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AN EVALUATION OF THE
ATTAWAPISKAT FIRST NATION
JUSTICE PILOT PROJECT

Conducted By:

Obonsawin-Irwin Consulting Inc.

June, 1992

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1.0 INTRODUCTION

In 1989 the Attawapiskat First Nation submitted a proposal to the Ministry of the Attorney General to establish a pilot community-based justice project. In 1990 the Ministry provided funding as well as support from Ministry personnel to establish and recognize a panel of community Elders who would hear cases diverted to them by the Crown Attorney.

The cases diverted include criminal, provincial, Indian Act and other federal offences. Hearings are conducted in Cree. In addition the Elders panel sit with the Judge when dealing with more serious criminal offences. In these cases the Elders act as a sentencing panel advising the Judge on suitable sentencing alternatives.

The Elders' Panel was formally sworn in on October 22, 1990 and commenced formal hearings in December of that same year.

The Ministry had agreed to fund two justice pilot projects in Nishnawbe-Aski Nation - Sandy Lake and Attawapiskat First Nations were selected on the understanding that an evaluation of both projects would be undertaken after a year. The study would help the Ministry and the community evaluate progress and decide how the projects should be continued. In addition, the evaluation is intended to provide information and recommendations to assist the Ministry respond to other First Nation communities wishing to establish similar projects.

Our firm was contracted in December of 1991 to carry out the evaluation of both the Sandy Lake and Attawapiskat justice pilot projects.

2.0 STUDY METHODOLOGY

There were no precedents to guide the establishment of a joint justice system in Attawapiskat integrating the Ontario justice system with traditional and customary values and community infrastructures. As a result the initiative was established as a pilot project in order to test it out, assess the impact on the community and the justice system and make recommendations related to long range plans and developments.

2.1 Study Purpose

To provide a thorough description and assessment of the Attawapiskat First Nation Justice Pilot Project which will help the community and the Ministry make decisions regarding the future of this justice project.

2.2 Study Objectives

- 1) To describe the background and operation of the project;
- 2) To assess the level of satisfaction of participants in the project, other community members and justice personnel with the project, and their support for it;
- 3) To determine the impact of the project and the degree to which it meets the needs and aspirations of the community regarding the provision of community-controlled justice, and to determine the impact of the project on the administration of justice;
- 4) To enable the Ministry of the Attorney General and the community to draw conclusions and make recommendations regarding the future of the project in Attawapiskat.

2.3 Study Tasks

2.3.1 Clarifying the Study Issues

The consultant reviewed background information on the Attawapiskat project as well as the questions posed in the terms of reference. Preliminary interviews were conducted with each member of the steering committee to ensure common understanding of issues outlined and approaches to be utilized.

2.3.2. Preparation of Study Questionnaires

Six questionnaires were developed to be administered individually to justice personnel, community leaders, accused, victims, family members of accused, and community members. The questionnaires were reviewed with the steering committee along with a chart identifying how each question addressed the study issues. The final questionnaires were developed incorporating revisions proposed by committee members.

2.3.3 Document and File Review

Program documents were gathered from the Ministry of the Attorney General including progress reports, training documents, administrative documents, the consultant's report and a summary background on the project.

2.3.4 Interviews

The following interviews were conducted in person. Roger Obonsawin conducted most of the Justice Personnel and Community Leaders interviews while Louis Bird conducted victims, family members, accused and community members interviews. He also interviewed members of the Elders' Panel.

A. Justice Personnel (outside of community):

. Lawyers	2
. Judge	1
. Crown Attorney (former)	1
. O.P.P. - Northwestern Patrol	2 *
. Probation Officer (M.C.S.)	1
. Ministry H.Q. staff	4 **
Total:	<hr/> 11

* The two O.P.P. officers were interviewed simultaneously. Only one questionnaire was tabulated.

** Four Ministry Headquarters staff were interviewed. The Attawapiskat questionnaire was utilized in 3 interviews while the Sandy Lake questionnaire was utilized in 1 interview. The Sandy Lake questionnaire was not tabulated in the Attawapiskat evaluation. A total of 9 justice personnel questionnaires were tabulated for this evaluation.

B. Community Leaders

. Elders Panel Members	3
. Project Coordinator	1
. Former Chief	1
. Band Councillors	2
. Probation Officer	1
. Band Constable	1
Total:	<u>9</u>

C. Family Members 11

D. Victims 11

E. Accused 12

F. Community Members 16

Total # of People Interviewed	<u>70</u>
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Total # of Questionnaires Tabulated	68
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2.4 Study Limitations

2.4.1 Length of Time Since Project Implementation

This evaluation was initiated only fourteen (14) months after the appointment of the Elders' Panel. This does not allow enough time to fully measure impacts on attitudes towards the justice system and trends related to charges laid, dispositions and sentencing. This study, therefore, concentrates on describing how the project was implemented and the perceptions

of stakeholders regarding implementation of the project along with some indications of trends in sentencing in the Elders' Court.

2.4.2 Comparisons With Other Communities

The Sandy Lake and Attawapiskat projects were evaluated simultaneously allowing for some comparisons of different models since the Elders' Court in Attawapiskat operates independently once diversion has occurred. It is our understanding that other communities are experimenting with different ways of increasing community input and involvement in the justice system without any funding from the Ministry. It would have been useful to conduct a similar evaluation in one of these communities at the same time in order to assess similarities and differences in results and in costs.

While this was not possible, it may be something to consider for future evaluations.

3.0 PROJECT DESCRIPTION

3.1 Project Background - The Process By Which the Project Was Conceived and Developed

The formal involvement of Attawapiskat First Nation in the courts in the community has been fairly recent. Prior to the establishment of the Elders Panel this involvement appeared to be restricted to the hiring of a translator from the community to help in the court process. Approximately 15 years ago, the practice of having the Chief or his designate attend courts to advise the judge was initiated. This was discontinued about 10 years ago.

In 1989, as a result of discussions in the Working Group on the Administration of Justice in the Remote North (Working Group on Justice in Nishnawbe-Aski Nation) the Attorney General invited Nishnawbe-Aski Nation to provide two proposals for community based justice projects. Funds were provided for the development of the proposals.

Attawapiskat and Sandy Lake were selected to prepare proposals. A report was prepared by Fletcher and Fletcher Associates. The Ministry and Attawapiskat First Nation entered into a contract for the 1990-91 year. The contract was renewed for 1991-92 and part of 1992-93.

The Chief and Council of the day were very concerned about the numbers of people from Attawapiskat being sentenced to jails outside the community. They immediately welcomed this initiative as a way to increase community involvement and control in the justice system and as a primary way of reducing jail sentences. Chief Reg Louttit was particularly instrumental in the establishment of this project as well as Band Councillor Gerald Mattinas who had been providing translation services in the courts.

The project experienced three difficulties which impaired its development.

- 1) The original proposal was too general and did not clearly define the purposes and objectives of the project or how it was to be carried out.

- 2) The first Project Coordinator hired did not carry out his duties adequately resulting in delays in the implementation process.
- 3) Regional Justice personnel who should have had major responsibilities for the successful implementation of this project were not seen by the community to be supportive or to be willing to provide assistance.

As a result of interventions by the Senior Judge and the hiring of a new Project Coordinator, the impetus for implementing the project increased substantially.

Ministry headquarters staff were assigned responsibilities to provide assistance, primarily through training. In addition, the newly hired Project Coordinator was instrumental in the development of systems for implementing the project and mobilizing the necessary resources.

The Elders' Panel, composed of three members, was appointed by Chief and Council. They were formally sworn in by His Honour Senior Judge Michel on October 22, 1990. The first formal hearings of the Attawapiskat Elders' Court was held on December 6, 1990.

A grant of \$100,000 was provided by the Ministry for the 1990-91 fiscal year. This grant included developmental as well as operational costs. A second grant of \$100,000 was approved for the 1991-92 fiscal year. Interim funds are being provided this year until the completion and review of this evaluation.

3.2 Community Needs

Community involvement in the courts in Attawapiskat has been a concern amongst community members for a long time. One member interviewed related a story about the courts prior to 1975. The process was conducted entirely in English at that time. Sentences were given without any explanation in Cree to people attending courts. This led to concerns by family members of the accused since they did not even know what decisions were made. The accused was then taken out of the community. This led to an incident where some

members present, out of frustration, began to throw chairs around and cause a disturbance. The suggestion was made, and acted upon, to have someone available in courts at all times to translate all the proceedings.

The provision of translation helped considerably. Concern still remained, however, that the court party just flew in, made quick judgements, and then flew out again. The main concern was the number of people who were taken out of the community and sent to jails in the south.

The background documents provided little information on the problems and needs in the community leading to the establishment of this project. The community needs were identified through a review of the Elders' Court statistics and the comments of community leaders and justice personnel during the interviews.

3.2.1 Responses on Needs From Interviews

Community leaders identified the following problems and needs:

- Five (5) respondents, talked about the pain and loss of family members when spouse and/or child was removed from the community
- Four (4) respondents mentioned the numerous complaints received about people sent away to jail - they felt it did not serve any purpose and people came back bitter with no rehabilitation
- Three (3) respondents talked about the cultural differences expressed through discrimination and lack of understanding by provincial court
- One (1) respondent talked about the need to counsel the accused in their own language
- One (1) respondent said that the community recognizes the need to use Native ways in the justice system.

Justice personnel identified the following problems and needs:

- Three (3) respondents talked about the need to make court relevant to the community through increased control and responsibility for dealing with their own problems
- Two (2) respondents mentioned the problem of alienation and lack of trust by the community of the judicial process
- One (1) respondent talked about the need to deal with dispositions differently.

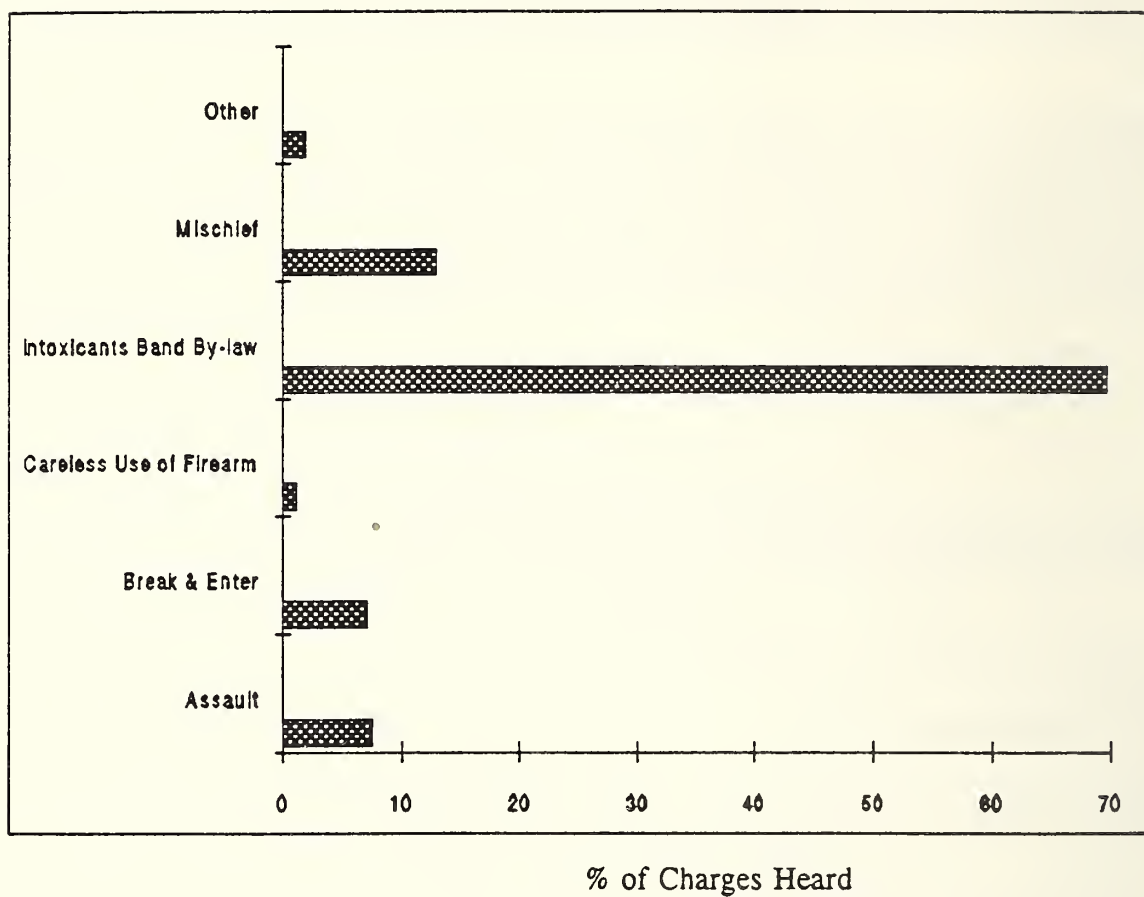
In summary the community needs can be defined as follows:

- 1) The need to keep people in the community as much as possible through development of methods for dealing with dispositions differently
- 2) The need to develop a court process which is sensitive to the cultural and language needs of the community
- 3) The need to increase community involvement and control within the court system and to give more responsibility to the community for dealing with justice issues
- 4) The need to develop community-based rehabilitation processes as alternatives to jail
- 5) The need to ease the pain and burden placed on the families when a spouse and/or child is removed from the community.

3.2.2 Elders' Court Statistics

Between December 6, 1990, when the first Elders' Court was held and November 13, 1991, 255 cases were handled by Elders' Court. Some cases were returned to the regular court system and are not included in these figures. Table I shows the types and number of charges laid related to these cases.

TABLE I
Type and Frequency of Charges
Elders' Courts Dec. 1990 to Nov. 1991



Of the 255 people appearing before the Elders' Court 212 were males and 43 were females, i.e. 83.3% of the accused were males and 16.7% were female. 54% of the accused were in the 18 - 27 age group. The offenders appearing in Elders' Court varied in ages with the youngest being 13 and the oldest being 69. Table II identifies the frequency of appearances by age groups.

TABLE II
Type and Frequency of Appearances
By Age Group

CHARGE	17 and under	18 - 27	28 - 37	38 - 47	48 - 57	58 - 69	No Age Given	TOTALS
Correction of child by force		1						1
Firearms, careless use	3							3
At large without excuse		1						1
Escape, permitting or assisting		1						1
Impaired driving		1						1
Assault		5	2					7
Assault causing bodily harm	1	6	1					8
Assault, aggravated		1						1
Assault on a police officer		1	1					2
Assault, sexual	1							1
Theft			1					1
Break and Enter	12	5	1					18
Mischief, danger to life	3							3
Mischief, property exceeding \$1000	3	3	1					7
Mischief, property	8	13	2					23
Intoxicants on reserve	10	101	37	17		5	6	176
Intoxication in a public place		1						1
TOTALS:	41	140	46	17	0	5	66	255

We also reviewed the types of sentences handed down by Elders in Elders' Court and identified these by age groups.

TABLE III
Dispositions
December 1990 to November 1991

Disposition	17 and Under	18 - 27	28 - 37	38 - 47	48 - 57	58 - 69	No Age Given	TOTALS
Probation	7	1						8
Probation & CSO	8	2	1					11
Probation & Fine	3	37	13	5				58
Fine		65	28	11		5	6	115
CSO	11	15	1					27
CSO & Fine		6	2					8
Restitution		3	1					4
Restitution & Probation			2					2
Withdrawn	1	3						4
Suspended Sentence	1							1
Absolute Discharge	1							1
Conditional Discharge	1	1						2
Fine, Probation & CSO		1						1
Adjourned							13	13
TOTALS:	33	134	48	16		5	19	255

3.3 Funding Criteria

The Ministry funded this project because it was seen as a self-determination initiative in line with the provincial government's thrust to support Aboriginal self-government.

Funding criteria was limited to the following:

- project with practical application;
- project addressing community needs rather than research orientation;
- demonstration of community support;
- demonstration of accountability to the community.

3.4 Purpose, Objectives and Scope of Project

We found no evidence of clearly documented purpose, goals and objectives for the project except for those outlined in the funding agreement and the Request For Proposals. These are:

To develop mechanisms for greater community involvement and control over the local justice system so as to permit a harmonious merger with traditional native justice practices and enhanced sensitivity among justice personnel.

To increase community control over and participation in the justice system.

To adapt the justice system to the needs of the community.

To foster community control over dispute resolutions within the community.

In spite of the lack of clear written goals and objectives, the Attawapiskat Justice Pilot Project has developed a broad mandate and scope. These include both in court and out of court activities.

3.4.1 In Court Activities

A) Elders' Court

The Elders' Court is convened approximately once a month. From December 1990 to November 1991, the court was convened 10 times.

The court hears cases involving members of Attawapiskat for offences committed on Attawapiskat First Nation territory. Adult and youth cases are diverted to the Elders' Court from the regular court system. Criminal and provincial charges are diverted after charges are laid. Band by-law (Indian Act) charges are diverted either before formal charges are laid or following formal charges. For criminal charges, formal charges in the regular court system are stayed and then the case is diverted by the Crown Attorney in consultation with the Project Coordinator.

Serious criminal offence charges are not diverted to the Elders' Court. An accused must agree to be diverted to the Elders' Court. He or she also has access to legal advice before any diversion occurs. The Elders can return a case to the regular court system if they deem it advisable.

Hearings are conducted entirely in the Cree language. Translation is provided at times when a person involved in the process wishes to speak in English.

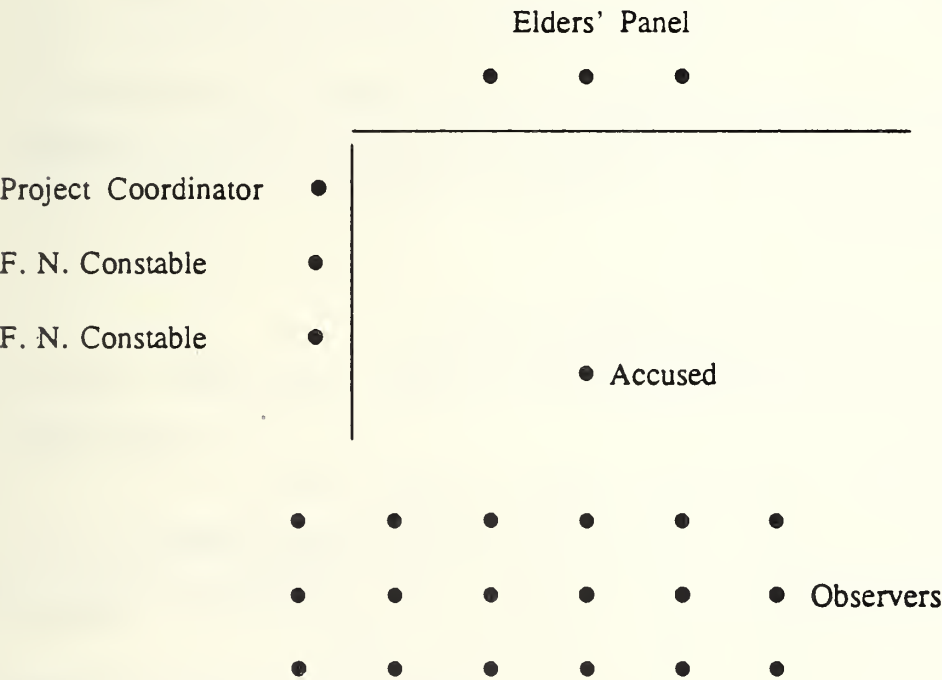
There is no prosecutor or defence counsel in the Elders' Court. The First Nations constable who laid the charge will advise the Court why the charge was laid and provide relevant information surrounding the charge. The accused, any witnesses, and any family members who wish to address the Elders' Court, will then discuss the case with the Elders.

The Elders' Court has the authority to decide all matters relating to the cases before it, including whether or not the individual is responsible for the offence. This is not a finding of criminal intent. No discussion in Elders' Court can be used as evidence in criminal court.

The Elders' Court applies community values to make a determination of what measure is appropriate for assisting the offender, his or her family and the community. Such measures include community service, counselling, restitution, or a monetary payment. The Elders' Panel cannot impose a jail sentence on the offender.

The Project Coordinator attends all Elders' Court sessions and acts in the capacity of court clerk.

The Elders' court is held in the community hall. The seating for the court party is arranged in an "L" shape. The Elders' panel sit at the top of the "L" facing the accused and observers. The Project Coordinator sits on the side of the "L" shape along with the First Nation constables. A chair is placed between the Elders and observers for the accused who directly faces members of the Elders' Panel.



B. Ontario Court (Provincial Division)

The members of the Elders' Panel sit as an advisory sentencing panel with the Provincial Court Judge when the provincial court presides in Attawapiskat.

This practice started subsequent to the first Elders' Court sitting in Attawapiskat.

The Provincial Court is a circuit court sitting approximately four times per year in Attawapiskat.

Justice of the Peace court continues to be held periodically and elders sit as an advisory panel in that court as well.

3.4.2 Out of Court Activities

The majority of out of court activities are carried out by the Project Coordinator.

The Elders are available to provide counselling and advice to individuals and families on request. This is done informally and as requested by individuals. We were not able to assess the extent of this activity.

The Project Coordinator carries out the following functions:

- ensures coordination of all matters relating to sitting of the Elders' Court and disposition of cases;
- ensures arrangements are made for sitting of the Elders' Court;
- ensures all parties are notified of dates for sittings of the Elders' Court;
- keeps records of cases diverted to the Elders' Court, disposition of cases and performance of all judgement orders of the Elders' Court;
- liaises with the Crown Attorney as required concerning cases diverted to the Elders' Court;

- prepares project progress reports and provides these to Band Council and the Ministry;
- collects fines and ensures restitution orders are carried out;
- oversees the conduct and development of Community Service Orders;
- follows up on and supervises probation orders;
- maintains contact with First Nation constables and other justice personnel as required;
- provides advice and counselling to offenders and family members as required;
- carries out office administration duties;
- works with Ministry staff to coordinate project training sessions;
- liaises with other service agencies as required;
- prepares Elders' Court dockets;
- issues subpoenas and summons.

3.5 Expected Impacts and Benefits

Justice personnel and community leaders interviewed were asked to identify what their expectations of the project were when it was first established. Tables IV and V identify these expectations and potential benefits.

TABLE IV
Community Leaders Expectations

Expectations	No. of Respondents (n = 9)
Community Development/Self-Government	5
Reduction in Jail Sentences	3
Ease Family Pain and Break Up	2
Increased Effectiveness with Young Offenders and Repeaters	2
Increased Effectiveness with Drug & Alcohol Abuse	1

TABLE V
Justice Personnel Expectations

Expectations	No. of Respondents (n = 9)
Increased Community Control, Involvement and Ownership	5
Restore Community Harmony/Reduce Crime	1
Reduce Recidivism	1
Functional Diversion	1

The main impacts and benefits expected from this project from its inception is the increased control and involvement of the community in addressing problems in the community leading to a reduction in crime, recidivism and incarcerations. This should result in a reduction in the easing of family pain and break up.

3.6 Community Values Incorporated Into Project

Community leaders and justice personnel interviewed were asked to comment on the community values they have perceived to be incorporated in the project. Tables VI and VII outline their perceptions.

TABLE VI
Community Leaders Perceptions of Community Values

Values	No. of Respondents (n = 9)
Family Counselling and Advice	4
Advice from Elders	2
Reduced Jail Sentences	1
Reduced Repeaters	1
Increased Community Service Orders	1
No Response/Don't Know	3

TABLE VII

Justice Personnel Perceptions of Community Values

Values	No. of Respondents (n = 9)
Establish a Wholistic and Non-Adversarial System/ Establish Community Harmony	3
More Human Perspective to Courts	1
Increased Community Responsibility	1
Reduction in Jail Sentences	1
Early Response to Problems	1
Don't Know	2

3.7 Organization and Administration

3.7.1 Human Resources

Staffing for the project includes a full-time Project Coordinator, a part-time Translator and those Elders who constitute the Elders' Panel.

The Project Coordinator carries out more duties than originally anticipated and outlined in the job description. In effect he is the court administrator, project administrator, office manager, justice liaison officer, probation worker, and Community Service Order coordinator. He works out of a small office in the Band Administration building.

At the time the field work was conducted there was no secretarial/clerical support staff and the need for an in court Translator appeared to be minimal. Other translation/interpretation duties include the translation of documents and explaining charges to the accused.

There is a Ministry of Correctional Services Probation and Parole Officer located in Attawapiskat. He has caseload responsibilities for the James Bay coastal communities and is not assigned any responsibilities for probation order dispositions in the Elders' Court.

It is our understanding that discussions are currently taking place with Correctional Services to extend these responsibilities to the Elders' Court.

The three members of the Elders' Panel are male. There is a requirement for all the Elders' Panel members to be present, however, under certain circumstances, courts can be convened with one, two or all three members being present.

3.7.2 Financial Resource Allocations

3.7.2.1 Financial Statements

Year-to-date financial statements are prepared by the Band's finance department on a quarterly basis. The 1991-92 budget prepared by the Project Coordinator identifies the following projected expenditures:

Remuneration to Elders	\$ 39,600
Coordinator salary and benefits	31,920
Translator	7,200
Project Administration Costs	20,113
Travel, training and evaluation	<u>6,840</u>
Total	\$105,673*

* The total includes a surplus of \$5,673 from the previous year making Attawapiskat eligible to receive \$100,000 from the Ministry.

3.7.2.2 Fines and Restitution Orders

A report dated March 8, 1991 indicates that fines and restitution orders are being complied with. It appears that these funds are being utilized to facilitate community service orders and prevention activities in the community.

Consideration has been given to establishing a victim's compensation fund. No action has been taken to date.

Revenues and expenditures related to payment of fines are being maintained but were not reviewed by the consultant.

3.7.2.3 Allocation For Project Coordinator

The expenditure related to the Project Coordinator's salary and benefits is the only one we can comment on in respect to appropriateness. The tasks carried out by the Project Coordinator and the Elders' Court caseload justifies a full-time Coordination position for this project. In effect the Project Coordinator is probably carrying out too many administrative and court follow-up tasks preventing him from further developing this project and integrating it within the Attawapiskat community.

Discussions with Ministry of Correctional Services to provide Probation Services to the Elders' Court have been taking place. The budget should be reviewed with the view of allocating funds for an office support position.

3.7.2.4 Translation Allocation

It is difficult to comment on the appropriateness of this allocation. We were not able to assess the degree of need for this service. The translation requirements appear to be minimal since Elders' Courts are only held in Cree. There is a need, however, for translation of documents and translation from Cree to English especially with the younger generation.

3.7.2.5 Allocation for Remunerating Elders

Elders' Panel members appear to be paid a flat rate of \$13,200 each a year. They hold courts approximately 10 days during the year, attend about 4 provincial court sessions a year and Justice of the Peace court as required. In addition, they attend training sessions, review materials in preparation for courts, and provide informal advice and counselling to

community members. In the period between August 14, 1990 and July 31, 1991, 23 days of training was provided to project staff.

It was not possible to assess the time spent by individual Elders in out of court activities. Methods should be developed to better assess the time spent by Elders in the discharge of their duties in respect to this project, in order to develop a rationale for this allocation.

3.7.2.6 Other Allocations

These allocations include administrative costs, travel costs, and training costs. These appear to be appropriate and should be flexible enough to meet the needs of the project. There may be a need to review project administration costs in order to ascertain what is actually being spent on these items and to assess if they are adequate to meet the increasing office administration requirements of the project.

3.7.3 Roles and Responsibilities of Participants

I Project Coordinator

The current Project Coordinator assumed his duties in October of 1990, approximately two months prior to the first courts being held. Training had already been initiated as of August of that year.

Prior to the current Project Coordinator being hired, project development and implementation work had been progressing slowly. Once he was hired, a lot of work had to be carried out in a short period of time in order to hold the first Elders' Court on December 6, 1990.

The success for the implementation of this project was due to the work carried out by the Project Coordinator. He continues to play an administrative and developmental role in this project, as well as following up on court orders.

There is a need to divert some of the duties of the Coordinator to other staff and resources in order for him to increase his activities related to project development.

II Translator

The Translator has been involved in providing interpretation services to the provincial courts in Attawapiskat since 1975. He is very familiar with the project and was involved as a Band Councillor in implementing the pilot project. He provides translation services on an as needed basis. This includes the translation of documents into Cree.

III Elders Panel Members

There are three male Elders panel members. They hear all cases diverted to Elders' Court and sit as a sentencing panel with the judge in provincial and in Justice of the Peace courts in Attawapiskat.

The members were appointed by Chief and Council.

IV Justice Committee and Other Resources

A Justice Committee was established. The committee has not been very active.

There are few community resources available and accessible to the Elders' Court. This will be discussed in a later section of the report.

The Project Coordinator relies on other band staff for financial administration and reporting.

3.8 Training and Development

There has been extensive training carried out since the inception of this project. These have including working sessions and formal training with the active involvement of Ministry staff.

The Ministry staff involvement in training and development was requested by Chief and Council and by the senior judge. This work began in August of 1990 and has been ongoing since then.

The work included providing consultation to community leaders, members, and Elders on the processes required for establishing the Elders' Court and suggesting methods for addressing the various issues that arose as the project was being developed and implemented.

In addition, formal training sessions were held with Elders and staff including sessions on such topics as the legal framework, how diversion functions, etc. Mock trials were held and written materials outlining the process were prepared. The materials were translated into Cree syllabics.

Since the Elders' Court have been operating for a while now, the training sessions are not as formalized. They consist mainly to responding to issues or areas the Elders and staff would like clarification on.

The two people most involved in the training and development work were the Administrator, Native Justice of the Peace programme and the Counsel, Policy Development Division. The Native Justice of the Peace (Northeast) and the Senior Judge were also involved in the training.

Other personnel who provided assistance and/or were involved in developmental discussions, included the Crown Attorney, the Senior Judge, the Justice of the Peace (Northeast), and the Counsel for the Criminal Law Policy Division.

3.9 Criteria For Selecting Cases To Be Heard In Elders' Court

Cases diverted to the Elders' Court include criminal, provincial, and Indian Act and Young Offenders Act offences.

The selection criteria is as follows:

- 1) Members of Attawapiskat First Nation
- 2) Offence committed on Attawapiskat First Nation territory
- 3) Criminal and provincial offence diverted after a charge is laid
- 4) Band by-law (Indian Act) charges diverted before formal charges are laid or following formal charges
- 5) Serious offences are not diverted; e.g. attempted murder, sexual assault, aggravated assault, or others where it appears that jail is the most appropriate sentence to be asked for in the regular courts
- 6) Crown Attorney's discretion regarding diverting criminal charges if they feel the individual could benefit from appearing before Elders' Court
- 7) Project Coordinator's discretion regarding diverting the accused based on an assessment of the offenders type and frequency of previous offences, the seriousness of the offences and the potential rehabilitative benefit from appearing in Elders' Court
- 8) Right of refusal by accused to be diverted
- 9) Right of accused to counsel prior to diversion
- 10) Right of Elders Panel to request the Crown to return case to regular court system at any time.

4.0 LEVEL OF SATISFACTION WITH THE JUSTICE PILOT PROJECT

All the people interviewed were asked, through a number of questions, their degree of satisfaction or dissatisfaction with the way the project was established and implemented. Nine (9) community leaders were interviewed.

4.1 LEVEL OF SATISFACTION OF COMMUNITY LEADERS

Generally, community leaders did not express a high degree of satisfaction with the project and the way it was implemented. For the most part, they felt it was an improvement over the way courts were being conducted previously and they all felt the project should continue. Concerns were expressed, however, about a number of areas needing to be expanded or strengthened.

4.1.1 Discretion Exerted by Crown Attorney In Diverting Cases To Elders Panel

The community leader respondents were asked if they felt the cases diverted to the Elders' Court were appropriate.

- Six (6) respondents said they were appropriate
- Three (3) respondents said they were not appropriate

Concern was expressed about the seriousness of some of the charges diverted, particularly aggravated assault, sexual assault, and police assault. It was felt that the Elders Panel was not trained or experienced enough to deal with serious cases.

One respondent felt that on a third offence, the accused should automatically go to provincial court.

The aggravated assault case was seen by some respondents as an isolated error.

The statistics show 19 assault cases from December 1990 to November 1991. Four of the assault cases diverted fall under the category mentioned by those concerned:

Aggravated Assault	1
Assault on a Police Officer	2
Sexual Assault	1

While the serious cases diverted were not numerous, they had significant impact on attitudes in the community about the Elders' Court. These attitudes are also reflected in the comments of some of the community members interviewed. We will report on these in a later section.

4.1.2 Satisfaction With Degree of Control They Had Over Decisions In This Project

QUESTION: How much control has the community, as compared to government, had over the decisions made in establishing and carrying out the Elders' Court?

TABLE VIII
Community Leader Responses
of Degree of Community Control

Degree of Control	No. of Responses (n = 9)
Total	0
A lot	2
Some	4
Very little	2

QUESTION: How satisfied are you with the degree of control the community has had?

TABLE IX
Community Leader Responses to Satisfaction
With Community Control Exercised

Level of Satisfaction With Control	No. of Responses
Very satisfied	0
Fairly satisfied	3
Not too satisfied	5
Not satisfied	0
No responses	1

When they were asked why they commented as they did, the following responses were provided:

- Lack of community involvement and information to community 3 responses
- More training and experience will lead to more control 3 responses
- Need to develop the project more slowly 2 responses
- Lack of resources or back-up, therefore, funding controls the project 2 responses
- Too dependent on Judge and other Ministry staff 1 response

4.1.3 Satisfaction With Training Provided

Six of the nine community leaders interviewed had participated in some or all of the training provided.

- One participant said the training was very effective
- Four participants said the training was fairly effective
- One participant said the training was not too effective
- None of the participants said the training was not at all effective

The training singled out as the most effective by respondents was the training provided in the initial stages of development by Richard le Sarge, Lois Lowenberger and Judge Michel.

Weaknesses of the training identified by respondents were:

- the lack of follow-up on the training conducted in the initial stages of the project
- training was geared more to courts as they now exist with no exploration of options for our own courts
- Elders were starting from a very basic point and still did not have clear understanding after training

4.1.4 Satisfaction With Resources Allocated to the Project

Community leaders were asked to rate on a scale of one to five, how satisfied they were with the resources provided for implementing this project. (1 = not at all satisfied, 5 = very satisfied).

The average rating for each resource was arrived at by adding the total for that resource and dividing it by the number of people who rated that particular resource.

TABLE X

Satisfaction Rating for Each Resource
(1 is low satisfaction and 5 is high satisfaction)

Resource	Average Rating
Regional Justice Personnel	3.9
Ministry Administration/Training Support	3.4
Elders	3.0
Staff	2.6
Police	2.4
Community Facilities	2.2
Other Community Agencies/Resources	2.1
Financial	2.1
Correctional Services	1.5

Four (4) respondents felt that this was the best use of resources at this time. Five said it was not the best use of resources.

The following comments were made related to each of the resources rated:

Regional Justice Personnel

- Very satisfied, particularly with Judge Michel's help
- We need a referral network

Elders

- There is a need for more diversity of Elders; e.g. youth and female not represented
- Need more training on sentencing procedures
- The selection process was too rushed -- need more involvement from the community
- Elders should use more program resources rather than counselling in the courtroom
- Elders are too lenient
- Need to start getting together to discuss development of Courts

Ministry Administration/Training Support

- We are satisfied with their input, but we need further training
- We need future planning for the program

Staff

- There is a shortage of staff for this project and we need more resources (2 respondents)
- The staff did not involve the police early enough

Police

- Their participation is questionable; there is not enough involvement because their hands are tied
- Should be more coordination in working more closely with the police
- They are generally helpful and provided help at the beginning
- There are more pressures placed on police because of Elders' Court -- people are more aware of their rights

Community Facilities

- The office is inadequate -- need better and more facilities and a place of their own
- Need facilities for Young Offenders and Elders; i.e. trained in wilderness procedures
- Two cells are limiting

Other Community Agencies and Resources

- Very little help and involvement from other agencies
- The school and hospital is supportive, but other agencies need to support Community Service Orders
- Need coordination between agencies
- Good help from drug and alcohol counsellor

Financial

- Insufficient funds (4 respondents)

Correctional Services

- Need Rehabilitation Officer
- Need to develop and coordinate resources better

4.1.5 Satisfaction With Responsibilities Given to Elders

**QUESTION: How satisfied are you with the degree of responsibility given to the Elders?
Why do you say that?**

- None of the respondents said very satisfied
- Six (6) respondents said fairly satisfied
- One (1) respondent said not very satisfied
- Two (2) respondents said they were not at all satisfied

The following comments were made:

- the Elders require more training
- need more cooperation between Elders and police
- the Elders fail to see alternatives because they don't know of services and how they operate
- there is still a need to develop more responsibility, but the onus is on the Elders to build more responsibility
- need more alternatives to send people to drug and alcohol treatment

4.1.6 Community Leaders Views on Current Community Support

QUESTION: Are community members aware of the Elders' Court and how supportive are they?

All nine respondents said that community members were aware of the Elders' Court.

Three of the respondents felt the community was fairly supportive of the Elders' Court, while six felt they were not very supportive.

The following comments were made:

- The main support comes from families with juveniles appearing in courts
- People support the existence of Elders' Court, but not necessarily how it functions
- There needs to be more community involvement in the project, including the selection of Elders panel members
- A lot of improvements are needed in areas of:
 - impartiality of Elders
 - reinforcement of restitution and Community Service Orders
 - training of Elders
 - younger person on panel for youth
 - too many on probation and then not being dealt with
- The project is still too new for the community to be supportive

4.1.7 General Comments Regarding Community Leader Satisfaction

Community leader respondents were asked if they felt the Elders' Courts were an improvement over the existing Ontario justice system.

- Six (6) respondents said it was an improvement
- Two (2) respondents said it was not an improvement
- One (1) respondent did not answer the question

Of the two who said it was not an improvement, one person felt that it was too early to assess improvement, since the project is still developing. The other person felt the Elders' Courts were too lenient, did not have enough authority, and there was not enough training for the Elders.

When asked if the project should continue, all of the community leaders interviewed (10) said that it should continue. The following reasons were given:

- With more community by-laws developed, more authority given to the Elders' Court, and more training provided to the Elders, the project should improve substantially

- It allows the Band to look within the community for prevention and rehabilitation methods for solving problems
- The project is just getting started and needs a chance to get established
- People in the community should have more choices and a right to be tried in their own language

4.2 LEVEL OF SATISFACTION OF VICTIMS, ACCUSED, AND FAMILY MEMBERS

4.2.1 Accused

Twelve accused who had attended Elders' Court were interviewed. A number of questions asked related to their experience in court.

QUESTION: In your opinion, was the Elders' decision fair?

- Ten (10) respondents said it was fair
- Two (2) respondents did not answer

The following comments were made by those who answered the question:

- The Elders understand their own people and speak the Native language
(2 respondents)
- I only got a fine (4 respondents)
- Because the accused does not have to be taken out of the community and sent to jail
(2 respondents)
- They gave counselling rather than a sentence (1 respondent)

QUESTION: Were you satisfied with the way you were treated in court by the Elders and other staff?

- Ten (10) respondents said they were satisfied
- Two (2) respondents did not answer

Four respondents said the treatment by Elders and staff was good and respectful.

All twelve of the respondents had appeared in other courts besides Elders' Court previously.

They were asked if the Elders' Court was different from the other courts they attended.

- One (1) said it was very different
- Seven (7) said it was fairly different
- Three (3) said it was the same

The accused who said it was very or fairly different made the following comments:

- The provincial court is more firm and severe and sends people to jail without much notice
- Elders' Court gives out fines, community service work, and probation
- There is better communication between Elders and accused

Those who felt it was the same said their decisions are based on provincial law, therefore, it works the same way.

When asked if these differences were good or bad, two people said it was bad because the accused are usually repeat offenders and the Elders were inconsistent.

Eight people said it was good because it shows concern for the people, Native language is used, no jail sentences are given, and counselling is provided.

When the accused were asked if Elders' Court should be continued in Attawapiskat, nine people said yes and two said no.

4.2.2 Victims

Eleven victims were interviewed. A number of questions were asked related to their experience with Elders' Court.

QUESTION: Was the (court) decision fair to you?

- Three (3) said the decision was fair
- Four (4) said the decision was not fair
- Two (2) did not answer

The respondents who said the decision was fair said the accused had to pay and they received payment for damages.

The respondents who said it was not fair felt the punishment was not severe enough, they should have common privileges reduced, and more probation or community service rather than fines.

One person felt the assault charge was serious enough so it should not have gone to Elders' Court.

When they were asked if they were treated fairly by the Elders and the Coordinator, most victims (9) did not respond, one said yes, and the other said no. No additional comments were made.

QUESTION: Have you ever been in other courts besides the Elders' Court?

- Seven of the eleven victims said they had been in other courts
- Five of the seven said it was very different, while two said it was a little different
- Four victims said the differences were good, while three said it was bad.

Those respondents who said it was good made the following comments:

- they show concern for community members
- the accused are not sent to jail
- the payment for damage goes directly to the victim

Those who said the difference was bad made the following comments:

- the accused have no fear or respect for Elders' Court or its decisions because it is too soft
- the Elders' Court does not have enough power -- it cannot accomplish its goal
- it is too lax -- too relaxed and casual, and people talking and not taking it seriously
- the accused show very little respect for property, people or authority

When victims were asked if the Elders' Court should be continued in Attawapiskat, five people said it should, while four people said it should not continue.

4.2.3 Family Members

Eleven family members of accused were interviewed.

QUESTION: Was their (court) decision fair to the family, the victim, and the accused?

- Seven family members said it was fair to the family, while one said it wasn't
- Two said it was fair to the victim, while two said it wasn't
- Five said it was fair to the accused

Comments made included:

- parents think it is fair because they don't want to see children punished
- the victim recognizes the consideration of Elders
- the young people like it because they are not sent to jail
- the victims are not too happy since they don't always get damages restored
- community service is not always done

QUESTION: Were you satisfied with the way you and your relative(s) were treated by the Court Coordinator and other staff?

- Six (6) said they were satisfied
- Three (3) said they were not satisfied
- Two (2) did not answer the question

No additional comments were made by those who were satisfied. The main concern expressed by those who said they were not satisfied was that one of the Elders was a victim and as a result was not impartial.

Eight of the family members interviewed had attended courts other than the Elders' Court.

- Two felt it was very different
- Four felt it was fairly different
- Two felt it was the same

Some respondents said the Elders' Court was not as intimidating, they display consideration and there is better communication. Others talked about Elders Court being too weak and the accused were not disciplined enough.

Six people saw these differences as being good, while three saw them as being bad, particularly for victims.

Five people said they preferred appearing in Elders' Court, while one mentioned a preference for provincial court. Six people did not express a preference.

QUESTION: Do you think the Elders' Court should be continued in Attawapiskat?

- Nine people said it should continue
- Two people said they didn't know

Three people said it will get better in the future. Two people felt the Elders' Court supported the family unit.

4.3 LEVEL OF SATISFACTION OF THE COMMUNITY IN GENERAL

A number of questions were asked related to the credibility of the project in the community. These were questions of awareness of the Elders' Court, respect for the Elders' Court, preferences between regular and Elders' Court, and the desire to have the Elders' Court continue.

4.3.1 Awareness

Generally, people were aware Elders' Courts were being held in Attawapiskat. While community members interviewed were asked if they were aware of Elders' Court, victims, accused, and family members were asked if they had been aware of it before having to attend court. Table XI outlines the responses given.

Table XI
Community Awareness of Elders' Court

Response	Community Members	Victims	Accused	Family Members	Total
Yes	15	8	10	10	43
No	1	3	2	1	7

The above table indicates 86% of people interviewed were aware of the Elders' Court.

People were asked how they became aware of Elders' Courts in Attawapiskat. Table XII outlines the responses.

TABLE XII
How Respondents Found Out About Elders' Court*

Method	No. of Responses
Word of Mouth	30
Through community sessions and swearing-in ceremony	9
Through direct involvement	3
TV/Radio	2
No response	3

* There were multiple responses to this question.

4.3.2 Respect for Elders' Court

Community members, victims, accused and family members were asked if people in Attawapiskat have respect for the Elders' Court.

- 25 people said yes
- 15 people said no
- 12 people said they did not know

Those people who said yes made the following comments:

- The family members are the ones who respect it the most since it spares them grief and pain since their children don't go to jail (8 respondents)
- It gives lighter sentences and reduces harshness at provincial court
- It is more humane since Elders and accused speak same language and show common culture

- There is opportunity for counselling.

Those people who said no made the following comments:

- Disagree with the decisions they make
- Elders are not always impartial
- There is no support for victims
- Elders are not consistent
- Few people respond to summons - even those not summoned should attend to know outcome
- The conduct of people while in court is disrespectful.

4.3.3 Preferences Between Regular Courts and Elders' Courts

Community members were asked if they preferred this kind of court to the regular Ontario courts.

- 8 people said they preferred Elders' Court
- 7 people said they did not prefer Elders' Court
- 1 person did not comment

The reasons given for preferring Elders' Courts were:

- Better communication because they speak the language
- This is a step towards self-government
- They are more sensitive to the family.

The reasons given for not preferring Elders' Courts included:

- Too lenient
- It is not solving community problems
- We get better justice from Provincial and Justice of the Peace courts.

Accused, victims and family members were asked if from what they heard from other people, they preferred Elders' Court to other courts.

- 16 people felt the community preferred Elders' Court
- 9 people felt the community preferred the other courts
- 9 people said they didn't know

Reasons given for preferring Elders' Courts included:

- Native language is spoken
- Were satisfied with how cases are handled
- Better for Young Offenders - get counselling
- They consider the community and the family.

Reasons for preferring other courts included:

- They are too lenient - violence escalated because they know they will only get lectures and small fine
- Elders are partial and inconsistent
- It is not working as expected.

The following reflects the answers from the three groups of respondents on whether the Elders' Court should be continued:

- 23 people said it should continue
- 6 people said it should not continue
- 5 people said they didn't know

The majority of no responses came from victims (4).

4.4 LEVEL OF SATISFACTION OF JUSTICE PERSONNEL

The level of justice personnel satisfaction for the Attawapiskat Justice Pilot Project was assessed from various perspectives. These include: general credibility of the project, the

extent project met expectations, the belief justice is being served, the effectiveness of training provided, and the satisfaction with Elders' performance of duties in court.

Nine Interviews were conducted with justice personnel.

4.4.1 General Credibility of the Project

A number of questions were asked related to justice personnel perception of the credibility of the project.

QUESTION: How much control has the community leadership had over decisions made in establishing and carrying out this project?

- One (1) respondent said they had total control
- Four (4) respondents said they had a lot of control
- One (1) respondent said they had some control
- Three (3) respondents did not know.

When asked how satisfied they were with the degree of control exercised by the leadership, five (5) justice personnel said they were very satisfied, one (1) said fairly satisfied and one (1) said not at all satisfied.

Concern was expressed about the Elders' Court being totally on their own, since they had no way of enforcing dispositions, hearing appeals or arriving at judgements.

There was also concern expressed about growing friction between the Council and the Project.

It was felt that the system needs to be ingrained further to help in overcoming personality issues which may affect justice.

Justice personnel were also asked to rate on a scale of one to five, how satisfied they were with the resources provided for implementing this project.

The rating for each resource was added up and divided by the number of people who gave a rating to that resource. Table XIII shows the results.

TABLE XIII
Satisfaction Rating For Each Resource
(1 is low satisfaction and 5 is high satisfaction)

Resource	Average Rating
1. Regional Justice Personnel	3.3
2. Financial	3.2
3. Elders	3.0
3. Community Facilities	3.0
5. Staff	2.8
5. Ministry Administration/ Training Support	2.8
7. Police	2.4
8. Correctional Services	2.3
8. Other Community Agencies and Resources	2.3

Seven (7) of the justice personnel respondents felt this was not the best use of resources at this time, while two did not comment. Respondents were for the most part not comfortable in making suggestions on how resources could be better utilized since they had few opportunities to observe how the Elders' Court operates.

The following comments were made:

Staff

- Need to distribute workload more evenly. The Project Coordinator has too many responsibilities

- There should be more coordination in the community between the agencies and service providers.

Elders

- Should hire and train more Native Justices of the Peace instead of Elders' Court
- There should be a back up Elder in event of sickness.

Ministry Administration and Training Support

- There should be more coordination to pull in other players, i.e. police, corrections
- There should be community education on justice system.

Regional Justice Personnel Support

- No comments were made.

Financial

- The project is over resourced. Remunerations for Elders should be on the same basis as part-time Justice of the Peace.

Community Facilities

- Office space inadequate. , Need space for counselling.

Other Community Agencies and Resources

- Need improved infrastructures; i.e. cooperation and coordination between agencies/service providers.

Police

- Need to build in inter-ministerial coordination
- They could be more involved.

4.4.2 The Extent the Project Met Expectations

Justice personnel respondents were asked to outline what they had hoped to see accomplished by the project.

The majority of respondents (6) expected the project to increase community control, autonomy and ownership. They talked of the need to set up a diversion project to give Attawapiskat First Nation full control of criminal prosecution which does not, by nature of the offence result in a jail sentence.

Other expectations mentioned by respondents included the restoration of community harmony, the reduction of crime and an effective response to problems in the community.

When they were asked to assess how well the project had met their expectations to date:

- two (2) people said very well
- four (4) people said fairly well
- two (2) people said poorly

Of those who said the expectations were met very or fairly well, the project was seen as a significant step towards self-government. Concern was expressed about the initial confusion but the community was seen to be working very hard at overcoming this. Caution was expressed about the need for continued attention to this project since it is still developing.

The respondents who said expectations were poorly met felt the Elders were too lenient and there was a lack of respect for the courts.

4.4.3 Perceptions That Justice Is Being Served

Justice personnel were asked if, in their opinion, justice has been served by this project.

- One (1) respondent felt it was served very well

- Five (5) respondents felt it was served fairly well
- One (1) respondent felt it was served poorly
- Two (2) respondents said they didn't know.

Those who felt justice was served very or fairly well talked about justice being served better than previously, the accused are dealt with fairly, victims have their say and the Elders are careful to treat people fairly and declare conflict when necessary. Concern was expressed about victims still feeling "short-changed".

The respondent who said the expectation was poorly met felt victims were being punished instead of the accused, the police feel abandoned and there seems to be conflicts of interest when dealing with family members.

4.4.4 Appropriateness of the Cases Diverted to the Elders' Court

Justice personnel were asked if the cases diverted to the panel by the Crown were appropriate.

- Four (4) people said yes
- Two (2) people said no
- Three (3) people didn't know and didn't comment.

Six respondents mentioned there were initially some serious cases diverted such as assault on police, sexual assault and aggravated assault, however the situation has been rectified.

The respondents who said the diversions were not appropriate felt all criminal cases should stay with Provincial Court while the by-law cases should go to Elders' Court.

None of the people interviewed felt that there were cases not diverted to the Elders when they should have been.

4.4.5 Level of Satisfaction With Training Provided

Four of the justice personnel interviewed were familiar with the training provided. Three of the four participated in some of the training.

The strengths of the training was identified as the mock courts, the chart on how the diversion system works and training on creative sentencing. It was found to be helpful to teach "Euro-laws" in order to make Elders more comfortable at proceedings.

The weaknesses of the training was identified as not being enough training, the inability of the trainers to speak Cree and the need for more structured training.

Another weakness identified was the amount of time taken away from the Native Justice of the Peace Program in order to provide the training.

Suggestions for future training included:

- increased training on workings of law, basic rules of law;
- training should not be ad hoc - should have a training support specialized to the program;
- training in areas of alcohol abuse as well as sexual and spousal abuse - need to know resources available;
- hypothetical cases to stimulate creative sentencing.

4.4.6 Satisfaction With Elders' Performance and Duties in Court

Justice personnel were asked how satisfied they were with the performance of the Elders in discharging their duties in Elders' Court. Seven people responded to this question:

- One said very satisfied;
- Five said fairly satisfied;
- One said not at all satisfied.

The respondents who answered very or fairly satisfied felt the Elders were serious and competent, and doing a good job. There was a need defined for the community to think about their role outside the court.

The respondent who said not at all satisfied was concerned about conflict of interest, poor knowledge of the law and the lack of authority to enforce.

4.5 GENERAL COMMENTS ON LEVELS OF SATISFACTION

People in Attawapiskat are aware of the existence of Elders' Court. Respondents were generally in favour of continuing the project. There were serious reservations expressed, however. These will have to be addressed if the Elders' Court is to be strengthened and if increased control and responsibility is to be given to the community.

The most serious concerns were expressed by victims and by the police. The concerns were not limited to them however, and these concerns seriously affect the credibility of the Elders' Court.

The project has had difficulties from the beginning. Even though some of these difficulties have been overcome they still impact on the feelings in the community about the project. The most serious of these are the instances where the accused were diverted to the Elders' Court for offences of aggravated assault, sexual assault and assaulting a police officer. The concern expressed was not only about the diversion itself but also, and perhaps more importantly, the way the Elders dealt with the case(s). The perception is that the Elders were not comfortable dealing with these cases but they failed to refer them back to Provincial Courts right away. This served to reinforce perceptions on the lack of training and experience and credibility of the Elders.

The Project Coordinator enjoys a high degree of credibility. He is seen to be the only one keeping this project functioning as well as it is. There is a concern about his being

overloaded with court administration details and follow-up on cases which prevent him from being effective in further developing and strengthening the project.

It may be useful to summarize some of the main issues or concerns which affect the credibility of the project.

I. Selection of Elders

The degree of community involvement in selecting the members of the Elders' panel is being questioned. This seems to relate more to the ability of the Elders to carry out their duties in a fair and impartial manner than the selection process itself.

Suggestions were made to develop a process which involves more than the Band Council in the selection process. The success of this project relies heavily on the acceptance by the community of the Elders selected and the degree of respect for the Elders in the community. There does not appear to be a sufficiently high degree of acceptance or respect at the present time.

II. Degree of Responsibility Given to the Elders' Panel

There is general agreement about increasing community control over justice issues in Attawapiskat. It is felt, however, that in assuming control, the Elders have been given more responsibility than they should have without having the proper training. The need for them to gain a better understanding of the law and the court process was stressed.

III. Coordination and Involvement of Resources

There is a potential to involve other service providers to help address justice issues. Resources such as the Drug and Alcohol Abuse Program and Payukotayno Child and Family

Services should be coordinated with the Elders' Court in order to develop more sentencing alternatives.

A broader choice of sentencing alternatives and increased creativity in sentencing are seen to be crucial to the success of this program. The Project Coordinator should place a high priority on coordinating these resources or looking at how other resources can be utilized to increase creative sentencing options. This is not possible to do at present given the current need for the Project Coordinator to carry out so many different activities and take on so many responsibilities.

IV. Involvement of Correctional Services

A large number of Elders' Court dispositions are probation orders. At the present time Correctional Services have no mandate to take on the responsibility of supervising these orders. As a result the Project Coordinator takes on direct responsibilities for supervising probation orders. There is little consistency, therefore, in following up on the probation orders.

Discussions have taken place with the Ministry of Correctional Services with a view of having them allocate the program resources in Attawapiskat for probation supervision related to the Elders' Courts.

V. Community Involvement and Ownership

While Attawapiskat has significantly increased its control and involvement in the justice system there still isn't a feeling of ownership for the process. This is due, in part, to an over reliance on the existing system and the lack of involvement from the community and other service providers in developing alternatives.

The potential for breaking this cycle seems to be there but it will require a concerted effort, particularly on the part of the Project Coordinator. This can be done only if other resources are provided to the Project Coordinator to relieve him from some of his existing duties in order to concentrate on community outreach and program development.

VI. Cooperation of the Police

There is a lot of tension between the police, the Elders' panel and the project. Police cooperation is essential in making this project work.

This tension was observed by the consultant on the day of Elders' Court. Prior to the court session beginning a distraught mother appeared in the courtroom saying her accused son was at home but refusing to attend court. Fearing repercussions for not attending she asked a member of the Elders' panel to intervene on her behalf and have someone attempt to bring her son to court. The Elder asked the constable present to help but he refused to do so stating he had no authority to do so without a bench warrant. The Elder and the constable were both visibly upset. The Elder felt the police could have exerted some pressure on the son to attend, while the constable felt the Elder should be aware he could not intervene without a warrant.

Small instances such as these not only affect the relationship between the police and the project, but also undermine the credibility of the Elders' Court in the eyes of the community.

Much work needs to be done to involve the police more directly and to establish protocols for cooperation between the Elders' Court and the police.

VIII. Victims' Dissatisfaction

There are a large number of cases involving property damage or theft. From December 1990 to November 1991 there were 18 Break and Enter cases, 7 Mischief to Property Exceeding \$1,000, and 23 Mischief to Property.

The group expressing the most dissatisfaction about cases heard in Elders' Courts is the victims of the offences. In fact one businessman in Attawapiskat refused to be interviewed stating, quite forcefully, that he had been the victim of offences many times without receiving any compensation while the perpetrators were dealt with too leniently.

Methods must be explored to better address the concerns of victims if the credibility of the Elders' Courts is to be improved in the community.

IX. Authority to Enforce Dispositions

A number of people expressed concern about the lack of authority the Elders' Court has for enforcing the sentences they hand out. They can only refer the person back to the regular courts when there is non-compliance. With the number of cases heard and the lack of resources for proper follow-up there is a tendency for the courts to be seen as having little or no authority.

5.0 IMPACTS AND BENEFITS

5.1 Project Objectives

To increase community control over and participation in the justice system.

To adapt the justice system to the needs of the community.

To foster community control over dispute resolution within the community.

5.2 Achievement of Objectives

5.2.1 Community Control

This has been achieved by having Elders' Courts operating separately from the regular justice system.

There is concern, however, that the control is limited since Elders lack training and experience, lack the authority to enforce the dispositions made in court, and lack the resources to develop creative sentencing options.

Attawapiskat First Nation has taken increased control of the existing system but still needs to develop a community-based system of justice which relies heavily on community resources.

5.2.2 Community Participation

There is increased community participation in that community members are involved in hearing their own cases and supervising the dispositions of the Elders' Courts. There is little community involvement, however, in developing by-laws or codes of conduct and developing community-based sentencing options acceptable to the community.

This participation is essential if true community control is to be achieved.

Community cooperation between service providers is lacking, a fact which severely limits community participation in the justice system.

5.2.3 Adaptation

There has been adaptation to the needs of family members and the accused but little adaptation to the needs of victims and the needs of the general community.

Some adaptation has been achieved by having courts in the Cree language and in a way the community understands and can relate to.

There has been little progress made in developing a justice system which satisfies the need in the community for creating harmony within the community.

5.2.4 Community Control Over Dispute Resolution

We had difficulty in assessing the degree to which this objective has been met since there was no clarification of how this objective was to be addressed. There is evidence that fines are collected and restitution is made to victims. We were unable to determine if this is what was meant by dispute resolution.

5.2.5 Other Objectives

The Request For Proposals document issued by the Ministry indicates a requirement to assess how well the project has met its objectives regarding public legal education, probation, etc. We found no evidence in any of the other documents we reviewed that these were objectives of the project. Even the objectives outlined in 5.1 are not reflected in any program documents.

Based on the materials reviewed and the interviews conducted the objectives of this project appear to be twofold.

1. Community control over the justice system;
2. Reduction in jail sentences for residents of Attawapiskat.

Attawapiskat First Nation and the Ministry need to come to some agreement on the purpose and objectives of this project if proper strategies are to be developed and future assessments/evaluations carried out.

There is little evidence that public legal education is being carried out or that probation objectives are carried out. We have been informed that a video for community consumption is being prepared.

5.3 Has The Project Met Needs and Expectations of Community Leaders and Justice Personnel

5.3.1 Community Leaders

The community leaders interviewed were asked what their expectations were for this project when it was first started.

The majority of respondents saw it as a community development process by developing community resources and increasing community awareness of who they are as a community and how they govern themselves.

They saw a need to increase their effectiveness in dealing with young offenders, with repeat offenders and with issues of drug and alcohol abuse.

They also expected to be able to reduce the number of jail sentences by developing community-based sentencing alternatives. This would help to ease family pain and break up.

Six of the community leaders felt these expectations were being met in the following areas:

- reduction in repeat offenders
- reduction in jail sentences;
- the fines are being kept in the community and used for community purposes.

Two community members said their expectations were not being met.

- There is lack of resources and training;

One person did not comment.

5.3.2 Justice Personnel

The justice personnel interviewed were asked what their expectations were for this project when it was established.

The majority of respondents talked about increased community control, involvement and ownership. Other expectations included a restoration of community harmony, a reduction in crime and recidivism and the establishment of a functional diversion project.

Two respondents said their expectations were met very well, four said they were met fairly well and two said they were poorly met.

There was a general feeling that this project was a good start at meeting these expectations and that some of the initial problems had been resolved.

Concern was expressed about the leniency of the Elders' Courts and lack of respect for the courts.

5.4 Conflicts Between Expectations and Reality

The most successful interventions by the Elders' Court appear to be in their dealings with Young Offenders. The level of satisfaction with the Elders' Court amongst family members seems to be related to the Elders having acted almost as "surrogate parents" with their children. This has led to a degree of "easing of the pains of families".

Table II on page 11 indicates that 54% of all accused appearing in Elders' Court in the period of one year were between the ages of 18 and 27 and 17% were in the 17 and under age group.

Early interventions with Young Offenders can help to reduce these numbers in the long run. It is too soon to be able to assess the degree to which these early interventions within the 13 to 17 age group are decreasing repeat offences in the 18 to 27 age group.

While these expectations appear to be met fairly well there is conflict between expectations and reality in other areas.

While fines and restitution orders are being applied and complied with there continues to be a high degree of dissatisfaction from victims and police about the leniency of the Elders and the continuing lack of accountability of the offender to the community.

Community control has been achieved by the fact that Elders' Court is being operated totally from the community. The lack of community involvement and the lack of training and experience on the part of the Elders is limiting the attainment of a higher degree of community control.

In relation to restoring community harmony this expectation is being met very minimally. There is more comfort with the Elders' Court on the part of the accused and family members since they can express themselves in their own language, they can get more involved in the process and the likelihood of a jail sentence is reduced. The lack of community by-laws (codes), the lack of involvement of other service providers, the lack of a variety of sentencing options and the lack of enforcement authority limits the ability of the court to increase community harmony.

5.5 Impact on Community Attitudes Towards the Justice System

67% of the community people interviewed in this study felt the Elders' Court should continue, 22% felt it should not continue and 12% didn't know or did not comment.

There is a feeling that the community has taken more control over the justice system in Attawapiskat but the control is limited due to lack of community involvement in developing community based alternatives, the lack of training and experience of the Elders' Panel, the lack of alternative sentencing resources, and the lack of enforcement authority.

There was a need expressed to increase control in a more gradual way allowing for increased community involvement and training. The attitude towards dealing with Young Offenders is positive while the attitude towards dealing with the repeat adult offender and the victims is not so positive.

Overall control is seen to be exercised, however, it is perceived to be limited and not too effective.

5.6 Impact on Accused and Victim

5.6.1 The Accused

The accused interviewed felt they had been treated fairly by the courts, staff were helpful and they preferred to appear in Elders' Court rather than regular courts. They feel they will

receive more leniency in Elders' Court than regular courts. Family members of young offenders are the most satisfied with this type of court.

Dispositions for a one year period show a tendency to fines (125), probation and fine (58) and community service orders (27).

It is too early to tell if there is a decrease in repeat offenders as a result of Elders' Court without relying solely on community perceptions. These perceptions indicate both an increase and a decrease of repeat offenders. Regardless of the outcome, the manner in which the repeat offender is dealt with should be more closely examined by the project.

There appears to have been a reduction in jail sentences, however we could not verify this through statistical information.

5.6.2 The Victim

This is where the impact is most negative. There are many break and enters, mischief to property and assault charges in Attawapiskat. Victims, for the most part, feel the courts are too lenient on offenders which increases the possibility of repeat offences.

While project progress reports indicate restitution orders are being complied to, there were only four (4) restitution orders in the one year period from December 1990 to November 1991.

This is an area which needs serious examination. Sentencing alternatives which are seen to be fair by the victim as well as accused are needed if the credibility of the Elders' Court is to improve.

5.7 Impact on Ontario Justice System in Respect to Time and Workload

Commitments

The Elders' Court is seen to have decreased the workload of Provincial Courts and in particular Justice of the Peace courts. This workload has not necessarily led to decreased time commitments on the part of justice personnel overall.

Some respondents indicated a 50% reduction in work because there is a decreased need for subpoenas, there are no witnesses, etc. This saving however is balanced by a slower process in Provincial Court and increased personnel time in training and consultations with Elders.

It is recognized that a lot of support is required initially but this should result in time and workload savings in the long term.

5.8 Comparisons In Respect to Dispositions and Sentences

While we reviewed sentencing patterns in the Elders' Court for a one year period we were not able to compare these to the dispositions in Provincial and Justice of the Peace Court prior to the beginning of the project.

5.9 The Strengths and Weaknesses of the Attawapiskat Justice Pilot Project

All of the people interviewed were asked to comment on the strengths and weaknesses of the Elders' Court project.

5.9.1 Strengths

I	Facilitates Communication in Own Language and Way of Understanding	35 responses
II	Counselling Provided by Elders Especially to Young Offenders	15 responses
III	Community Control/Accessibility/ Accountability and Responsibility	10 responses

IV	Community Based Sentencing Sensitive to Community Values and Customs	4 responses
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Other strengths were identified based on responses to other questions and the consultant's observations.

V Project Administration

The administration of this project is exemplary. Effective systems have been developed and are maintained for all administrative aspects of the Elders' Courts.

The fact that the project got off the ground after a slow start can be directly credited to the current Project Coordinator. He is very dedicated and efficient in conducting his duties.

Administration assistance is required if the project is to be strengthened.

VI Increased Hope In the Community

In spite of the difficulties encountered when establishing this project there is still a strong feeling that the project allows the community to deal with its problems in its own way.

There is a feeling that as issues are addressed and resolved the community will be successful in implementing an effective community based justice system.

5.9.2 Weaknesses

I	Little Enforcement/Lack Authority/Not Statutorily Mandated	9 responses
II	Too Lenient in Dispositions	6 responses
III	Lack of Training and Experience of Elders	4 responses
IV	Sentencing Options Limitations/Lack of Facilities Re: Sentence Options	4 responses

V	Not Enough Band By-laws/Codes/Regulations	3 responses
VI	Lack of Community Involvement and Support in Selection of Elders, project development, etc.	3 responses
VII	Potential for Politicizing the Process	2 responses
VIII	Lack of Impartiality on Part of Elders	2 responses

Other weaknesses were identified from responses to other questions and the consultant's observations.

IX Involvement and Coordination of Agencies/Service Providers

There is a need to involve other service providers particularly the Drug and Alcohol Program, Payukotayno Child and Family Services, the Police and the School. Sentencing options could be expanded with their input and community educational outreach could be facilitated. There is a lack of resources in Attawapiskat and the James Bay area for drug and alcohol services particularly treatment and prevention resources. This seriously affects the options open to the courts.

X Community Attitude

There appears to be a general lack of confidence in the community about the ability of the community and the leadership to address community problems and issues. This attitude is reflected in the lack of involvement and the criticisms of this project. Small errors become big issues. This comment is not intended to minimize the concerns expressed and the weaknesses identified. It does affect, however, the ability of the community to deal with problems encountered in a creative and constructive way.

6.0 CONCLUSIONS AND RECOMMENDATIONS

Having reviewed all the data gathered, and observed the court process in Attawapiskat, it is our conclusion that the Attawapiskat Justice Pilot Project is an improvement over the existing system, is viable and should be continued.

The establishment of the Elders' Court with its own administration is a step in transferring responsibility and accountability to the community. The project allows the community to participate in a justice system they can understand and can influence.

Substantial difficulties have been encountered in developing and implementing the Elders' Court. These difficulties have prevented the project from being as effective as it could be in this stage of its development. While some of the difficulties have been addressed they continue to affect the community attitudes towards the Elders' Court.

In addition there are few community or regional resources available to the Elders' Court which would help increase the effectiveness of the court in implementing more creative sentencing options.

6.1 Recommended Changes and Improvements to the Attawapiskat Justice Pilot Project

6.1.1 Defining the Project's Direction

The Justice Pilot Project lacks a clear sense of direction and philosophy. The original proposal does not give any direction to this project. The main thrust of the project is increased community control and reduction of jail sentences. There has been very little thinking about the best methods for achieving these objectives, as well as defining other objectives.

In spite of problems encountered and the lack of resources, the project has made significant progress in implementing a system which is community based and community controlled. A number of factors, have prevented the project from increasing the degree of community control.

These factors include the lack of community involvement in the process, the degree of training needed for the Elders, the initial start-up difficulties and delays, the lack of community resources being utilized to implement alternative sentencing options, and the lack of clearly defined goals and objectives for the project.

Sentencing options utilized tend to reflect the types of sentences handed out in the regular court system with a heavy reliance on fines, probation and community service orders. At the same time the Elders' Court have few resources available to it and limited enforcement authority.

The above factors combined with high caseloads in the Elders' Court and limited administrative resources prevent the project from carrying out the developmental work necessary to institute a system which will help community healing to occur and will bring more harmony to the community. In order to achieve this, it is necessary to increase community involvement in: 1) defining a direction; 2) providing resources; 3) implementing community codes; and 4) developing creative sentencing alternatives sanctioned by the community. It is also necessary for the Ministry and the project to explore ways for increasing the enforcement authority of the Elders' Court.

Since this project could very well serve as a model for other Aboriginal communities, we would suggest that the project's responsibilities be decreased until such time as its focus and direction is more clearly defined and a strategy for increasing community involvement and accessing of resources is developed.

We would suggest that the central focus or mission of the Attawapiskat Elders' Court be changed from "increased community control" to **"increasing the individual's accountability to the community"**. By developing a community based process for achieving this significant community control will be achieved.

Secondly, we would suggest that the philosophy of the project reflect the development of a healing process rather a punitive process.

RECOMMENDATION #1

THAT THE ELDERS' COURT BE CONTINUED IN ATTAWAPISKAT BUT THAT THEIR RESPONSIBILITIES BE LIMITED TO BAND BY-LAW AND YOUNG OFFENDERS ACT CASES UNTIL SUCH TIME AS A CLEAR FOCUS, DIRECTION AND STRATEGY IS DEVELOPED FOR THE FUTURE OPERATION OF A COMMUNITY CONTROLLED COURT.

The Attawapiskat Justice Pilot Project needs to clearly define its mission, goals, objectives and philosophy. Community members should be involved in developing these in order to ensure community ownership of the direction defined. By concentrating only on Band by-law and Young Offenders cases the project will be able to spend more time developing viable alternatives for dealing with these cases before taking on added responsibilities for adult criminal cases.

RECOMMENDATION #2

THAT THE ATTAWAPISKAT JUSTICE COMMITTEE BE REACTIVATED AND EXPANDED WITH ITS FIRST TASK BEING TO ENSURE COMMUNITY PARTICIPATION IN DEFINING THE DIRECTION OF THE JUSTICE PROJECT.

When developing a direction and strategy for the Justice Project the committee should keep in mind that healing must happen at various levels: healing of the accused, healing of the family, healing of the victim and healing of the community.

The justice system has a role to play at all of these levels.

Expansion of the committee should include involvement of the Drug and Alcohol Program and other resources.

6.1.2 Strengthening the Attawapiskat Justice Project Administration

The Project Coordinator has taken on too many responsibilities. This prevents him from carrying out more intensive developmental and community outreach work. He is also providing services which should be the responsibility of other service providers.

If the project is to be successful at involving community people in developing a direction and strategy for the Elders' Court, he will need to devote the time necessary to ensure this is done properly.

Two current areas of responsibility are fairly time consuming and prevent further developmental work from being carried out by the Project Coordinator. These are the office management and record keeping duties and duties related to probation and Community Service Order supervision.

RECOMMENDATION #3

THAT THE MINISTRIES OF CORRECTIONAL SERVICES AND COMMUNITY AND SOCIAL SERVICES PROVIDE RESOURCES TO THE ELDERS' COURT IN ATTAWAPISKAT TO ENSURE PROPER SUPERVISION OF PROBATION AND COMMUNITY SERVICE ORDERS.

RECOMMENDATION #4

THAT A CLERK/SECRETARY BE HIRED TO TAKE ON RESPONSIBILITIES FOR RECORD KEEPING AND FOLLOW-UPS ON COURT ORDERS AS WELL AS OTHER GENERAL OFFICE DUTIES.

It may be feasible to combine these duties with responsibilities for translation and making this one full time position.

6.1.3 Increasing Community Acceptance of the Court

There is a need to increase community involvement in the Elders' Court. With increased participation will come increased acceptance and respect for the courts.

Respect can also be increased in other ways. We will review some of the possibilities.

6.1.3.1 Selection of Elders' Panel Members

Concern has been expressed about the lack of community involvement in selecting members of the Elders' Panel.

The degree of respect shown for members of the Elders' panel is the most important ingredient in ensuring community acceptance of the court and the dispositions arrived at in the courts.

Family groupings in a small community make it difficult to select people who will be accepted by all groups and seen to be impartial in the adjudication process. One respondent suggested a selection process along clan lines, where each clan selects one person to be their representative on the panel. Panel members would have to withdraw when an accused from their clan is in front of the courts. This would ensure impartiality but would also ensure that members from another clan treat the accuser as fairly as he/she would treat a member of his/her clan. We are not familiar enough with the Attawapiskat clan system to comment on the feasibility of selecting Elders in this way. We do recognize, however, the need to develop a selection process which maximizes community input.

A second suggestion made was for selection of members of the Elders' Panel through community election.

A third option is to develop strict criteria and guidelines for the selection of Justice Elders' Panel members. These criteria and guidelines would be accepted by community vote. Band Council or another mandated group could then be authorized to select the Elders.

RECOMMENDATION #5

THAT ATTAWAPISKAT FIRST NATION REVIEW VARIOUS OPTIONS FOR THE SELECTION OF ELDERS' PANEL MEMBERS AND IMPLEMENT A NEW METHOD BASED ON THE STRENGTHS AND WEAKNESSES OF THE VARIOUS OPTIONS REVIEWED.

6.1.3.2 Guideline For Elders' Panel Members

Concern has been expressed about the impartiality of Elders when hearing cases when the accused is an immediate family member or, where the Elder is a victim of the offence being tried. It is our understanding that Elders normally declare a conflict in these instances and do not participate in the proceedings. Concern was expressed that while Elders declare a

conflict they normally do not physically remove themselves and are perceived to be participating in the case.

RECOMMENDATION #6

THAT GUIDELINES BE DEVELOPED REGARDING THE PARTICIPATION OF ELDERS IN CASES WHERE THERE IS A CONFLICT OF INTEREST. THESE GUIDELINES SHOULD INSIST THAT ELDERS PHYSICALLY REMOVE THEMSELVES FROM THEIR POSITION DURING THE CONDUCT OF SUCH CASES.

6.1.3.3 Court Facilities

Some respondents talked about the atmosphere created in the courts. It was felt to be too relaxed and informal to reflect the seriousness of the matters to be discussed there or the important decisions to be made by the Elders' Panel. The interaction and tension in the courtroom between the police and the courts prior to the court attended by the consultant would not serve to inspire community confidence in the courts.

RECOMMENDATION #7

THAT FACILITIES BE IDENTIFIED WHICH REFLECT A PROPER ATMOSPHERE FOR HOLDING COURT SESSIONS AND THAT THE SET UP OF THE COURTS SEATING ARRANGEMENTS REINFORCE THE SERIOUSNESS OF THE MATTERS TO BE DISCUSSED. CONSIDERATION SHOULD BE GIVEN TO HAVING CHAIRS AND TABLES ARRANGED IN A CIRCLE OR A SEMI-CIRCLE.

In addition to the above the Elders should not be placed in a position where they are interacting in public in the courtroom before court convenes. There may even be

consideration of having the Elders wear something formal such as a traditional ribbon shirt or even a special vest designed for the occasion.

In addition to the inadequacy of present courtroom facilities and set up, the project is very limited in respect to office space. There is a need for more space for office administration but also private counselling space for the Elders and/or other project staff.

RECOMMENDATION #8

THAT THE JUSTICE PILOT PROJECT AND THE MINISTRY EXPLORE THE FEASIBILITY OF SECURING FACILITIES WHICH WILL ACCOMMODATE ADMINISTRATIVE AND COUNSELLING REQUIREMENTS AS WELL AS A COURT ENVIRONMENT WHICH REFLECTS THE SERIOUSNESS OF THE OCCASION.

6.1.4 Strengthening Community Interventions In the Elders' Court Process

At the present time there are no other community resources formally participating in the Elders' Court process. Recommendations have already been made for the increased involvement of Correctional Services in supervising probation and Community Service Orders. There is a need to involve other community resources in order to ensure the availability of a range of sentencing options.

I. Drug and Alcohol Abuse

Based on our experience in the field of substance abuse, it is our opinion that prohibition policies against alcohol are not an effective method for reducing levels of alcohol abuse or reducing accessibility to alcohol. Instead they tend to increase the cost of alcohol, incidences of bootlegging, numbers of charges laid and the development of alternative prevention and intervention options.

Limited tolerance policies instituted by Band Councils appear to be more effective in raising awareness in the community and in developing effective substance abuse intervention strategies. These strategies are increasingly being recommended by practitioners and experts in the field such as the Addiction Research Foundation.

70% of the charges laid in 1991 were offences against the Band by-law of intoxicants on reserve.

Alcohol abuse and the prohibition of alcohol has a tremendous impact on the administration of justice in Attawapiskat.

The problem is further complicated by the lack of substance abuse treatment and prevention resources for Native communities in the James Bay area.

There is a need for increased formal involvement of the Drug and Alcohol Program in the Elders' Court to act as a resource to the Elders' Court as well as a need to develop a long range substance abuse intervention strategy in Attawapiskat.

RECOMMENDATION #9

THAT THE DRUG AND ALCOHOL ABUSE WORKER IN ATTAWAPISKAT BE INVITED TO PARTICIPATE IN THE JUSTICE COMMITTEE ONCE IT IS RE-ESTABLISHED IN ORDER TO DEVELOP METHODS FOR DEALING WITH CASES WHERE ALCOHOL ABUSE IS PREVALENT.

RECOMMENDATION #10

THAT THE JUSTICE COMMITTEE EXPLORE THE POTENTIAL FOR DEVELOPING BAND SUBSTANCE ABUSE POLICIES AND STRATEGIES BASED ON RECOGNIZED COMMUNITY SUBSTANCE ABUSE INTERVENTION MODELS.

It is not expected that these policies and strategies will have immediate effect, however, they are helpful for involving the community in addressing this issue.

II. The Police

Tension exists between the police and the Justice Pilot Project. These tensions must be reduced and cooperation must be increased if the Elders' Court is to develop effective methods for reducing the high number of repeat offences.

RECOMMENDATION #11

THAT DISCUSSIONS BE INITIATED BETWEEN THE MINISTRIES OF THE ATTORNEY GENERAL AND SOLICITOR GENERAL TO EXPLORE WAYS TO FACILITATE THE INVOLVEMENT OF THE O.P.P., THE ATTAWAPISKAT CONSTABLES AND THE JUSTICE PILOT PROJECT IN DEVELOPING PROTOCOLS WHICH ENSURE COOPERATION AND COORDINATION IN IMPLEMENTING ELDERS' COURTS IN ATTAWAPISKAT.

III. Payukotayno Child and Family Services

The Elders' Court have had positive impacts on Young Offenders and on families. Payukotayno is involved to a substantial degree with issues related to Young Offenders and their families. There should be formal links established between the Elders' Court and Payukotayno in order to develop innovative sentencing options.

RECOMMENDATION #12

THAT DISCUSSIONS BE ENTERED INTO WITH PAYUKOTAYNO CHILD AND FAMILY SERVICES TO EXPLORE METHODS FOR INCREASING EFFECTIVE SENTENCING OPTIONS FOR YOUTH.

6.1.5 Training

The training provided has been helpful. A need for additional training along the same lines has been identified to increase the Elders' comfort with the court process. There is also a need to develop creative sentencing options. This requires an understanding of community services and resources available when developing these options.

RECOMMENDATION #13

THAT FUTURE TRAINING SESSIONS INCORPORATE INFORMATION ON SPECIFIC ISSUES SUCH AS ALCOHOL ABUSE, FAMILY VIOLENCE ETC. AS WELL AS THE ROLE OF RELATED COMMUNITY AGENCIES IN ADDRESSING THESE ISSUES. THE TRAINING SESSIONS COULD INCLUDE PROBLEM SOLVING EXERCISES RELATED TO ADDRESSING THESE ISSUES IN THE COURTS.

6.1.6 Victims

The treatment of victims in the court process was one of the main weaknesses defined in this project. Methods for increasing restitution orders and victim compensation should be explored.

RECOMMENDATION #14

THAT A VICTIM'S COMPENSATION FUND BE ESTABLISHED FROM FINES COLLECTED AND THAT THIS BE SEEN AS A PRIORITY ALLOCATION WHEN DISBURSING REVENUES GENERATED FROM FINES.

RECOMMENDATION #15

THAT METHODS FOR INCREASING VICTIM RESTITUTION AND INVOLVEMENT BE EXPLORED.

6.2 Emerging Issues

There are four issues emerging which may need to be addressed in the future.

6.2.1 Gap Between Elders and Youth

Comments have been made by respondents about the growing gap between young people and the Elders. These gaps can be attributed both to language and a changing lifestyle. Some young people feel traditional values are changing as lifestyles in the community change. It is felt that Elders often do not understand the pressures young people are facing when trying to adjust.

RECOMMENDATION #16

THAT THE JUSTICE PROJECT CONSIDER THE FEASIBILITY OF APPOINTING ONE MORE PANEL MEMBER WITH EXPERIENCE WORKING WITH YOUTH.

6.2.2. Wilderness Camp

The establishment of a wilderness camp has been discussed. Offenders would be sentenced to spend time at a camp where Elders or other qualified people would teach them survival skills. While a formal camp idea may be prohibitive from a cost and resource perspective, at this time, there may be simpler options available to implement the same idea. For example, an offender could be paired up with an Elder or other community volunteer who has these skills. This person could take the offender on the trap-line, hunting, fishing, etc. (almost as an apprentice).

Out-of-pocket or other expenses incurred by the Elder or community member could be covered through the fines/donations fund.

RECOMMENDATION #17

THAT THE JUSTICE COMMITTEE AND PROJECT STAFF EXPLORE THE FEASIBILITY OF ESTABLISHING AN OFFENDER MENTORING PROGRAM IN ORDER TO EXPAND SENTENCING OPTIONS.

6.2.3 Community Codes of Conduct

The limited authority and mandate of the Elders' Court has been identified as an area of concern. The only Band by-law at this time is the by-law on intoxicants on the reserve. The Band does have authority under the Indian Act to develop additional codes regulating the conduct of its members. These should be part of the by-laws to be adjudicated by the Elders' Court.

RECOMMENDATION #18

THAT THE JUSTICE COMMITTEE DEVELOP RECOMMENDATIONS FOR BAND COUNCIL CONSIDERATION ON AREAS WHERE ADDITIONAL BAND BY-LAWS COULD BE DEVELOPED.

6.2.4 Degree of Ontario Control vs. Community Control

The community and the Elders' Panel has exercised a substantial control to date in the delivery of justice in Attawapiskat.

The issue of legislated control in the community through the establishment of Tribal Courts goes beyond the scope of this study. These issues require legislative changes and will most likely be addressed in the context of defining inherent rights to Aboriginal self-government and the defining of the forms of Aboriginal self-government.

There is a reluctance on the part of some community members to proceed too quickly in this direction. There was comfort in having an Elders' Panel deal with band by-laws and even less serious criminal offences. There is a reluctance to have the Elder's panel being the sole arbitrator of serious offences such as murder, violence, and assault.

At the moment and under the present conditions the Ontario justice system will continue to play a role in all criminal matters even if it is simply a matter of diverting offenders who have pleaded guilty to the Elders' Panel for sentencing. They will also play a major role in serious offences as an objective outside party mediating serious disputes within the community. Before withdrawing from that role there has to be strong social contracts and community codes of conduct, accepted by community members, as well as methods for dealing humanely with these issues including an appeals process.

In our opinion it is premature for community leaders and the Ontario justice system to implement total community control of the justice system without having other alternatives in place. We do agree, however, that the community and the justice system could begin to prepare themselves for increased community control through the development of community codes and methods for enacting and enforcing these codes. This can only help to strengthen the community in the long run.

Whether there is a separate Native justice system or a continuing presence of the Ontario justice system there will always be a need for a conflict resolution/mediation function by a group from outside the community and for protection of the community from dangerous offenders.

There was a tendency on the part of some community respondents to say that community control is inhibited solely due to the lack of resources, community codes and enforcement authorities. This tends to divert from the need to look at areas where community control can be increased even without these.

It is our opinion that the main barriers to increased control at the present time are: lack of community involvement in defining the kind of project they wish, and the direction of justice development in Attawapiskat; the lack of community involvement in selecting members of the Elders' Panel; and the lack of resources to implement innovative sentencing options.

Once a solid foundation and direction is established other control issues can be addressed. In addition, the question of disposition enforcement authority needs to be addressed if the Elders' Courts are to be effective in Attawapiskat.

RECOMMENDATION #19

THAT THE MINISTRY OF THE ATTORNEY GENERAL AND THE ATTAWAPISKAT JUSTICE PROJECT EXPLORE WAYS TO INCREASE THE ENFORCEMENT AUTHORITY OF THE ELDERS' COURT.

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FUTURE ABORIGINAL COMMUNITY JUSTICE PROJECT DEVELOPMENT NEEDS

**AN ADDENDUM TO THE
SANDY LAKE AND ATTAWAPISKAT FIRST NATIONS
JUSTICE PILOT PROJECT
EVALUATION REPORTS**

July 1992

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1.0 BACKGROUND

1.1 Introduction

In June of 1992 our firm tabled evaluation reports on the Sandy Lake and Attawapiskat First Nations Justice Pilot Projects.

These evaluations were conducted in response to two Requests for Proposals. The R.F.P.'s requested individual evaluations for each project under separate contractual agreements. Some of the terms in each contract were identical. The identical terms related to developing recommendations for implementing future justice projects in Aboriginal communities. This report addresses questions related to these terms.

1.2 Questions To Be Addressed

The following questions were included in both Requests for Proposals and will be dealt with in this report:

1.2.1 What criteria are required to assess future proposals?

1.2.2 What is needed in the community to accommodate a project such as this?

1.2.3 What degree and type of training and community development work is necessary before community justice projects can be implemented?

1.2.4 What community resources are needed to accommodate a project such as this?

1.2.5 What are the appropriate roles, responsibilities and functions of community members and Ministry staff in the development and implementation of community justice projects?

1.2.6 What is the appropriate degree of control which should be exercised by the community and retained by the Ontario justice system?

2.0 COMMUNITY LEADERS AND JUSTICE PERSONNEL RESPONSES

A total of 39 community leaders and justice personnel were interviewed for the Sandy Lake and Attawapiskat evaluations. In two instances two people were interviewed at the same time. Only one questionnaire was completed in each of these cases. A total of 37 questionnaires were tabulated as follows:

Justice Personnel	-	Sandy Lake	10
	-	Attawapiskat	9
Community Leaders	-	Sandy Lake	9
	-	Attawapiskat	9

The data from the questions related to future projects were tabulated without making any distinction between groups of respondents.

2.1 Developmental Needs of Future First Nations Justice Projects

Two questions were asked about future developmental needs. The first question asked people to make suggestions for improving methods for developing a project like this. The second question asked people what they would suggest to other communities if they were asked how to prepare the community and what is needed in the community in order to establish an Elders' Court. The answers were categorized in order of frequency mentioned, as follows:

I. Community Involvement - 22 responses

Respondents talked about the need to ensure community involvement in the developmental phase of a project of this nature. Seven of these responses indicated a need for a more gradual process of

implementation, ensuring community input in the selection of Elders and thorough community discussion on alternatives.

II. Community Legal Education - 10 responses

People interviewed stressed the need for conducting legal education sessions in the community during the developmental stage of a justice project. Respondents talked about the need for legal education in schools, as well as community meetings and information sessions throughout the developmental phase.

III. More Training - 7 responses

The need for training of project staff and Elders' panel (Council) members was stressed. It was felt that training should be provided prior to initiating Elders' Courts. Training should include sessions on law and court procedures and on methods for dealing with sensitive community issues such as family violence and sexual assault. One respondent felt that Criminal Code cases should not be diverted until there is a better understanding of court systems and procedures. It was also suggested that a new or developing project should observe the process in Attawapiskat and/or Sandy Lake and learn from their experiences prior to establishing a project. Staff and Elders from Sandy Lake and Attawapiskat could act as resource people.

IV. Community Resources and Facilities - 7 responses

People addressed the need to ensure community resources and facilities are available to facilitate a wide range of sentencing options. These options included: agency/institutional resources for

implementing Community Service Orders; availability of probation services; substance abuse counselling and treatment programs; wilderness camps and adequate community lock-up facilities to ensure possibility of intermittent sentences.

Respondents also talked about the need to better coordinate agency involvement and to "inter-link" programs with other agencies.

V. Establishment of Community Justice Committee - 4 responses

Some respondents felt that it was important to establish a community justice committee even before the developmental phase of a project of this nature. The justice committee was seen as crucial for ensuring community involvement in all stages of the project and for beginning to develop a plan for assuming increased community control.

VI. Conduct a Needs Assessment and Develop an Action Plan - 3 responses

Some respondents saw a need to conduct a community needs assessment and develop an action plan prior to implementing an Elders' Court in a community. Suggestions for conducting a needs assessment included an identification of: 1) what the community leadership wants to achieve; 2) previous community involvement with the justice system; 3) court statistics and police occurrence reports; and, 4) community perspectives on justice needs and how to address them.

VII. Other Considerations - 5 responses

The need for Band Council support and involvement was seen as crucial. The need to develop justice projects independently from the band political process was stressed by some respondents.

The need to ensure support from the whole system during the developmental phase was also stressed.

The need for an independent body to facilitate the developmental process was also stressed. Two respondents suggested that Nishnawbe-Aski Legal Services Corporation could provide this service.

2.2 Administrative Needs of Future First Nations Justice Projects

Community leaders and justice personnel interviewed were asked if they had any suggestions to make for changing or improving the methods for administering a project like this.

The main responses were related to the need for support staff to ensure proper record-keeping and follow-up to courts and to the need for improvement of courtroom and administrative/counselling office facilities.

Some respondents saw the need for the establishment of community by-law codes at the beginning of this project while others talked about the need for increased coordination and involvement of police and other agencies.

A justice committee at the band level to oversee project administration was mentioned as well as a need to more clearly define the Ministry's legal responsibility and accountability for the projects.

2.3 Training Needs

All those interviewed were asked to comment on the initial and ongoing training needs of Elders' Courts projects. The following training needs were identified.

I. Training In Understanding Criminal and Family Law - 13 responses

While most respondents emphasized the need for better understanding of criminal law by the Elders, some people also saw a need for an understanding of family law and the differences between family law and criminal law.

II. Understanding the Justice Process and Court Procedures - 12 responses

The need for training of project staff and Elders in court procedures was stressed. Mock trials were identified as particularly useful.

III. Cross Cultural Training - 7 responses

Respondents talked about the need for increased cultural training for justice personnel attending courts in Aboriginal communities. A suggestion was made for cross cultural awareness sessions to be held every two years.

Issues of family law as it relates to Aboriginal communities was also seen as a training need.

IV. Understanding of Resources and How to Use Them - 4 responses

The need for the Elders to gain a better understanding of the resources available to them was emphasized. These could include community or regional agencies providing a range of counselling and treatment services. By understanding how these agencies work Elders would be in a better position to involve these agencies/services in the sentencing process.

V. Substance Abuse Training - 3 responses

The majority of cases coming before the courts are alcohol or drug related. Many of these are band by-law cases related to the use or possession of intoxicants. Respondents talked about the need for the Elders and project staff to receive training in substance abuse. This will allow them to gain an understanding of the root causes of substance abuse and methods for dealing with substance abuse.

VI. Other Training Needs - 7 responses

In addition to training required in the above areas, respondents also talked about the following training needs:

- . How to deal with more serious offences;
- . Developing community codes (by-laws);
- . Community Legal Education;
- . Administrative and office skills for staff.

2.4 Role of Community Members, Community Leaders, and Ministry Staff in Project Development and Implementation

2.4.1 Role of Community Members and Community Leaders

Justice personnel and community leaders were asked to identify the roles of community members and leaders in developing and implementing community justice projects. The following areas of involvement were defined:

I. Community Consultation/Information/Consensus - 8 responses

It was seen as the Band Council responsibility to ensure that there is a thorough community consultation, that information is provided to the community, and that community consensus for a justice project is reached.

II. Band Council Support and Initiative - 7 responses

Respondents felt that Band Council should be responsible for taking the initiative for developing and implementing a project of this nature. Band Council support is needed during the developmental stage of a project and continued support is required once the project is implemented.

III. Separation From the Band Council Political Process - 4 responses

Some respondents reinforced the need to have the Elders' Court totally separate from Band Council influence and politics once the project is established.

IV. Understanding of System and How Court Works - 3 responses

Some respondents felt that community members and community leaders should have a good understanding of the justice system and how the courts work in their community. The need for continued public legal education was emphasized.

V. Other Roles - 4 responses

Respondents also talked about the need for Band Council to develop by-law codes, and for community members to help establish community supervision and sentencing options through Community Service Orders and counselling services.

People emphasized the need for Band Council to review options for implementation of justice projects and give ideas on how such projects could be carried out.

2.4.2 Role of Ministry Staff

Community leaders and justice personnel were asked to identify the role of Ministry staff in developing and implementing community justice projects. Sandy Lake community leaders respondents did not answer this question since the people interviewed were not aware of the role of Ministry staff.

The following roles were identified:

I. Training and Development Support - 6 responses

Respondents identified a need for Ministry staff to provide training and developmental support to future community justice initiatives. Some respondents talked about the need for a joint training and development process between the Ministry and the community when implementing justice projects while others talked about a need for independent facilitation of the developmental process with training input from Ministry staff.

II. Provision of Information and Educational Material - 6 responses

Some respondents talked about the need for the Ministry to fund community information meetings and be involved in providing information and educational materials on the laws, court procedures, justice systems, etc.

Suggestions also included Ministry staff role of promoting and encouraging the idea of similar projects in other communities.

III. Increased Involvement When Implementing Projects - 2 responses

Some respondents in Sandy Lake felt that Ministry staff should be more involved in the development and monitoring of a community justice project.

There was agreement that more control can be transferred to communities but that the transfer of control should not mean a complete withdrawal of involvement from the Ministry. The need was identified for a joint process as well as an orderly transfer process

which avoids being seen as "dumping" the problems and responsibility onto the community.

IV. Other Roles - 3 responses

The need for Ministry financial support was stressed by some respondents as well as the need to facilitate inter-Ministry discussions on coordinating resources to ensure successful project implementation.

2.5 Degree of Community vs. Ontario Control

Community leaders and justice personnel were asked to comment on how much control should the community have and how much control should stay with the Ontario justice system when implementing projects of this nature.

Responses varied considerably on this question.

Two community leader respondents felt there should be complete control within the community with no outside involvement.

Other respondents gave a range of degree of control from:

- 75% to community, 25% Ontario
- 50% community, 50% Ontario
- more control to Ontario system than community

The majority of respondents gave answers which could be classified between 50% to 75% community control. Exact numbers were not calculated since many respondents did not answer by percentage.

The main concern expressed was related to the need for Ontario to ensure that Band political influence is not exerted on the justice process in the community.

Other concerns related to community control included:

- . The need for the Ontario justice system to continue dealing with serious criminal offenses and offenders who threaten the safety and security of the community;
- . That the Crown Attorney should maintain a screening control;
- . The need to maintain some Ontario control to ensure equality of treatment with people from other communities and non-Aboriginal communities;
- . The need to maintain some Ontario control to ensure protection of individual and societal rights;

Generally comments indicated a bias for increasing community control both in Attawapiskat and Sandy Lake. It was generally felt, however, that some Ontario involvement would still be required to ensure protection of rights, the safety of the community and safeguards from undue community political influence.

3.0 CONCLUSIONS AND RECOMMENDATIONS

In drawing conclusions and making recommendations for future project development, it may be necessary to consider some variables such as community population, accessibility and remoteness which may have different impacts in different communities.

Sandy Lake and Attawapiskat are both fly-in communities. They are also among the larger communities in Nishnawbe-Aski Nation. Methods for implementing projects of this nature may vary in smaller communities and/or in southern or road accessible communities.

The main principle applying to both Sandy Lake and Attawapiskat projects is that Elders from the communities have responsibilities for hearing cases diverted to them or acting as a sentencing panel. This principle may or may not be compromised if Elders' Justice Council members came from various communities and had responsibilities for holding hearings in a number of small communities.

We will deal with each of the study questions separately and in the following order:

1. Degree and type of community development required prior to project implementation;
2. Degree and type of training required prior to implementation;
3. Community resources needed to accommodate a justice project;
4. Suggested roles, responsibilities and functions of community members in developing and implementing a justice project;

5. Suggested roles, responsibilities and functions of Ministry staff in developing and implementing a justice project.
6. Criteria required to assess future proposals;
7. Appropriate degree of community and provincial control.

3.1 Degree and Type of Community Development Required

This is the most crucial element to the successful implementation of a community justice project and the eventual transfer to community control of specific aspects of the justice system.

The main community justice project developmental needs were identified, as follows:

1. The need for increased community legal education and community involvement in the development of the project;
2. The need for increased community involvement in the selection of Elders;
3. The need to have sufficient developmental time to ensure involvement and cooperation of the various agencies and government departments who can contribute to the successful implementation of the project;
4. The need to ensure sentencing option resources are available once the project is implemented;
5. The need to develop community codes and by-laws;

6. The need for training of project staff and Elders;
7. The need to define specific goals and objectives for the project as well as project monitoring mechanisms to assess how well these are being met;
8. The need for better monitoring of the process by the Ministry.

Most, if not all of these needs should be addressed in the developmental phase of a project. It is important, therefore, to develop a standardized format for implementing community justice projects and transferring some responsibilities to community control. The developmental costs will prove to be a sound investment towards ensuring the effective transfer of components of the justice system to community control.

RECOMMENDATION #1

THAT THE MINISTRY OF THE ATTORNEY GENERAL IN CONSULTATION WITH APPROPRIATE ABORIGINAL REPRESENTATIVES ESTABLISH A STANDARDIZED PROJECT DEVELOPMENT PROCESS FOR IMPLEMENTING FUTURE COMMUNITY JUSTICE PROJECTS.

RECOMMENDATION #2

THAT THE PROJECT DEVELOPMENT PROCESS CONSIST OF THREE PHASES TO BE CARRIED OUT OVER A PERIOD OF 11 TO 17 MONTHS. THE THREE PHASES WOULD INCLUDE:

- 1. A NEEDS ASSESSMENT PHASE;**
- 2. A PROJECT DEVELOPMENT PHASE;**
- 3. A PRE-IMPLEMENTATION PHASE**

The following is a suggested outline for each phase of the project development process:

PHASE I. THE NEEDS ASSESSMENT

The needs assessment should include the following components:

- 1. Community Profile**
 - population (on and off reserve)
 - number of non-band members residing on reserve
 - outline of community-based social and mental health services
 - outline of off-reserve social services and treatment services available to community members

- community volunteer groups/organizations/committees
- 2. Identification of types and frequency of charges over a two-year period based on court statistics and police occurrence reports;
- 3. Identification of types and frequency of courts held in the community over a two-year period;
- 4. Identification of justice related resources available to the community (e.g. police, Native courtworkers, Probation Services, community legal education, etc.);
- 5. Identification of current community facilities such as lock-ups, court facilities, office and counselling space;
- 6. An assessment of the ability of justice related resources as well as community and regional social and treatment services to assist in project implementation;
- 7. An assessment of the adequacy of community facilities for project implementation;
- 8. An assessment of the degree of commitment from Band Council to address justice issues in the community;
- 9. An assessment of the degree of community involvement in addressing community issues/problems;
- 10. An assessment of the degree of support from regional justice personnel and the potential for involving them in the process;

11. The community member perspectives on the needs and the focus for community-based justice delivery.

The above information can be gathered in a number of ways. Items 1 through 5 require some basic research work in compiling and organizing the information. Items 6 through 11 require some assessments to be carried out. Items 8 and 9 may require that some specific questions be answered; for example: is this a direct Band Council initiative or is it initiated by a community group? If from the community, is Council supportive and are some Council members directly involved? Does the community have a history of community volunteer involvement - document that involvement through references to specific committees and volunteer groups.

A community and key informant survey should be conducted. The survey could include individual interviews and/or focus group sessions. The survey would address questions related to the community needs; what the leadership wants to achieve through this project; the strengths, weaknesses and accessibility of community and regional resources; assessments related to degree of commitment and involvement as outlined in Items 8, 9 and 10 above; and an assessment of the degree of previous community involvement in the justice system.

The needs assessment should serve as a tool to initiate community involvement as well as involvement from regional justice personnel and other community and regional resources.

The proposed time frame for the Needs Assessment Phase is 4 to 6 months.

PHASE II. PROJECT DEVELOPMENT

The Project Development Phase would consist of the following components:

1. Provide feedback to the community and the Ministry on the results of the needs assessment - community feedback could include community meetings, newsletter articles and media coverage;
2. Review similar projects in other communities;
3. Develop mission, philosophy, goals and year one objectives for the project;
4. Develop project description with implementation time lines;
5. Conduct community information and public legal education sessions;
6. Identify staffing needs, role of staff and role of Elders;
7. Develop a training plan;
8. Consult with appropriate agencies, services and Ministries in order to involve them in the process;
9. Define a process for selecting Elders - get community approval for the selection process;
10. Develop project policies and procedures - this will include project administrative and financial reporting formats;

11. Establish a process for developing appropriate community codes (by-laws) with the justice committee and the Band Council.

The proposed time frame for the Project Development Phase is 4 to 6 months.

PHASE III. PRE-IMPLEMENTATION

The Pre-Implementation Phase would consist of the following components:

1. A preliminary review of progress and documentation from Phases I and II of the project. This review should include representation from Ministry Headquarters, from regional justice personnel and from appropriate Aboriginal representatives.
2. Selection of Elders' Justice Council members;
3. Orientation and training of staff and Elders;
4. Public legal education sessions and information for community members;
5. A final review of progress following orientation, training and public legal education sessions;
6. Swearing-in ceremony for Elders' Justice Council members;
7. Project implementation.

The proposed time frame for the Project Feasibility Review Phase is 3 to 5 months.

3.2 Degree and Type of Training Required Prior to Implementation

Training is a crucial aspect for ensuring the effective transfer of responsibilities to the community. The training plan needs to strive for a balance between providing basic information on the law and court procedures while allowing flexibility for the community to implement creative and innovative sentencing options and diversion initiatives.

A number of training areas were defined in the evaluation studies. Training needs were identified for Elders, project staff, justice personnel, and community members. If the establishment of a Band Council mandated Community Justice Committee becomes a program criteria, training for justice committee members should also be considered.

The following outlines training needs for each group. (Some training overlaps between groups).

3.2.1 Project Staff

Project staff should receive training in the following areas:

- Basic understanding of the law - distinction between criminal and family law, Indian Act and band by-laws, etc.;
- Court procedures and terminology;
- Understanding the role of community and regional resources;
- Creative sentencing options;

- Program planning and evaluation;
- Networking and community outreach;
- Office administration - record-keeping;
- Substance abuse - prevention and intervention.

3.2.2 Elders' Justice Council Members

- Basic understanding of the law;
- Court procedures and terminology;
- Understanding the role of community and regional resources;
- Creative sentencing options - problem solving;
- Dealing with serious offences - sexual abuse, family violence, aggravated assault, etc.;
- Substance abuse - prevention and intervention.

3.2.3 Justice Personnel

- Understanding community resources;
- Cross-cultural awareness.

3.2.4 Justice Committee

- Roles and responsibilities;
- Program planning;
- Monitoring and evaluating progress;
- Understanding the role of community and regional resources;
- Developing community codes.

3.2.5 Community Members and Band Council

- Community legal education sessions.

The Elders require more intensive training than the other groups identified. This training will be most intense in the period immediately prior to project implementation. They should also be allowed to become more comfortable with their role in the courts through direct court experience with a presiding Judge and Justice of the Peace.

RECOMMENDATION #3

THAT WHERE FEASIBLE. PRIOR TO HEARING BY-LAW AND MINOR CRIMINAL OFFENCES ELDERS HAVE SUFFICIENT OPPORTUNITIES TO BE A SENTENCING PANEL TO PROVINCIAL COURT JUDGES OR TO OBSERVE THE COURT PROCESS.

RECOMMENDATION #4

THAT INTENSIVE TRAINING BE PROVIDED TO ELDERS' JUSTICE COUNCIL MEMBERS DURING THE PRE-IMPLEMENTATION PHASE. THAT THE INTENSIVE TRAINING BE FOLLOWED UP WITH INTERMITTENT TRAINING SESSIONS FOLLOWING ELDERS' PARTICIPATION WITH A JUDGE IN PROVINCIAL COURT.

3.3 Community Resources Needed to Accommodate a Justice Project

The establishment of a Community Justice Committee, mandated by Band Council, will help to facilitate community involvement and agency coordination for implementing a justice project.

RECOMMENDATION #5

THAT PRIOR TO INITIATING THE DEVELOPMENT OF A COMMUNITY JUSTICE PROJECT, BAND COUNCIL ESTABLISH THROUGH BAND COUNCIL RESOLUTION A JUSTICE COMMITTEE.

THE COMMITTEE WOULD BE RESPONSIBLE FOR MONITORING ALL DEVELOPMENTAL AND IMPLEMENTATION ASPECTS OF THE PROJECT AND PROVIDE RECOMMENDATIONS TO COUNCIL RELATED TO THE DEVELOPMENT AND IMPLEMENTATION OF A COMMUNITY JUSTICE PROJECT.

Other resources were identified during the course of the two evaluation studies. They include:

1. **Community Service Orders** - There is a need for community-based employers to provide supervised work opportunities for the accused;
2. **Intermittent Sentences** - Isolated communities with inadequate or no lock-up facilities do not have opportunities to utilize intermittent sentences as sentencing options. These could include lock-up facilities, a wilderness camp or other suitable alternatives;

3. **Inter-Agency Cooperation** - a number of community resources can be utilized to assist in the sentencing and/or counselling process. The main ones identified were Substance Abuse Counsellors and Probation Officers.

Other community-based resources could include: group homes, child and family service workers, mental health workers, educational counsellors and schools (for prevention education);

On a regional basis a drug and alcohol abuse treatment centre which is easily accessible to the community is helpful:

4. **First Nation Constables** - The cooperation and support of the police in the community will help to establish credibility to a project and will facilitate diversion efforts. Police should be involved at an early stage of project development.
5. **Band Council** - The support of Band Council is crucial for the success of a justice project. Support means helping to establish a project and then allowing the project to operate without any political interference;
6. **Court and Office Facilities**

Adequate private space is required for project administration and for counselling. In addition court facilities which reinforce the seriousness of the occasion and which encourages community attendance is required.

3.4 Roles, Responsibilities and Functions of Community Members

There should be substantial involvement of community members in the development and implementation of a justice project. The three-phased approach to project development is designed to maximize this involvement.

The **Band Council** is responsible for initiating or at least supporting a project of this nature. They should also ensure that band by-laws are in place which establish community codes of conduct reflecting community norms and values.

The **Community Justice Committee**, mandated by Council, assists in ensuring community consultation takes place, develops recommendations for program development and implementation for Council consideration and monitors all aspects of project development and implementation. They are also responsible for recommending to Band Council a process for the selection of Elders' Justice Council members and making recommendations for establishing band by-laws.

Community members should be involved by having input in the consultation process, by attending public legal education sessions, and, in some instances, volunteer their time and resources in areas related to Community Service Order supervision and in programs such as a volunteer mentoring program.

The more input and involvement there is from community members, the more control will be exercised by the community.

Community members should also have input in suggesting to Band Council areas where band by-laws need to be developed.

The development and implementation of community justice projects should be an initiative of the community with facilitation help from other resources.

Project implementation is also a community responsibility. Wherever possible staff from the community should be responsible for project administration.

RECOMMENDATION #6

THAT A SAMPLE TERMS OF REFERENCE BE DEVELOPED AS A GUIDELINE FOR A JUSTICE COMMITTEE. THE TERMS OF REFERENCE SHOULD OUTLINE PROJECT DEVELOPMENT AND IMPLEMENTATION RESPONSIBILITIES AND COMMUNITY ACCOUNTABILITY.

RECOMMENDATION #7

THAT SAMPLE JOB DESCRIPTIONS BE DEVELOPED AS A GUIDELINE FOR A PROJECT COORDINATOR. THESE JOB DESCRIPTIONS SHOULD TAKE INTO ACCOUNT THE DIFFERENCES IN RESPONSIBILITIES IN THE PROJECT DEVELOPMENT AND PROJECT IMPLEMENTATION PHASES.

3.5 Roles, Responsibilities and Functions of Ministry Staff

Suggested Ministry staff functions can be categorized as follows:

- Project development and implementation support;
- Training and information;
- Ministry consultations and coordination;
- Project accountability;
- Project facilitation.

3.5.1 Project Development and Implementation Support

At the regional level support from a Judge and Crown Attorney is essential. This support can be provided by assisting the Project Coordinator and the Elders integrate their functions with those of Provincial Courts and the Ontario justice system.

It would be helpful if someone at the regional level were to assist in reviewing the plans developed at the Project Feasibility Review stage and make suggestions on the best methods for implementation. This could be a Judge or a Crown Attorney. They could also be available to the Project Coordinator to provide advice and direction.

At the head office level support can be provided by putting project development people in touch with relevant resources or similar projects in other regions.

3.5.2 Training and Information

At the regional level a Judge will be an invaluable resource for providing formal and informal training to the Elders' Justice Council members and project staff.

At the head office level training resources can be provided in the development and implementation phase as is being done in Attawapiskat. Some attempt should be made by Ministry staff to develop or access other training resources related to understanding the role of community and regional resources in the sentencing process.

In addition head office staff can provide an avenue for exchange of information between established projects and new (developing) projects.

3.5.3 Ministry Consultation and Coordination

There is a need for consultation and coordination within the Ministry in such areas as training and project implementation. There is also a need for consultation and coordination between Ministries, particularly with Correctional Services, Solicitor General, and Community and Social Services.

3.5.4 Project Accountability

The Ministry has legal accountability and responsibility for the administration of courts in Ontario and for funding projects which fall within their mandated area.

From a head office perspective Ministry staff should ensure that financial and program implementation accountability systems are in place and that project accountability to the community and the Ministry is enforced.

At a regional level and head office level there should be periodic reviews of the progress of a project through the project review team established during the project development stage of the process.

3.5.5 Project Facilitation

The need for someone to provide facilitation resources to a project in the development stage was identified in both evaluation studies. Some respondents expressed a preference for independent facilitation. There are three options which the Ministry could pursue:

Option #1 - To assign Ministry staff to facilitate the project development process.

Option #2 - To contract with a non-profit agency or institution such as Nishnawbe-Aski Nation Legal Services to provide facilitation services;

Option #3 - To contract with an individual with expertise in the area of justice to provide facilitation services.

The Ministry may wish to have a number of options available with the final decision on the most suitable option being left to the community.

3.6 Criteria Required To Assess Future Proposals

Previous sections have described a process for developing and implementing community justice projects. In effect this process allows the Ministry to assess progress at various points in the development process. Part of the criteria, therefore, will be the successful completion of the various phases of the process.

3.6.1 Criteria For Selecting Developmental Projects

The following criteria could be applied when a community first applies for project development funds:

1. Has Band Council support through Band Council Resolution or community support through letters of support;
2. Has a community recognized Justice Committee mandated by Band Council or recognized by relevant community agencies/organizations;
3. Has a regional or community focus;
4. Can show a need for the project based on the population to be served and the extent to which Aboriginal persons are appearing in the courts;
5. The sponsoring organization is controlled by Aboriginal persons;
6. The sponsoring organization is accountable to the people being served and indicates how community accountability is exercised;
7. There is demonstrated Aboriginal community support for the proposal.

3.6.2 Criteria For Selecting Projects to be Implemented

1. Successful completion of all three phases of the development project;
2. Degree of need as identified in the needs assessment;
3. Degree of support as identified in the needs assessment;
4. Project mission, philosophy and goals are consistent with the needs defined in the needs assessment;
5. An Elders' Justice Council has been established based on a selection method which involves the Aboriginal community;
6. The Elders, staff and Justice Committee have successfully participated in the required training;
7. Suitable program administration policies and procedures have been established to ensure program and financial accountability and a method for monitoring and evaluating progress;
8. Adequate community consultation has been carried out.

3.7 Appropriate Degree of Community and Provincial Control

Generally people interviewed felt that community control could be increased from their present levels in Attawapiskat and Sandy Lake.

In Sandy Lake it was felt that control could be increased by having the Elders' Justice Council hold their own courts without a judge or justice of the peace present for band by-law charges and minor criminal offences. In Attawapiskat it was felt that control could be increased by strengthening community involvement in the Elders' selection process, developing community codes and having disposition enforcement authority.

The screening and diversion role of the Crown Attorney, in consultation with the Project Coordinator, for criminal offences should continue. This is a legislated provincial responsibility and can only be changed through new legislation.

Discussions pertaining to legislated changes go beyond the scope of this study and will be dealt with in tripartite self-government negotiations as inherent aboriginal rights are defined.

Complete local authority in such matters is questionable, however, since there is a need to establish community standards reflecting the values and norms of a nation whether it is through Tribal Courts or the provincial court system. There is also a need for objective mediation by an outside party in serious disputes or in matters affecting the safety and security of the community.

These matters can include instances of abuse of political power or authority related to individuals or community groups, such as women or non-band members. They can also include cases where an individual must be removed from the community for the safety of the community.

