and report to the police because in my experience there is no such thing as justice when it comes to violence, especially when they are women."

Several participants expressed deep concern over the police treatment of people trying to protect their treaty rights.

My experiences are violent with the RCMP. I have a deep seeded hatred for RCMP. The mere presence of them triggers my anxiety and my experiences with them you have to look at the historic relation between RCMP and Indigenous people right from the start, the North West Mounted police. They were founded specifically to control the Indians to put them into reserves. The timelines since they first coming around, a lot of us have traumatic experiences, not just in our lifetimes, but generations. The residential schools, they are enforcing colonial practices in Canada from the start until today. We have people trying to protect their territory but we have RCMP officers who are heavily armed coming in to attack the people who are protecting our territories to enforce colonial law and that white supremacy. I do not want to help them become better but I would like to see justice delivered in the community in better ways.

Community-based solutions

The community expertise to assist in policy development is extensive. For example:

I worked in the correctional centre for 23 years and part of our mandate was to try to make awareness for the Aboriginal population in there. We taught our correctional officers a two-day course, I fought to have more days in the course but they didn't go for that. There is too much information to get out in 2 days. We put around 500 correctional officers and staff through the program but there

is still a lot of work to be done. I have had many situations where I deal with people, I don't wear a uniform when I am with the Grand Council, I don't need one. I don't need something to say that I am enforcing laws. I just need to talk to people and try to get an understanding of what is going on. The police don't take that time. They do evaluate. They have a use of force protocol and they are supposed to follow it, a continuum that they follow. I wish they had **some kind of model for dealing with people from native communities** they jump the gun when they should just sit back and listen, because it takes as much time jumping the gun to fix that problem as it does to sit and listen. When they say, they have no time, it takes more time to deal with the aftermath of the problem that was caused from them not listening in the first place. For the victims when they say they can't say anything that is not true. They can things to a certain extent. I know they have to protect the investigation but they could say what is going on and if they are getting somewhere. They don't have to say we can't say anything. They could say we have more information or we don't have information. It gives the victims a chance to feel that something is being done. They need to look at things more broadly. Very seldom you see a cop out there talking to kids or playing baseball, all we saw was the negative side and we never seen anything else. I guess you can't recognize something if you have never seen it. I think some of the recommendations from the Donald Marshall inquiry are at play and are being used but so much more has to be done.

In their strategic priorities, the RCMP states, "We contribute to safer and healthier Indigenous communities by:

- promoting and encouraging the recruitment of Indigenous people as potential employees and police officers

- working collaboratively with the communities to ensure enhanced and optimized service delivery by developing relevant and culturally competent police services
- contributing to the development of community capacity to prevent crime through on-going social development
- maintaining and strengthening partnerships with Indigenous communities, our policing and government partners, stakeholders and with Indigenous organizations
- promoting and using alternative / community justice initiatives for Indigenous people
- demonstrating value for service through the development, management and evaluation of the detachment performance plan created in collaboration with the local Indigenous communities
- contributing to public policy development and implementation and development to assist in building safer, and healthier Indigenous communities.¹⁰²

The knowledge shared in the gathering circles and throughout the course of this project point to strategies to adjust racial bias in policing, to develop relevant and culturally competent police services, crime prevention strategies, and concrete ideas to better assist police interactions with people facing mental health and addiction challenges, and to facilitate reporting. Mi'kmaw people want to be able to trust the police to protect them and their rights as Mi'kmaw people. They want to be treated with dignity and respect and to have certainty that their expectations will be met in the delivery of policing services in their communities.

¹⁰² Royal Canadian Mounted Police. "Strategic Priorities – Indigenous Communities." November 21, 2018. <http://www.rcmp-grc.gc.ca/prior/index-eng.htm#ac>.

Perspectives of police members past and present

Several Indigenous members of the RCMP and other police services, retired and serving, contributed to this research by sharing their recruitment and career experiences. They spoke of a variety of challenges and opportunities.

Former police members have rich and instructive narratives from which we can learn much about the challenges of Indigenous police and policing Indigenous communities today. Thematically the officers raised their experiences of discrimination and paternalism in local detachments as Option 3B or special constables. They were not protected in their positions, there were no retirement or security benefits. Band councils had control over policing and could make special requests and that facilitated the perceptions of favouritism. There were some excellent officers in the special constable and 3B program but many quit, due to frustration at the ridicule they experienced from regular members.

Former officers were skeptical of the CTA program because it does not resolve the problems of adequate funding, leadership and officer turnover occurs regularly and services as are result are inconsistent.

Former officers also speak of the trust gap and how difficult it was to get people to cooperate with investigations. "It is difficult for the RCMP to do their job because no one trusts them." "Indigenous officers don't make the trust issues any better because they have to prove themselves, so they can be even harder on our people." These challenges are compounded by "racism and dehumanization of our people by law enforcement."

They also identify the importance of training officers. The complexities of Mi'kmaw communities requires well rounded and highly skilled officers who are "capable in suicide intervention, alcohol and drug counselling, as well as treaty rights protection." All officers, Indigenous and non-Indigenous need to be trained in "the culture, spirituality, poverty, intergenerational trauma, welfare dependency,

unemployment and the precarious life of Indigenous peoples. Indigenous officers should take into consideration Gladue factors when laying charges.¹⁰³

Unama'ki tribal police force was a smaller force that was local, that was part of the community but was tragically underfunded. "We should have our own peace officer system, but they see us as terrorists when we want to manage our own resources." "Many of our people have been traumatized by the level of force used against them by the police."

A key source of frustration witnessed by former Indigenous law enforcement members is the lack of long term commitment to Indigenous community policing. "There is no longevity behind any Indigenous plan."

Recruitment

The most successful recruitment experiences included long term and consistent mentoring, academic upgrading and tutoring for tests, financial and logistical assistance in vision corrections, supportive physical fitness training, and job shadowing at detachments. Indigenous recruits have to "work 10 times harder". "Indigenous women have three strikes: first you are a woman, second you are an Indian, and third you are a single mom." Female officers experience gender discrimination and gender based harassment. Detachment commanders should be more proactive in supporting female officers in leadership positions.

"RCMP needs to make themselves available to the recruitment, supervising the entire process, finding the right go to people for mentoring."

Until there are systemic changes in the day to day business of the RCMP participants in this research are "not willing to recruit" future members.

"Change the standards, don't lower them."

¹⁰³ Rudin, Jonathan. 2019. *Indigenous People and the Criminal Justice System*. Toronto: Edmond.

“No one wants to be the token.”

Distance from home communities and little support for officers with children created unique challenges identified by Indigenous female officers in the RCMP. Single parent officers are not well accommodated by Depot.

Members need training in gender based analysis and in mental health first aid as it pertains to the unique circumstances of Indigenous communities.

Graduating from the police academies are recounted as an important highlight in the career of officers.

Identity

The problem of self-identification and “filling diversity quotas” are concerns for members and for communities in general. Increasingly people are identifying as Indigenous. Some, with only very tangential ties to a distant relative and no substantive ties to community or culture are newly claiming identity in order to access programming and positions. People who newly identify do not generally have the same experiences of discrimination and inequality as those who have historically identified and are thus advantaged in access to education and hence employment. This situation increases competition over limited affirmative action resources, heaping “trauma on top of trauma” for those who have deep ties to community, but may be less exposed to career pursuits or experienced in navigating applications and tests.

Indigenous officers with “white privilege,” those that do not look like a visible minority and “have status, but who have never stepped foot on a reserve before ... they have never experienced what life is like in First Nations communities.

In Nova Scotia, there is considerable controversy over people who claim Métis identity and expect to access Indigenous treaty rights and title. Many Mi'kmaw, including the Assembly of Mi'kmaw Chiefs, call into question the heritage of “Métis” and have created exclusionary policies to limit their access to treaty protected rights and

resources. In recruiting Indigenous members, reconsideration of self-identification policies may be warranted to reduce internal tensions and enhance external legitimacy.

Some enforcement agency members indicated that they preferred not to declare their ancestry because they did not want to be a token and feared it would jeopardize their opportunities for advancement.

Retention

Communication barriers exist for officers whose first language is Indigenous. Non-Indigenous members are paternalistic in their treatment of Mi'kmaw speakers. Members reported encountering racialized stereotypes frequently. In day to day conversations, mannerisms, job assignments, and social encounters, Indigenous members endure intended and unintended slurs, insensitive comments that are directed at them personally or at Indigenous peoples or clients generally, that collectively, make for hostile and toxic work environments. "We thought you were lazy", "let's have a powwow", "must be welfare day", "don't you mean a bannock date". These experiences are in addition to day-to-day subtle and overt confrontations of Indigenous identities from society in general. Layered on all of this is the complexity of Indigenous officers policing their own communities, where some community members view RCMP and Municipal Police Departments as colonial edifices whose role is to oppress and assimilate Indigenous peoples according to the dictates of settler society and as such can experience lateral violence from their home communities.

Non-Indigenous, usually Caucasian officers, who serve on-reserve tend to receive promotions over Indigenous officers doing the same work. While some Indigenous officers are finding their voices, their complaints are not being pursued. The sense that an "old boys' club" exists and is an obstacle to Indigenous officers' advancement, persists.

Socializing and inclusion in activities off the job is described as awkward and “horrificing”. Members feel they are constantly under surveillance and are being judged by non-Indigenous colleagues.

“The systemic racism is unreal. We have intergenerational trauma. We have trauma as first responders but we have fear of being labelled so we don’t talk about it.” Standing up and speaking out against insensitive, racist, or discriminatory behaviour is perceived as likely to lead to trouble maker labels and result in exclusion and isolation. Officers report being denied training and promotion opportunities for speaking out. Member only Facebook pages are rife with the racism and offensive behaviour that exists within police services and reflects wider institutional racism. The commentary on the Colton Bushie killing, or the Facebook posts of Durham Regional Police are just two contemporary examples of a much wider problem that has historically plagued police services and their attitudes toward Indigenous peoples as evidenced in the 2004 *Report of the Commission of Inquiry into matters relating to the Death of Neil Stonechild* and the 2007 *The Ipperwash Inquiry* and in every commission dealing with Indigenous peoples and justice before them.¹⁰⁴

Mental health and quality of life are central concerns for retention of Indigenous officers. As first responders, they are witness to numerous traumatic incidents, often of people they know intimately. Add to this the intergenerational experiences of colonization and genocide the intensity of PTSD is heightened. Culturally safe services for healing and wellbeing are hard to come by in regular society, and are even more difficult to access specialized services for the unique circumstances of Indigenous police service providers. A further exploration of the rates and circumstances of off-duty sick

¹⁰⁴ <https://publications.saskatchewan.ca/#/products/9462> and <https://www.ontario.ca/page/ipperwash-inquiry-report>. See Kent Roach (2019) *Canadian Justice: Indigenous Injustice: The Gerald Stanley and Colten Bushie Case* (McGill-Queen’s University Press).

patterns of Indigenous officers may reveal key places where services could be made available in order to improve quality of life and retention of officers.

Indigenous officers working on reserve have unique taxation and pension circumstances that requires specialized financial advising, but these services are not readily available to members. Some members stay in Aboriginal policing because of taxes, documenting time on reserve is required in order to qualify for tax exemption under Section 87 of the *Indian Act*, as such, promotions are limited in small detachments.

Community-based policing

Currently there is only one community policing coordinator for four Cape Breton reserves and there are not enough resources to meet community demands. In order to correct the current shortcomings and problems of mistrust, many Indigenous officers suggest a move to autonomous policing.

Autonomous police forces are the, “secret to First Nations policing, but you need the expertise to manage it.” “You need a strong detachment commander that has experienced all levels, knows how to investigate and can be a good administrator.” “You need people who can run cells, do the finances and special equipment and all of the associated policies. “Corporals and sergeants need to know how to make people comply and must work without political interference in order to engender community trust.” Community policing requires “boots on the ground”. “Go speak to the Elders, they were the first police officers, they were the front lines of helping manage a dispute.” “Being a member of the community means going to wakes, buying a mass card. bringing muffins or donuts, L’nu people respect ceremony.” “It takes generations to trust. You cannot rebuild relations through a keyboard.”

RCMP Aboriginal Domestic Violence Liaison

This position was designed to address police service gaps in family violence issues and to provide coordinated and consistent service to victims of domestic violence and their families. The objective of the position is to educate and train RCMP officers on issues of family violence and community based policing in Indigenous communities. The program is a result of the RCMP's commitment to the practices and principles of community policing and that the police must be representative of the people they serve. The program incorporates Mi'kmaw teachings in the design of five training modules that make up the educational component for the training of police investigators involved in Indigenous family violence cases. Whenever possible, police services for Indigenous clients are provided in the Mi'kmaq language.

Program participants collaborate with Aboriginal policy analysts, community liaison officers and diversity members in community based policing in Aboriginal communities. The liaison officer offers training on intimate partner violence to regional justice-system partners, including the Department of Justice Canada personnel as well as RCMP employees and volunteers. The Liaison officer also arranges and attends extensive public service and community based policing meetings to raise awareness of the issues of family violence in the Mi'kmaw community. Regular evaluations are conducted internally by the RCMP to evaluate the effectiveness of the program. Nonetheless, due to the privacy concerns, evaluations of this nature are not generally available to outside agencies. There are generally no formal external evaluations of RCMP programs unless specifically requested by the RCMP or one of the partner agencies. Adequate, long time and permanent staffing is required to maintain trusting relationships with communities. When the liaison officer is off-duty or on leave there is no replacement.

Domestic Violence Training

Aboriginal Domestic Violence Liaison officer has provided training for members throughout the province but it is difficult to measure the impact on domestic violence

rates and the experiences of survivors and perpetrators. Success is measured against an assessment of how many members work in those communities and how many of those members receive the necessary training provided by the Aboriginal Domestic Violence Liaison officer.

Over 200 intimate violence partner educators across Nova Scotia have been trained by the Aboriginal Domestic Violence Liaison officer. Since the program there has been a decrease of high risk for lethality cases and there are indications that many victims of domestic violence have been successful in accessing available services. There is a demand for training new RCMP personnel due to high turnover rate. There is difficulty in overcoming colonial perceptions of Mi'kmaw community members. There is a human resourcing issue due to the small number of Aboriginal Domestic Violence Liaison positions. Domestic and family violence is still an ongoing issue however there are currently not enough support services available to assist families with these issues. Confidentiality policies infringe on efficient communication sharing which limits the effectiveness of timely, coordinated case management.

Indigenous Awareness Training

“Non-Indigenous officers need to understand that they are settlers on unceded territory and when they learn that there is a shift”.

“Management understands the need for training but the lower decks have less understanding of the need and egos get in the way.”

The RCMP Aboriginal Perceptions training programs or Indigenous awareness training began in 1974 as a three-day in-service course called Cross Cultural Education. Today the program is 4 or 5 days in length and is optional. Retired Inspector Jim Potts advises that it the courses work best when they are custom designed to the area and long enough to allow time to cover a wide range of topics, lecture, guided discussions,

talking circles, sweat lodge and smudging ceremonies.¹⁰⁵ Participants should be those involved in any facet of policing, from communications centre personnel and detachment office staff to front-line detachment members and their commanders, as well as other government agencies, including Department of Fisheries and Oceans, Department of Natural Resources.

Today the 5-day training is held at Debert twice a year and has received national recognition for its model. There has been some discussion over the direction of training. Each program director designs the curricula and the agendas shift depending on who is available to provide teachings, lectures and lead ceremony. Indigenous Elders and sweat lodges are integral to the Aboriginal Perceptions training course for the RCMP.

Working with the Mi'kmaw Friendship Centre, cadets receive one day of diversity training and many have participated in blanket exercises which is a teaching tool to help understand the impacts of colonization and residential schools on Indigenous communities.

The Office of Aboriginal Affairs in Nova Scotia has made Aboriginal Perceptions training available to over 2,000 public servants to increase the level of public awareness of Aboriginal peoples and the issues they face. Nova Scotia celebrates Mi'kmaq History Month in October and Treaty Day October 1st as well as National Aboriginal Day June 21st. In 2015, the province signed the Treaty Education Memorandum of Understanding as part of their "generational journey toward reconciliation." Specific programs for the education system, the provincial civil service and the broader public are in development and will soon be ready for implementation. Treaty Education Nova Scotia is framed by four questions 1. Who are the Mi'kmaq historically and today? 2. What are the Treaties and why are they important? 3. What happened to the Treaty relationship?

¹⁰⁵ <http://www.rcmp-grc.gc.ca/en/gazette/indigenous-awareness-training> (2017)

And 4. What are we doing to reconcile our shared history to ensure justice and equity?¹⁰⁶

In October of 2019, the Nova Scotia Archives in partnership with Treaty Education Nova Scotia and the Nova Scotia Department of Justice launched the digitized version of the seven-volume report of the *Royal Commission on the Donald Marshall Jr., Prosecution* and the transcripts of all proceedings, interviews, exhibits, documents from the original trial and appeals, counsel notebooks, audio testimonies and correspondence.¹⁰⁷ the video archive will be available soon.

The cultural content of training at Depot and police colleges is often too generic and too limited to translate into culturally proficient officers. Cultural competency and the various strategies developed for interacting with Indigenous communities in times of protest and confrontation have been well documented. The emphasis on measured approaches is important, but attention must shift to a more holistic and inclusive community centred approach in order to build positive policing relations in Mi'kma'ki.

Our findings align with those of the Expert Panel on Policing in Indigenous Communities:

A comprehensive understanding of safety and well-being in Indigenous communities requires multi-dimensional thinking, including attention to social and cultural factors. This understanding provides an opportunity for policing approaches that reflect holistic views of safety and well-being that are already embedded in Indigenous cultures. Policing in Indigenous communities is embedded in a complex legal and policy context marked by a growing emphasis

¹⁰⁶ <https://novascotia.ca/treaty-education/>

¹⁰⁷ <https://novascotia.ca/archives/marshall/>. This important digital resource was made possible through the efforts of Judge Anne Derrick, Professor Archie Kaiser, former Chief Justice Michael MacDonald and the Honourable Arthur LeBlanc, Lieutenant Governor of Nova Scotia.

on Indigenous self-determination and the need to recognize Indigenous rights and laws. While efforts have been made to improve policing for Indigenous communities in Canada in recent decades, many continue to receive policing services that do not meet their safety and security needs.

In both Indigenous and non-Indigenous communities, the most promising ways to promote safety and well-being involve relationships among police, other service providers, and community members. Effective relationship-based approaches are community-led and provide opportunities for police to assist in mobilizing communities and to earn their trust. Opportunities for change begin with providing meaningful choices for policing arrangements that support self-determination. These choices require resources that allow for sustainability and that can be facilitated by systemic reforms aligned with the need for safety and well-being in Indigenous communities.¹⁰⁸

7. Conclusion

In its recent report, “Towards Peace, Harmony and Well-being: Policing in Indigenous Communities” the Council of Canadian Academies (2019) found that “current realities with policing in Indigenous communities, as well as crime, victimization and incarceration, are tied to a historical context. The impact of colonialism continues to reverberate in Indigenous communities. Confronting this history is part of the challenge of achieving relevant and decolonized policing.”¹⁰⁹ This project examined the historical context of policing in Mi’kma’ki in order to contextualize the current landscape. In engaging with a diverse cross-section of people in Mi’kma’ki it is clear that there is much to be done to improve policing relationships,

¹⁰⁸ Expert Panel on Policing in Indigenous Communities (2019) *Toward Peace, Harmony and Well-Being: Policing in Indigenous Communities* (Ottawa: Council of Canadian Academies).

¹⁰⁹ Ibid. 15

practices and policies. Our findings and the findings of the Council of Canadian Academies are consistent with the National Inquiry into Missing and Murdered Indigenous Women and Girls. Reducing violence against Indigenous women and girls will require cooperation between police services, social service providers and Indigenous peoples.

Situated within Mi'kmaw legal principles, the *Marshall Inquiry* recommendations, the community priorities emerging from the 2014 review of the Marshall Inquiry, the *Truth and Reconciliation Commission* (TRC) Calls to Action, and in the *UN Declaration on the Rights of Indigenous Peoples*, and the MMIW Calls to justice are the tool necessary for refreshing, restructuring, and redefining the justice relationships between Indigenous peoples and the Province of Nova Scotia. From these principles, a comprehensive justice action plan that establishes Indigenous law and legal institutions to protect and enforce Mi'kmaw laws can be developed. This will require the creation of proper consultation and consent processes and the replacement or elimination of legislation, policies, and practices that perpetuate systemic discrimination and inequality in order to foster an environment of reconciliation that facilitates self-determination.

Prime Minister Trudeau in the mandate letters to his Ministers stated that, "No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership". Among the priorities identified, the Prime Minister directed the Justice Minister to increase the use of restorative justice processes and other initiatives to reduce the rate of incarceration amongst Indigenous Canadians, to explore sentencing alternatives and bail reform, and the creation of a unified family court. Since 1996 s. 718.2(e) of the Canadian Criminal Code has instructed sentencing judges to consider the following principle, "all available sanctions or options other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of

Aboriginal offenders.” Of key concern today is the capacity within Mi’kmaw communities to make available legitimate and effective alternatives deemed appropriate by the Mi’kmaw Nation, and their coordinated use, or lack thereof, by the courts.

As noted at the Marshall Symposium many steps to improve justice relations with Mi’kmaq communities have been undertaken. These include intentional hiring of Mi’kmaw personnel in most justice sectors, increased cultural competency training programs for RCMP and other police services, corrections and various Department of Justice personnel, Indigenous law capacity building within the Schulich School of Law, at the Nova Scotia Bar, and at Nova Scotia Legal Aid. There were amendments to the Emergency Protection Order protocols, the *Children and Family Services Act* and *Family Homes on Reserves and Matrimonial Interests or Rights Act* to better reflect the concerns of Indigenous families. There are various programs to help women and girls who encounter the law including the FILU program, sexual violence response research and action programs, and the National Inquiry into Missing and Murdered Women and its attending support programs. There are also community based youth programs oriented to prevention and asset based learning such as Love and Red Road and others focused on land based and traditional knowledge education, and Treaty rights and responsibilities.

Significantly the judiciary in partnership with Mi’kmaq Chiefs in Cape Breton instigated the formation of a unique court in Wagmatcook, opening in April 2018, which has the potential to enhance customary law and community-based criminal dispute / family / healing and wellness management through the implementation of Mi’kmaw legal principles if it is adequately resourced and linked into a comprehensive Mi’kmaw Justice Initiative.

The Mi’kmaw Legal Support Network (MLSN) continues to be innovative and responsive to community needs and is establishing a firm legitimacy in the

revitalization of Mi'kmaw legal principles and their applications today in their court worker, customary law, victims' services, Gladue report writing and corrections programming. However, there are serious limitations caused by precarious funding, insufficient practitioner compliment, and institutional isolation. Together these and other issues prevent MLSN from delivering consistent services and from realizing their full potential. This is particularly urgent because demands for Mi'kmaw justice services, such as Gladue reports, family and criminal court workers, healing programs, customary probation, community assisted bail programs, legal advice and education, reintegration and corrections programs, as well as requests for cultural competency programs, and Treaty rights information, are ever increasing as Indigenous rights awareness expands and communities mobilize. Access to justice remains a real challenge for Indigenous peoples in Nova Scotia under these conditions.

In this era of legal reform and reconciliation it is time to reconsider a Mi'kmaw centered comprehensive justice strategy and develop immediate, 5 and 10 year plans to clearly lay out the scope, direction and responsibilities of the Mi'kmaq, federal and provincial parties. Truth and Reconciliation Call to Action #42 states,

We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*.

Call to Action #50 states,

In keeping with the *United Nations Declaration on the Rights of Indigenous Peoples*, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

The National Inquiry Calls for Justice direct police services to carry out the following eleven changes:

9.1 We call upon all police services and justice system actors to acknowledge that the historical and current relationship between Indigenous women, girls and 2SLGBTQQIA people and the justice system has been largely defined by colonialism, racism, bias, discrimination, and fundamental cultural and societal differences. We further call upon all police services and justice system actors to acknowledge that, going forward, this relationship must be based on respect and understanding, and must be led by, and in partnerships with, Indigenous women, girls, and 2SLGBTQQIA people.

9.2 We call upon all actors in the justice system, including police services, to build respectful working relationships with Indigenous Peoples by knowing, understanding, and respecting the people they are serving. Initiatives and actions should include, but not limited to, the following measures:

- i Review and revise all policies, practices, and procedures to ensure service delivery that is culturally appropriate and reflects no bias or racism toward Indigenous Peoples, including victims and survivors of violence.

- ii Establish engagement and partnership with Indigenous Peoples, communities, and leadership, including women, Elders, youth, and 2SLGBTQQIA people from the respective territories and who are resident within a police service's jurisdiction.

- iii Ensure appropriate Indigenous representation, including Indigenous women, girls, and 2SLGBTQQIA people, on police services boards and oversight authorities.

- iv Undertake training and education of all staff and officers so that they understand and implement culturally appropriate and trauma-informed practices, especially when dealing with families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people.

9.3 We call upon all governments to fund an increase in recruitment of Indigenous Peoples to all police services, and for all police services to include representation of Indigenous women, girls and 2SLGBTQQIA people, inclusive of diverse Indigenous cultural backgrounds, within their ranks. This includes measures such as the following:

- i Achieve representative First Nations, Inuit, and Métis diversity and gender diversity within all police services through intensive and specialized recruitment across Canada.

- ii Ensure mandatory Indigenous language capacity within police services.
- iii Ensure that screening of recruits includes testing for racial, gender, gender identity, and sexual orientation bias.
- iv Include the Indigenous community in the recruitment and hiring committees / processes.
- v In training recruits, include: history of police in the oppression and genocide of Indigenous Peoples; anti-racism and anti-bias training; and culture and language training. All training must be distinctions-based and relevant to the land and people being served; training must not be pan-Indigenous.
- vi Retain Indigenous officers through relevant employment supports, and offer incentives to Indigenous officers to meet their unique needs as Indigenous officers serving Indigenous communities, to ensure retention and overall health and wellness of the service.
- vii End the practice of limited-duration posts in all police services, and instead implement a policy regarding remote and rural communities focused on building and sustaining a relationship with the local community and cultures. This relationship must be led by, and in partnership with the Indigenous Peoples living in those remote and rural communities.

9.4 We call upon non-Indigenous police services to ensure they have the capacity and resources to serve and protect Indigenous women, girls, and 2SLGBTQQIA people. We further call upon all non-Indigenous police services to establish specialized Indigenous policing units within their services located in cities and regions with Indigenous populations.

- i Specialized Indigenous policing units are to be staffed with experienced and well trained Indigenous investigators, who will be the primary investigative teams and officers overseeing the investigation of cases involving Indigenous women, girls, and 2SLGBTQQIA people.
- ii Specialized Indigenous policing units are to lead the services' efforts in community liaison work, community relationship building, and community crime-prevention programs within and for Indigenous communities.

iii Specialized Indigenous policing units, within non-Indigenous police services, are to be adequately funded by governments.

9.5 We call upon all police services for the standardization of protocols for policies and practices that ensure that all cases of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people are thoroughly investigated. This includes the following measures:

i Establish a communication protocol with Indigenous communities to inform them of policies, practices, and programs that make the communities safe.

ii Improve communication between police and families of missing and murdered Indigenous women, girls and 2SLGBTQQIA people from the first report, with regular and ongoing communication throughout the investigation.

iii Improve coordination across government departments and between jurisdictions and Indigenous communities and police services.

iv Recognize that the high turnover among officers assigned to a missing and murdered Indigenous woman's, girl's or 2SLGBTQQIA person's file may negatively impact both progress on the investigation and relationships with family members; police services must have robust protocols to mitigate these impacts.

v Create a national strategy, through the Canadian Association of Chiefs of Police, to ensure consistency in reporting mechanisms for reporting missing Indigenous women, girls, and 2SLGBTQQIA people. This could be developed in conjunction with implementation of a national database.

vi Establish standardized response times to reports of missing Indigenous persons and women, girls, and 2SLGBTQQIA people experiencing violence, and conduct a regular audit of response times to monitor and provide feedback for improvement.

vii Lead the provincial and territorial governments to establish a nationwide emergency number.

9.6 We call upon all police services to establish an independent, special investigation unit for the investigation of incidents of failures to investigate, police misconducts, and all forms of discriminatory practices and mistreatment of Indigenous Peoples within their police service. This special investigation unit must be transparent in practice and

report at least annually to Indigenous communities, leadership, and people in their jurisdiction.

9.7 We call upon all police services to partner with front-line organizations that work in service delivery, safety, and harm reduction for Indigenous women, girls, and 2SLGBTQQIA people to expand and strengthen police services delivery.

9.8 We call upon all police services to establish and engage with a civilian Indigenous advisory committee for each police service or police division, and to establish and engage with a local civilian Indigenous advisory committee to advise the detachment operating within the Indigenous community.

9.9 We call upon all levels of government and all police services for the establishment of a national task force, comprised of an independent, highly qualified, and specialized team of investigators, to renew and, if required, to reinvestigate each case of all unresolved files of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people from across Canada. Further, this task force must disclose to families and to survivors all non-privileged information and findings.

9.10 We call upon all police services to voluntarily produce all unresolved cases of missing or murdered Indigenous women, girls, and 2SLGBTQQIA people to the national task force.

9.11 We call upon all police services to develop and implement guidelines for the policing of the sex industry in consultation with women engaged in the sex industry, and to create a specific complaints mechanism about police for those in the sex industry.¹¹⁰

Together the TRC calls to action and the MMIW calls for justice and the Marshall Inquiry recommendations create a foundation upon which to build systemic change. Police services in Mi'kma'ki need a major infusion of support and comprehensive collaboration in order to be able to provide sustainable, responsive, consistent and safe services for communities, offenders, victims and families, that are aligned with

¹¹⁰ 2019, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (190-193) volume 1B.

Mi'kmaw legal principles and Mi'kmaw governance. With the mandate of the Minister of Public Safety and Emergency Preparedness to co-develop with the Minister of Indigenous Services, a legislative framework for First Nations policing, which **recognizes First Nations policing as an essential service**, and work with interested communities to expand the number of communities served by First Nations policing, the systemic problems outlined by the participants of this research can be addressed and a decolonized police service can become reality in Mi'kma'ki.

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