

# Addressing Mi'kmaq Family Violence

## Executive Summary

Family Violence and Aboriginal Communities: Building Our Knowledge and Direction through Community Based Research and Community Forums<sup>©</sup>

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# Message from the Tripartite Justice Working Committee

The Justice Working Committee of the Mi'kmaq-Nova Scotia- Canada Tripartite Forum is very proud to bring forward this important research:

## ***Addressing Mi'kmaq Family Violence***

### ***Family Violence and Aboriginal Communities: Building our Knowledge and Direction through Community-based Research and Community Forums***

In all our collective work to support this research has been the vision and the hope that this research would serve as a guidepost for our committee's work on these important issues, and as a foundation for all efforts across Nova Scotia to address family violence impacting Mi'kmaq communities.

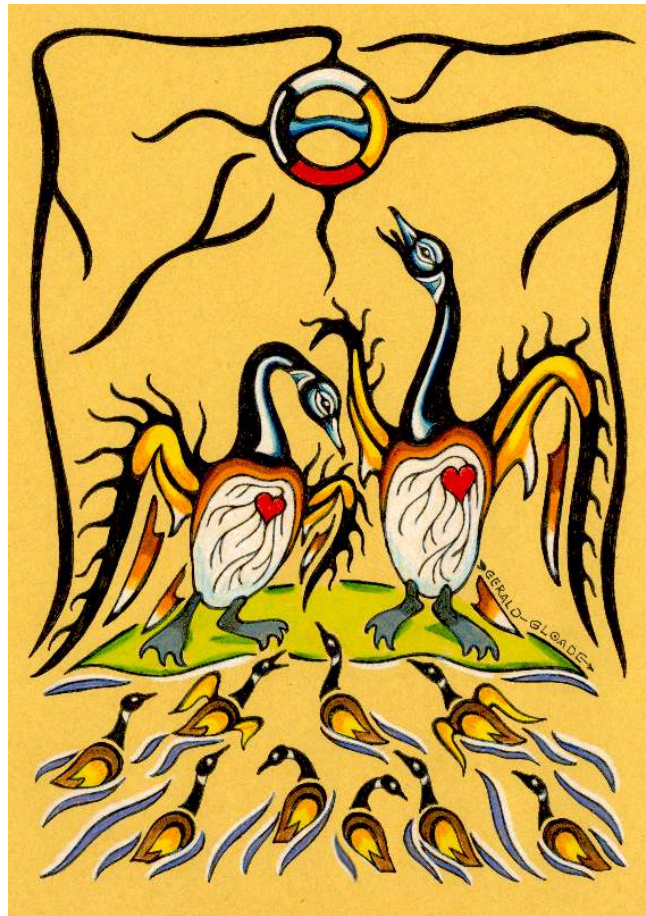
We acknowledge and thank the important contribution to this research provided by the many Mi'kmaq who took time to share their stories, knowledge and compassion; all of which helped to shape our deepening understanding of the dynamics of family violence. We also extend a heartfelt thank you to our principal investigator Dr Jane McMillan, who, supported by our active Family Violence Sub-committee, was instrumental in mapping this pathway for us.

This research was made possible by assistance from the Atlantic Aboriginal Health Research Program and the Mi'kmaq-Nova Scotia- Canada Tripartite Forum Project Fund Program.

We invite you to read this executive summary, which offers a précis of the comprehensive research report, which can be accessed on our website at [www.tripartiteforum.com](http://www.tripartiteforum.com).

Equipped with this better understanding of the issues, the Justice Working Committee will now turn our attention to developing action in response to the three critical paths for prevention, intervention and remedy which emerged from the community sessions.

- to support the development of men's intervention and empowerment programs to provide consistent, sustainable, family healing plans and compliance monitoring strategies to end family violence in Mi'kmaq communities;
- to work toward sustainable Mi'kmaq victims' services in order to provide consistent, safe, sustainable, family healing plans; and
- to support the design and delivery of culturally meaningful prevention and anti-violence education and to explore the development of intervention protocols for family / domestic violence cases based on Mi'kmaq customary law process



## PART I

### Introduction

The goal of the *Addressing Mi'kmaq Family Violence* report is to help Mi'kmaq families and communities 'do something' about violence by asking participants to help develop programs that will produce meaningful remedies and consequences that foster the normalization of intervention and prevention of violence. The report was designed to consider:

- 1) historical traumas such as colonization, residential schools, systemic discrimination and racism and the complex community dynamics that arise from such circumstances that contribute to family violence; and
- 2) personal experiences of abuse and the collateral damage associated with those experiences.

This research is a participant-based study directly involving over 150 Aboriginal participants ranging from 16 to 65 years of age. Information was gathered through interviews; focus groups; community forums with elders, youth, survivors and abusers, community and cultural leaders, employed and unemployed people, addicted and non-



addicted people, men and women. Another 300-plus participants were consulted indirectly through meetings, conferences and workshops. Of the 150 direct participants a) half speak Mi'kmaq; b) some are high school graduates; c) some are employed; and d) most live on-reserve.

Our research was funded by the Atlantic Aboriginal Health Research Program at Dalhousie University, a CIHR-funded program, and by the Mi'kmaq • Nova Scotia • Canada Tripartite Forum Project Fund program. It is supported by the Social Sciences and Humanities Research Council Canada Research Chairs Program. Ethical approval was granted by the Mi'kmaq Ethics Watch and Saint Francis Xavier Research Ethics Board and complied with Tri-Council policies regarding research with Aboriginal communities.

### **Mi'kmaq Customary Practices Prior to Colonial Domination**

Before colonization, the Mi'kmaq were well-equipped and adapted to their environments. Their social organization was complex and included ways of governing, laws, ceremony and resource sharing that connected people to the land through language and culture. Customs were based on shared values and were taught through oral traditions within family and community. Many of the commonly held understandings were designed to address potential conflict before it happened.

The most noted characteristic of early society was the primary responsibility of the entire community was to ensure that not one member went without food, shelter, clothing, and most importantly, love and nurture. Rules and guidelines for living collectively (such as respect for elders) were taught at home to children with input from parents and extended family members. The central values - represented today as the "seven sacred teachings" reflect concepts of love, honesty, humility, respect, truth, patience and wisdom - set the tone for the rules and guidelines for living well together.



Elders were held in esteem as they embodied wisdom through their experiences, perseverance, community involvement and oral knowledge. They formed a Council of Elders and worked with the Chiefs (and *pouins*) on decision-making for the community in areas such as dispute management, war and peace, territory and resource use and relocation. Elders often taught by doing and children, who are highly revered in Mi'kmaw culture, learned by trying. Children were instructed through oral traditions recounting legends and historical events that taught socialization, proper behaviour and rules to live by. Teachings embedded in the stories were passed on to extended families over generations.

Marriage and courtship were important institutions and overseen by a residency period where the male lived with the female's family, who would determine compatibility. Before residency, the male asked permission of the female's father. Parents never arranged marriages nor forced couples into it. Both men and women were responsible for proving they could sustain marriage and a family. Men proved that they were able hunters and providers, while females demonstrated support of future husbands in their individual and shared responsibilities. After a one-year trial period, the two would decide on marriage or separation. If married, the couple lived with the groom's extended family and worked as a couple to support their extended families and share resources.

Child reproduction was seen as an honourable practice but inability to reproduce could lead to ending marriage, according to early writers; so could loss of love for a partner. Divorce and separation would occur with balance and both men and women could end a relationship without dispute. Modern divorce issues, such as property division, were not issues as 'property' was communal. Missionary influence led to significant changes in society by imposing Christian rules on marriage and divorce often incompatible with Mi'kmaw law ways and world views.

Conflict was usually settled through family intervention as family justice was a key source of law. If problems escalated, spiritual practitioners and elders assisted in removing the root causes or problems – or sicknesses – that were believed to be the source of conflict. Often community leaders and/or elders guided offenders on how to fix any situation and find a sense balance. Problem solving was done through both formal and informal actions such as talking, teaching, and rituals; gossip and exclusion were also effective sanctions. Sometimes violence occurred, like fighting, or by using *hapenkuituik* - a law of vengeance practiced by the wronged family. The latter is similar to *asidolisk*, meaning to make even. A central concept called *apisiktuagn* – a mutual forgiveness - helps to rebalance society after a wrong. Many of these elements of dispute management are evident today.

The goals of Mi'kmaq justice were to reinstate wrongdoers into the community; to find and maintain balance; and when needed, restore relationships with people, the land, and the spirit world. Of course, Mi'kmaq life was not perfect or 'edenistic'; like any

society, problems and conflict occurred and sometimes it could not be resolved. With the introduction of settler society and the imposition of British colonial laws and Christian doctrine, Mi'kmaq customary practices were prohibited, devalued and eventually criminalized.

## **The Consequences of Colonization and Changing Root Causes of Family Violence**

With settler expansion growing steadily, French and British efforts to colonize the Mi'kmaq included an increased push into accepting Christianity, which quickly disrupted many Mi'kmaq cultural practices relating to kinship, gender and marriage. The church and European-based systems (i.e., legal) forcibly replaced the customary practices and influence held by elders, chiefs and the community. The colonists were not satisfied with just political and economic control. They sought to deny Mi'kmaq history, disfigure their culture, especially their social organization and institutions, seasonal rounds, marriage and spiritual practices; in short, break down their customary laws. Practices that stood for millennia were forever damaged beginning in the 1600s through missionary practices and English-French conflict.

The Mi'kmaq resisted English encroachment in their territory and rejected colonial control over their government, land and resources. Rejecting subjugation to any monarch, the Mi'kmaq signed reciprocal agreements (treaties) that assured traditional rights to land and its usage. The Mi'kmaq firmly believed it was necessary to protect their present and future endeavours by committing to rebalance their symbiotic relationships with all things human and other than human. Customary Mi'kmaq beliefs and traditions clashed violently with European ideologies.

Evidence of domestic violence in the archival record is minimal. Interpersonal violence, deceit, abandonment, and failure to provide for family resulted in significant community crises. The Mi'kmaq had ways of belonging and behaving and the consequences of behaving badly as taught by the Kluskap (Glooscap) legends and elders were reinforced through ceremony and cultural institutions. It is likely that the moral orders of Mi'kmaq society and the strength of the seven sacred teachings would not have permitted abuse to occur beyond an initial episode of violence. A culturally-constructed moral self-expression gained significance within historically informed social environments. The further influx of settler ideology – and the introduction of alcohol – diminished the strength and efficacy of these moral orders.

Alcohol misuse increased violence and created many new problems. Increased reliance on alcohol to cope with the traumas of colonization exacerbated rapid decline in populations already suffering from starvation and diseases brought from European trading and English policies of genocide. High mortality rates dissolved kinship networks, disrupted political succession, interrupted seasonal rounds and food procurement strategies and altered social order. Knowledge bearers died prematurely without their teachings being passed on to and upheld by the next generations. In these tragic times, alcohol made a vulnerable people more susceptible to violence, while

displacing traditional practices that became ineffective against the onslaught of colonization. In short, Mi'kmaq way of life was dying, and the archives recount this intensive traumatic shift in everyday life.

Family violence escalated and women were forced to abandon traditional practices to defend themselves and their children against drunk, violent husbands, parents and siblings. Alcohol, coupled with colonial-based complexes (like male supremacy), changed attitudes of respect for women and disrupted the customary male duties of protection, providing and nurturing family.

Mi'kmaq population declined to its lowest point by the 19<sup>th</sup> century and lands were seized by Europeans without compensation or agreement, which depleted resources. Welfare dependency emerged and Mi'kmaq reliance on the colonial government surged.

The 1867 *British North America Act* assigned Canada's government the responsibility of Aboriginal peoples and their designated lands, but provinces had authority over the lands and resources within their boundaries. Power divisions caused numerous jurisdictional problems that enabled the Crown to break treaties and commitments without consequences. Canadian *Indian* policy developed from misconceived ideas found in pre-confederation legislation that defended discriminatory legislation of the Indian Act and its assimilation policies. New government powers created confusing bureaucracies and further eroded Mi'kmaq customs, while assimilation policies undermined elder teachings and cultural order. Colonial settlements rendered survival patterns unfixable and Mi'kmaq kinship networks suffered. Denied participation in settler economies, poverty and hunger caused further damage to families and societal health collapsed.

Colonial relations were framed by power imbalances that denigrated the cohesive, innovative Mi'kmaq culture into chaos and collapse. Colonization fragmented Mi'kmaq ways of life, disrupted generational protocols, eroded traditional gender roles and prevented Mi'kmaq inclusion of various institutions. This led to misery from unemployment and the decline of mental, physical and spiritual health.

### **The Shubenacadie Indian Residential School and Intergenerational Trauma**

Besides legislation, colonizers believed that education was another method of "civilizing" the Mi'kmaq and established the Indian Residential School System - the most notorious form of racial discrimination. The violence of residential schools produced the catalysts for family violence and intergenerational trauma.

The Roman Catholic Church (RCC) opened the Shubenacadie Residential School in 1926 under Deputy Minister of Indian Affairs, Duncan Campbell Scott. He, like many others, felt that Canada had an "Indian problem" that could only be solved through aggressive assimilation. This genocidal institute, situated between a highway and railway, was a propaganda tool designed to appear as if the RCC and government had

a genuine benevolent concern for the children. While a periodic place of learning and camaraderie for some, the schools were mainly a source of abuse, torture, violence and slavery for many others. They were designed to intentionally obliterate any habits and associations with Indigenous cultures, and succeeded in causing extraordinary suffering in Aboriginal communities. Terms such as Residential School Syndrome, intergenerational trauma, historical traumas, and trans-generational effects, are commonly used to describe the ongoing consequences of these colonial assimilation policies.

In the 1990s, First Nations people began speaking out against residential school atrocities, but some were – and still are – reluctant to speak; a result of traumatic experiences. As a tool of colonization, the residential schools are seen as yet another effort to destroy Mi'kmaq people and culture. Some Mi'kmaq, whether survivors, relatives or friends, or simply aware of this history, express anger, mistrust and hatred towards settler societies. The church's cultural and religious contradictions left many Mi'kmaq confused both spiritually and culturally.

Ultimately, the dominant society failed to reach its goal of total assimilation and the school closed between 1967 and 1968. Victim experiences are a deep part of the Mi'kmaq legal consciousness and must be carefully considered when developing strategies for ending violence and intervening in abusive situations. The damaging practice of remaining silent about harmful experiences became part of Mi'kmaq daily lives; a replication of a “don't talk, don't tell” is a mantra used by witnesses and victims of violence. To understand and fix family violence problems, the intergenerational consequences of colonial and residential school traumas must first be understood.

Understanding intergenerational colonial and residential school trauma is a step toward understanding and addressing family violence. Today *survivors* are becoming empowered and speaking out against the residential school abuses they experienced. The Government must be held accountable as a champion of assimilation. The Mi'kmaq and other First Nations are actively asserting their human rights. Residential school discourse progresses from silence to healing and harmony, truth and reconciliation. Today, residential school discourses play large in the dialogues on family violence.

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



In addition to the residential schools, foster care and adoption systems were used to destroy kinship networks as an assimilation tool. From the 1960s through the 1980s, adoption and temporary placements moved Aboriginal children into non-Aboriginal homes which furthered the discrimination, injuries and abuses of residential schools. Section 88 of the Indian Act expanded provincial child welfare services to reserves but, “did not clarify the financial obligations of the Federal government to the Provinces, the consequences of which would be an enduring conflict between Federal and Provincial governments.”

### **Mi'kmaq Encounters with the Canadian Justice System**

There is a general agreement that the Canadian legal system fails Aboriginal peoples, who are clearly over-represented in prison statistics. In the 2006 consensus:

- Aboriginals comprised 3.71% (1,172,785) of Canada's population (31,612,897).
- Of the 90,051 people admitted to custodial sentencing, 24% (21,612) identified as Aboriginal.

Aboriginal incarceration rates continue to increase despite introduction of Section 718.2(e) to the Canadian Criminal Code and the Supreme Court of Canada *Gladue Decision* of 1999. These reforms instruct sentencing judges to consider:

(e) All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Counsel has a duty to cite examples and judges must consider information related to the unique circumstances of Aboriginals who enter the court system while addressing the issue of Aboriginal over-representation in correctional systems. The principles of community-based restorative justice are a starting point from which both the courts and Indigenous communities can work to engender much needed re-assignment of the structural authority of dispute management strategies Indigenous people encounter when they come before the law.

Research indicates that Aboriginal offenders:

- are denied bail more often;
- spend more time in pre-trial detention;
- are more likely to be charged with multiple offences;
- spend less time with lawyers;
- do not have access to court, probation and parole services in their home communities; and
- are more than twice as likely to be incarcerated than non-Aboriginals.

Repeated acts and re-incarceration rates are high amongst Aboriginal peoples because of ineffective punishments and imposed remedies that conflict with cultural values and community circumstances. As the criminal justice system usually removes offenders

from their communities, they are not held responsible against their victims. Reoffending occurs and relationships are broken when problems are not addressed.

In the 1990s, Aboriginal justice was a central topic of concern in Nova Scotia focused on the wrongful incarceration of Donald Marshall Jr. and the Royal Commission on the Donald Marshall Jr. Prosecution. The report exposed problems in policing, courts and provincial judiciary system; raising important questions about the legitimacy and authenticity of the Canadian criminal justice system regarding Aboriginal treatment. The report demonstrated how the system failed Marshall from arrest through exoneration. The report, released in 1989, identified Marshall's Aboriginal identity as a significant factor in the denial of justice and due process.

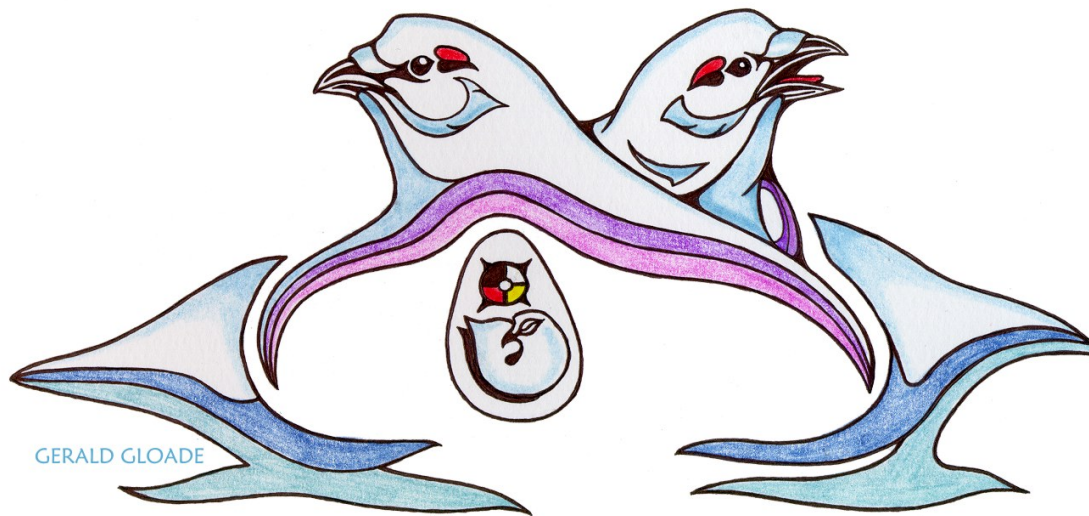
The Mi'kmaq responded to the 82 recommendations with two goals:

1. to ensure better treatment of their people as they encounter mainstream justice; and
2. to create their own justice system in order to deal meaningfully with problems in their territories.

Two vital elements identified for the development of community based justice were:

1. time to consult with community members; and
2. the financial resources to engage the necessary expertise to design what is acceptable to the community.

Over the past two decades a number of justice initiatives were implemented in Mi'kmaq communities ranging from: the indigenization of mainstream programs to court worker programs; creating dispute management strategies using customary law to exploring options for control over resource regulation; community assisted parole hearings to culturally aligned corrections programs; crime prevention initiatives to programs of justice as healing and victims services. One prime example is the Mi'kmaw Legal Support Network (MLSN) which hosts a number of significant Indigenous justice programs. MLSN emerged from native resistance to their unjust treatment "under the law" that was galvanized by the wrongful murder conviction of Donald Marshall Jr.



## PART II

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

Research on Aboriginal family violence and violence against Aboriginal women show that community controlled justice processes are necessary to social justice and self-determination. Recent studies discuss gender and political power dynamics, re-victimization, hyper-responsibilization, culture, assimilation, accommodation, and tradition in community healing; all vital to the creation of community-based justice programs. There is a divide between those who favour criminal charges with incarceration and those who advocate dispute management using alternative and restorative approaches. This research explored how legal consciousness is shaped by personal and collective experience and through analyses of the competing discourses regarding the legitimacy, authenticity and efficacy strategies to address the problems of violence as identified by Mi'kmaq people who have experienced violence in their lives.

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

## Findings

The research fieldwork was conducted in Mi'kmaq communities. Questions were asked to delineate the reactions and responses to abuse by individuals and others so that we can understand the cultural strategies at work, as well as gain an appreciation of the adequacy and inadequacy of current approaches and services. The participatory action stance of this collaborative research mandated that this report formulate an analysis of the communities' perceptions regarding the potential for creating a community-based response strategy to prevent, intervene and manage situations of family violence within Mi'kmaq communities in Nova Scotia and to make recommendations for next steps based upon these examinations.

Participants believe that violence is normal, happens regularly, is visible, and that community members have a habit of 'not getting involved'. Intergenerational trauma from centuries of discrimination, family breakdown, and attempts to destroy Mi'kmaq culture created a widespread desensitization to violence. Participants outline three distinct factors perpetuating violence: poverty, addictions and culture loss. Continuous discrimination and marginalization have limited opportunities to address problems. Internal and external colonization contribute to divisive lateral violence.

The majority of family violence incidents are not reported due to a complex matrix of factors including: real and perceived prejudice by police, courts and community services; the possibility of dual charges; uncertainty of rights; shame; self-blame; retaliation; extended family and community dynamics; severe lack of exit options including housing, employment, and transportation; financial dependency on the abusive partner; addictions; and a profound fear of losing children. Couples may reconcile but lack of services for family healing leads to further unaddressed abuse.

Male and female Mi'kmaq experiences are diverse as anyone at any age can be a victim, yet research shows younger parents experience the most domestic violence. This may indicate that older people are less likely to reveal abuse or abuse is less common in that age category. It is perceived that violence is mainly physical while some recognize psychological and emotional violence. However, few see the latter as reason to seek help. Most victims of domestic violence overlooked financial abuse but the majority found their freedom hindered by financial security and were unable to leave violent relationships as a result of poverty. Physical and sexual abuse were the forms of violence most commonly identified by the research participants. There is a general awareness of emotional, financial, verbal, psychological, neglect and hate crimes, but people did not feel these forms of abuse warranted any specific intervention.

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

*He lived it, he lives it, he knows when to anticipate violence. He gets these feelings that something is going down and he has to get ready, be prepared or he has to run away and go to a different place. It is like he can see it, taste it smell it.*  
- Service provider discussing an 18 year old male

Service providers and police in Cape Breton communities also agreed that most family violence situations involved young parents or young women with young children in relationships with men who were not the children's father. Violence also exists in couples of all ages even if they do not have children.

During Mi'kmaq Victim Services' first year (where one person served one large Cape Breton Mi'kmaw community), about half of the 80 files were domestic violence cases. Mi'kmaq Family and Children Services' (MFCS) statistics and its Mi'kmaq Family Healing Services (MFHS) annual report state that family violence is a serious problem. People view violence as common and attribute its root cause largely to substance abuse. A strong sense of dissatisfaction by victims and offenders with the Canadian justice system's treatment of cases persists. There is some agreement that prosecution and incarceration are necessary in some cases, but most people prefer intervention and mediation for reconciliation or separation 'in a good way'.

*The biggest issue is drugs and alcohol. My two best friends married. When they drink, they fight. They know they will fight. Everybody knows they will fight. They know they will fight...* - Mainland female

Between April 1, 2009, and March 31, 2010, the Millbrook Family Healing Center, had 21 admissions, 1,424 bed stays and 219 access visits including 10 children in shelter. Of the 21 admissions:

- seven (7) were family violence related
- six (6) were related to housing concerns
- 20 were unemployed, not seeking employment, or on social assistance
- eight (8) were involved in abusive situations previously

In 2009-2010 the We'koqma'q Family Healing Centre had:

- 42 women admissions
- 30 children
- 1,528 total bed stays

A total of 63 women and 40 children utilized the Family Healing Centres and a total of 73 women received outreach services.

*We are seeing more clients who come in, not for addictions, but because of abuse and homelessness.* - NADACA

A majority of research participants reported that they were very reluctant to use the Family Healing Centres' services due to their direct affiliation with Mi'kmaq Family and Children's Services. They report that visiting MFHS would bring unwanted attention



from MFCS and the possible apprehension of children and court intervention. Many indicated that they would prefer to stay in high-risk situations in the home rather than involve child protection services.

Violent incidents vary by community size and location. Exact rates and statistics are indeterminable due to unreported cases. Participants perceive that violence is increasing and its nature is changing with people feeling more isolated and their personal safety increasingly threatened in the community. Some participants say that violence is discussed, but feel that very little is done in response. People feel ashamed, blame themselves, remain silent, or are taught to “not tell” or “keep it in the home.” Discussions showed that sexual violence is common in many communities and is often linked to suicide.

Elder abuse is a topic of concern and awareness has increased due to public service campaigns. Participants felt that elder abuse could occur in Mi'kmaq communities, but since elders are held in high esteem they may be less vulnerable than elderly people in other societies. Assuming that Mi'kmaq elders are ‘protected’ is a dangerous thought and awareness of elder services is necessary for community prosperity.

Participants suggested violence is intergenerational and the result of residential schools; it is a taught cycle. Cycles of violence are observed as inherited, “children who witness violence self-medicate” and often “become violent toward themselves and others.”

*A lot of the parents we have now grew up in abusive homes and they haven't dealt with issues. They have a lot of issues on their own when they are parenting and it just comes down the line after that. – Service provider*

Strongly associated with these claims are the links people have made between culture loss and violence. Colonization and discriminatory legislation paved the way to a decline in sacred teachings and a perceived forfeiture of respect for self, others, and community. People speak of such regular trauma and that healing is unable to happen.

The reasons given as to why violence exists as ‘normalized’ are:

- widespread anger;
- identity loss;
- language loss;
- breakdown in trust;
- denial about problems;
- (too busy with) other issues;
- other problems are too large;
- no sense of belonging; and
- medicine wheel is out of balance.

Some suggested a distancing from culture as a root cause of violence. Violent and victimized youth have named social and mass medias as factors that emphasize distance from cultural teachings. Social networks are seen as dangerous contributors to culture loss and conflict because they are used as vehicles for spreading destructive gossip and rumours. Young people are interested in using these tools for social good, cultural reconstruction and mobilization.

Kinship relations and family dynamics play a central role in either continuing or ending violence. Family is a primary source for help and, for some, is the only place to get help. There is a widely shared sensibility that if one speaks out against violence that you will be labelled a trouble maker and become ostracized within the community, particularly if you speak out about people in positions of power or against family members.

*One time I found her boyfriend hitting her while she was holding her baby, it was Thanksgiving and I just remember my daughter is in the living room and I got so light headed, that is how I was feeling and I snapped out of it and I just remember grabbing his hair and 'boof' (hit him), I had to protect my sister.." – female participant*

Families can be safe havens for violence, but have limits. In situations of continued abuse, participants have faced the lack and loss of support for returning to violent relationships. Reconciliation occurs at great risk to continuing the cycle of violence if effective family and community interventions are not put in place. Separation options are limited and some people rely on family to solve problems. Families may not intervene, but rather avoid conflict entirely especially if the offender is a relative. Interfamily resolution can involve consequences of threats and retaliatory violence, but restorative methods have also worked. Family can have a silencing effect if people in abusive relations are afraid of expanding the network of harm by reporting or involving other family members. Violence is viewed as learned behaviour and often victims are silenced or told to 'deal with it'.

*I remember one time I was getting my head kicked in, in the bedroom, and my mother-in-law and father-in-law were in the other room and I am screaming for help and they said no, they are married, they will work it out, that is their belief" - Mainland female*

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

All participants identified addictions as a major factor contributing to family violence which explained why responses to violence are not important if substance use/abuse did not change. Financial troubles, poverty, and the lack of access to education and training to find sustainable employment all create instability in families and are key

sources of conflict. Gambling within the context of poverty was commonly identified as another root cause of violence.

*She gambled all the money and I got pissed and hit her. - Mainland male*

Unemployment, inability to provide for children, and reliance on subsidies produce cycles of financial dependency in families and make leaving violent relationships more difficult. Poverty and housing crises co-exist with addictions in every community. The politics of housing are particularly complicated in communities where overcrowding is most serious. People who are marginalized and isolated through family violence have another layer of trauma to deal with when trying to secure and maintain homes to protect themselves and their children.

Matrimonial property issues are contentious in each community. Some victims perceive that band officials will have a bias in determining who stays in the home. If there is a strong perception of bias – or perhaps a previous disputes with band officials (or their family members) – victims are less likely to take action. Factors that influence perceptions of band council bias include: family members or kinship ties in positions of power and authority; band membership; housing lists; financial and job security; prior conflicts; and the silencing of problems or past history of intergenerational trauma in families of band council members.

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

**From the evidence, it is clear that poverty, addictions and culture loss are the primary elements in the perpetuation of family violence as well as the key obstacles to addressing the problems.**

We found that when people did involve outside help, in particular courts and court ordered programs, the majority of participants were extremely dissatisfied and disillusioned by their experiences. Their disappointment was due to a profound lack of cultural respect and relevance and a general sense of alienation leading to feelings of helplessness and disempowerment.

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### PART III

#### **Assessing the Potential for Creating a Community-based Response Strategy**

From this research we have learned that success requires:

- community design and ownership;
- sustainable mobilization; and
- sufficient resources to make choices available that are culturally valid and comprehensive.

Mi'kmaq customary law involves addressing root causes by discussion, seeking and receiving counsel, elder reprimands and teachings, shame and shunning, restitution, reintegration, reconciliation, transparency and accountability.

Most Mi'kmaq participants view the justice system with reluctance, mistrust and fear regardless of their position. Many attempt to avoid the adversarial Canadian justice system entirely, feeling it fails to remedy Aboriginal problems, denies Indigenous voice and does not take their problems seriously. The Canadian justice system is designed around a set of legal symbols, endorsed by parliamentary-set laws, written as statutes, and enforced by official institutions and agents who work to ensure human conformity and compliance of law and order.

Mi'kmaq systems sought justification through shared decisions and forgiveness, compensation, balancing relations, possible revenge and avoidance; practices that discredit the adversarial nature of court authority. Peace was restored internally by family, community and governing networks. This research showed that the 'Canadian'

approach tended to reinforce colonial oppression, systemic discrimination and did more harm than good. Incarceration did not deter future violence or violations. Crimes tend to go unreported due to community pressure, inadequate policing and court actions, and a belief that nobody else cares, or that the problem will go away.

Feelings towards police are mixed; some people are happy to have police lay charges to remove a burden of doing it themselves, while others felt police intervention only made situations worse. When police are viewed in a negative light, people chose to manage their own affairs. Some women do not call police as they are extremely vulnerable in the time between the call and police arrival. This is a lesson taught in safety planning. Depending on the community, some people simply rely on family and friends rather than involving police. Participants have used police to distance themselves from abusers, but to also gain control of situations, and to deflect blame from themselves onto police and others. Community members suggested it would be helpful if police monitored families reporting domestic violence.

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

The Department of Justice stresses officer training specifically for work in Aboriginal communities. In several Mi'kmaq communities police are building positive relations with the people they serve through community policing strategies. However, there is a shared frustration if officers are transferred to other detachments after making strides and networks within the community:

- In Millbrook, the RCMP runs a successful youth group. In Membertou police services are contracted with the Cape Breton Regional Municipality.
- Eskasoni is currently policed by the Royal Canadian Mounted Police, which has a local detachment with a lock-up situated in the middle of the community
- In both Membertou (CBRPS) and Eskasoni (RCMP), officers participate in the Mi'kmaq Venture Program, a youth focused experiential learning program operated by Mi'kmaw Legal Support Network.

These types of healthy interactions help build positive community-policing relations that are critical to family violence prevention and intervention. Youth groups seem very receptive to police supported programs that are goal oriented, fun and meet regularly.

In 1996, a provincial court was established in Eskasoni Mi'kmaq Community in response to overwhelming evidence confirming the failures of the Canadian legal system and as a specific recommendation of the *Royal Commission on the Donald Marshall Jr. Prosecution*. According to a local Mi'kmaq officer who has worked in the community his entire policing career, the only change is that there is more court. The same officer believes the community is more accepting of court although there is still some resistance. Conflicts are often resolved before court dates. This officer noted that the court system does not generate healing; there is no reintegration process. He



favours creation of more healing circles to address responsibility, which may work better in community-focused collective cultures, provided that women or victims are protected from harmful hyper-responsibilization.

*“Too many people were charging and dropping them, charging them and dropping them.”* – Unidentified research participant

Court remediation removes responsibility from the community and interrupts opportunities for restoring balance disrupted by harm. Jail time is a poor deterrent as not being held responsible for actions does not usually facilitate the reciprocal nature of *apiqsigtoagen*. Some even see jail as a rite of passage. For some, jail is a favorable alternative to a life mired in poverty, insecurity, and violence because it offers predictability and structure, three meals a day, and a bed.

When asked about court experiences, people expressed dissatisfaction. The length of time, lack of support, guilt, public shame, family stress, psychological trauma and emotional confusion; coupled with the lack of cultural alignment of the processes and the service provision, often made people very unhappy with the outcomes. This was true whether they received convictions, incarcerations, conditions, or their cases collapsed and they reconciled. People in conflict generally want an acknowledgement and validation of harm done, an explanation of why they were harmed, assurances it will not happen again, an apology and restitution. There is an urgent immediacy for successful intervention for Mi'kmaq people, however, events most often get caught up in paperwork and court scheduling and ultimately the incident gets lost in the legal process, causing further obstacles to wellbeing. These conditions generate perceptions that nothing gets done about family violence. Trials are very challenging for victims and often they feel so intimidated by the process, the offender and families, that they are compelled to drop the charges or recant. The Canadian justice system is not fully equipped to provide opportunities for positive interaction.

The court workers have the difficult job of translating the authenticity of Canadian justice system for their Mi'kmaq clients. The survivors of family violence that shared their experiences with us found peace bonds and restraining orders to have minimal effect, both in terms of protection and their enforcement. Far more cases collapse than proceed and more violence occurs. Mi'kmaq entering the courts experience systemic discrimination both directly and indirectly. Indeed, MLSN court workers suggested a correlation exists between suicides and attendance at court where victims and perpetrators of violence are at high risk for suicide pre, during and post testimony.

### Mi'kmaw Legal Support Network (MLSN)

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

expanding to serve all Nova Scotia Aboriginals and its operations have transferred from the Nova Scotia Department of Justice Victims Services to the MLSN.

MLSN began operations in 2002 under the umbrella of the Confederacy of Mainland Mi'kmaq tribal council. The vision of MLSN is that Mi'kmaq people will have autonomy and control over a sustainable justice support system that addresses inequities, builds strong partnerships and provides culturally aligned justice services. The organization has worked very hard to provide consistent and effective assistance to offenders and is considered to be one of the leading edge Indigenous customary law providers in the country. However, MLSN has been constrained by grant based funding dependency and by hesitant and conservative approaches to restorative justice within mainstream Nova Scotia. Regardless of the constraints, MLSN has overcome many logistical obstacles and is the longest running Aboriginal justice program in Atlantic Canada. In 2010, no longer under the umbrella of a tribal council, MLSN became a stand-alone organization sanctioned by the Assembly of Nova Scotia Chiefs. Initially an offender based support service, MLSN, in keeping with its mandate to provide culturally aligned services, is now building capacity to provide holistic justice support for all Mi'kmaq persons, victims and offenders alike. MLSN is working to intervene in disputes with information and assistance to empower victims and communities to better understand justice processes and their rights and to offer opportunities for dispute management that are rooted in Mi'kmaq customs.

(Visit <http://www.eskasoni.ca/Departments/12/> and <http://www.cmmns.com/Legal.php> for more information on MLSN)

### Nova Scotia Victims' Services (NSVS)

Nova Scotia Victims' Services (NSVS) assists victims of crime who go through the criminal justice system. Their services start with the police laying the charge and end with sentencing. NSVS prepares people for court, assists with victim impact statements, provides a specialized program for children going through court, and offers access to resources to underwrite the costs of counselling to victims of crime. Victims' Services prioritizes sexual offences and any high harm offences such as assault causing bodily harm, aggravated assault, anything with a weapon, children's files and domestic violence, which, according to the Sydney office, is the bulk of their caseload. Domestic violence case files have increased "dramatically in the past two years. Their case load is predominantly domestic violence, which is a new trend. 95% of the referrals are from the police. When the police make a referral the service has a duty to contact the victim.

When considering Gladue principles at sentencing, the courts have very limited culturally aligned referral options in Nova Scotia. The same problem plagues NSVS. The few choices for Mi'kmaq-centred social work, counselling supports or programs that have some component of cultural competency and relevance are often overwhelmed by caseloads. Funding inadequacies impact how often programs are offered, program consistency and the number of available staff; directly affecting victim experiences and satisfaction in a pro-charge, pro-conviction environment.

Victims' Services has a list of approved counsellors that clients can pick from if they are approved for this type of support under the NSVS program. On the Cape Breton list there are no Mi'kmaq social workers listed since social workers must request placement. The only time NSVS actively reaches out to place a person on the list is when a client comes to them and to say they are seeing someone who is not on the list. NSVS may then invite the social worker to get on the list so they can be paid for counselling under the Victims' Services mandate. Those who qualify receive \$2,000.00 in counselling funding and more if required while the counsellor facilitates everything.

### Policing and Courts

High risk management coordination has problems with inadequate supervision. Police use the ODARA (Ontario Domestic Assault Risk Assessment) tool to assess risk in domestic violence cases. Once a high-risk designation is made, a referral process assesses high-risk case management where interagency service providers meet to discuss the case and build safety plans. The high-risk protocol came into effect in Cape Breton in 2003 and Eskasoni RCMP started high-risk protocols in 2009. There are more options for assistance in cities with interagencies working together. In Mi'kmaq communities there are fewer options for appropriate agency referrals and greater costs associated with interventions.

Police in Mi'kmaq communities have greater access to community programs meaning greater opportunities to use their discretion when directing the course of action when family violence cases are reported. This research found that non-Aboriginal health and justice service providers operating outside of Mi'kmaq communities have very low levels of awareness of Mi'kmaq programs and services. For example, a domestic violence case coordinator had no experience or knowledge of Mi'kmaq Legal Support Network services.

Participation in the legal system through courts, police and victims' services courts tend to agitate fragile kin networks of victims and perpetrators. Justice mechanisms such as kinship networks, retaliation, shunning, shame, gossip, threats, silence and denial are very active in the communities and deter people from seeking help from services and within communities and families. Service providers suggest that community ideas of responsibility and ingrained codes of silence make it difficult to confront and combat violence using the adversarial criminal justice system.

Courts place difficult conditions on offenders waiting for hearings resulting in criminal breaches and lead to higher incarceration rates without addressing the problems of abuse. The courts and justice facilities would benefit from greater communication with community members and service providers. The justice community has the basic responsibility to learn about life on reserves regarding the applicability and enforceability of non-contact orders, the frequency of couple reconciliation and the systemic issues at play in court charges. Participants also complained about the lack of Aboriginal people working in the Canadian justice system. Though Aboriginal representation has risen in

recent years, many justice system positions remain unfilled by Aboriginal candidates. Everyone agrees that the current governance of social services and legal processes do not producing adequate responses when addressing Mi'kmaw family violence in Nova Scotia. Changes must occur in order to provide effective intervention and prevention.

Mi'kmaq victims of violence are particularly concerned about privacy as they encounter police, victims' services and the courts. They are concerned about issues of confidentiality and find it very difficult to reach out for help amidst fears of being judged by other community members or losing their children, and have qualms about being denied services. Victims may encounter several case workers because of high staff turnover rates. People are very reluctant to agree to recommendations from high-risk case management because they do not want their family business to be known to others. In addition to being a consequence of intergenerational trauma, there is a prevailing attitude in all of Nova Scotia that what happens in the home stays in the home and this attitude is socially accepted. Victims are very concerned that they will be stigmatized for using community services, despite confidentiality codes.

*"Yeah. I did not want to be responsible if somebody got hurt, so I just kept my mouth shut because I know how crazy the boys are."* – female survivor

Service providers are challenged by familial and political changes, the cultural capacity of staff and programs, and the complexities of victim and funder expectations. These challenges are not insurmountable. All organizations serving Mi'kmaq communities have made tremendous contributions in terms of prevention, intervention and remedies for family violence within their niches: however, the nature and extent, the reactions and responses to family violence indicate that much more must be done.

## **Next Steps**

Mi'kmaq justice operates on principles of full inclusive collaboration for remedies that:

- 1) hold people accountable in a timely manner; and
- 2) consider the shared community and service provider responsibility in making remedy plans work through compliance monitoring and enforcing agreed-upon consequences in non-compliant situations.

It is the most effective strategy for protecting and empowering victims, providing support to families, educating abusers and alerting community members that working together can improve everyone's quality of life.

Communities become empowered by expanding referral entry points, re-establishing interagency case management, coordinating dispute management follow-up and healing plans through customary law. There is a genuine desire for change fostered by efforts of various programs and groups (i.e., Parents Against Drugs, Building Bridges, etc.). With this momentum supporting change, Mi'kmaq communities can address the problems of access to justice, and can choose to live in communities where doing nothing about violence is no longer normal.

This research taught us that there is need for men's programs, services for victims and something in the communities to help families. It was unanimous that organizations must work together to better meet their communities' needs. Timeliness is critical to dispute management and Mi'kmaq communities are better positioned to immediately deal with matters than the courts or service agencies are. In order to do so, each organization's responsibilities must be clarified and efficiently communicated to everyone rather than sporadically. Program transparency and accountability suffer from poor messaging causing obstacles that limit community collaboration and service legitimacy.

The biggest challenges are:

- 1) breaking the "codes of silence";
- 2) encouraging people to get help; and
- 3) making certain the help they need is there.

Eliminating barriers of service provision is the other critical piece. Service providers are aware of the challenges of working with narrow mandates of the government and band bureaucracy. All service providers indicate that their organizations tend to operate divisively, not collectively; reflecting the bureaucracies that fund them. Their policies tend to contradict and compete with one another for limited funding, creating gaps where victims fall through.

Grant-based organizations make the necessary provision of holistic services impossible and people suffer. Agency ties are interrupted through counterproductive resource-draining funding competitions. Mi'kmaq agencies are subject to state authority. When programs are forced to focus short-term fixes, service provision is difficult to maintain because incremental building cannot occur and remote decision results in a top-down approach where organizations are limited in determining how their resources are used while depending on external resources. Evaluation processes required by funders do not consider the significant time programs need to build trust and capacity.

Grant based models create circumstance where:

- decision making is short term and nonstrategic;
- funders outside of the communities set the development agenda; and
- development is treated as primarily an economic problem with Indigenous culture considered as an obstacle to, rather than the framework for, healing and wellbeing.

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



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

Re-establishing customary law through community-based restorative justice has the greatest potential for mobilizing and sustaining healthy community relations and facilitating safe dissolution or reconciliation of families in conflict. Aboriginal communities in Nova Scotia vary widely in their ability, capacity and desire to use traditional dispute management strategies. Each community has different historical, political, familial, economic and cultural characteristics that influence how local legal consciousness is constructed. Goals and approaches are diverse and priorities of the process remain constant:

- prioritizing victim safety;
- offering information and support for victims in a coordinated community response that ensures follow up, monitors compliance and aids reintegration for all parties;
- engaging in normative judgments that oppose gendered domination and violence;
- working with state resources when necessary; and
- operating on the premise that forgiveness is not a goal of the process, but may be an outcome.

Mi'kmaq justice models are based on discussions to address root causes for family violence. Counselling, elder reprimands and teachings, shame and shunning, restitution, reintegration and reconciliation are part of the progression leading to mutual forgiveness or dissolution. The process is based on respectful and timely inclusion of everyone collaborating for remedies by holding people accountable. Participation results in a healing plan and a compliance monitoring strategy complete with consequences for non-compliance, thus building community capacity toward legitimizing Mi'kmaq justice practices.

Effective collaboration involves positive change, expanded referral entry points, coordinated case management, accountability models in healing plans and reciprocal access to resources. Empowered community policies can compel participation. External policing and court orders are rarely effective or enforceable. ODARA high-risk designations are culturally uncertain. People prefer when police lay charges as it removes onus from the victim for "selling out" but some are sceptical citing that police fear or dislike Aboriginals. Police services in general are seen as instruments of colonial authority, and viewed as 'bad guys' even if the police are Aboriginals.

Violence is not a Mi'kmaq cultural norm – but the primary observation of our participants is that violence is normal in frequency and severity – which is extremely troubling and disturbing especially to community members. Normality does not presume apathy; instead, the realizing this violence created recognition of Mi'kmaq resilience and has prompted methods to address culture loss and poverty. Our ancestors, governments and courts have entered into constitutionally recognized treaty arrangements.

The extraordinary resilience of Mi'kmaq people must be celebrated. We are all treaty people. As treaty people we have an obligation to educate ourselves on the responsibilities inherent in such relations, a duty to learn the history and consequences of colonization so that we can understand what is happening today. We can sympathize by acknowledging and understanding the harms done and working together to facilitate cultural reinvigoration, community healing and peaceful relations. The first path to addressing family violence is recognizing that the cultural health of the Mi'kmaq Nation requires recognition of Mi'kmaq rights and title, meaningful consultation and fulfillment of the fiduciary obligations of the Crown. Without rights education and the implementation of Mi'kmaq treaties, systemic discrimination and poverty will continue to contribute, rather than limit, the experiences family violence.

A second path is to continue to improve Mi'kmaq experiences within the mainstream justice system through the expansion of the very good work and services of Mi'kmaq Legal Support Network, Mi'kmaq Victims Services and Mi'kmaq Family Healing Programs and by the complete, consistent, fulfillment of the Marshall Inquiry and RCAP Recommendations: translation services, court workers, legal aid, probation and aftercare, justice committees for sentencing, and the Mi'kmaq criminal court and so on.

The third and perhaps most important path is to address the sense of culture loss by creating programs and remedies that are meaningful to those who participate in them. How? The communities have told us they want a customary law program to promote prevention and to provide intervention to help families in crisis. By creating customary law protocols that are rooted in Mi'kmaq ways of being and framed by Mi'kmaq rights, meaningful, flexible and culturally relevant mechanisms will help people work through their crises, enhance Mi'kmaq values for living right and provide visible and serious consequences for those who commit acts of violence.

Six goals were identified from this research:

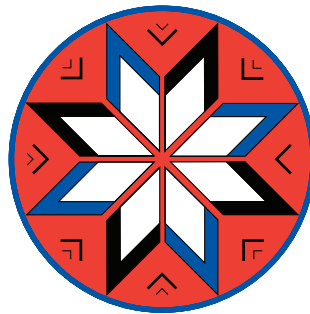
1. To develop and implement intervention protocols for family / domestic violence cases to be managed by a collaborative community-based Mi'kmaq customary law process;
2. To implement and maintain Men's Intervention and Empowerment Programs to provide consistent, sustainable, family healing plans and compliance monitoring strategies to end family violence in Mi'kmaq communities;
3. To expand and sustain Mi'kmaq Victims' Services by using a comprehensive navigation protocol to work collaboratively with Mi'kmaq Family Healing, NADACA, Mental Health, the RCMP and other policing services, and other service providers, to provide consistent, safe, sustainable, family healing plans and compliance monitoring strategies to end family violence in Mi'kmaq communities;

4. To design and deliver culturally meaningful prevention and anti-violence education.
5. To expand support and legal services for Mi'kmaq people engaging the Canadian Justice System.
6. To mobilize reintegration procedures and support network activities in each Mi'kmaq community on reserve and in urban centres.





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