

In Pursuit of a Model of Conflict Resolution: First Nations Family Justice

By

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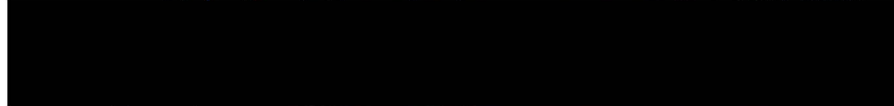
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We accept this thesis as conforming to the required standard



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ABSTRACT

This thesis represents the story and analysis of a journey taken by myself as the Child and Family Services Coordinator for Awasis Agency of Northern Manitoba and by other community participants. Over the past six years, Awasis has undertaken a search for a better way to design and deliver First Nations child and family services. As a Child and Family Services Coordinator, my main responsibility was to increase accountability in the area of child and family services and to facilitate, provide resources, and provide support for the development of community specific and defined standards of practice regarding child and family matters. As a First Nations member and as an agent for the child and family services system, I witnessed the detrimental impact of removing First Nations children from their families and sometimes from their communities and culture. I have heard the personal stories of people who passed through the child welfare system and how this separation from their families affected the rest of their lives. I realized that the current child and family services system was not working in the best interests of our First Nations children, families, and communities. My vision for healthy First Nations and commitment to creating social justice for the First Nations people are the driving force behind this research. A paradigm shift within the Awasis' approach to child and family services and the development of a partnership between Awasis and University of Victoria provided an opportunity to create practical and useful change in child and family services practice for First Nations people.

This research developed an alternative system or model from the present federal and provincial system of adjudicating child welfare cases. The Mee-noo-stah-tan Mi-ni-si-win Model is conducive and appropriate to First Nations values and beliefs about child and family matters. The research which led to the development of the model was not just about seeking knowledge and understanding systemic and practice issues in child welfare and justice but about documenting and sharing the process and knowledge of how to develop a model that was acceptable to all stakeholders. The research process included community involvement and thus the research design used was participatory action research. The approach to data analysis was qualitative because I was interested in uncovering personal meaning and personal learning.

As a result of the research process involving elders, Chiefs, child welfare practitioners, youth and women as participants the First Nations Family Justice: Mee-noo-stah-tan Mi-ni-si-win model of conflict resolution was developed. The model has two components: the Magistrate component provides an option which is based on Euro-Canadian values and the Mee-noo-stah-tan option is based upon First Nations values. The model reflects and accommodates contemporary and traditional First Nations practices of conflict resolution so it provides choices and options for communities using the model to meet their needs and wants.

Examiners:



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The search and development of an alternative model of conflict resolution has been a learning experience for me both personally and professionally. The alternative conflict resolution model, Mee-Noo-Stah-Tan M-Ni-Si-Win, was developed to do things differently in the area of child welfare and justice based on the beliefs and values of First Nations. The journey in the development of this model was not done in isolation and individually, but rather in partnerships and collectively with community participants, organizations, politicians and technicians who specialize in the area of child welfare and justice.

First of all, I would like to acknowledge my family for their patience, understanding and giving me the space and time to do my work and complete my thesis. The development of this model required a lot of travelling on my part and many hours of writing the thesis after work.

Secondly, I would like to acknowledge the Awasis Agency of Northern Manitoba for trusting and believing in me and for giving me the opportunity to coordinate such a massive task. The Awasis Agency of Northern Manitoba has undertaken a different approach to service delivery of child and family services and community development that promotes health & well-being as well as individual and family empowerment. Many thanks to the Awasis Agency Board of Directors, Senior Management and staff for their belief in the capacity and capability of First Nations families and communities to address and restore harmony, balance and justice in their lives.

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This model was derived from the participation of many people that it is difficult to mention all of them. There are many others that helped in the development of the model and many thanks to you as well.

DEDICATED

TO

My Wife, Rhonda

My Daughters, Melissa and Mearle

and My Son

David Monias, Jr.

Chapter One

Introduction

First Nations Justice is about achieving health & well-being, balance, and harmony. For First Nations Justice to be achieved, the means and the ends of Justice must encompass the spirit, body and the mind of the individual, family, community and the Nation. It must be done in a non-adversarial, cooperative and consensus manner. The Thesis has been broken down into five chapters. Chapter One includes the introduction of the study in order to provide the reader with a background on the Awasis Agency of Northern Manitoba's (hereafter Awasis) history as well as the issues the organization faces. The research question will be developed in this part to act as a guide and focal point to the research. Chapter Two presents the project methodology, sampling population, sampling techniques and data analysis. Chapter Three presents the description, classification and connections of the data in the research process. Chapter Four is comprised of a conceptual framework and a literature review on concepts that effect child welfare issues and how these show up as dichotomies between First Nations and Euro-Canadian systems. Chapter Five presents the conflict resolution model: Mee-noo-stah-tan Mi-ni-si-win.

There are many families that have psycho-social problems and each family deals with their own problems in their own unique way. Some of these families will be able to resolve their problems in an appropriate and safe fashion considered normal by the general society while some families will have serious difficulty in coping with their own problems. It is usually the latter that comes to the attention of the Awasis agency.

Families will be referred for assistance either by the child and/or parent(s), or by a third party referral such as the school, police, and/or hospital due to neglect, physical or sexual abuse on a child. The Awasis Agency of Northern Manitoba is looking for an alternative way of dealing with these families that will promote the health and well-being of children and families in our First Nations communities. Awasis Agency presented a brief to the MKO Chiefs in Assembly in 1994 and the MKO Chiefs ratified a resolution which supported the research and development of a First Nation Magistrate model or program. The Magistrate and Mediation program as it was first known was changed to Mee-noo-stah-tan Mi-ni-si-win. The reason for this was that the former name did not accurately describe First Nations Justice.

Background

While the primary responsibility for caring for children remained with the parent(s), the Canadian government recognized that there were children that required assistance and services to improve their chance for a healthy transition to adulthood. The Canadian government therefore established the child welfare system in the early 1920's, however, child welfare services in First Nations communities were practically non-existent prior to 1950's due to the federal and provincial governments' lack of commitment to provide funding and resources to First Nations communities.

In 1946, a special Joint Committee of the Senate and the House of Commons was appointed to examine the *Indian Act* and to make recommendations as to what changes or amendments were required. The most significant recommendations made by the committee were in the areas of education and social services. The result of the

recommendations made by the report was the addition and implementation of the section 88 of the *Indian Act* in 1951. This section states:

Section 88 Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulations or bylaw made thereunder, and except to the extent that such laws make provisions for any matter for which provisions is made by or under this Act., c. 149, s. 87.

Section 88 of the Indian Act extended the jurisdiction and provided an inroad for the provincial legislation, more specifically, the Manitoba *Child Welfare Act* now known as the *Child and Family Services Act*. Children's Aid societies under agreements signed with the federal and provincial governments provided statutory child protection services, consisting primarily of long term placement outside the community and culture. At this time crisis intervention services were provided only when the life of a child was at serious risk. In the 1960's, more funds were allocated to the social services for First Nations and this allowed the social workers of the children's aid society to become more involved with First Nations communities and children. The result was the "sixties scoop" when the children's aid workers would fly in to visit the community and apprehend children they thought were at risk and fly out with them without completing an investigation and doing proper assessments.

Bearing witness to the removal of the First Nations children from their families,

communities, and culture and remembering the detrimental impacts of the residential school system, the leadership mobilized to prevent further loss of their children and culture. They advocated and lobbied for self-determination and sought control for social services in their communities. The First Nations leadership sought to gain legislative, executive and administrative authority and power over Child and Family services for their membership. The Manitoba Indian Brotherhood, the government of Canada and the province of Manitoba met to discuss the possibility of First Nations control over child and family services.

In 1980, the Indian Child Welfare committee submitted a report with recommendations to be considered by the three parties involved. In 1981, the government gave its approval for a five year child welfare program to be developed and implemented by the First Nations of Manitoba. February 22, 1982, The Manitoba Indian Brotherhood, the government of Canada (Indian Affairs), and the province of Manitoba signed the Master agreement with provisions allowing for subsidiary agreements.

The specific responsibilities assumed by the three parties are as follows:

1. The government of Canada will fulfil its fiduciary responsibility to First Nations by assuming full financial responsibility over First Nations child and family services providing that parent(s) or guardian(s) residence is on the reserve, crown land or on unorganized territories;
2. The government of Manitoba agreed to extend the Manitoba Child Welfare Act now known as the Child and Family Services Act as the interim legislative base, and to assume full financial authority and responsibility for the cost of services

where the parent(s) or guardian(s) were residents off-reserve.

3. The First Nations would have to establish First Nations Child and Family Services Agencies to carry out the mandate of the Child and Family Services Act.

In 1983, the Manitoba Keewatinowi Okimakanak, Inc. (MKO) signed the Canada-Manitoba-Northern Manitoba Indian Child Welfare Agreement which established the Awasis Agency of Northern Manitoba as the provider of Child and Family Services to status Indians living on 25 First Nations communities within the MKO region. The historic signing is a tripartite agreement between the federal government (Department of Indian Affairs and Northern Development), provincial government (Manitoba Family Services) and Manitoba Keewatinowi Okimakanak Inc. (MKO). MKO is a First Nation political organization representing twenty-five Northern First Nation communities of Manitoba. This arrangement provided the First Nations with only the executive and administrative authority and power over child and family services. They have considered it as an interim arrangement until such time that full legislative authority is achieved. In the meantime, Awasis Agency and any other new First Nations agencies within MKO are to operate in accordance with the Provincial Child Welfare Act and by extension, the Provincial Court Act and/or The Queen's Bench Act . In doing so, they came under the authority of the Provincial Child and Family Support Branch, the mechanism used by the Province of Manitoba to monitor, regulate and enforce regional offices to follow the Act and Program standards. The mandate of the Awasis is to provide child protection services and family services that lead to the prevention of neglect and abuse of children.

With the expiration of the various five year agreements, First Nation agencies

continue to operate, receiving funding from the Federal Government by virtue of contribution agreements. Mandates continue to be in place from the province, despite the expiry of the agreements. During this period, it was and continues to be stipulated by the Federal Government that agencies abide by the Provincial legislation as a funding condition.

Justification for the Development of a First Nations Model

I am a member of the Cross Lake First Nation within the MKO region. I am currently employed by the Awasis Agency of Northern Manitoba as a coordinator to increase the accountability in the area of child and family services and to develop agency specific and defined standards of practice. One of these is to develop an alternative system of conflict resolution within Child and Family matters. I have also been seconded to the MKO Child and Family Jurisdiction Project as an assistant project manager to implement the operational plan to develop First Nations codes and standards which will lead to an MKO First Nations Child and Family Services Act. As a First Nations person with First Nations beliefs and values, I will be in the role of a participant and not separate from the other participants or research process. It is therefore important that I employ a methodology that is conducive to the people that I serve. The people that employ me are not the people that I serve, rather it is the First Nations within the MKO region (25 reserves of Northern Manitoba area). It is important that these facts of the role that I bring into this research is known as they will be impacting the type of methodology, research design and sampling techniques employed in the study.

Under the Child and Family Services Act, the paramount concern is to protect the

child first and foremost. This is the provincial government's concept of the best interest of the child and this usually results in the removal of the child from their home and family. When intervening in child protection matters, under the same legislation, Awasis is to go through formal judicial proceedings as prescribed by the Court of Queen's Bench Act or the Provincial Court Act. The vision of the MKO leadership was for Awasis to help and strengthen First Nation families rather than absolve their parental responsibilities and cause family separation. The issues that have arisen from the provincial system are as follows:

1. The parent(s) is/are dis-empowered of their parental responsibilities when the Awasis case manager takes their parental rights away by going through formal judicial (child protection court) proceedings:
2. The First Nation communities are dis-empowered of their community involvement and responsibilities toward the family when the case is taken through judicial proceedings under the authority of the provincial or federal court system;
3. The Awasis case manager-client (child/parent) relationship is jeopardized when the Awasis case manager apprehends the child(ren) while at the same time trying to establish a working relationship with the parent(s) in trying to help them become healthier. Children are uprooted from their natural settings.

Over the years, the Manitoba child and family services and judicial system have proven to be culturally inappropriate for First Nations people in terms of standards, policies, guidelines and practice. Consequently, this has had a detrimental impact on many First Nation children, families and communities, as documented by the following

Federal and Provincial commissioned reports:

1. Judge Kimelman's report validated for the people of Manitoba and Canada how the child welfare system was a fallacy. For First Nations, his report constituted an indictment of the child welfare services:

The failures of the child welfare system have been made known many years after the fact in the statistics from correctional institutions, psychiatric hospitals and as former wards of agencies became neglectful and abusive parents themselves.... The appalling reality is that everyone believed they were doing their best and stood firm in their belief that the system was working well.... The miracle is that there were not more children lost in this system run by so many well intentioned people. The road to hell was paved with good intentions and the child welfare system was the paving contractor (p.268).

2. The First Nation Child and Family Task Force report, Children First, Our Responsibility was released in 1992. They were commissioned by the provincial government of Manitoba. The report documented that in Manitoba, there were 5000 plus children in care and approximately 80% were of aboriginal descent. In their report, they recommended that the First Nation people should have their own First Nations Child Welfare system that would better reflect their culture, practices and realities.

3. The provincial government also commissioned Associate Chief Judge Murray Sinclair and Chief Justice Hamilton to review the Justice system in Manitoba with regards to First Nation people. After conducting hearings, in 1991 they released the Aboriginal Justice Inquiry report and in this report they stated:

Aboriginal peoples have always had governments, laws and some means of resolving disputes within their communities. . . . They have never surrendered their original right to govern themselves in accordance with their customs and cultures. Although successive federal governments have tried to interfere with or diminish and to replace it with their concepts of Aboriginal government, they have done so without much success (p. 18).

4. The report of the Royal Commission on Aboriginal Peoples, "Gathering Strength", states:

...it is our conviction that much of the failure of responsibility that contributes to the current imbalance and distress in Aboriginal life centres around the family. Let us clarify at the outset that the failure of responsibility that we seek to understand and correct is not a failure of Aboriginal families. Rather, it is a failure of public policy to recognize and respect Aboriginal culture and family systems and to ensure a just distribution of the wealth and power of this land so that Aboriginal nations, communities and families can provide for themselves and determine how best to pursue a good life. (P. 9, 1996)

Awasis has undertaken numerous project initiatives to try to address the above issues and concerns. The purpose of this study was to describe the process of development and learning that occurred as we created a model of intervention that would address the above issues.

Significant Goals, Aims and Objectives

As federal and provincial governments surge ahead, striving to find and promote culturally appropriate models of practice, First Nations have continued to state their opposition to these proposals mainly due the systematic way of reviewing and changing the legislation without First Nation input. The reports of both the federal and provincial government committees have gone so far as to document that the federal and provincial systems have done injustice to Aboriginal peoples and that these systems do not reflect First Nation realities and culture. Experience tells us that these documents for the most part will likely be set aside by the governments and will most likely be left on shelves to gather dust.

The aim of this study is to develop an alternative system to the present federal and provincial system that is less adversarial and based on cooperation and consensus building. However, it is not just seeking knowledge and understanding about systemic and practice issues in child welfare and justice but documenting and sharing the process and knowledge on how to develop a model that is acceptable to all stakeholders. Predominantly, the aim of this process is to have community involvement to promote community ownership of the model developed.

Traditional approaches to the developmental and delivery of social services by

agencies which are not directly involved in the life of the community in which their clients are increasingly being recognized as ineffective in meeting families and communities contemporary needs and demands. Encouraging and empowering First Nation communities to recognize, confront and work towards a resolution of a problem is necessary to community action and community development. It is necessary for people to take a hand in shaping of their lives and the life of the society they live in.

Community work is sometimes referred to as indirect help because the intervention is directed to the community level rather than to the individual clients. In fact, it is directed at the problems individuals encounter but at a different level. To prevent any alienation of a new system to First Nations communities, the following goals/objectives must be taken into consideration:

1. The model must be determined by the community. The services for First Nations must be planned and developed by and for First Nations. This principle stems simply from the notion that the members of First Nation know best what they need/want and are able to determine the nature and scope of services that would best address their needs.
2. The model must be based in the community. The services must be based in First Nation communities to ensure that community members in need can access and receive services within their own community. By being based in the community, the services will be more accessible to community members socially as well as physically.
3. The model must be specific to the community. The policies, programs and

agencies which are not directly involved in the life of the community in which their clients are increasingly being recognized as ineffective in meeting families and communities contemporary needs and demands. Encouraging and empowering First Nation communities to recognize, confront and work towards a resolution of a problem is necessary to community action and community development. It is necessary for people to take a hand in shaping of their lives and the life of the society they live in.

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3. The model must be specific to the community. The policies, programs and

services planned and developed for First Nation communities must reflect community values and customs. Since First Nations are not homogeneous, First Nation culture is distinct and each community is unique, it is apparent that a process of community based planning and development controlled by and for First Nation will re-establish distinct, community-specific services for community members.

4. The model must be controlled by the community. The services for community members will be controlled by and accountable to the respective governance structure or Chiefs and Councils of First Nations. Services must be managed directly by First Nations or indirectly through organizations directed by representatives of First Nation communities.

Chapter Two

As Skolinski (1992) puts it, “We always partake of what we describe” (p. 20), so our “reality” is a product of the dance between our individual and collective mind and “what is there,” the amorphous primordial givenness of the universe. This participative world view is at the heart of inquiry methodologies that emphasize participation as a core strategy.

Let me be clear that my personal and professional commitment is to contribute to the emergence of this more participative world view: that I write this chapter as an advocate of the methods presented rather than as an outside reviewer. (Reason, 1994, p. 324)

Methodology: Qualitative

The methodology that I will be using is qualitative. Within the qualitative approach, I will be utilizing participatory action research as my research design. These theoretical components will be discussed in this chapter to elaborate why I have chosen them as my guide.

So the PAR strategy has a double objective. One aim is to produce knowledge and action directly useful to a group of people-through research, adult education, and socio-political action. The second aim is to empower people at a second and deeper level through the process of constructing and using their own knowledge: They “see through” the ways in which the establishment monopolizes the production and use of knowledge for the benefit of its members. (Reason, 1994, p. 324).

Participatory research is not a specific methodology rather it has been expressed most generally as a process which combines three activities: research, education, and action (Hall 1993). The first activity is to engage in a social inquiry of problems, involving the participation of ordinary people in problem posing and solving. The second activity is a learning process for both the researcher and participants who are involved in the analysis of the structural causes of the identified issues through collective discussion and interaction. The first two activities will allow for the community of participants to be fully informed as possible about the issues and context of the phenomena under study. Information that emerges from the two activities will be useful in organizing actions to be taken by community participants in shaping policies, or implementing social change measures. Therefore the third activity is action. It is my belief that this should be determined and controlled by the community of participants because the choices and decision that they need to make will greatly affect their lives and future.

Participatory action research and program development links collective inquiry (reflection), collective learning (education) and collective action. It is an inquiry and educational process in which both researcher and community members participate in order to learn about each other as well as about local social conditions. It is also an action process in which both researcher and community members learn about and work toward improving social conditions. The process is based on the assumption that the way people see their lives and formulate their own interests is of central importance to inquiry and action and that collective inquiry produces new knowledge for participants.

The uniqueness of the participatory action research is that the researcher's role is primarily to facilitate a collaborative process of producing new knowledge for the specific purposes of social change. Maguire (1987) states that participatory research aims at three types of change:

1. Consciousness-raising or the development of critical consciousness and knowledge of both the researcher and the participants;
2. Enhancement in the lives of those involved in the research; and
3. Change of and in fundamental societal structures and relationships.

Critical Social Theorist, Jurgen Habermas, stated that knowledge could be classified into three types: *instrumental*, *interactive*, and *critical* (Park, 1993):

1. *Instrumental knowledge* is the central in the natural and social sciences. It is produced methodically in procedure and it's foremost concern is finding causal relationships.
2. *Interactive Knowledge* comes from relationships of human beings, the sharing of a world together and how we relate to one another. This type of knowledge allows for community to be formed. A common stock of knowledge of this kind makes it possible to form social solidarity capable of mutual support and common action (Park, 1993). This type of knowledge is also known as "interpretive" by some researchers who argue that it is produced by hermeneutic inquiry. That is, the understanding of the meanings given to social interactions by those involved (Maguire 1987).
3. *Critical Knowledge* is produced by critical thinking and inquiry. It comes from a

combination of self-reflection and traditional analysis of how our social problems may be rooted in inequitable social systems. Critical knowledge may lead to action for social change and it can also be argued that action for social change can produce more critical knowledge (Park 1993).

The participant research paradigm recognizes and occasionally uses all three, however, the emphasis for this thesis is definitely on the latter two types of knowledge.

Sample Selection

For practical purposes and since this is a qualitative study, I used a purposive sampling, a form of non-probability samples, with all the limitations that they entail (Monette, Sullivan, DeJong 1994). A sample was selected which represents a cross-section of the community in terms of age, gender and socio-economic status (employment/education/income).

Community in this case is defined as the linking of people by social networks, territory and cultural ties. In this case, the population of community participants are linked by the MKO region (Territory), Awasis Agency and MKO (social network) and as First Nations people (cultural ties). The participants were selected who were interested in this particular project and who were available to contribute to this project.

The majority of the people who participated in this study are community people of First Nations' descent that are interested in the area of child and family matters. They are someone's grandfather, grandmother, father, mother, sister, brother, wife, husband, son, daughter, grandson and/or granddaughter. The people involved were as follows:

1. Elders participated in this study and they were all male. The three elders

represented the different regions serviced by the Awasis Agency of Northern Manitoba, Keewatin Tribal Council (KTC) region, Island Lake Tribal Council Region (ILTC) and Independent bands region. These elders are trusted and respected community members who are usually called upon for guidance as advisors, consultants and teachers in various committees, councils, meetings and other community activities.

2. Eight chiefs participated in this study and they were all male. The Chiefs are elected community individuals who act for the best interest of their communities and represent their membership First Nations. Of the eighteen communities that Awasis services, seven chiefs of the eighteen chiefs available are elected to the Board of Directors for the Awasis Agency of Northern Manitoba. These Chiefs sit on the board to ensure that the agency follows its mandate and continues to be accountable to the membership First Nations it services. The 8th participant is the Grand Chief of MKO who is elected to this position by the 26 Chiefs in Assembly of the MKO region., he represents the 26 First Nation communities in the MKO region and ensures that activities are to the their best interest.
3. Three youth participated in this study; two were male and one was female. The youth selected were to represent the KTC region and Independence. No name was provided by the communities of the ILTC region. Two of the youth involved were elected as youth Chiefs in their communities and one of the youth was actively involved in youth activities especially at the local high school.
4. Seven women participated in this study. The women involved were community

members who worked as legal secretaries and came to Winnipeg for training every three months.

5. Professional staff who work in the area of child and family services at Awasis Agency participated in the study. This group held management meetings every three months to discuss projects, programs and policies that would better meet the needs for First Nations families in their communities. This group numbered 43 and were comprised of Directors, Operation Managers, Program Coordinators, and Unit Supervisors from the First Nations communities, Thompson and Winnipeg. The majority of the group are from the First Nations communities and the female to male ratio is 2:1, respectively.
6. Others that participated were from the Provincial government departments of about 4 people. They were professional staff that were either doing research or participating in other commissioned work in aboriginal and/or northern areas.

Sampling Limitations

Given that the sample was not randomly selected and is not truly representative of the larger population, statistically speaking, the question of generalizability arises. That is, to what extent can the results of this study be generalized to the First Nations community? The results cannot be generalized entirely to be applicable to the community, however, in qualitative enquiry, the derived information represents a legitimate indication of community philosophy (beliefs and values), politics (stakeholders and roles they play), and practice (orientation, approach and process), with regard to conflict resolution in child and family matters. More importantly, in participatory action research, one does not need to

generalize if the results are useful to the participants. Non-probability sampling is acceptable because generalizability is not critical in participatory action research.

Every effort was made to plan the consultations with the participants around their work schedules and usually according to their availability and accessibility. Not all participants participated on a consistent basis due to other commitments in their work area and/or they were prevented from attending due circumstances out of their control.

Data Collection

In social research as in everyday life, our assessment of quantitative and qualitative data is likely to reflect the interests we bring to it and the use we want to make of it (Dey 1993). By comparison with quantities, qualities seem elusive and abstract. We often use 'quality' as a measure of relative worth, as when referring to a 'quality performance' or 'a person of quality', or asking whether something is of good or poor quality (Dey 1993). In this case whether there needs to be a change from the present system of conflict resolution in child and family matters. Is the present system just or not just?

Social researchers systematically collect and analyze empirical evidence in order to understand and explain social life, but a qualitative researcher goes about this differently than a quantitative researcher does. The most obvious difference is that qualitative data tend to be in the form of words, sentences and paragraphs rather than numbers (Neuman, 1994, p.316).

According to Neuman (1994), there are few procedures or terms that are standardized which has precipitated a continued debate about whether qualitative research should be standardized much like quantitative research. Arguments or reasoning to

standardize are mostly due to researchers having to learn by trial and error, by working with another experienced qualitative researcher or by reading many reports. There are no clear guides or rules on qualitative research however there are principles which are followed.

The qualitative research approach is practical when attempting to capture knowledge informed by experience which is shaped both by traditional relations and a particular community context. It recognizes multiple realities and allows for a linking understanding to inform the process. As Neuman (1994) states, “Qualitative research is more nonlinear and cyclical. Rather than moving in a straight line, a cyclical research path makes successive passes through steps, sometimes moving backward and sideways before moving on. It is more of a spiral, moving slowly upward but not directly. With each cycle or repetition, a researcher collects new data and gains new insight “ (p. 319).

Qualitative data is usually collected through surveys, questionnaires, interviews (structured and unstructured), participant (non-participant) observations, group interviews and the collection of documentary materials. For this study, data was produced from the observations of the researcher as a participant in this qualitative research. Notes and/or minutes of meetings and discussions with groups/individuals were kept by the participant observer (researcher). A literature review was compiled for examination and exploration by the researcher. Concepts, context, and processes in the research were noted by the researcher. Dey (1993) states:

The point is that any ‘data’, regardless of method, are in fact ‘produced’ by the researcher. In this respect, the idea that we ‘collect’ data is a bit

misleading. Data are not 'out there' waiting collection, like so many rubbish bags on the pavement. For a start, they have to be noticed by the researcher, and treated as data for the purposes of his or her research. (P.15)

Sources of Data

The following is a list of data sources which helped me in the development of the alternative model of conflict resolution. The following tasks were completed to collect information:

1. A literature review was completed and compiled.
2. Elders, Women, Youth and Chiefs were consulted with in the development of the model.
3. Other models of conflict resolution were researched and examined.
4. On-site visits were conducted for the purposes of witnessing other models in action.
5. Awasis Board of Directors were reported to and consulted with on a monthly basis.
6. The Awasis Agency Management team of approximately 40 people were consulted with regard to this study.

The goal of this data collection and information was to identify and examine social values and principles that are reflected in First Nation concerns with respect to resolving conflict. Doing this helped me develop a model of practice with regard to child and family matters that enables, entrusts and empowers First Nation individuals, families and communities.

Data Analysis

Data analysis refers to the way in which one analyzes or makes sense of the information collected. Furthermore, data analysis is a process of identifying, examining and assigning data into its constituents components, to reveal its characteristic elements and structure. My understanding of the data in this study as a whole does not just rely entirely on my impressions and intuitions. My impressions and intuitions are important and certainly have their place in analysing data but impressions and intuitions must be thoroughly checked out. Before I came to any conclusions, I validated my impressions and intuitions from the more rigorous and logical procedures of analysis.

According to Dey (1993), the “core of qualitative analysis lies in these related processes of describing phenomena, classifying it, and seeing how our concepts interconnect (p.30).” Concepts are labels that denote discrete instances or events in a social setting. Those concepts found to be related to one another are grouped together under a higher, more abstract order of classification called categories. Description, classification and connecting information are the three main processes in the analysis. This will help me with the framework to understand the Euro-Canadian Justice system and our First Nations culture and how it relates to Justice and Child Welfare.

Description

The first step in my qualitative analysis of the data is the descriptive process. The description process: 1) “encompasses the context of action, 2) the intentions of the actor, and 3) the process in which action is embedded.”

Contexts.

Within the Descriptive process of the analysis, the first part is describing the Contexts. Contexts are important as a way of situating action, and understanding its wider social and historical significance (Dey, 1993, p.32). Meaning is dependent on context and it is relative to the positions and perspectives of different observers. “We can make mistakes in attributing particular meanings to particular observers, but the biggest mistake would be to imagine that meaning can somehow be understood independently of the contexts in which it is observed.” (P.35)

Intentions.

The second part of analysis in the descriptive process is capturing the Intentions of the participants involved. Dey states that “we can certainly acknowledge that qualitative analysis is usually concerned with how actors define situations, and explain the motives which govern their action. Though as researchers we may develop our own concepts for analysing these actions, we want to ensure that this relates to intentions of the actors involved (1993, p.36). He also states that people observe and “define situations, including their own intentions”, based on “their understanding of their own motivations, and of the contexts in which they act (1993, p.36).”

In the Cree culture, when you hear a conversation between two Cree speakers, you would hear the reply of the person listening as saying “Dabwe”. When translated, Dabwe means true. When interpreted it means that from the speaker’s point of view, context and understanding, s/he is speaking her/his truth. Saying Dabwe does not necessarily mean that you are in agreement to what the person is saying. However, you are validating that

persons words and perceptions.

Also in Cree, there is also the rule of look, listen and learn. By observing and listening to the other person speak or telling a story, what you learn will be affected by your context and experience (livelihood). However, your learning is your truth and is not to be classified as right or wrong by another person. There are many truths and the relationships between these truths are usually negotiable. The point of this section is that many of the stakeholders that I have encountered and had discussions with have stated their truths and this writer has attempted to understand these truths by trying to walk in their moccasins for a day. For the most part, I view these people's truths as my truths and attempt to understand them by setting aside my context. My understanding is that we seem to have the same intentions but we apply them differently and goals are different.

As individuals, organizations, departments, and communities, our behaviour and actions are influenced by our assumptions, beliefs, and the way we view the world - our paradigm (perception). This paradigm influences the type of services that we provide, the way that these services are structured, and the practice orientations we adopted. How we view the world becomes not only the basis on which models are formulated but also the criterion for choosing problems that can be assumed to have solutions (Kuhn, 1977).

Process.

The third part of analysis in the descriptive process is capturing the process involved both in terms of activities and cognitive. Dey's (1993) description of the process is provided as it captures its importance:

The significance of process in qualitative analysis is also exemplified in

interactive methods through which qualitative data is often produced. Data collection can itself be conceived as an interactive process through which the researcher struggles to elicit meaningful interpretations of social action. Analysis often proceeds in tandem with data collection, rather than commencing on its completion. The resulting analysis is contingent in character, since it in turn stimulates and is modified by the collection and investigation of further data. The researcher meanwhile becomes a participant in his or her own research project, for their own interpretations and actions become a legitimate object of subsequent analysis. Information on the researcher's own behaviour and thinking, in the form of field notes, memos, diary or whatever, can become a vital source of data for the analysis (p.37).

Classification

Dey (1993) states that the second step in qualitative analysis is the classification process. "Interpretation and explanation are the responsibility of the analyst, and it is his or her task to develop a meaningful and adequate account; the data merely provide a basis for the analysis, they do not dictate it" (Burgess, 1982, p.39)". In order for actions or events to be deciphered intelligible, a conceptual framework would have to be developed. Dey (1993) states that classifying the data will help us in knowing "what it is that we are analysing", and to "make meaningful comparisons between different bits of data" (p.40). It does not necessarily mean that we have to classify the data before it can be analysed, but "classifying the data is an integral part of the analysis: it lays the conceptual foundations

upon which interpretations and explanation are based”(Dey, 1993, p.40).

Connections

The third step in data analysis is making the connections between the concepts of the study. A connection needs to be made between classifications or categories.

According to Dey (1993), this can be achieved by searching for patterns in the classifications or categories, by using graphic representations (flow charts or mapping) and/or by using theories that can contribute to the direction and order to the analysis.

Linking the data when categorizing can offset the “initial fragmentation of the data and provide more direct empirical grounds for making connections between categories” (Dey, 1993, p.169). Making sense of the connections will be based on our arguments as per our observation and experience of links and how they operate. Dey states that “we can think of links as the sort of ‘connecting mechanisms’ between events which we experience in everyday life - why the door bangs when we slam it; why the light comes on when we operate the switch; why eating satisfies our hunger. We connect these things because we understand the links between them” (p.169).

Chapter Three

This study must be understood within the political and legal context of Canada, Manitoba and the First Nations people of MKO.

Federal Legislation

In 1951, the federal government exercised its legislative authority by conducting revisions to the Indian Act which extended provincial legislation onto reserves throughout Canada. Since then, jurisdiction over First Nations child and family services continues to be the subject of much debate. The Indian Act does not refer specifically to the delivery and judicial proceedings of child and family services; however, the provinces do have legislation giving them power and authority over child and family matters. Section 88 of the Indian Act extends the jurisdiction of the Manitoba Child and Family Services Act and the Provincial Court Act onto reserves in Northern Manitoba.

According to this section, provincial laws of general character apply to First Nations, unless the laws are contradictory with the terms of any treaty or federal statute or stipulations that have been stated for the same business in the Indian Act or in any order, rule, regulation or by-law made under the authority of the Indian Act. The phrase “all laws of general application from time to time in force in any province” basically means provincial laws in force. However, provincial laws are in effect over a particular area, if and only if, the federal government does not retain jurisdiction over the same area. This basically means that if a federal legislation is in effect over crown and reserve lands and if the provincial legislation is contradictory with the federal legislation then the provincial legislation has no jurisdiction over that particular area with regard to people and resources

occupying that area.

Manitoba Legislation

There are two provincial legislations that provide the jurisdiction and authority over a Child Welfare Agency's operations: The Child and Family Services Act and the Provincial Court Act. There are no sections in either legislation that prevent the use of Family Group Conferences as a process to address and resolve child and family matters. At the same time, there are no sections within these legislations that explicitly support or provide the mandate to the child and family service agencies to use alternative conflict resolution systems. The various governmental department develop policies which dictate the types of programs, processes and/or systems to be used in addressing and resolving child and family matters. This, however, is done unilaterally by the provincial government without consultations with the stakeholders, namely the constituents (including First Nations). It must be noted that in this study to develop an alternative model of conflict resolution, I took this context under serious consideration and therefore sought for a way to have a model work under the present system without changing legislation. Two provincial legislations that were examined and considered as a context to be utilized are the Provincial Court Act and the Child and Family Services Act.

As per the Provincial Court Act, a magistrate has the same powers as a judge and may exercise those powers in a provincial court case proceeding in the capacity of a provincial court judge. Section 42(3) of the Provincial Court Act states:

Every magistrate may act as and in the capacity of, judge of the Provincial Court for such purposes as the Chief Judge may determine.

As a result, a community magistrate could be given the power by the Chief Judge to hear and determine family and child protection matters and proceedings in the Family division of the Provincial Court. The magistrate may make orders as per section 38(1) of the Child and Family Services Act. This action could be done as informally as possible in order to be sensitive to the parties involved. The magistrate could also adjourn the proceedings until an investigation could be completed to ensure that the best interest of the child is taken into consideration. This investigation could take the form of a family group conference as it does not specify how the investigation is to be completed. Excerpts from the Child and Family Services Act state:

Section 36: Proceedings under this part may be as informal as a judge or master may allow and no order under this part shall be set aside because of lack of formality at the hearing or for any other technical reason not affecting the merits of the case.

Section 37(2): In a proceeding under this part, and upon being satisfied that it is necessary in order to determine the best interest of the child, a judge or master may direct an investigation into any matter by a person who has no previous connection with the parties to the proceeding or to whom each party consents.

Section 11: Assistance to community groups. Any interested community group or individual may apply to an agency for assistance in resolving community problems which are affecting the ability of families to care adequately for their children.

Both legislations could then accommodate a program model of alternative conflict resolution. Some revisions would need to be made by the administration of the provincial justice system to expand the magistrate's power to be able to hear child and family matters.

Framework Agreement Initiative on Dismantling in Manitoba

The Framework Agreement Initiative (FAI) on Dismantling the Department of Indian Affairs and Northern Development in Manitoba that was signed December 7th, 1994, purports to give federal recognition to the existence of an inherent right to Aboriginal Self-Government. The following is an excerpt from the Federal Policy Guide on Aboriginal Self-Government:

“The federal Government recognizes the inherent right of self-government as an existing right within section 35 of the Constitution Act, 1982.”

The federal government is prepared to enter into a process of transferring items which could be under First Nations control. They provided a listing of what subjects or functions could be up for negotiations and Child and Family Services is one item or area identified by the federal government as being a plausible item to transfer over authority and jurisdiction to First Nations governments. The policy guide states the following:

“broadly stated, the government views the scope of Aboriginal jurisdiction or authority as likely extending to matters that are internal to the group, integral to its distinct Aboriginal culture, and essential to its operation as a government or institution. Under this approach, the range of matters that the federal government would see as subjects for negotiation could include

all, some or parts of the following:...child welfare...” (p. 5).

When MKO signed the Canada-Manitoba-Northern Manitoba Indian Child Welfare Agreement in 1983, the agreement acknowledged First Nations executive and administrative power and authority of First Nations child and family services, however, service delivery continued to fall under the provincial legislative guidelines and policies. Basically, the First Nations would create First Nations agencies to deliver child and family services as prescribed by the provincial Child and Family Services Act and by extension, the Provincial Court Act and/or the Queens Bench Act.

The agreement was supposed to be an interim measure while First Nations continue to work towards developing and reclaiming legislative authority over child and family matters. The tripartite agreement expired in 1985, without acknowledgment of First Nations legislative authority from the provincial and federal governments.

Prior to the Framework Agreement Initiative (FAI), research and discussions by various First Nations work groups and committees led to the revisiting of the topic of legislative authority over child and family matters. On September 13th, 1994, the Manitoba Chiefs in Assembly passed a resolution to expedite Child and Family Services within the FAI. In 1995, MKO submitted a proposal outlining a plan for the development of First Nation codes and standards as well as a secretariat and legislation over Child and Family Services. In 1996, the southern agencies followed by submitting a plan of their own. Since the judicial system in child welfare is part and partial to one another, there is nothing in the present FAI that would deter the development of an alternative conflict resolution program within the child and family service field. Actually, the FAI could act

as a catalyst for advancing the development of our model of conflict resolution.

The Provincial Child and Family Services System

Mainstream child and family social service models and the resulting controls forced upon on our First Nation agencies create barriers. The provincial child and family services system is based on deeply held values that conflict with our own set of values. These barriers and conflicts were well documented by the report of the Provincial Child and Family Services Task Force. Even now, specific aspects of the Manitoba Child and Family Services Act are under review by Manitoba Family Services through the provincial directorate's office: Child and Family Support Branch. This is carried out by the child and family services review panel. The purpose for the development of the review panel is to explore "innovative ideas on how to provide services that supports families and children in need and instill stable homes and communities." Input from First Nation communities was sought, however, the child and family services review panel travelled only to non-reserve communities. The 1996 Provincial Minister of Family Services stated in a news release sent to the Awasis office via letter, "We are particularly interested in hearing from the Aboriginal community on ways to ensure that services are more culturally appropriate and sensitive to traditions". While significant cultural value differences have been recognized and acknowledged, the governments should pay serious attention to the community effects from long standing subjugation through the paternalistic care and protection of First Nations children and the imposition of the mainstream judicial system. This writer and the Awasis Agency engaged in discussions and provided submissions to the review panel in Thompson, Manitoba. The review panel acknowledged and agreed

that improvements need to be made in terms of how services are provided and that alternatives ways of delivering child and family services should be explored. The message conveyed to the review panel was that there is real opportunity for healing on a large scale to re-create harmony and promote health and well being by developing and implementing a community based judicial and social type of a system.

Provincial Child and Youth Secretariat

The Manitoba Child and Youth Secretariat was formed in November of 1994 to initiate a coordinated and integrated system of services for children, youth, and their families. This system includes prevention, treatment, rehabilitation, safety and care services which are provided through the departments of Education and Training, Family Services, Health, and Justice. The Secretariat created various committees to explore specific areas in detail and to make appropriate recommendations to the secretariat for implementation and further recommendations to the Provincial Child and Family Support Branch.

I have made presentations to two committees from the Secretariat on our initiative and the type of approach we are undertaking to develop our model of conflict resolution in child and family matters in the hopes of creating interest from the province on this project or a similar type of project. The discussions generated from the presentations made it clear that the Manitoba Child and Youth Secretariat committees was interested in models of alternate conflict resolution. In fact, the inter-sectorial committee made a submission to the Child and Youth Secretariat outlining a framework for an alternative model of conflict resolution. This model, however, is being developed in isolation and without an extensive

consultation to the public.

Provincial Justice System

There are several initiatives underway to look at alternative justice approaches within the provincial and federal justice system. In Manitoba, local justice committees have been established in some First Nation communities under section 69 of the Young Offenders Act. St. Theresa Point, Nelson House and Shamattawa are just three examples of communities which have used local justice committees with young offenders with varying degrees of success. The RCMP in conjunction with the Department of Justice, the Department of Indian Affairs and Northern Development, and the Ministry of the Solicitor General began implementing a five year Aboriginal Justice Initiative (AJI) in 1996. This initiative looks at improving the justice system for both aboriginal and mainstream communities by allowing them to play a more significant role in dealing with aboriginal accused and victims. Family conferencing has been mentioned as one means for participation. The AJI would be supported by the Learning Network, which would create a 'virtual' college for supporting and training legal professionals in the objectives, values and mechanics of the new approaches. Awasis Agency has been in contact with AJI representatives and will be sharing the ideas outlined in this proposal to the AJI committee. In addition, the provincial justice system has been cited recently in the media as considering 'Sentencing Circles' that would be more sensitive to aboriginal needs.

In light of the progressive developments in the justice system in Manitoba, the First Nation Family Justice: Mee-Noo-Stah-Tan Mi-Ni-Si-Win program is being supported at both the federal and provincial levels. Provincial Chief Judge and Chief Justice from

Queens Bench were informed regarding this project and have expressed an interest in our ideas. While support of alternative justice approaches are being explored, the largest barrier to overcome in fundamentally redressing how the legal system deals with First Nation families and individuals will be within the minds of those in position of power - particularly lawyers and judges. Even in light of progressive action we continue to see the majority of court cases denounce the importance of culture and heritage in custody and guardianship decisions. One recent court case heard by the Manitoba courts of appeal has presented a hope and light at the end of the tunnel by taking into consideration cultural ties as being an equally important principle in the upbringing of a child.

MKO First Nations Child and Family Jurisdiction Project

First Nation Political organizations were concerned that their unique practices and needs could not be accommodated within the provincial Directorate known as the Child and Family Support Branch. As a result, Northern and Southern First Nations submitted proposals outlining a process of a community consultation that will document community beliefs and values about children, families and community, which will then lead to the development of First Nation Codes and Standards. The Codes and Standards will provide the foundation upon which a First Nation Legislative framework will be developed. A Secretariat will ensure that the standards and guidelines set by the Act continue to benefit the children, families and communities.

In early August of 1996, MKO secured \$261,250.00 through FAI from DIAND to implement a community based consultation process leading to the articulation of First Nation codes and standards in child and family matters. The amount received was less

than 4% of the amount requested to complete the work needed. However, the amount received was accepted by the MKO as monies to be used for the implementation of a one year community consultation process outlined in the four year work plan submitted in 1995. Using the available dollars plus internal staff and existing community resources, Awasis Agency of Northern Manitoba, Island Lake First Nation Family Services and Cree Nation Child and Family Caring agency, under the guidance of MKO, will be working together in partnership to ensure the success of the MKO Child and Family Jurisdiction project. MKO acknowledges that while this project is underway, there are other research initiatives being undertaken, such as discussion papers on judicial systems aimed to resolving difficulties within the family as an alternative to the courts. These papers will provide a basis of discussion for communities and leadership on the preferred systems in which to establish community programs, services, and support to First Nation families and children.

Other Areas

Funding for First Nation Child and Family Services comes primarily from DIAND, with provincial dollars augmenting specific programs within the agency. One of the major complaints from First Nation Child and Family Service agencies regarding funding, is that funding is fragmented and piece-meal, reactionary, categorical, case specific, based on government instead of community priorities, and separated from policy formation, organizational structures, and practice implementation. Those delivering human services have their service parameters, priorities, and resource allocations dictated by government policies. While child and family concerns cross many service boundaries (including child

protection, justice, education, and health), service providers are discouraged from stepping on the turf of others. Funding parameters more often than not define these turfs and make it difficult for service providers to develop, holistic innovative programming. Funding allocated to explore alternative justice initiatives in Manitoba is one such example. Presently, Assembly of Manitoba Chiefs, MKO, the provincial justice department's sentencing circles, the Aboriginal Justice Initiative, and Awasis Agency are all engaged in research activities exploring very similar topics. Yet funding for development is generally project specific, and does not encourage collaborative planning between agencies and services providers. This type of resource allocation indirectly becomes a barrier to moving forward and beyond the present system.

Funding for the proposed First Nation Family Justice: Mee-Noo-Stah-tan Mi-Ni-Si-Win program will require negotiations with several potential funding sources. The program offers a forum for collaborative, holistic planning to take place which involves families, community members, and diverse service providers. The planning would be in the best interest of children, families, and the community as a whole.

The context are very important to include especially when trying to explain your learning and developmental experiences. People need to know under what factors played the shaping of a person's mind to understand the actions of that person.

Personal Narrative

I tried to capture my learning and the developmental experiences which led to the writing of this document. This research used participatory action research which means I was also part of the story as well as the story teller. From our culture's perspective, you

are never separate, you are always part of what's happening around you. The process of research, community contacts, visits to other programs and countries, conferences, and even the writing of this document have been learning opportunities. Limited resources influenced the selection of which programs and conferences would be attended where our thinking would be challenged, allow for relationship building, and bring a new component to our work. The journey of which I undertook on this project has helped myself and others continue to learn, develop relationships, and expand our visions as we develop this model. This process continues....it is never-ending.

Limitations of Literature Research

In April of 1994, Awasis Agency began doing research on the Canadian justice system and its impacts on child and family matters and more specifically, First Nations of Manitoba. We began looking into how the mainstream legal system operated within the First Nation Child and Family service system. We first looked at the legacy that the Manitoba legislation and policy had over First Nation legislation. There were task force reports and other studies that were completed which documented the injustice done to First Nation people by the provincial system and the Canadian system. This was of no surprise to us and we felt that there was enough documentation on this area but there was not enough literature on how to address and begin to rectify these injustices or even prevent them from happening again. There are always the proclamations being made that First Nations should have their systems in place but no documented means (in Canada) of how to create and achieve First Nations control over our own systems. Our cultural heritage and traditional systems have been passed from generation to generation orally and with

limited writing. The generation gap and relationship between our elders and youth is deteriorating as more and more of the youth speak mostly English and are losing their language thus the documentation of our process is critical.

After serious consideration, we began to focus specifically on the impact of the overlap of two provincial systems on First Nation families and communities. A literature review provides us with a conceptual framework to begin our journey into the development of the model. Initial research into this area was prompted by the desire to provide Child and Family Services (CFS) to communities within an empowerment, participatory framework of delivery. Research was completed in the fields of child welfare, family law, provincial and federal legislation, and alternative dispute resolution. Literature from across Canada, United States, New Zealand, and Australia were reviewed. What readily became apparent is that we were not the only First Nation organization looking into alternative dispute resolution. The Maori in New Zealand and the Navajo Nation in the United States had been implementing large scale programs of this nature over the past number of years.

The literature review validated my personal views about child and family services and justice system. The literature documented that these two systems have proven to be culturally inappropriate for First Nations people in terms of standards, policies, guidelines and practice. They have had a detrimental impact on many First Nations children, families and communities. It is a process where two parties fight through their lawyers and whoever has the better lawyer wins. The communication between the two parties are practically non-existent if they do communicate, it is through their lawyers where it is

legalistic and artificial at best. I have learned that the two systems employ an adversarial process in resolving conflict and it is a process where no one can possibly win when a person is removed from his or her family, community and culture. In child welfare, children have suffered the most as their parents are usually judged by concepts of parenthood based on what is considered “good” and “bad” parenting by the dominant society. These two systems have undermined the psychic development of the child, family and the social development of the First Nations communities. These are issues which have to be brought to the forefront of the First Nations leadership and community members.

Manitoba Keewatinowi Okimakanak Chiefs in Annual Assembly

In August of 1994, Manitoba Keewatinowi Okimakanak (MKO) Chiefs in Assembly passed a resolution which supported the research and development of a First Nation Magistrate model or program. This was the result of a presentation outlining the potential development of a First Nation mediation and magistrate program to the Awasis Agency Board of Directors, and the Chiefs of M.K.O. region who supported further research and development into this initiative. It has and will continue to be a practice to keep the Chiefs in Assembly updated of this project until completion. It was crucial that we got the support of the Chiefs who head these organizations because any project supported by numerous Chiefs in a region will meet less resistance from the community people. It is a pre-screening system to prevent the alienation of a project, system, policy or program to be imposed on the communities. The presentation was designed to facilitate discussion and help the Chiefs rethink the effectiveness of the current CFS system and decide if this was what the Chiefs who signed the Master agreement in 1981 had in mind.

The outcome was full support to further our research and look for opportunities to augment the current system to one that is more conducive to First Nations.

One thing that was learned from this forum is that if we are to proceed with the development of an alternative conflict resolution model, we must ensure that First Nations people are informed of the project and provided with the opportunity to participate if they want. This must be done in a team setting between child welfare and justice technicians, politicians and community people.

Initial Workshop in Portage La Prairie

On November 22 - 24, 1994, Awasis Agency hosted a meeting of Chiefs, Board of Directors, Elders, M.K.O. representatives, and Awasis staff at the Manitoba Inn in Portage LaPrairie to talk about developing this new model. This was based on the assumption that the Chief and Council, Elders and all members of the communities needed to be part of developing a new model. All of the presentations made during the three days of the meetings were either translated into Cree or English. This translation process allowed all members of the meeting to participate in a manner that they were comfortable with and in the language of their choice. As a result, the meetings ran approximately 13 hours per day.

The conference that was held in November 1994 had three purposes:

1. To involve respected Chiefs and Elders in the process of examining literature on how the law works;
2. To share our experiences as Child and Family Service workers; and
3. To learn from and incorporate the visions of the Elders and Chiefs into the initiative from the very beginning.

The conference was facilitated by myself and a colleague from the agency. Conference events were recorded in written form and an information package was developed which would be circulated to each First Nation community as a further measure of seeking feedback from the grassroots level of the community.

The first day of the meeting began with discussions on the current system of child and family services. It started out as confusing for the elders because they were not familiar with how child and family services were delivered, operated, structured and governed. An education process had to occur if the elders were to provide an informed direction as to whether this proposed initiative should continue.

The second day of the meeting began by our group discussing the term 'best interest' of the child. No one disputed that this should be the case, however, the elders stated the 'best interest' of the child should always be of paramount consideration but based on our perspectives (beliefs), by our own measures (standards) and in our own way (procedural). We have to note that English was hard to translate into Cree and vice versa, at certain times, we had to interpret as to what was said but this was done by agreement between other bilingual speakers. One elder (male) and two technicians (male and female) assisted us to come to this agreement.

The third day looked at past practices of our First Nations with regard to resolving conflict. This day was predominantly reserved for the elders to tell their stories about how conflict was handled and how their grandfathers handled these type of situations. An expert in mediation was also brought in to do a presentation on how this type of process may be used as a tool within child welfare. Discussions were held on how and who would

facilitate the process of this initiative. Feedback on this new proposed initiative was very positive and encouraging. The Elders made it clear to the group that the technicians were to move ahead on this initiative as they were more knowledgeable and educated in this area. One thing that the elders made clear was that they are not to be forgotten in this initiative and to remember the grassroots people as this will be affecting them. They have to be notified of this project initiative and consultations must be continued in some form or another.

At the end of the conference, some parting wisdom and encouragement were contributed by the chiefs and elders. The message conveyed was that we need to work together as a team and see each other as equals. We need each other to make this work. The “elders have the wisdom and respect” of the communities they represent and will provide watchful eye on the process of this initiative. The “Chiefs will provide the support and leadership” to keep this moving politically and the “technicians have the expertise and strategies” to work and weave through any obstacles and barriers we may encounter. A motivating vision and mandate was provided by an elder in his closing remarks as follows:

“What we are trying to do is for the benefit of our people. This can be done in the hope that those who do not understand will eventually understand and see that what we are doing is better” (Sandy Beardy).

This initiative was approved by the group who recommended that we continue our research. The discussions held indicated that we should look at other programs in place. We began making connection with programs which were already in operation. We were not interested in transplanting an external program for use in our communities (we

strongly believe in community defined models of practice), rather we were interested in learning from their successes and mistakes. We also wanted the group of elders, chiefs and technicians to see and witness first hand that there were other indigenous groups with similar context and historical background that were able to restore and implement First Nations practices into child welfare and justice systems.

New Zealand Family Group Conferencing

In August of 1995, a trip was made to New Zealand with the purpose of examining the family conferencing program and the context it operates within. The diversity of the group of 14 people (Grand Chief of M.K.O., 3 Elders, 3 Chiefs, M.K.O. Child Welfare Advisor, and 6 staff members of Awasis Agency) who went on the trip aimed in gaining a multiple perspective on the programs in New Zealand. The group became immersed in the Maori culture as they were billeted and hosted by the Maori Nation. Our group was also able to make on-site visits to various programs concerning the care of children and youth. We witnessed family group conferencing, had conferences with care and protection workers, teachers, family group conference coordinators, youth justice workers, lawyers, Maori Chiefs, Elders, families and youth. Formally and informally, we engaged in discussions regarding beliefs and values, historical relationships, education, legal and social structure, issues around jurisdiction, relationship with federal governing bodies, and past & current development processes including successes and mistakes. Family Group Conferencing is an example of New Zealand's First Nations (Maori) traditional practice being incorporated into the mainstream justice and social system.

Canadian First Nation's history is strikingly similar to the Maori in New Zealand

which is probably due to our lands being both colonized and governed under the British Sovereign. We gained a great deal of knowledge from our visit with the Maori but more *introspectively* as we can see ourselves in their lives yet from an outside perspective. The Maori people sought for answers in their belief systems, people and more importantly in their language and through the teachings of elders, songs, stories and dances. We have seen similar struggles in the Maori that we have experienced and they have worked with the government to develop the Family Group Conferencing. This introspection was also experienced by the Maori as they have seen how far we have come in our child and family practice and wanted to know more about our system. This provided us with an interesting dilemma, as we were in New Zealand to find out more about their system in conflict resolution and not for the purpose of providing information about ourselves and our system. After discussions with the Maori, a verbal agreement was reached where support and sharing of ideas can continue with the Maori in New Zealand. A social worker exchange program was undertaken which has proved to be mutually beneficial for sharing learnings about our systems, perspectives and true practices. I have learned that learning is a two way street and that it is based on relationships and partnerships. It must be for the benefit of all involved where we set out to enlighten ourselves about our situation and how we can help each other to resolve it. In order for this to happen, we must share information that will lead to dialogue and then to action.

On June 19th, 1995, our experiences in Portage La Prairie, Manitoba and New Zealand were highlighted in a newsletter that was circulated throughout the 18 First Nation communities that fall under Awasis Agency's jurisdiction. The purpose of the newsletter

was to provide information to the First Nations community about the project initiative and to solicit feedback from community members on the emphasis and directions of the proposed initiative. Only a handful of people phoned to make comments about the newsletter and no written comments were received. Most of the verbal comments were positive and stated that we were on the right track and others phoned to comment about the use of traditional art as a cover for the newsletter. I have come to learn that we had to take into consideration the different beliefs systems that exist in our communities and how these beliefs affect attitudes and practices in the lives of the people we serve. We had to be cognizant about how we framed and presented this initiative to the people so it would be accepted by the community members. How can we address this First Nations community issue? The answer to this question was community self-reliance. Community self-reliance is the process of developing programs or systems of which the member First Nations were consulted and on which they had a voice in one form or another. It is about accountability and ownership of the problem and the resolution of that problem rather than relying on external resources. It was therefore crucial that the methodology used involved a community participation approach.

Navajo Nation Peacemaking Process

Further research and networking led our group to a second retreat with the Navajo Nation in New Mexico, USA. The Navajo Nation have been utilizing a peacemaking process based on language and traditional values to restore balance and harmony within their communities, and amongst the individuals. Eleven people (six Chiefs, three Elders, four Awasis staff) travelled to Albuquerque and Window Rock to meet with

representatives of this peacemaking system and to share program ideas. This peacemaking process was part of the Navajo's Justice system. The Navajo Justice system also included court processes and arbitration. It is a system that will accommodate both traditional and contemporary people. It is a system that integrated both past and present practices. The rationale given by the Navajo people is that their people would like to see traditional practices brought back into the current system while others are so used to having their rights protected by the courts that they want that system to be still in place. We know that we face the same dilemma as the Navajo Nation and that we had to do something to accommodate these people. We realized that the model developed had to incorporate a component that will allow for people to be able to have a choice by what means they would like to employ in resolving their conflicts, restoring their health, harmony, balance. The justice system had a legal component in place to address the issues of rights through courts, judges and magistrates, however, they are still external resources. The component of the magistrates could be incorporated into this model, however, community people have to be utilized rather than external people.

Hollow Water Program

This initiative was also influenced by the work presently occurring in the Hollow Water First Nation's Community Holistic Circle Healing Project (CHCH). Community holistic circle healing deals with redressing sexual abuse in the communities of Hollow Water, Manigotogan, Aghaming, and Seymourville in Manitoba. Hollow Water is a First Nation community and the other three are Metis. Community members of Hollow Water initiated a process and protocol with the legal system to enable their community to begin

the process of healing from the effects of sexual abuse. Sexual abuse is one of the most difficult and sensitive issue that have plagued our First Nations children, families and communities. As a child welfare agency, we come across many situations where children are sexually and physically abused. The abusers are usually criminally charged, children removed from their home and the case processed through the court system. Through this system, the state (province or federal) sets out to punish the abuser for violating and breaking the law, rather than addressing and resolving the relationship between the abuser and victim. In many of the abuse cases, the children knew their abusers. There were times that children have told me personally that they love their father, brother, mother, sister or whoever the abuser if it is a relative and that they just want the abuse to end. They do not want to be separated from their family but they also want the abuse to stop. The present system does not promote healing and the restoring of good feeling between the abuser and victim or take into consideration or even begin to address the problem of how these incidents impact other people besides the abuser and victim. The Hollow Water Program is one community program that is closer to home that looks at abuse holistically and seeks to address this issue through healing and retribution if necessary. The model of conflict resolution that we were developing had to have a component where the process will allow for healing to begin and for the community to take responsibility for the safety and security of the victim and abuser. If anything that was learned from this model, it was that the community had to focus and tackle the problem head on and not just on the individual. It should be the people against the problem and not the state against the individual. The abuse is a signal of ill health of an individual in the spirit, mind and body. This individual

is the abuser, victim, their families or even the community. This illness manifests itself as inappropriate behaviour and/or attitude of one person to another which affects others. The Hollow Water Program recognizes this problem and accept it as a community problem and take it upon themselves to resolve it through healing for the individual, families and the community.

Northern Justice Conference

In September 1995, the Coordinator of the Child and Family Service Program attended a Northern Justice Conference in Iqaluit, NWT which was sponsored by the Northern Justice Institute from Simon Fraser University. This conference explored justice initiatives within a self government framework.

Each contact with other aboriginal agencies and alternative dispute resolution personnel further fuelled our research into a program that would benefit First Nation communities in Northern Manitoba. These contacts were viewed as important components in the process of development, as it is through and within relationship where fundamental learning takes place. Our ability to experience these programs first hand added a dimension of personal learning that we could not have gained by reading about them. Linking positive personal feelings with new learning allows for a greater internalizing of learning.

Involving Chiefs and Elders in these personal learning experiences had a profound impact on those involved. For some of our Chiefs and Elders, it was the first time that they truly believed that we could effect fundamental and lasting change, that we had the power and ability to do so. They felt empowered to be actively involved in the initiative,

which led to greater community support and ownership. We received validation from both the Maori and Navajo Nation, that the wisdom needed to carry out this new initiative rested with our Elders and Chiefs. In addition, we were able to view these programs through an academic lens, practitioner lens, and a First Nation lens, gaining insights from components that were relevant for our realities, and leaving behind others that did not fit for us. We learned that we were not alone in our quest to seek a better way to resolve conflict and that others are also looking to their traditions and heritage. The journeys that other have taken have always brought them back to the culture and people. In the development of the model, I realized that the answer lies within our beliefs, values, hearts, language and our people.

Awasis Agency Annual Retreat

In September, 1995, Awasis Agency hosted an annual retreat at Elkhorn, Manitoba which was attended by 160 participants, 100 of which were community-based workers, elders, and Chiefs. The retreat had three main goals. First, it acted as a platform for sharing our learning to date with staff, community members, and individuals from different systems. Second, by structuring formal and informal discussion groups, we knew that through dialogue, our thinking and understandings would be challenged which would increase our learning and clarity. Third, the conference provided valuable feedback from the various systems within Manitoba regarding this initiative.

We invited a diverse group, representing different countries, departments and paradigms. All Awasis Agency personnel attended; Chiefs and Elders from the First Nation communities we serve; Matt Hakiaha, John Tamehari of New Zealand; Chief Judge

Judith Webster; Chief Justice from Queens Bench; Chief Justice from Navajo Nation; an Ontario lawyer and author of several aboriginal justice papers and books; representatives from Hollow Water; a journalist from the Globe and Mail; Manitoba Minister of Northern Affairs; a First Nations Coordinator for the Provincial Child and Family Services Department; and the Director of the Provincial Child and Family Services Department of Manitoba.

This conference was very successful in raising awareness amongst diverse systems regarding the issues which First Nation people face. It provided a important opportunity to openly, proactively and positively dialogue about these issues within the community of Awasis Agency, and it has led to increased support, involvement and clarity in our emerging vision.

Sacred Conference

Four Chiefs, three youths representing their communities and four Awasis personnel attended the Sacred Conference in Ottawa in November, 1995. While this conference focused on the bigger issues of social justice for First Nation peoples, it acted as an opportunity for healing and restoring respect for diverse forms of spirituality and religious beliefs. For us, it challenged us to further explore what role spiritual beliefs should play in this particular initiative, and how we can respect the diverse beliefs in our communities within this program.

The Sacred Conference was valuable experience because it was an opportunity for people's voices to be heard, a time for sharing our thoughts and our hearts, a time for listening, a time for seeing and a time to see the illness that exists within our people and

nations. People regardless of age, gender, race or religious beliefs came together as one to find a way to reconcile and live together. Many of the speakers and participants spoke about their beliefs and values and their way of life. They believed in one thing or another and most of the time it was God or the Creator. These people had prayer for their God or Creator but they practiced in different forms. These people had a lot of commonalities than they realize. Whether they realized it or not, these people practiced their religion for the same reasons.

I learned that if I listened without judgement, I could hear these people's message more clearly. They want a voice, law, order, balance, harmony and health in their lives and to live with humanity with equality, respect, love, caring, integrity, understanding, humility and trust. It is these principles that had to be integrated into the conflict resolution model and people must come to this process with an open mind and without judgment. In the end, the healing began for many people. There was forgiveness conveyed to the churches for the suffering First Nations and others have endured from the people who represented the church and God (Creator). It was not God who did these things but man himself. For many people, there is forgiveness but they will not forget. This was also good because all experiences whether good or bad were learning experiences. If we forget what we have learned, we risk making the same mistakes in our lives. This should also be the case in any conflict resolution.

Documenting and Developing the Model

In January, 1996, we began the serious process of culminating our thoughts, learning, ideas and visions into one document that could serve as a learning tool for the

communities and for members of the dominant systems. A team was formed to capture our learning process to date. As a way of sharing and receiving feedback on the development of this model, the following discussions were facilitated:

1. A small group of youth representing our communities participated in discussions regarding the project in December 1995. This group's main concern was about having a voice and to be given the opportunity to be heard. Two of these young people were youth Chiefs in their community and the other was a spokesperson for his local high school. The youth group were participants and in attendance at the youth conference which was part of the Sacred conference. The youth state that they need to be given equal opportunity to be part of discussions that affect their lives, after all, it is their future and they are the ones that are going to be living it.
2. A group of legal secretaries representing 11 communities participated in a focus group discussions regarding the barriers and opportunities of this project. The main issues of the discussions centred around equality, safety, empowerment. They feel that they are just as important as the adults, elders, workers and politicians.
3. Presentations were made to the Provincial Child and Youth Secretariat in January and March 1996. Discussions centred around the feasibility of a model of conflict resolution that can be developed and implemented province wide. There was nothing in the acts that prevented such a program to be developed and utilized but there was nothing that promoted it as well. There were agreements that change was necessary in the way conflicts were resolved but the ideas on the

implementation of such a program were different. The province have a top down approach while First Nations prefer a grassroots approach. Our model should not be imposed on any other nation or peoples without their input.

4. Members of the Provincial Child and Family Services Act Review committee in October 1996 were presented with our frameworks for a model of conflict resolution since they were conducting community consultations. This was an opportunity to make strong recommendations with regard to child welfare and how these services are provided.
5. A presentation was made at the "Caring for Indigenous Children: Capacity Building to Support Indigenous Children's Rights: An Educational Partnership with Indigenous Cultures in Support of the International Decade of the World's Indigenous Peoples and the United Nations Convention of the Rights of the Child" held in Victoria, B.C. July, 1996. This was a chance of lifetime to provide our First Nations input into how indigenous children and families should be serviced.
6. MKO Annual Political Assemblies in 1994, 1995, 1996 and 1997 provided us the opportunity to share our progress with and receive feedback and direction from our First Nation community members, Chiefs, Elders and technicians. The last annual Assembly held in June of 1997 passed a resolution to start negotiating with the Provincial and Federal governments for full implementation.
7. University of Victoria professors Dr. Michael Prince of Graduate Studies, Dr. Frances Ricks of the School of Child and Youth Care, and Dr. Robert Bish of the Faculty of Public Administration were provided with the opportunity to look at our

work and research for their input. We were looking for an outside perspective that will give us an indication as to how our work and research may be viewed.

8. Joint presentations and discussions on the model of conflict resolution are held with Awasis community Unit supervisors, senior management team, and Board of Directors on a quarterly basis. Awasis Agency Board of Directors were and are brought up to date on a monthly basis regarding the developments of this initiative, and it is through the Chiefs and community-based workers that the communities are kept abreast of new learning. While we have involved the communities continually throughout the beginning of this process, we know it is time to bring community members in to play a much more active role in this development. For this model to truly meet the needs of First Nation families and communities, it must be shaped and nurtured by the community itself. We have stated before that each community is unique and that the model can be shaped to be specific to the community practices and beliefs. As in any development project there are time and fiscal constraints that influence the process. In an attempt to share our learning through different methods and seek further direction we are in the process of developing a video that will provide a visual perspective of the model we are proposing in this book. The script is presently being worked on and will involve input from Awasis' Board of Directors regarding emphasis on content.
9. In April of 1997, MKO organized a large scale conference which brought together youth, women's groups, Elders, Chiefs, Provincial and Federal Ministers, technicians from federal, provincial and First Nations departments and

organizations. There were approximately five community representatives for each of the twenty-six communities that MKO represents. We distributed our documents (books & briefs) to the representatives one day ahead of time for their review and perusal prior to our presentation on this model. A presentation was made the next day and time was provided for feedback and discussions on the model and presentation. Feedback with regard to the documents, presentations and model was very favourable and accepted by the participants. As a result of the presentation, we were invited along with our chiefs to meet with the provincial MLA's to further discuss the model. There are ongoing meetings with the Province.

A second community document is presently being developed that will be circulated throughout our communities. Additional documents will be produced as required. Awasis personnel will continue to act as facilitators of the development process at the community level. Community members are given the opportunity to tailor make the First Nation Family Justice: Mee-noo-stah-tan Mi-ni-si-win Program according to their community standards. They will organize information sessions, facilitate community meetings, and interview specific focus groups. This will allow First Nations to continually voice their concerns regarding judicial and community responsibilities of Child and Family Services.

Again, we know that each of our 26 communities are diverse in their history, beliefs, and needs, and this model will be implemented and look differently in each community. Focus groups (of Elders, women, youth, Chiefs, etc.), small and large group community discussion groups, individual dialogue and family discussions all shape and

mould the outcome of this development. The outcome of this process so far is the development of a model of conflict resolution and the publication of a book entitled First Nations Family Justice: Mee-Noo-Stah-Tan Mi-Ni-Si-Win.

Chapter Four: Classifying and Connecting Our Experiences

Conceptual Frameworks

The following literature has helped me in shaping my study and to look to certain areas for the development of the First Nation Magistrate and Mediation project:

1. Community development
2. Empowerment models
3. Canadian Law versus First Nations culture

This chapter presents several frameworks and models of social work that have helped me in conceptualizing the framework of the study.

Community Development

Traditional approaches to the development and delivery of social services by agencies which are not directly involved in the life of the community in which their clients reside are increasingly being recognized as ineffective, or at least less than as effective as is required to meet contemporary needs and demands (Sarri & Sarri, 1992). The attempt to encourage a community to recognize, confront, and then work toward a resolution of a problem is a theme of major necessity and urgency which recurs in the literature of community action and community development" (Brookfield, 1983).

In order to understand community development, we must first define what we mean by community development and what processes are needed to do community development. The term 'community' refers not only to what exists but also to what some people believe should exist (Carniol, 1985). Newman and Oliver (1967) define "community" as an organic, natural set of relationships, a group in which membership is

valued as an end in itself; which allows competing factions; whose members share commitment to a common purpose and to procedures for handling conflict in the group; whose members share responsibility for actions of the group; and whose members have an enduring and extensive personal contact with each other. The term "development", according to Webster's New Collegiate Dictionary 1981, is an act, process, or result of developing (growth). The term community development can be described as a portmanteau word to include a great number of processes, projects, programmes and approaches in social change. This is undoubtedly true, but the unifying factor underpinning this multitude of activities is that development is equated with improvement and what constitutes improvement is a value judgement made by an agency or individual.

Social agencies which carry out community development and social action will typically have frequent contacts with grassroots community groups who enjoy a degree of decision-making autonomy. Since many of the social planning and community development activities tend to accept community interpersonal hierarchies, the strategies are primarily consensual and accommodative to the status quo (Carniol, 1985). In order to have a self-sufficient community, you must have community-based programming and program people hired to do the job rather than outside resources. In order for the First Nation Magistrate and Mediation Project to work as a community-based program and benefit the people it is supposed to serve then social agencies must have community participation about how the program should look and even if it is needed. Support of key people, such as Chiefs and Elders is essential to make community based programming work. If this does not happen then a program is created that is unacceptable to the First

Nations people and will therefore be a failure.

You must also have confident and willing people to carry out the program or create an environment that is conducive to motivating people to take to the task. An important feature of community development is its assumption that if people are capable then it is necessary for them to take a hand in the shaping of their lives and the life of the society they live in. In other words, community development assumes a capacity for and a process of learning (author unknown). Wharf (1981) states that:

Citizen participation is rooted in pragmatism. Life experiences as students, employees, professionals and residents we can all support the following propositions:

1. People respect more those laws on which they have been consulted.
2. People identify more strongly with programmes they have helped to plan.
3. People perform better in projects they have assisted in setting up.

Nowhere are these propositions more valid than in the social services (p.124).

Community work is sometimes referred to as 'indirect help' because the intervention is directed to the community level rather than to individual clients (Carniol, 1985). In fact, it is directed at the individuals but at a different level. This is consistent with Awasis Agency's broader aim of community improvement and regeneration of the First Nation community's physical, psychological, emotional and spiritual fabric.

Community participation in the development of social programs will allow organizational and community members to gain a greater critical awareness about their situation. This will empower community members to develop resources and strategies to change the

social system through the processes of community development.

Empowerment

Empowerment is to make one able to do something. Empowerment according to Webster's New Collegiate Dictionary (1981), means: "to give official authority or legal power to" a person or an entity (p.408). According to Cornell Empowerment Group (1989), "Empowerment is an interactional ongoing process centred in the local community, involving mutual respect, critical reflection, caring and group participation, through which people lacking an equal share of valued resources gain greater access to and control over those resources"(p.2). We need to empower families and communities to resolve their own conflicts within their own environment. The agency can do social planning along with the leadership in the communities to make this possible and practical without making it too complex. Our job and responsibility as social workers is not to define people's problems for them and calculate the right solution but to help increase other people's capacity for handling their own problems and find solutions to them.

We must begin to question treatment approaches that increase the power of workers rather than the power of clients. Radical sharing of power in the client-worker relationship consists of more than techniques for increasing client skills or even client self-determination. It involves power sharing and power shedding (Hartman, 1993), a professional stance that implies transformative changes in how the work of professionals is evaluated and rewarded (Gutierrez, Glenmayer & DeLois, 1995). The empowerment process sometimes is seen as political, suggesting societal redistribution of power and advancement of social justice (Swift, 1984; Russel-Erlich & Rivera, 1986).

The fact that child and family services agencies serve a socially devalued group contributes to the stress and lack of prestige of working in that setting. It is also one of the reasons empowerment-based practice is both little used and badly needed (Hegar & Hunzeker, 1988). Empowerment of clients and families is a relatively new practice orientation in child and family services systems. Another reason is that the agencies were always reactive to crisis situations and therefore were preoccupied in bandaid solutions. As a result, many children ended up in care of a child and family service agency. Thorough child welfare investigations would find that many of these children did not need to come into care. Child and family service agencies were always children focussed and neglected to help families to change.

Helping families become empowered is one strategy that may help keep children out of placement or enable parents and children to reunify more quickly (Hegar & Hunzeker, 1988). Empowerment practice is consciously consumer oriented and driven. Often this practice involves clients or consumers in the planning, governance, or implementation of programs and suggests that the successful implementation of empowerment-based programs may require the use of participatory management techniques and the creation of an organizational culture and environment that are based on working in partnership (teamwork) with others (Gutierrez, Glenmayer & DeLois, 1995). These ideas can be used in the child welfare field to help both workers and clients move toward empowerment. Awasis has moved toward this idea by developing a system that is non reactive and developing an Awasis Case Management system that promotes increased family engagement in planning and conferencing.

Canadian Law versus First Nations Culture

Monture-Okanee (1994) stated that neither the First Nations way or the Euro-Canadian way of governing was better than the other, but they were and continue to be very different. As we undertook this development, we had to look to customary law and present day law for guidance and content. Ethical considerations should be taken for different cultures because different cultures have different ethics. Ethics reflect the demands of the society and provide guidelines for daily living in today's society and they contribute to a person's sense of self-worth and affirmation.

The ethics of traditional law in First Nations culture are connected to natural and spiritual elements. We needed to learn about these ethics with increased understanding and appreciation and one way of doing this is by looking to the cultures and the languages of First nations people. Traditional law has its origin, transmission and longevity embedded in cultures. In First Nations culture, law was closely associated with relationships between a person, family and the community which allowed everyone to contribute to the restoration of balance, harmony, and beauty to the entire community in an effective and sustainable manners. The conflict resolution processes were guided by spiritual means nurtured by customs and habits such as sweats, isolation, and the teachings of the elders, parents and grandparents. Traditional law encompassed the most profound beliefs and values of the First Nations people that provide the guidelines for everyday happenings and personal interactions, regardless of how common or simple they may be. For example, it is believed that an incident or situation that occurs naturally or is created by a person or persons affects the other persons, families and the community. If this

incident causes disharmony then the restoration of balance and harmony within that person, family or community must come from within and include all those affected. Any change or rehabilitation of the person, family and/or community requires real personal development and healing. In some First Nations cultures, shaming was an important step in the rehabilitation process. Since others were affected, a healing process for everyone could be addressed in a formal way, i.e., a re-integration of a person(s) into the community would be undertaken in the form of a ceremony with everyone affected being involved.

Traditional laws of various First Nations groups were not based on an adversarial system like the Euro-Canadian model but rather on a dispute resolution system that was closer to the daily lives of the people where everyone understood the system and were able to participate in it. Vincenti (1972) stated the following:

People knew how to behave and there were people in the community who could set things right. People depended on the actions of each other. If actions showed disrespect, they were expected to set things right with the person who had been offended and with his family. Most bad acts could be compensated for by money or property payment to the person harmed.

Traditional ways of solving disputes emphasized repairing the damage caused. People sat down and tried to resolve differences. An admission or acknowledgement of wrongdoing was assumed when people sat down to discuss the case (p. 104).

The Canadian Justice System is largely a reactive system where people commit wrongs that breach a specific code of conduct, are charged, appear in court, usually plead

guilty and then are sentenced. Once the sentence of the individual is complete, the process is finished. This is an individualized process and truth is reached through an adversarial system (Monture-Okanee, 1994).

Ovide Mercredi, National or Grand Chief of the Assembly of First Nations, stated to the Aboriginal Justice Inquiry of Manitoba:

“In law, with law, and through law, Canada has imposed a colonial system of government and justice upon our people without due regard to our treaty and aboriginal rights. We respect law that is fair and just, but we cannot be faulted for denouncing those laws that degrade our humanity and rights as distinct peoples.” (AJI, P.1)

There really is no such thing as an aboriginal notion of justice and in many Aboriginal languages there is no way to say justice. The closest that can be said is ‘Achieving balance’. Balance is required within the individual and within all individual relationships including the relationship with the community. Aboriginal justice is to re-achieve wellness (Monture-Okanee, 1994).

Aboriginal peoples have maintained a desire to be sovereign (or self-governing) both as individuals and collectives. This means that we have not deferred either our individual or collective right(s) to be sovereign (Monture-Okanee, 1994). In Winnipeg at a human rights conference entitled "Unity in Diversity" Clarence J. Dias, president of the International Center for Law in Development, stated:

There is a need to take economic, social, and cultural rights seriously, and there is the need to develop group rights and collective rights and to strike a

balance between such collective rights and individual rights. Only then can secularism, multiculturalism and pluralism halt the slide to savagery epitomized by Bosnia and Rwanda.

A Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (1988) stated in their report that the guiding principal in their current legislation is that the welfare of the child shall be regarded as the first and paramount consideration. They also stated that there need be no inherent conflict between that and the customary preference for the maintenance of children within Hapu. This is also true for the First Nation people in the MKO region of Manitoba.

The inherent subjectivity renders best interests particularly susceptible to the criticism that it legitimizes cultural bias, by allowing decision makers who are generally members of the dominant culture to impose values that may be inconsistent with those of a minority group, such as aboriginal people. Such bias or 'culture tunnel vision' is blamed for the disproportionate number of native children in out-of-home care (Walter & Isenegger, 1986). In the late 1950's, the provincial child welfare schemes were extended to First Nations on reserve which resulted in large number of First Nations children being removed from their natural parents, extended families, communities and culture. The continuous removal of children has also hindered the transmission of First Nations culture and traditions from elders to younger generations, thus threatening the very survival of First Nations (Kline, 1992).

According to Marlene Kline (1994), in *Re C.J.W.S.(1987)*, the court rejected a plan to have a First Nations child returned from his foster care to the home of his Cree

grandmother who lived in Edmonton, where he would have been cared for during the day by his Metis mother who lived across the street. The family advanced the plan on the grounds that it would allow the child to maintain his First Nation identity. The plan was rejected by the court, which characterized the plan as placing the child in a city environment rather than among his people. Although the child would have been with his extended family, the city seemed to the court, by definition, a non-First Nation environment and the urban dwelling mother and grandmother equivalent to non-First Nation caregivers. Marlene Kline interprets the decision of the courts as believing that when a First Nations person moves and lives off-reserve then that person can no longer be seen as belonging to a First Nation culture. In the case above, the child remained in the care of his non-First Nation foster parents.

In another case, *Natural Parent v. Superintendent of Child Welfare*, Marlene Kline (1992) states that the courts passed judgement on a particular case where the child had to be considered as an individual and not a part of a race or culture as this was deemed separate and irrelevant to the child's best interest. In *John v. Superintendent of Child Welfare*, the British Columbia Supreme Court would not accept or recognize that a child will be better off living with relatives or within his culture unless it can be proven otherwise (Kline, 1992). This is just another example of denying First Nation extended family members the chance to take ownership of their problems in child welfare.

First Nations believe the future and the survival of the traditional ways depends on children. When children are removed from their families and communities then the traditional circle of life is broken which leads to the breakdown of families, communities

and ultimately the destruction of native communities and cultures. It is seen as a form of genocide by the First Nations people. Like the Spallumcheen Band Council of British Columbia, First Nations should be given the control, power and responsibility of over their own children (Bull, 1989).

The conclusion we must come to is that the answer does not lie in Canadian law and politics as we know it, but in the power of the Aboriginal people themselves (Monture-Okanee, 1994). First Nations have argued that in First Nations society, the collective rights of the community are the focus; for non First Nations this can also be misleading. It is not a debate between individual versus collective rights; rather the individual's rights and responsibilities exist within and are complimented by the collective rights and responsibilities. In such a context, the collective is recognized as having a communal responsibility for raising of children and for deciding the future of an individual child. The child is never viewed as separate from the family or community and it is within this context that his or her rights and responsibilities are understood.

Project Philosophy

Our entire development process has been premised on particular operating beliefs and values. We have adopted a very definite "learning and development" perspective within our organization, our colleagues, our families and our communities. The central premise we maintained was that our families and communities are capable of living healthy lifestyles, are capable of providing loving nurturing environments for raising children, and are capable of directing and controlling their own lives given the opportunity to define their own futures, to learn, and to interact. This premise (paradigm) went against

the commonly held belief that our people and our communities were not yet ready, or were incapable of making healthy decisions in their own best interest. Paternalistic attitudes have shaped federal and provincial involvement with First Nations since European contact and are still imbedded within the Indian Act.

These limiting beliefs and/or narrow perspectives maybe difficult to overcome when attempting to implement this project. Both our legal system and the child and family service system have extensive histories which have encoded a particular way of doing something because we have always done it that way. It is difficult to challenge existing paradigms and rethink the basic premises of our systems. We have, however, found that our own process of development and acceptance of responsibility for addressing inequities in the child and family service system has had rippling effects through provincial and federal departments.

Likewise, the collaborative nature of this project will require us to work with different systems, organizations and departments. While we all espouse collaborative planning with other agencies, it has been our experience that the differing philosophies or politics of more traditional service providers and community members can negatively affect the ability to develop partnerships. The challenge will be to develop partnerships to more effectively meet the needs of families and communities. The First Nation Family Justice: Mee-Noo-Stah-Tan Mi-Ni-Si-Win program offers a powerful option.

A Comparison of Paradigms

The term paradigm according to Guba (1990), is “a basic set of beliefs that guide action, whether of the everyday garden variety or action taken in connection with

disciplined inquiry” (p. 17). Senge (1990) states that paradigms are the broader mental sets or world views which influence the kinds of frameworks we develop and/or adopt. A paradigm is a concept, often assumed or subconscious, that enables one to see and understand. It is not the thoughts we have, but the framework around which our thoughts are formed. In this sense, our paradigms are the mental tools, mind sets or mental models we use to understand a situation. There are many paradigms that we use in guiding our actions: the adversarial paradigm that guides the legal system, the judgemental paradigm that guides the selection of Olympic winners, and the religious paradigms that guide spiritual and moral life. Our concern here, however, is with those paradigms that guide disciplined inquiry and action in the area of the child and family services and justice system.

Discussing the different paradigms is not as easy as presenting a dichotomy between Euro-Canadian and First Nations thinking. Each community is unique due to the fact that there has been an influence by the Euro-Canadian system on the First Nations communities, hence, the merging of traditional beliefs and Christian principles and beliefs. ✓
Yet while much has been lost, there remains an historical awareness of traditional beliefs and an emerging renewal of traditional practices within many of our communities. The First Nations participants way of viewing the world and their place in it sets them apart from non-First Nations people. The world view was never lost as it remained intact in the languages. This process over the last two years have provided us the opportunity to reflect on our beliefs, values and assumptions. This reflection led to the consciousness raising and acknowledgement about First Nations world views and how this is reflected and

embedded in the languages that shapes our lives. Oral and written language is the medium through which history, culture and world view are transmitted, therefore the best connection to historical roots are First Nations languages. The study of articles, visiting of on-site community based program in justice, the examination of the Canadian Justice system, the exploration of our First Nations language and the internal reflections provided this study with a dichotomy of the Euro-Canadian Justice system and Euro-Canadian Child Welfare system with First Nations culture. Table 1 and 2 illustrated a dichotomy of the differing paradigms on justice and child welfare.

Table 1: Justice

| Euro-Canadian | First Nation |
|--------------------------------|---------------------------------|
| Individual | Individual in relationships |
| Vertical | Horizontal |
| Uses Sanctions | Compassion and understanding |
| focusses on Act | Act is a signal of disharmony |
| Adversarial | Consensus and cooperation |
| Punishment | Health and Wellness |
| Authoritarian | Peacefulness |
| Coercive and persuasion | Encouragement |
| Short Term | Long Term |
| Expert Discussion | Community/Family Members |
| Rights | rights with responsibility |
| Events are static and discrete | Inter-related and ever changing |
| state versus individual | people versus problem |

Table 2: Child Welfare

| Euro-Canadian | First Nations |
|-------------------------------|--|
| Child and Act | Family and relationships |
| Protect child | Health and well-being for the whole family |
| Isolated | Integrated |
| Negative | Positive |
| Removal of child is front end | Removal of child is last resort |

Justice System: Euro-Canadian and First Nations

The emerging of the legal system within the child welfare system further promotes negative communication, lack of cooperation, break down in social/ family relationships, legal delays, increased costs and complete loss of power by families over the lives of their children (Maresca, 1985). ✓

Justice in the Euro-Canadian sense (paradigm) is not the same as justice in First Nations especially the Cree. “Justice” is defined by Black’s Law Dictionary as follows:

1. As a verb: To do justice, to see justice done; to summon someone to do justice.
2. As a noun: Title given to judges of the U.S. and state supreme courts and as well to judges of appellate courts; Proper administration of laws. In Jurisprudence, the constant and perpetual disposition of legal matters or disputes to render every man his due.

“Justice” as defined by the Webster’s dictionary, is any of the following:

1. the quality of being just; righteousness; equitableness, or moral rightness;

2. the moral principle determining just conduct;
3. the administration of deserved punishment or reward;
4. the maintenance or administration of what is just by law.

The Euro-Canadian concept of justice tries to control actions it considers harmful to society, to individuals, to the wrong doers themselves, by interdiction, enforcement or apprehension. The emphasis is on the state punishing the deviant to make that person conform, or to protect other members of society by removing that person from society. The state usually takes over the case of which the person has done wrong to another person or a person's property. The state takes it upon itself to make sure that the person is punished for his deeds. This is usually done through courts where the deviant person hires or is appointed a lawyer to either plead guilty or not guilty and they go through the motions of the court trying to win their case. This is the same process taken in family court where the agency and the parents go through the motions of the court process trying an argument over their livelihood and their child. The outcome is usually a win-lose with the state or agency coming out as the winner of the court case. This usually results from the fact that the individuals being taken to court by the state or agency are usually resource poor while the state and agency has the backing of multimillion resource. The other fact is that by going through the court process: one person usually a judge makes the singular decision about the outcome of the case; only relevant information considered by the judge is entered into evidence; only the persons that were effected directly are considered to be involved in the court process and they are not usually involved in making the final decision. There is no meaningful communication between parties except through their

lawyers. The outcome is that the court process is usually considered for justice to have been served, however, this is usually dependent on whether the judgement (decision) was in the individual's favour or not. The decision does not promote harmony, balance and health & well-being between the two parties in conflict.

For First Nations, the word justice is defined differently from the Euro-Canadian system and the way justice is achieved is also different. First of all, because justice is not translatable into Cree. Justice is defined or rather interpreted as achieving balance, harmony and health & well-being. It is through our language and talking with the elders that we came up with the definition of what justice means for First Nations people. We had to acknowledge that knowing about how a language works is not the same as the ability to speak and understand it under certain circumstances. Through our discussions on justice, it became apparent that when conflict disputes arise, the term most often used is "Mee-Noo-Stah-Tan". The meaning attached to "Mee-Noo-Stah-Tan" is "let's set things right" or to reset an object or situation to its proper path. After examining the term, it became apparent that the root word of this term derives from the word "Mee-Nah-Sin" which means beauty. Further exploration of this root word and its relation to justice, we came up with the following Cree words which can be used to develop an explanation of what is First Nations Justice:

- 1 Mee-Noo-Pu-Niw - something is flowing in its proper path and in harmony or flowing beautifully.
2. Mee-Noo-Yah-Win - a person or thing is in a state of beauty, or goodness. This would be interpreted to mean that the person or thing is healthy.

3. Mee-Nah-Steo - a thing or situation is set in a beautiful way. This would be interpreted to mean that something or situation is balanced.
4. Mi-Ni-Si-Win - this term is used for the word family; a place of beauty or to create beauty. Interpreted to mean “family” was the place of beauty or to create beauty.

For First Nations, the closest thing that would describe justice is working together to achieve balance, harmony and health and well-being for all involved and for the betterment of the First Nations community. First Nations Justice goes beyond the outcome of justice, they also involve consensus, cooperation, teachings, spirituality and lifestyle planning. The process includes the voluntary participation of people affected whether directly or indirectly and all are considered equal. The reason for this is that the individual is not viewed in isolation, but is understood within a complex set of relationships and contexts. Things are perceived not so much as separate “things in themselves,” but in terms of their activities, with special emphasis placed upon their constantly changing relationships with all the other things that surround them (Ross, 1994, p. 39). The process does not only provide others to be involved in reaching the consensus about how to restore good feeling and relations among everyone but it also provides a safe and supportive group environment for the individuals directly impacted. This process allows for the people involved to try to resolve the problem rather than trying to blame and punish one person. The act of wrong doing by an individual is a sign of disharmony and it is the responsibility of the family and community to help in restoring good faith and health to the family and community. The resolution of the problem is approached with compassion and understanding so any activities to be completed are done with sincerity and commitment.

Child Welfare: Euro-Canadian and First Nations

The field of social work has always been plagued with contradictions in practice. The ideology of social work and the practical realities under which social workers function are often inconsistent due to the involuntarily nature of the entry of many families into the system. “While social workers see themselves as advocates for clients, facilitators of client-system interaction, and agents of client self-determination, the reality is that many workers operate in involuntary settings with clients who have no choice but to cooperate. As a result, social workers are often seen as agents of authority rather than helpers” (Mayer, 1987, p.25). The involuntary nature of client participation creates both ethical and therapeutic dilemmas. There are several aspects of traditional social work practice that inhibit growth and development in children and families.

The system looks at the act and the child rather than looking at the child, family and the relationships that exist. The case specific and act specific focus of traditional social work practice results in negative labelling. Parents felt they were “bad parents” and children felt that they were “dysfunctional”. Child and Family Services within a First Nations context must adopt a contextual perspective for service delivery.

A categorical approach to service delivery results in children being labelled and defined according to their perceived dysfunctions. The negative labelling of First Nations families and children has done little to increase the health and wellness of First Nations communities. First Nations families require an holistic approach to services based on community defined standards and models of practice.

First Nations languages are oriented towards the positive: they are empowering.

The focus is always on the desired positive outcome rather than the discontinuation of something negative. Traditionally, the field has focussed on the five percent of negative behaviour in any individual child, with little notice being paid to the 95 percent of positive developmental behaviour (Thomas, 1994). This has been particularly true for First Nations communities where promotional and empowerment programs have been underutilized and the social difficulties highlighted. Reducing deficits does not necessarily lead to enhanced capacities and assets. Thus First Nations communities and families need programs that emphasize their strength and wisdom.

Euro-Canadian child and family services systems and their interventions often resulted in the child being removed from the family and placed in care of an agency and put in a foster home. Removal of a child from the home often results in reduced self-esteem and confidence in the child and family and disempowerment of the parents. Keeping the family intact will ensure that parental responsibilities are retained. Family interventions allow for inter-generational understanding to grow. If the entire family has an opportunity to learn and develop as individuals and as a family unit, sustainable development is more likely.

Added to this already complex and contradictory system, another disempowering layer is that of legal litigation. While the child welfare system is often seen as separate from our justice system, the two overlap in many areas. It is our legislation that defines the parameters within which both service systems will operate, and it is through our legal system where all child protection cases are handled. Therefore, the philosophical basis of both our legislation system and legal system fundamentally influences child and family

services practice. Patricia Monture-Okanee (1994) sees the child welfare system as being on a similar continuum with the criminal justice system. Both systems remove citizens from their communities and families, which have a devastating effect on the cultural and spiritual growth of the individual. She states that “both the child welfare system and the criminal justice system are exercised through the use of punishment, force and coercion” (p. 5).

Conclusion

Justice initiatives are usually housed at either the state or community level but more so at the state level. Justice initiatives should be housed at the family level because in Cree, our understanding is that the Mi-Ni-Si-Win (family) is the place to create beauty. If we are to aim our efforts at creating Mee-Noo-Ya-Win (state of beauty or goodness; health) and Mee-Noo-Pu-Ni-Win (something that will flow in its proper path and in harmony or flowing beautifully) then our efforts must be directed at the family level.

Today, the child welfare field is dominated by child protection, is overwhelmed by escalating demands, a critical shortage of resources, and high public dissatisfaction. Despite the enormous investment of funds in the system, the incidence of abuse and neglect show no signs of diminishing. We have reached a point where we must ask the question, ‘what have we learned from this experience?’ We must challenge the notion that protective services under the control of bureaucracies actually reduce the risk of child maltreatment. The bureaucratic approach defines the unit of services delivery to be a case, not a child. By controlling, the inputs and outputs, just like a machine, certain predictable results are forecasted including overall cost to service children in care. As a result,

extreme pressure has been placed on the system to perform in the short term, at the expense of the long term, with many children hurt as a result.

For lasting changes to occur ownership and responsibility of service delivery must rest with First Nations families and communities themselves. In the current system, voices of those most affected are quieted. The reason for this is the power imbalances that exists within the system with the potential for abuse and inequities between the agency and families. The power structures that underlie traditional approaches to social work practice often work against collaborative decision-making with families. Even when social workers try to share decision-making power with families the power and authority attached to the role of social worker erode this attempt. Decision-making structures need to be designed to allow for the power sharing. Given the above context, this cannot happen in the current child welfare system but outside as an independent system within the community.

The program should occur prior to any judicial proceedings, and employ cooperative consensus-making methods. Should a consensus fail to be made and because of the merging and influence of the Euro-Canadian System with First Nations, the option should exist within each program to access the formal judicial system. Many people still want their rights protected and want to settle their disputes through arbitration therefore the model must recognize and provide that option.

Chapter Five

First Nations Family Justice: Mee-noo-stah-tan Mi-ni-si-win Program

We will begin our discussion of the program by highlighting the program beliefs from which the program goals were drawn, and what we have identified as the potential outcomes of the program.

Belief Statements

The Mee-noo-stah-tan Mi-ni-si-win program holds the following beliefs as fundamental to its success.

1. First Nation children have the right to safety, security and healthy stimulation to grow into healthy adulthood.
2. First Nation families have the capacity and capability to provide healthy and nurturing environments for their children.
3. First Nation families have the inherent right and responsibility to provide for the best interest of their children and families.
4. The family unit is the entry point for regaining balance, harmony and health ("justice") for a child, family and community.
5. Wisdom lies within each one of us and with support and guidance we can stay on the right path to health and wellness.
6. We must assert the recognition of our unique and special collective rights as distinct people to develop services that are effective, community based, community determined, community specific and culturally appropriate to better meet the needs of First Nation people.

Therefore the vision of the First Nation Family Justice: Mee-noo-stah-tan Mi-ni-si-win Program is to put systems in place in First Nation communities that facilitate health and well-being and promote the 'best interest' of children within the context of families, communities and culture. The mission of the First Nation Family Justice: Mee-noo-stah-tan Mi-ni-si-win Program is to have empowerment at the family and community level.

Program Goals

The Mee-noo-stah-tan Mi-ni-si-win program will aim to achieve the following goals:

1. Establish a process that will better meet the 'best interests' of First Nation children and families. 'Best Interests' are best met within the family and community.
2. Establish a process that acknowledges and legitimizes the strength, wisdom, and capabilities of First Nation peoples.
3. Strive to create equitable, just scenarios for First Nation families within the Child and Family Services system.
4. Create a process that assists in building on the strengths of First Nation families.
5. Start from a consensual and cooperative bases for addressing disputes within the Child and Family Services field.
6. Create a program that emphasizes relationships and the restoring of harmony and balance to families and communities -- which lead to an increased state of health and wellness.
7. Create a program that has the ability to break the community abuse cycle.
8. Allow for First Nation communities to have direct input and control into the

systems that impact the lives of families.

9. Establish a process for dealing with First Nation Child and Family Service cases outside the Provincial Court system thus increasing just resolutions, speeding up process times, and freeing up dollars.

First Nations Language

In trying to clarify our understanding of justice and identify key components of the program, we chose to look to our language for answers. We explored the meanings embedded within the Cree language, and reflected upon the world view that is suggested by the language. We believe that our language is shaped by our perspectives and world view, and likewise, our perspectives are reinforced through the use of language. It is our understanding of the Cree language and First Nation world view that was used to inform our thinking around the linking of health and justice with individuals, families and communities. The following Cree words have been chosen as the cornerstones to describing the present justice initiative:

1. Mee-noo-stah-tan - Let's set things right - to reset an object or situation to its proper path or state.
2. Mi-noo-puh-niw - it is in harmony - something is in harmony and flowing on its proper path.
3. Mi-nah-sin - means beautiful or good - in a state of beauty or goodness.
4. Mi-nah-yah-win - derivative of mi-nah-sin - this word is now used to refer to the well-being of an individual or that a situation is good; healthy or in a state of good health.

5. In-ni-nu - human being
6. In-ni-see-si-win - wisdom - its connection with in-ni-nu (human being) implies wisdom lies within each individual
7. Ka-na-wa-pa-mi-soo Pi-ta-ma - Look at yourself first - introspection
8. Dabwe - say things right. There is no word for the absolute truth. This word implies to speak as right as you can about a particular subject, what you know to be true to you.
9. Mi-ni-si-win - Family - to create beauty or place of beauty. This suggests that the family was seen as the place of beauty or the place to create beauty.
10. Sa-kee-hee-we-win - the principle of love
11. Ki-ste-ni-ta-ko-si-win - Respect
12. Ki-se-wa-ti-se-win - Caring
13. O-wah-koo-i-tee-win: All my relations
14. O-to-te-mi-to-win: Community or social grouping

Program Model

By reflecting on the Cree language to help inform First Nation world view, and in consultation with our Elders and Chiefs, our understanding of justice looks like the following:

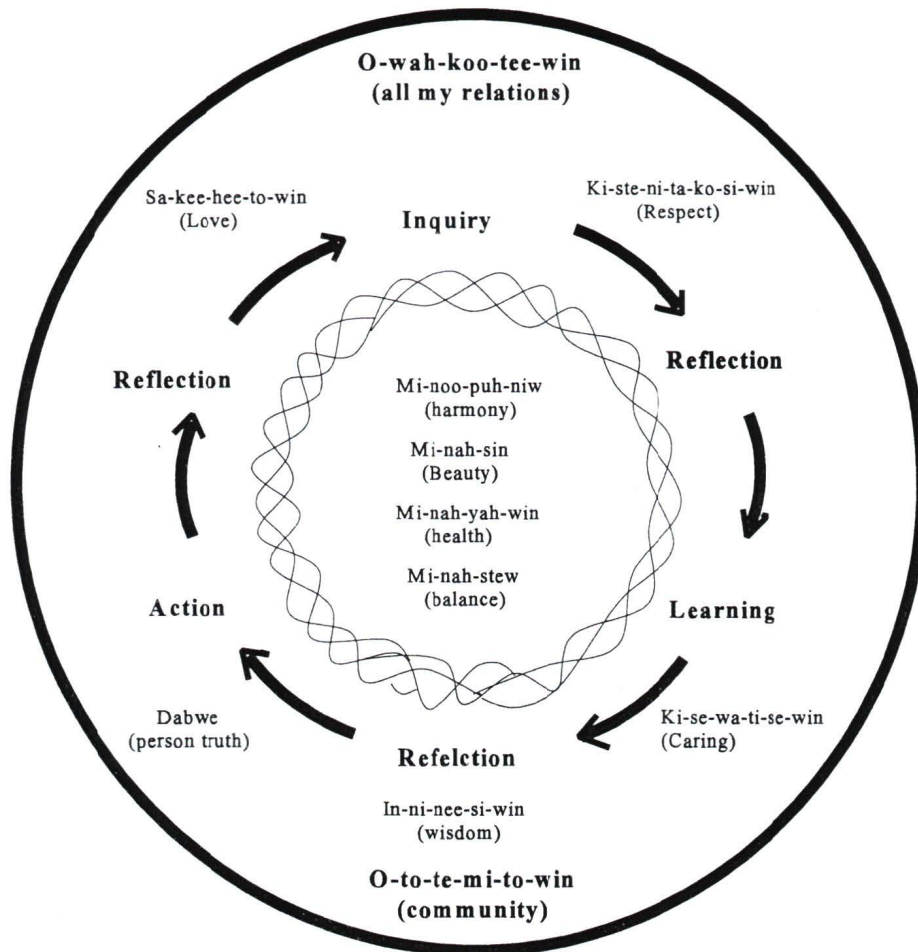


Figure 1: Mee-noo-stah-tan Mi-ni-si-win Program Framework

Mee-noo-stah-tan (The Process)

The circle is an attempt to capture the process inherent in the Mee-noo-stah-tan Mi-ni-si-win Program for restoring harmony, health, and beauty (the outcomes). It represents the gathering of the individual, family and community (Ka-was-ka-na-pi-na-ni-wak). The three interwoven strands that make up the circle represent the three levels of cleansing or healing that take place: the mind, body, and spirit. For our purposes the

strands also represent the inter-relationship between the individual, family and community. While individual strands can stretch and break under pressure, woven together they become very strong.

Justice for us is a process of collectively "setting things right" that is used to achieve the outcomes of mi-noo-puh-niw (harmony), min-ah-sin (beauty), and mi-na-yaw (health). The process begins with ka-na-wa-pa-mi-soo pi-ta-ma (introspection) as we must look at ourselves first, for wisdom lies within each of us. The process is carried out in respect for "dabwe". Each individual will have their own understanding of the truth. It is understood that the family "mi-ni-si-win" is the place of beauty and where beauty is created. Therefore, if the outcome is to achieve mi-nah-sin (a state of beauty), the process must be grounded in the family. Justice and health are intrinsically linked within our language: when "things have been set right" than a "state of beauty is achieved". The process must be guided by sa-kee-hee-win (love), ki-sten-ta-ko-si-win (respect), and ki-se-wa-ti-se-win (caring). At all times we remember our connections to our o-wah-koo-i-tee-win (all my relations) and o-totem-it-win (community), as our actions effect us all.

Program Components



Figure 2: First Nation Mee-noo-stah-tan Mi-ni-si-win Program

Mee-Noo-Stah-Tan Component

As suggested earlier in this chapter, Mee-noo-stah-tan means "let's all set it right"

and refers to a process of restoring mi-noo-puh-niw (harmony), mi-nah-sin (a state of beauty), and mi-nah-yaw-win (health). The Mee-noo-stah-tan component of the program is seen as the first step to resolving family difficulties. The Magistrate component augments mee-noo-stah-tan and will be discussed later in this chapter.

We are somewhat reluctant to outline all of the processes and procedures that will be involved in implementing this model as, it is only through consultation with each First Nation community that the real implementation framework will be developed. Below I discuss structural topics and address some of the commonly asked questions regarding program components, issues, benefits and concerns.

Program Structure

The program structure of the Mee-noo-stah-tan Mi-ni-si-win Program is community based, community controlled, community specific and community owned. The program is comprised of an O-kwes-ki-mo-wew and a community Magistrate.

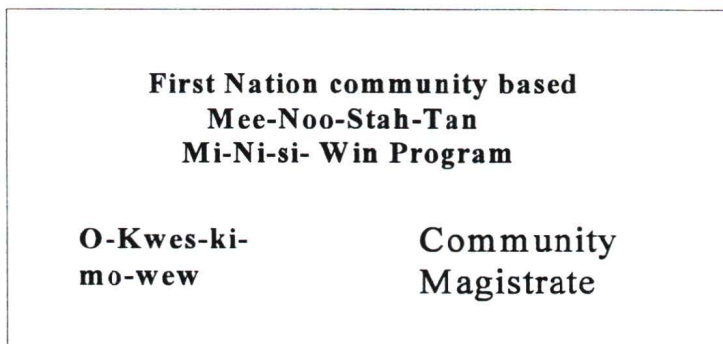


Figure 3: Mee-Noo-Stah-Tan Mi-Ni-Si-Win Program Structure.

We envision that the First Nation Mee-noo-stah-tan Mi-ni-si-win Program will fall under the direction of the Band, therefore, all employees of the program will be hired by the Band. The parameters of the Child and Family Services Act allow for Awasis Agency to utilize this program for resolving situations experienced by families. Specifically, the Child and Family Services Act states:

Section 18.4(1) where an agency receives information that causes the agency to suspect that a child is in need of protection, the agency shall immediately investigate the matter and where, upon investigation, the agency concludes that the child is in need of protection, the agency shall take such further steps as are required by this act **or** are prescribed by regulation **or** as the agency considers necessary for protection of the child.

Section 11(1) Assistance to Community Groups. Any interested community group or individual may apply to an agency for assistance in resolving community problems which are affecting the ability of families to care adequately for their children.

We see the structure flowing this way: A referral comes to the Mee-noo-stah-tan Mi-ni-si-win program. The family engages in Mee-noo-stah-tan with the help of the Okwes-ki-me-wew. A resolution may be met that does not require the engagement of other support services. Or agencies such as Awasis Agency may be brought in to assist the family. If a resolution can not be achieved and a violation of the Child and Family Services Act has occurred, the family has the option of going through the Magistrate Program first. If no resolution can be reached the family will be referred on to the

provincial court system. Or the family may choose to bypass the Magistrate program and go directly to the provincial court system to have their case heard. Figure 4 shows another way to think about the process.

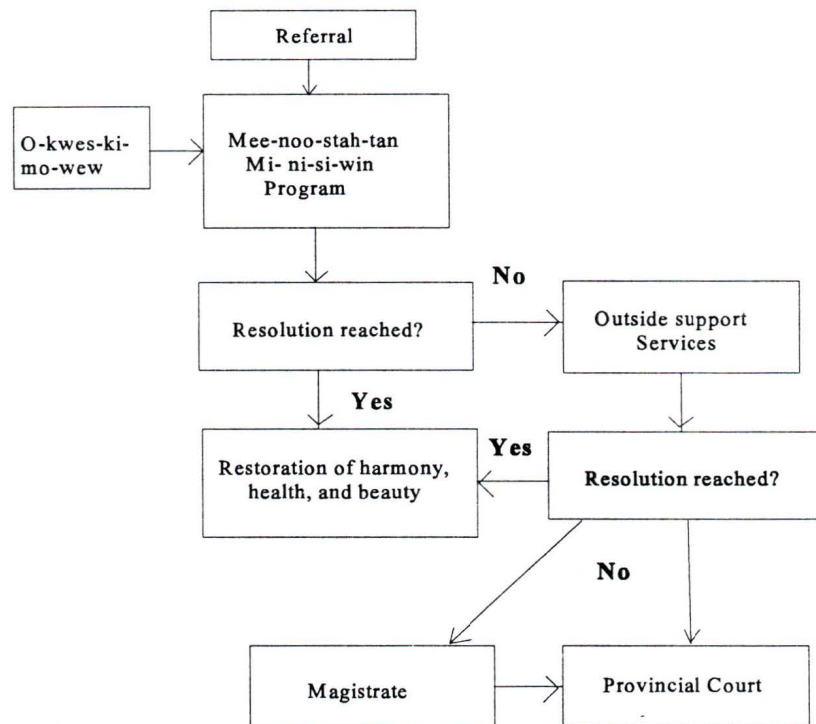


Figure 4: An Example of the Mee-noo-stah-tan Mi-ni-si-win Process in a Community.

Appropriate Use of the Mee-noo-stah-tan Component

First and foremost, mee-noo-stah-tan must be a voluntary process. Families can not be forced to participate in mee-noo-stah-tan sessions, rather they must make an informed decision to participate, believing that, given the choices, mee-noo-stah-tan is a preferred way of addressing family concerns. The family may choose to opt out of mee-noo-stah-tan at any point in time and be then referred to either the magistrate program or provincial court proceedings. This program is appropriate for families who are willing to

enter into discussions regarding what is in the best interest of their children and the family. They must be willing to seriously look at the role they played in the present difficulty and accept responsibility for their actions.

Any Child and Family Services case where a family file has been opened, or is deemed to be necessary, may be appropriate for Mee-noo-stah-tan. In addition, ward files, where the immediate concerns regarding child protection issues have been addressed, may be appropriate for mee-noo-stah-tan.

There are some situations where Mee-noo-stah-tan cannot be used. If a child is being physically or sexually abused, the safety and protection of the child must be the first concern. If the safety of the child has been ensured and/or the abuse is not ongoing and the family is working hard to bring themselves back together, than mee-noo-stah-tan can work. Mee-noo-stah-tan can only be used when the abuser is willing to take responsibility for their past behaviours. This program will also not be appropriate for any cases that fall under the jurisdiction of the Court of Queens Bench.

Facilitating the Process of Mee-noo-stah-tan: The O-kwes-ki-me-wew

It is suggested that each community employ two O-kwes-ki-me-wew ("headman" or person who speaks), one female and one male. This will allow for families to choose whether they wish to engage in joint facilitation sessions with both the O-kwes-ki-me-wew or engage in sessions with one or the two O-kwes-ki-me-we-wak. Having both a male and female ensures a gender balance which can be very useful in joint facilitation sessions. The O-kwes-ki-me-wew must remain impartial in the mee-noo-stah-tan process and should not be personally involved with any of the parties involved. The O-kwes-ki-me-wew

would be a person from the community who knows the people and speaks the language.

If an appropriate O-kwes-ki-me-wew can not be found within any one specific First Nation community, than a another O-kwes-ki-me-wew can be requested from another First Nation community. The role of the O-kwes-ki-me-wew is not to "solve a problem", rather, they help facilitate understanding and discussion that will lead to a resolution. The O-kwes-ki-me-wew has no power to force participants to accept any one particular solution.

Role of the O-kwes-ki-me-wew

The emphasis adopted by anyone who is the O-kwes-ki-me-wew will be influenced by personality, style, and/or specific circumstances. An O-kwes-ki-me-wew may be involved in any or all of the roles mentioned below.

1. O-kwes-ki-me-wew helps facilitate communication between the participants.
2. O-kwes-ki-me-wew shares the benefits of using conciliation with participants.
3. O-kwes-ki-me-wew needs to ensure that the process is being followed. The process serves as a map and guide for the participants and the mediator. Participants need to know what progress is and when it occurs. Acknowledging progress encourages the participants to continue moving forward.
4. People want to have their viewpoints appreciated, feelings understood, and their conflicts validated. People choose the mee-noo-stah-tan process to meet these needs.
5. Participants need others to know that there is a basis for their feelings, statements and behaviours. O-kwes-ki-me-wew play a major role in de-escalating the conflict by validating the participants issues and feelings.

6. People will often avoid difficult, embarrassing, or delicate issues unless the 0-kwes-ki-me-wew gives the O.K. For this reason 0-kwes-ki-me-wew often must be permission givers.
7. 0-kwes-ki-me-wew sometimes must explore hunches suspicions, vague statements, values and difficult issues to facilitate full conflict expression and resolution.
8. 0-kwes-ki-me-wew can help participants to take advantage of valuable learning experiences during the sessions.
9. 0-kwes-ki-me-wew may help participants understand their situation in a way that is new, more helpful and manageable.
10. 0-kwes-ki-me-wew may perform a valuable function for participants in translating words, feelings, ideas and meanings.
11. 0-kwes-ki-me-wew need to test the stated resolution agreements with people's ability to complete them.
12. 0-kwes-ki-me-wew must ensure that participants be protected from abuse such as name calling, threats and intimidations.
13. 0-kwes-ki-me-wew must establish the limits and boundaries of the process and people's behaviours.

Referral Process

Cases referred to the Mee-noo-stah-tan Mi-ni-su-win program will not be pre-screened by an external individual or program. It will up to the family alone to make an informed choice to participate in the program, and to determine which component they which to access: Mee-noo-stah-tan or the Magistrate component. A referral can be made

to the program from the family, social worker, school, or community professional as long as the family is in agreement.

The referral will first be reviewed by administrative staff who will facilitate an information sharing session with the family members involved to ensure that they understand the program and are willing to engage in the process. In addition, demographic and background information will be gathered at this time.

An interview with the O-kwes-it-mi-wew is scheduled to discuss what the two component of the program look like: Mee-noo-stah-tan component and the magistrate component. The O-kwes-ki-me-wew will also discuss who the family wants to be present during the sessions, and any questions the family may have regarding the process. The O-kwes-ki-me-win will ensure that the family understands their role, responsibilities and rights within the process. The family may at this time decide that they are not readily or willing to participate in the mee-noo-stah-tan component, at which time the O-kwes-ki-me-wew will discuss with the family the options available for addressing their family concerns. The mee-noo-stah-tan administrative staff will be responsible for contacting participants, and setting location and time for the family sessions to take place.

Mee-noo-stah-tan Sessions

Rules and parameters of the session are set by the O-kwes-ki-me-wew in conjunction with the participants. Length of sessions, location, time, protocols regarding participating etc, will be agreed upon during the first session. The O-kwes-ki-me-win will guide the process and will determine, through a collaborative method, the topics to be discussed, when it is time to explore topics deeper, and when it is time to put closure on

discussions and generate possible options for resolving conflict.

Magistrate Sessions

The community magistrate will control the process undertaken. Unlike mee-noo-stah-tan, the magistrate will have more of an arbitrators role in resolving disputes. This role is further discussed in the section on First Nations Magistrates.

Closure

When an Agreement is reached with the Mee-noo-stah-tan component:

1. O-kwes-ki-me-wew will document the resolution and distribute to participants;
2. Support services will be advised of their involvement if they were not present during the family sessions;
3. Follow-up case monitoring will be done by the O-kwes-ki-me-wew

When an Agreement cannot be reached:

1. Counselling or monitoring role is assigned to social worker
2. If the Child and Family Services Act has been breached, the family has the choice of accessing either the Community Magistrate Component of the program or having their case heard in Provincial Court

First Nations Magistrates

Although extensive judicial powers are granted to Justices of the Peace and Magistrates under the federal and provincial statutes, in fact, many of these powers are rarely or actually exercised by them. The intention in Manitoba seems to be that Justice of the Peace and Magistrates exercise mostly a process function and will not usually be called upon to adjudicate summary conviction matters, consider bail applications or issue search

warrants. Those functions are carried out by some Magistrates, but not all. Aside from a handful of Magistrates who have been designated as hearing officers and who routinely preside at trials, prohibition hearings and the like in Winnipeg, many Magistrates in Manitoba exercise a narrower jurisdiction than that granted under statute. Their official activities are more likely confined to sentencing, hearing bail applications and issuing process. For the most part, these reductions in the authority actually exercised by Justices of the Peace and Magistrates have been accomplished through directives from court administrators setting out powers which may not be exercised and, more recently, letters from the Chief Judge setting out those powers which the individual may exercise.

Presently, Magistrates exist in many communities who have the power to rule over minor infractions. They are not involved in any Child and Family Services cases. We have been exploring the possibility of expanding the present Magistrate's role to incorporate Child and Family Services jurisdiction. A local magistrate would be a person from the community who knows the people and speaks the language. This person would have the legal authority to decide Child and Family Services matters. Together with the Mediation program, this would ensure that Child and Family Services decisions are made in the community of the family involved, with all members of the family having input, and community members supporting the decisions.

For us to have Magistrates in our communities, the federal government will have to recognize their power. Presently, Canadian law does not recognize any inherent right for First Nations to exert legal authority. Major changes would have to be made in our legal system to allow local Magistrates to begin ruling on Child and Family Service cases.

The Magistrates would fall under the umbrella of the Mee-noo-stah-tan Min-si-su-win Program. Under the existing Magistrates program, the Magistrates can be given the mandate from the Attorney General's Office to adjudicate child protection cases that are uncontested, adjourned and/or to exercise section 34 of the Child and Family Services Act.

The statutory authority granted all Magistrates and Justices of the Peace, by virtue of their respective appointments, are more specific grants of authority. These are sometimes made to individual judicial officers which allow them to exercise a particular jurisdiction not otherwise theirs.

Potential Magistrates

For our proposed initiative, a Magistrate would be a person from the community who knows and speaks a First Nations' language of the region. In the initial stages we could set up a regional Magistrate that will be trained in the legal system and in the social services area. This person will in turn train Community Magistrates to take over the legal authority and powers to decide child and family services matters.

Appointment and Renumeration

Appointment is by the Lieutenant Governor in Council (that is, the Provincial Cabinet), may be full time, with jurisdiction extending throughout the province (the provincial Court Act, C.C.S.M.c.C275, s.40.). Magistrates may be paid a fee, salary or other remuneration prescribed by the Lieutenant governor in Council or they may be appointed civil servants, with remuneration and expenses as provided in the Civil Service Act.

Proposed Powers

Community Magistrates be given the powers to adjudicate the following:

- 1) Uncontested child protection cases with the exception of permanent orders.
- 2) Adjournments of child protection cases.
- 3) Section 34 of the Child and Family Services Act.

First Nations Magistrates Policies and Procedures

The policy and procedures of accessing Magistrates to hear the child protection case will be the same as the procedures for filing in court and having the case heard by a Judge.

Framework for Implementation

In order to create a context to examine implementation frameworks, I will contrast the proposed development with the present-day system.

Present Involvement of Provincial Court System

Presently, as per the Awasis intake system, all referrals made to the agency are recorded and documented by the intake worker. An investigation must be completed by an assigned case manager within 48 hours to determine if a case file is to be opened or not. If the case manager determines that a file must be opened, then he/she has the option to open a family file exclusively or a ward (child) file in conjunction with a family file (a family file is automatically opened when a ward file is). A family file is opened when the family is determined to be in need of family support services. This type of file does not require judicial intervention by a provincial judge. Instead a family support agreement is signed with the family outlining the support services that will be made available. The Family

Support Coordinator reviews and signs each support agreement to ensure that appropriate support is being provided to the family.

If a ward file is opened then there is reason to believe that one or more children are in need of alternative living arrangements and/or protection. If a ward file is opened, a Petition and Notice of Hearing must be filed before a Provincial Judge within 4 days outlining the agency's rationale for intervention with the family. According to provincial regulations, the case must be heard before a judge within 30 days. If the case is contested, a pre-trial is set, and if further contested, a trial date is set to hear the case.

Proposed First Nation Mee-noo-stah-tan Program

The following process and framework will be presented to the communities to consider as a foundation for the development of their conflict resolution model.

Processing a Referral by a Social Worker

Once it is determined that a case file must be opened, the social worker shall open a family service file or a ward case file along with a family service file.

If the case requires service other than for monitoring reasons then the case will be referred to the Mee-noo-stah-tan Min-is-su-win program. There are two outcomes:

- 1) Either at the initial interview with the O-kwes-ki-me-wew or at the end of mee-noo-stah-tan, the case can be referred back to social worker for proceeding under the judicial process or through agreements under Service to Families between worker and family.
- 2) The case goes through mee-noo-stah-tan where conflict is resolved and closed or social worker can use agency agreements to support the decision reached.

- 3) If the Mee-noo-stah-tan process or agency agreements are not appropriate, and the case is uncontested, adjourned or section 34 of the CFS Act needs to be exercised, then the family could opt for a hearing by the Community First Nation Magistrate.
- 4) If the case is contested or the hearing is for a permanent order of guardianship, than the case could be heard by a Provincial Judge.
- 5) If the case cannot be settled at a hearing than the family has the option of Pre-Trial or Trial by Provincial Judge.

Program Logic Model

The program logic illustrated on Table 3 shows four major program components: community education, staff/training, Mee-noo-stah-tan and Magistrate. Community education is about promoting and advertising the program and model for the purpose of increasing the awareness for community members to learn about and be informed about the First Nation Family Justice program. This will enable and empower community members to make informed choices regarding action to resolve problematic family issues. The second component is staffing and training. This is to recruit and train staff so that they will be able coordinate and process family conflict resolution. Training must be provided in the areas of facilitation, justice, child welfare and First Nations culture. The third is the Mee-noo-stah-tan component. This component is provided for the purpose of increasing, facilitating, enhancing the health and well-being of First Nation children, families and communities. It is a natural process being utilized to promote the best interest of the children within the context of their families, communities and culture. The

magistrate component is a legal and community based system and filled by a First Nations community member so that it will lessen dependability on outside legal resources and increase the community sense of ownership, accountability and responsibility over child and family matters.

Table 3: Program Logic Model

| Program Components | Implementation Objectives | Inputs/Elements | Program Outputs | Short-Term Outcome/Objectives | Short term Outcome indicators | Long Term Outcome/Objectives indicators |
|---------------------|--|--|---|---|---|---|
| Community Education | To support the development and delivery of Alternative Conflict Resolution (Mee-Noo-Stah-Tan Mi-Ni-Si-Win) to interested Community members. To engage in program promotion activities at the community level. | Program Staff Chief and Council Reference and Program material | Number of program promotion activities carried Number and type of information packages developed Number and type of media used to promote program | To increase the awareness for community members to learn about and be informed about the First Nation Family Justice program. To enable and empower community members to make informed choices regarding action to resolve problematic family issues. | An increase in the number of community members who feel they have obtained an increase understanding about the program and make enquiries about how to go about making referrals. | |
| Staff/Training | To design and deliver content training on Provincial and CFS agency protocols, policies and standards regarding child safety, abuse, neglect and abandonment. to staff of the Mee-noo-stah-tan Mi-ni-si-win Program. To design and deliver process (mediation) training for O-Kwes-ki-Mo-We-Wak and Magistrates that is culturally and community appropriate. To design and deliver program implementation training for O-Kwes-Ki-Mo-We-Wak and Magistrates on Mee-Noo-Stah-Tan Mi-Ni-Si-Win philosophies, protocols, policies and standards. To design and deliver training for O-Kwes-Ki-Mo-We-Wak and Magistrates on judicial protocols, policies and standards. | Program Staff Trainers Educational Materials Provincial Reference materials Policy/Program Manual Agency policies Judicial policies Mediation training Materials about First Nations culture and community philosophy. Intake and Screening Procedures. | Type of training sessions delivered Number of participants List of participants training provided to. Number of days/hours of training offered. Cost of training delivery Types of materials developed such as copies of up-to-date program policies and protocols in CFS and judicial system per community. Completed training evaluation forms. | To ensure that all First Nation Family Justice program staff are trained in understanding and addressing child abuse, neglect, abandonment and other related issues. To ensure that all First Nation Family Justice program staff are trained in judicial and CFS policies and protocols related to child safety. To ensure that all First Nation Family Justice program staff are trained in how to coordinate and process family conflict resolution. | Program staff trained in all areas of child safety (abuse, neglect & abandonment), CFS policies and protocols, family communication and judicial protocols. Program staff's increased use of educational materials with families. Program staff's sense of confidence in facilitating and supporting families through the process of conflict resolution. | |

| Program Components | Implementation Objectives | Inputs/Elements | Program Outputs | Short-Term Outcome/Objectives | Short term Outcome indicators | Long Term Outcome/Objectives indicators |
|--------------------|---|---|--|--|---|---|
| Mee-Noo-stah-Tan | <p>To facilitate and deliver the First Nation Family Justice: Mee-Noo-Stah-Tan program</p> <p>To have a community based model for conflict resolution in child and family matters</p> <p>To develop and implement an intake system that is standardized and consistent, and will provide a framework for responding to requests and referrals for service.</p> <p>To develop and implement a case monitoring system for use with families involved in the Mee-noo-stah-tan Program.</p> | <p>Program Staff</p> <p>O-Kwes-Ki-Moo-Wew</p> <p>Family participants</p> <p>Other Resources</p> <p>Significant others</p> <p>Referral Source</p> <p>Client</p> <p>Intake Policy manual</p> <p>Case monitoring/management policies</p> <p>Case evaluation format</p> <p>Elders</p> | <p>Number of referrals</p> <p>Type of Cases referred</p> <p>Number of cases screened, opened and closed at intake.</p> <p>Number of cases involved in Mee-noo-stah-tan process.</p> <p>Number of cases closed through Mee-noo-stah-tan process.</p> <p>Number of cases referred to sources outside of Mee-noo-stah-tan program (i.e. Magistrate or provincial judicial system).</p> <p>Number of participants</p> <p>Number of sessions</p> <p>Number of days/hours of sessions.</p> <p>Number of completed process evaluations.</p> | <p>To ensure that the conflict resolution is non-adversarial.</p> <p>To ensure all participants work in a cooperative and consensus manner in reaching a conflict resolution.</p> <p>To ensure a process is undertaken to promote health and well-being.</p> <p>To ensure that the child's best interest is addressed by all participants and mechanisms are put in place for accountability.</p> <p>To ensure that responsibility of child's safety is owned and accepted by all participants.</p> <p>To ensure that all referrals dealt with in a standardized and consistent manner.</p> <p>To ensure that all referrals are notified and made aware of choices and options.</p> <p>To ensure that all referrals can make an informed decision in the type of process needed to be taken.</p> | <p>An increased number of referrals who feel they have obtained an understanding of the processes available to them.</p> <p>The number of referrals who choose and feel that the First Nation Family Justice program would be appropriate to use as a conflict resolution for their issues.</p> <p>An increased the number of children and families receiving service.</p> <p>An increased number of children maintained at home through the use of the First Nation Family Justice program and support from significant others involved in the process.</p> <p>An increased number of decisions made are based on consensus and cooperation.</p> | <p>To increase, facilitate, enhance the health and well-being of First Nation children, families and communities.</p> <p>To have systems in place in First Nation communities that facilitate health and well-being and promote the best interest of the children within the context of their families, communities and culture.</p> <p>To have empowerment at the family and community level.</p> <p>Indicators of success will be determined by the number of child protection cases that are serviced each year through the judicial system.</p> |
| Magistrate | <p>To have a community based system in adjudicating matters in child and family services.</p> <p>To develop and implement a consistent referral and case management system.</p> | <p>Magistrate</p> <p>Social worker</p> <p>Family participants</p> <p>Referral and case management policies and forms</p> | <p>Number of cases processed.</p> <p>Type of Cases processed.</p> | <p>To lessen dependability on outside resources for conflict resolution.</p> <p>To increase the community sense of ownership, accountability and responsibility over child and family matters.</p> | <p>A decrease in the number of cases having to go through court hearings by a judge.</p> <p>An increase in the number of people taking responsibility over child and family matters.</p> | <p>Justice system in Family conflict resolution is:</p> <ol style="list-style-type: none"> 1. Community owned 2. Community specific 3. Community operated 4. Community accountability 5. Community determined 6. Community based |

Conclusion

“Best interest” of the child has been labelled as being too vague and is usually subjective to one person’s beliefs and values about child and family matters. This is true and all too often in our communities, it is usually the judges’ beliefs and values about child and family matters that prevail over that of the child’s parents, family and community. To truly promote the best interest of children, it must be done in a cooperative manner with consensus and within the context of the child’s family, community and culture. We cannot continue to view situations of psycho-social risks as act specific and individually focussed. We needed to look at how we affected families and communities when we intervened in their lives. Are we part of the problem or the solution? More often we intervened in families lives with good intentions and solutions to their problems, however, we were usually viewed as intruders and created more stress and thus, became part of the problem. Once we realized our role in the dysfunction of the families, we wanted to create a new system for helping First Nations families. Again we realized that we did not have the solutions and that the answers lay in the families, communities and cultures that we worked with. We had to return to community values and not be restricted by the values of Canadian law. We had to create a natural system with which everyone was comfortable - one that is community based, community specific, community controlled, and community owned. There was a great deal of room within the existing provincial and federal legislative systems for positive change and development.

We had to be innovative and reconnect with our traditional teachings and Elders and adopted a learning stance to the problems and barriers which plagued our families and

communities. We believed that First Nations were capable of creating transformative healthy resolution of the strife plaguing so many of our families and communities. Mee-noo-stah-tan Mi-ni-si-win program can help First Nations families and communities regain ownership and power over their lives.

The research process was beneficial to me because I learned a lot about myself as a First Nations person and as a Child and Family Services agent. As a result of the knowledge created by the interaction of the participants in this research process, I felt enlightened about how and why I related to people, organizations and government. I understand the conflicts and ethical dilemmas that existed within me as a First Nations Child and Family Services Practitioner and I know how to deal with them. I now feel that I can do a better job in helping and interacting with families. The research process has also helped me to get to know and speak the Cree language a lot better because I had to translate and interpret for the elders that participated in this research.

References

- Adler, P.A. & Adler, A. (1994). Observational techniques. In Handbook of Qualitative Research. CA: Sage Publishing.
- Alary, J. (Ed.) (1990). Community care and participatory research. Montreal: Nu Age Editions.
- Alper, B.S. & Nichols, L.T. (1981). Beyond the courtroom. Boston, MA: Lexington Books.
- Assembly of First Nations (1992). First Nation circle on the constitution: To the source, Commissioners Report.
- Atkin, W.R. (Circa, 1996). New Zealand children vs. Families: Is there any conflict? Canadian Journal of Family Law, 27.
- Balto, B. (1990). Mediator directiveness in child custody mediation: An exploration of alternatives and decision making. Mediation Quarterly, 7(3).
- Barsh, R.L. (1980). The Indian Child Welfare Act of 1978: A critical analysis. Hastings Law Journal, 31, 1287.
- Beamish, C.M. (1993). Parenting disputes across cultural lines. Special Lectures of the Law Society of Upper Canada, pp.117-139.
- Bernd, W. & Isenegger, J.A. (Circa, 1996). Best interests in child protection proceedings: Implications and alternatives. (unpublished manuscript).
- Bluehouse, P. & Zion, J.W. (1993). Hozhooji Naat'aanii: The Navajo justice and harmony ceremony. Mediation Quarterly, 10(4).
- Brookfield, S. (1983). Adult learners, adult education and the community.

London, England: Open University Press.

Carasco, E.F. (1986). Canadian Native children: Have child welfare laws broken the circle? Canadian Journal of Family Law, 5.

Carniol, B. (1985). "Intervention with Communities", in An Introduction to Social Work Practice in Canada, Ontario: Prentice-Hall Canada Inc., pp. 92-110.

Cassidy, F. & Bish, R.L. (1989). Indian government: Its meaning in practice. Lantzville, BC: Oolichan Books.

Clandinin, D.J. & Connelly, F.M. (1994). Personal experience methods. In Handbook of Qualitative Research (Ch. 26). San Francisco: Sage Publications.

Connors, J.F. (1993). _Resolving disputes locally in rural Alaska. In D. Leresche (Ed.), Special Issue: Native American Perspectives on Peacemaking. Mediation Quarterly, 10(4). San Francisco: Jossey-Bass.

Cornell Empowerment Group. (1989). Networking bulletin: Empowerment and family support. New York; NY: Cornell University.

Corrigan, S. W. & Barkwell, L. J. (Eds.). (1991). The struggle for recognition: Canadian justice and the Metis nation. Winnipeg, MB: Pemmican Publications Inc.

Daley, T. T. (1992). _In whose best interests?: The child welfare agent before the court. C.J.F.L. 8, 215.

Davies, C. (1994). Racial and cultural issues in custody disputes. Canadian Family Law Quarterly, 10(1).

Department of Indian Affairs and Northern Development. (1995). The government of Canada's approach to implementation of the inherent right and the

negotiation of aboriginal self-government. In Federal policy guide: Aboriginal self-government.

Dey, I. (1993). Qualitative data analysis: A user-friendly guide for social scientists. New York: Routledge Publishing.

Dibenindizomin Consulting. (1996). Aboriginal World View Seminar.

Evans, W. P. & Havercamp, M. J. (circa, 1996). An assumption of mediation strategies: Strategies to help mediators in child custody disputes.

Fals-Borda, O. & Anisur-Rahman, M. (1991). Action and knowledge: Breaking the monopoly with participatory action-research. New York: The Apex Press.

Gianotten, V. & de Wit, T. (1982). Participatory research and popular education in context of peasant economy. Nuffic, CESO Verhandeling no. 29.

Gildart, E. (1993). Innovations for participatory research: Communications implications of paradigmatic triangulation. University of Calgary (Masters thesis).

Goldsmith, D. J. (1990). Individual vs. Collective Rights: The Indian Child Welfare Act, Harvard Women's Law Journal, 13.

Greene, T. (1994). The Indian Child Welfare Act-A Step in the Right Direction for Indian Peoples, A Model Approach for Other Communities of Color?, Presentation at Sovereignty Symposium V11, Full Faith and Credit, Doubletree Hotel, Warren Place, Tulsa, Oklahoma.

Gutierrez, L., Glenmayer, L. & DeLois, K. (1995). The organizational context of empowerment practice: Implications for social work administration. In Social Work, National Association of Social Workers, Inc.

Haberfield, S. & Townsend, J. (1993). Power and dispute resolution in Indian country. In D. Leresche (Ed.), Special Issue: Native American Perspectives on Peacemaking, Mediation Quarterly, 10(4). San Francisco: Jossey-Bass.

Hegar, R. L. & Hunzeker, J. M. (1988). Moving toward empowerment-based practice in public child welfare. In Social Work, National Association of Social Workers, Inc.

Huber, M. (1993). Mediation around the medicine wheel. In D. Leresche, (Ed.), Special Issue: Native American Perspectives on Peacemaking, Mediation Quarterly, 10(4). San Francisco: Jossey-Bass.

Hublely, D. R. (1990). Mediation at the crossroads. Mediation Quarterly, 7(4). San Francisco: Jossey-Bass.

Kaminsky, H. & Cosmano, R. (1989). Mediating child welfare disputes: How to focus on the best interests of the child. Mediation Quarterly, 7(3). San Francisco: Jossey-Bass.

Kimmelman, E.K., (1985). No quiet place. In the final report to the Honourable Muriel Smith, Minister of Community Services Government of Manitoba Review Committee on Indian and Metis Adoptions and Placements. (Winnipeg: Manitoba Community Services,), pp.268, 272-276.

Kincheloe, J. L. & McLaren, P. L. (1994). Rethinking critical theory and qualitative research. In Handbook of qualitative research (Ch. 8). San Francisco: Sage Publications.

Kline, M. (Circa, 1996). Complicating the ideology of motherhood: Child welfare

law and First Nations women. Queen's Law Journal, 18(2), 306-342.

Kline, M. (1994). The colour of law: Ideological representations of First Nations in legal discourse. Social and Legal Discourse, 3, 451-476.

Kline, M. (1992). Child welfare law, "best interests of the child" ideology, and First Nations. O. H. L. J., 30(2).

LeBaron-Duryea, M. & Potts, J. (1993). _Story and legend: Powerful tools for conflict resolution. In D. Leresche (Ed.), Special Issue: Native American Perspectives on Peacemaking, Mediation Quarterly, 10(4). San Francisco: Jossey-Bass.

Leresche, D. (1993). Editor's notes. Special Issue: Native American Perspectives on Peacemaking, Mediation Quarterly, 10(4). San Francisco: Jossey-Bass.

Lithman, Y. G. (1993). The provincial involvement in First Nations: A report to the Assembly of Manitoba Chiefs.

Maguire, P. (1987). Doing participatory research: A feminist approach. The Center for International Education, School of Education, University of Massachusetts, Amherst Massachusetts.

Manitoba Child and Family Services. (1994). Manitoba Child and Family Services Act.

Manitoba Keewatinowi Okimakanak Technical Working Group. (1995). Discussion paper: MKO Child and Family Services Secretariat. Thompson, MB (unpublished).

Manitoba Child and Family Services Branch. (1996). Consultation workbook on the Child and Family Services Act. Winnipeg, MB: Manitoba Child and Family Services..

Mansfield, E. (1993). Balance and harmony: Peacemaking in Coast Salish tribes of the Pacific Northwest. In D. Leresche (Ed.), Special Issue: Native American Perspectives on Peacemaking, Mediation Quarterly, 10(4). San Francisco: Jossey-Bass.

Maresca, J. (1995). Mediating child protection cases. Child Welfare, 124(3).

Maxwell, G. M. & Morris, A. (Circa, 1996). The New Zealand model of family group conferences. In Family conferencing and juvenile justice.

Maxwell, G. & Morris, A. (1993). Family group conferences: Key elements. Presentation made at the Mission of St. James and St. John, Melbourne, Australia.

Mayer, B. (1985) Conflict resolution in child protection and adoption. In J.A. Lemmon (Ed.), Mediation Quarterly, 7. San Francisco: Jossey-Bass.

Mayer, B. (1989). Mediation in child protection proceedings: The impact of third party intervention on parental compliance attitudes. Mediation Quarterly, 24. San Francisco: Jossey-Bass.

McGillivray, A. (1985) Transracial adoption and the status Indian child. Canadian Journal of Family Law, 4.

McGillivray, A. (Circa, 1996). Therapies of Freedom: The Colonization of Aboriginal Children, (unpublished).

McKenzie, B., Seidl, E. & Bone, N. (1995). Child and family service standards in First Nations: An action research project. Child Welfare, 124(3).

Monette, D. R., Sullivan, T. J. & DeJong, C. R. (1990). Applied social research (3rd ed.). New York: Harcourt Brace College Publishers.

Monture-Okanee, P. A. (1994). Alternative dispute resolution: A bridge to

Aboriginal experience. In C. Morris & A. Pirie (Eds.), Qualifications for dispute resolution: Perspectives on the debate. Victoria, BC: UVic Institute for Dispute Resolution.

Monture-Okanee, P. (1990). A vicious cycle: Child welfare and the First Nations. C.J.W.L., 8.

Neuman, W. K. (1994) Social research methods: Qualitative and quantitative approaches (2nd ed.). New York: Allyn and Bacon.

Park, P. (1993). What is participatory research?: A theoretical and methodological perspective. In P. Park, M. Brydon-Miller, B. Hall & T. Jackson (Eds.), Voices of change: Participatory research in the United States and Canada (1-19). West Port, Connecticut: Bergin & Garvey.

Participatory Research Network. (1982). Participatory research: An introduction. PRN Series, No. 3, New Delhi: Society for Participatory Research in Asia.

Paterson, K. & Harvey, M. (1991). An evaluation of the organization and operation of care and protection family group conferences. Evaluation Unit, Department of Social Welfare, Wellington, New Zealand.

Patton, M. Q. (1990). Qualitative evaluation and research methods (2nd ed.). San Francisco: Sage Publications.

Pellat, A. S. (1991). An international review of child welfare policy and practice in relation to Aboriginal people. Calgary, AB: Canadian Research Institute for Law and the Family.

Penner, K. (1982). Minutes of proceedings of the special committee on Indian self

government. Ottawa, ON: Queens Printers.

Perry, T. L. (1991). Race and child placement: The best interests test and the costs of discretion. Journal of Family Law, 29(1), 51.

Reason P. (1994). Three approaches to participative inquiry. In Handbook of Qualitative Research (Ch. 20). San Francisco: Sage Publications.

First Nation's Child and Family Task Force. (1993, November). Children first: Our responsibility.

Report of the Aboriginal Justice Inquiry on Manitoba. (1991). The justice system and Aboriginal people (Vol. 1). Altona, MB: Friesen.

Report on the Standing Committee on Health. (1995). Towards holistic wellness: The Aboriginal peoples. Ottawa, ON: Canada Communications Group, Public Works and Government Services.

Richardson, L. (1994). Writing: A method of inquiry. In Handbook of Qualitative Research (Ch. 32). San Francisco: Sage Publications..

Rist, R. C. (1994). Influencing the policy process with qualitative research. In Handbook of Qualitative Research (Ch. 34). San Francisco: Sage Publications.

Ross, R. (1993). A discussion paper: Duelling paradigms? Western criminal justice versus Aboriginal community healing.

Ross, R. (1994). A discussion paper: Managing the merger: Justice as healing in Aboriginal communities.

Ross, R. (1994). Surfing the flux: Exploring the roots of the Aboriginal healing perspective.

Royal Commission on Aboriginal Peoples. (1996). Bridging the cultural divide: A report on Aboriginal people and criminal justice in Canada. Ottawa, ON: Canada Communication Group.

Sarri, R. C. & Sarri, C. M. (1992). Organizational and community change through participatory action research. Toronto, ON: The Haworth Press, Inc.

Savoury, G. R., Beals, H. L. & Parks, J. M. (1995). Mediation in child protection: Facilitating the resolution of disputes. Child Welfare, 124(3).

Senge, P. M. (1990). The fifth discipline: The art and practice of the learning organization. New York: Doubleday Publishing.

Senge, P. M., Roberts, C., Ross, R. B., Smith, B. J. & Kleiner, A. (1994). The fifth discipline fieldbook: Strategies and tools for building a learning organization. New York: Doubleday Publishing.

Shields, C. (1995). Improving the life prospects of children: A community systems approach. Child Welfare, 124(3).

Sinclair, M., Philips, D. & Bala, N. (1991). Aboriginal child welfare in Canada, In J.P. Hornick, N. Bala & R. Vogl (Eds.), Canadian Child Welfare Law. Toronto, ON: Thompson Educational Publishing Inc.

The Maori Perspective Committee. (1988). The report of the ministerial advisory committee on a Maori perspective for the department of social welfare. Puao-Te-Ata-Tu (day break).

Thomas, G. (1994). T raveling in the trench between child welfare theory and practice: A case study of failed promises and prospects for renewal. New York: The

Haworth Press, Inc.

Timpson, J. (1995). Four decades of literature on Native child welfare: Changing themes in child welfare. Child Welfare, 124(3).

Vincenti, D. (1972). The law of the people: DIN'E BIBEE HAZ' AANII.

Walter, B. (1963). In need of protection: Children and youth in Alberta.

Children's Advocate: Child Welfare.

Walter, B. & Isenegger, J. A. (Circa, 1996). Best interests in child protection proceedings: Implications and alternatives. (unpublished).

Wharf, B. (1981). The case for citizen participation in social programmes. In Australian Social Work.

Zlotkin, N. K. (1993). Aboriginal control over child welfare: Canadian and American approaches. In Continuing Riel's and Poundmaker's quest: Presentations made at a conference on Aboriginal peoples and justice (compiled by R. Gosse, J. Youngblood Henderson, & R. Carter). Saskatoon, SK: Purich Publishing.

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