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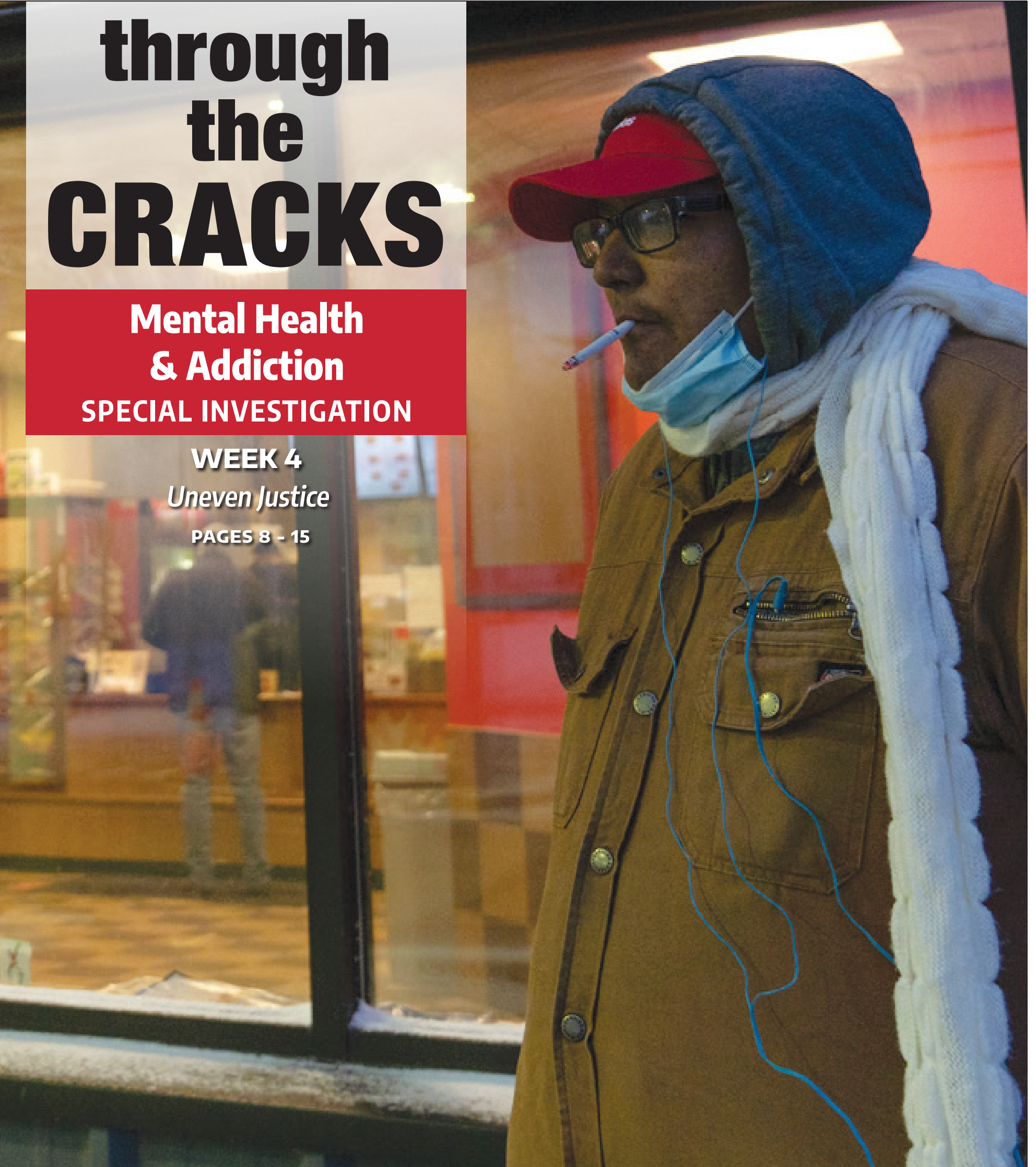
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through the CRACKS

**Mental Health
& Addiction**
SPECIAL INVESTIGATION

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Uneven Justice
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Jason Sark was out of prison for seven months when he learned that the crown had successfully appealed his sentence. Sark was never notified of the appeal. PEI's Court of Appeal eventually threw out the extended sentence, calling the lack of notice a miscarriage of justice. John Morris Photography



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Who will apologize to Jason Sark?

By Paul MacNeill

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Jason Sark had just cashed a \$465 welfare cheque at Scotiabank at the corner of Great George and Grafton Streets. He had plans to attend a sweat lodge and was looking forward to the promise of a couple of days' work at an upcoming Native Council of PEI retreat on Panmure Island. He was having a good day.

But like much of his life, calm suddenly became chaos.

Two sheriff's officers were waiting to take him into custody as he stepped out of the bank. They were acting on the order of the Prince Edward Island Court of Appeal, which unintentionally picked national Orange Shirt Day - a day of remembrance to raise awareness of the effects and legacy of residential schools - to send an Aboriginal man back to jail for a crime he had already served time for.

Tami Strickland was stunned. As outreach worker for Bedford MacDonald House, she worked for months to help Sark with the slow process of gaining sobriety, building confidence and dealing with a lifetime of abuse, mental health and addiction and being in the wrong place at the wrong time.

Sark was getting there. He participated in BMH outings to fish, play softball or bake bread and showed increased enthusiasm for his aboriginal culture. He respected his fellow residents and the rules that then manager Mike Redmond placed on him. After five months living at BMH he had earned a transition housing unit, a private room in a six-bedroom rooming house. It was a place to call his own.

The positive momentum growing in Sark's often tumultuous life evaporated as he and Strickland asked on what grounds he was being arrested.

Sark had been released from Sleepy Hollow Correction Centre seven months earlier after serving seven months of a nine-month sentence on a single count of robbery. From everything he knew, his time was served. There seemed no logic to the arrest warrant and officers did not elaborate, saying simply Sark, 41, needed to go with them.

Sark placed a gentle hand on his support worker's shoulder and said 'Don't worry I'll go, I'll go.'

Strickland will always remember the moment for the calm and gentle nature Sark displayed, but also because it is the moment a miscarriage of justice started to unravel.

A life where violence was normal

Jason Sark is easy to vilify if the only gauge are headlines from his many run-ins with the



Jason Sark thought he had served his time for a robbery conviction. But after being free for seven months he was sent back to jail following a successful appeal of his sentence. No one ever told Sark about the appeal. PEI's Court of Appeal called the lack of notice a miscarriage of justice, but no one has apologized for it. Photo by John Morris Photography

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The fundamental purpose of sentencing is to protect society and to contribute ... to respect for the law and maintenance of a just, peaceful and safe society.

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JUSTICE MICHELE MURPHY

law, dating back to 1999. His record includes more than 50 offenses of varying severity including a five-year federal sentence for attempted murder in 2007, and a slew of convictions for assault, assault causing bodily harm, assault with a weapon and aggravated assault.

But Sark is more than the sum total of his rap sheet. His life is influenced by numerous seminal moments: An abusive and violent Lennox Island home where his mother did her best to shield him from his father; racism within the education system; intergenerational impact of residential and Indian day schools; First Nations politics and where, how and to whom services are offered; and a justice system stubbornly clinging to how things have always been done.

Jason first experienced violence at 2.5 years of age when he stepped in the middle of his father assaulting his mother. His father grabbed his son and threw him toward the wall. Only the

quick reflexes of his mother kept the toddler from crashing into the wall with full force.

Sark's parents' marriage disintegrated because of addiction and violence, but his father continued to show up at their home, often in a foul mood. It led to an unpredictable existence for Jason, his mother and siblings. They moved around, couch surfed and ended up in Charlottetown, but reluctantly returned to Lennox Island, on the advice of a doctor, to access health care for the children.

Sark completed Grade 6 at John J. Sark Memorial School. Lennox Island students travel 35-kilometres each way to attend Hernewood Intermediate or Westisle Composite High School. For many it is a jarring experience. He experimented with drugs in junior high and got drunk for the first time at 13. It escalated at Westisle where he used marijuana, oil and hash. He was frequently intoxicated in school and drank a lot on week-

ends. He was the target of teasing and bullying, often finding himself on the defensive and in fights.

For Jason Sark, violence was a learned behaviour.

Sark disengaged academically, quit school at 18 in Grade 12 and followed a path of growing addiction during which he subsisted through seasonal or short-term work. While incarcerated in 2001 he earned his GED, later enrolling in UPEI and Holland College, although receiving no course credits. He enjoys reading and learning, but on his own terms.

After serving a five-year federal sentence for attempted murder in 2007, he suffered a drug overdose in Moncton.

An early morning robbery

The Fitzroy Street Parkade was quiet when Sark and two companions entered at 2:30 am on August 31, 2019. The men were

intoxicated. Video surveillance shows that one of Sark's companions struck the other on the head. Sark then kicked the downed man four times in the head and punched him once. The two men stole the third man's wallet and phone and fled. The victim suffered a cut lip and required \$1,300 in dental work.

Sark was charged with a single count of robbery. He pled guilty and appeared before Provincial Court Judge John Douglas for sentencing January 28, 2020. The Mi'kmaq Confederacy of PEI prepared a Gladue Report, a document mandated by the Supreme Court of Canada to allow 'the courts to explore alternatives to imprisonment, especially as it relates to the unique circumstances of Aboriginal offenders.'

"There is a need for Jason to engage in an intensive mental health and substance abuse treatment program as well as a program to address his criminality and criminal offending," the

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Jason's substance abuse is more complex than just a personal shortcoming.

**JASON SARK'S
GLADUE REPORT**

”

29-page report states. “Jason's substance abuse is more complex than just a personal shortcoming.” It acknowledged his potential for violence when under the influence.

Judge Douglas leaned on the report's insights in sentencing Sark to nine months in jail plus 18-months probation. The judge warned that if the victim's injuries were more serious, Sark would be facing far greater punishment.

February 7, 2020 the Crown launched an appeal. It sent notice to Charlottetown lawyer Conor Mullin, who had represented Sark at trial. Mullin was not authorized by Sark to represent him at appeal, so the lawyer sent the notice back to Legal Aid. Several days later, Legal Aid asked Mullin to represent Sark. He agreed.

But no one told Jason Sark or asked if he agreed.

To protect society

The appeal proceeded and was heard June 23, 2020 before Justices John Mitchell, David Jenkins and Michele Murphy. By the time the court got around to rendering its decision on September 30 Sark had been out of jail for seven months and was still unaware his freedom was at stake.

In a 17-page decision written by Justice Murphy, and agreed to by Justices Jenkins and Mitchell, the court increased Sark's sentence to two years (less credit for nine months served), followed by two years probation.

Justice Murphy made clear deterrent, and the defendant's lengthy criminal record, trumped Gladue. “The fundamental purpose of sentencing is to protect society and to contribute ... to respect for the law and maintenance of a just, peaceful and safe society,” Justice Murphy wrote. The Court agreed with the Crown that the original sentence was “demonstrably unfit, clearly unreasonable and inadequate in the circumstances.”

The decision makes only passing reference to Sark's diagnosis years earlier of schizophrenia. It does suggest he meet with the Native Council ‘for a referral to address mental health issue.’

Jason Sark returned to serve an additional 15 months.

Justice but no apology

It was January 15, 2021 by the time PEI's judicial system finally

got around to righting the wrong inflicted on Sark, at the time still in Sleepy Hollow serving out his extended sentence.

The same three justices who increased Sark's sentence now threw that decision out. In a five-page ruling Justice John Mitchell called the lack of notice a miscarriage of justice.

“The impact of the failure to give proper notice to Sark can be seen by the fact that he lost the right to retain counsel of his choosing, the right to assistance of the Mi'kmaq Confederacy, the right to instruct counsel, the right to attend the appeal hearing and hear the Crown's case and the right to make representations.”

Neither the court, nor anyone else in authority, apologized to Sark or mentioned the progress he made through Bedford MacDonald House during his seven months of freedom. Justice Mitchell did absolve the Crown of any error: “I pause to point out that the Crown's actions are unimpeachable. They were entitled to accept counsel's word that he was accepting service on Sark's behalf. That, however, does not rectify the fact that Sark had no notice.”

This is of little solace to Sark. When eventually released he was unable to turn back the clock and start his life again from the relatively positive position it had taken. The Graphic met him at 6:30 am on a brutally cold minus 22-degree Celsius March 2, 2021. He was huddled inside a Needs Convenience, getting warm from a night spent walking the streets. He bought a couple of packaged pastries for breakfast, which he admits is probably not a good idea for his diabetes.

Part of Sark's previous success was attributable to Redmond's understanding that he suffered from night terrors. Forcing him to follow a similar schedule to other BMH clients wouldn't work; he let him sleep much of the day and roam at night.

But Redmond set firm rules around Sark's interaction with staff, other residents, and drug use. There were times, Redmond says, when Sark, 5'10" and 260 pounds, was less than perfect, but he never broke the rules established. He was never violent. “Mike's been there for me ever since we first met,” Sark says in a soft voice.

Bedford MacDonald House is a shadow of what it was two years ago when it provided 24-hour service. Redmond and Strickland were fired by Salvation Army, which bristled at their activist style of client management. BMH now only operates 12 hours per day. There are no more fishing trips, ball games or outings at all. Food is limited and clients are mandated when to be in bed, when to get up and when to leave in the morning.

Sark has lived in transitional housing at Smith Lodge in Charlottetown for almost a year, with a goal once again of moving to independent housing. Redmond says it's not enough.

“A lack of a comprehensive mental health and addictions plan leaves this man in a very broken, and sick system,” he says. “From Jason's time wrongfully incarcerated to his present living situation, there has been a systemic failure to accept responsibility for Jason Sark. No apology from justice, from MCPEI, and simply dumped on the street.”

Who will apologize to Jason Sark?

“

Restorative justice is about restoring peace in our community, not (just) out on reserve.

LISA COOPER

”

Uneven justice

Favouritism and lack of consistency impact benefit of Gladue Reports

By Rachel Collier

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In an attempt to reduce overrepresentation of Indigenous people in Canadian jails, the Criminal Code of Canada was amended in 1996 to give judges authority in sentencing to consider the unique set of life circumstance faced by Indigenous accused.

But 26 years later that authority is delivered unevenly by the courts.

“Gladue is not a get out of jail free card. It was never meant to be used as a get out of jail free,” says Lori St-Onge, former executive director of the Mi'kmaq Confederacy of PEI, and former director of Indigenous Justice.

“It's meant to be able to look at what are the systemic factors that brought the person to the court today, and what we need to do to address those factors and help them on their healing,” she said. Since her interview with The Graphic, St-Onge was named Acting Director of Indigenous Relations for the province.

St-Onge said some Island judges understand and apply the Gladue principle well; they replace time behind bars with in-community restorative options. Others seem to get caught up on the need to prioritize denunciation and deterrence principles.

“It's not about that. It's not about using Indigenous people to set examples,” said St-Onge. “We have to continually educate and help them understand what it means to apply the principles.”

Gladue Reports are detailed narratives that share the individual's life story and establish connections to histories of discrimination and intergenerational trauma. It may also include alternative, often Indigenous-led sentencing recommendations. These could include mandatory participation in mental health and addictions programming, housing programs, community justice programs or healing programs.

Indigenous people make up approximately 2 per cent of the Island population, but

based on the most recent Statistics Canada data from 2020 3.4 per cent of the provincial inmate population.

Lisa Cooper, chief of the Native Council of PEI, believes the issue is greater than judges not properly applying Gladue principles. She sees favouritism in the provincial government's funding of report writers through MCPEI but not Native Council.

Gladue reports are incredibly personal, requiring interviews with friends and family members about the most intimate, often traumatizing, aspects of an individual's life.

For this reason, Cooper says, it's important that a writer with a relationship of trust, from the accused's chosen Indigenous community, produce the report. Over 1,000 Indigenous people living in PEI are less connected to the traditional First Nations bands represented by the Mi'kmaq Confederacy and are instead members of the Native Council.

However, when MCPEI-produced Gladue Reports suggest alternative sentences, they almost always neglect NCPEI programs as an option. This bias is due to the political divide that has grown between the two organizations over decades, Cooper says.

“Restorative justice is about restoring peace in our community, not (just) out on reserve.”

Both organizations should be empowered to allow Indigenous people the ability to choose the organization best suited to represent and work with them, she says.

The chief has requested the King government sign a Memorandum of Agreement, similar to one in place with the Mi'kmaq Confederacy, for the Native Council to produce Gladue Reports. She also wants equality in provincial funding for a court worker program. Government funds MCPEI's program, but not the Native Council.

With no promise of provincial support the Native Council has found other means to fund one court worker who can write Gladue Reports but Cooper says there is a need for more than one worker considering the great need to provide her members adequate access to justice.