



ACCESS TO JUSTICE SERVICES AGREEMENTS EVALUATION Final Report

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**Evaluation Division
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ABBREVIATIONS

ACW	Aboriginal Courtwork
AJAs	Access to Justice Services Agreements
JPIP	Justice Partnership and Innovation Program
LAP	Legal Aid Program
LSB	Legal Services Board
NWT	Northwest Territories
PLEI	Public Legal Education and Information
PPSC	Public Prosecution Service of Canada

EXECUTIVE SUMMARY

1. Background

Since 1997, the federal government and the three territories (Nunavut, Northwest Territories and Yukon) have entered into Access to Justice Services Agreements (AJAs) that provide federal support for legal aid¹, Aboriginal Courtwork (ACW)² and public legal education and information (PLEI)³ services in each territory. These agreements replaced individual agreements for each of the aforementioned program components.

The most recent evaluations of the Legal Aid Program (LAP), the ACW Program, and the Justice Partnership and Innovation Program (JPIP) (which provides funding to PLEI organizations in each of the provinces) establish the relevance, effectiveness, efficiency and economy of these funding programs. The primary purpose of the AJA evaluation is to consider these results in light of the territorial context, as well as to examine the relevance and performance of the consolidated agreement as an alternative to three separate funding agreements. The evaluation primarily covers the period from 2006/07 to 2010/11.

2. Methodology

The methodology of the AJA evaluation consisted of document and file reviews, site visits and key informant interviews. A review of program-related documents, including AJA terms and conditions, the AJA Evaluation Framework and research studies regarding legal aid, ACW and PLEI in the territories was conducted. AJA program files, including administrative files,

¹ The Department of Justice Canada administers the LAP, which provides ongoing support for criminal legal aid services in the provinces (funding for criminal and civil legal aid in the territories is provided through the Access to Justice Agreements) that ensure economically disadvantaged persons have access to the justice system.

² The Department of Justice Canada administers the ACW Program that assists Aboriginal people in obtaining fair, just, equitable and culturally sensitive treatment in the criminal justice system.

³ The Department of Justice Canada supports PLEI activities that advance public understanding of the law and legal issues, thereby facilitating a fair, efficient and accessible justice system, in accordance with the November 2009 Policy on Public Legal Education and Information.

correspondence, meeting minutes, and work plans and reports were reviewed. Additionally, the available annual claims from each territory for the fiscal years covered by the evaluation were reviewed. Site visits to each of the territorial capitals provided the opportunity to observe first-hand service delivery in each jurisdiction in order to better understand the context in which the territories operate. In total, 32 interviews were conducted with various AJA stakeholders.

3. Findings

3.1.Relevance

There is a continued need to provide funding to the territories for legal aid, ACW services and PLEI activities, and the consolidated agreement meets a need that would not otherwise be met with three separate funding agreements.

The program evaluations for LAP, ACW and JPIP (which provides funding to PLEI organizations in each of the provinces) establish the need for each of these national programs. Due to the size and remote nature of their jurisdictions, an alternative approach to the funding of these programs is warranted in the territories. With a consolidated agreement, territorial governments have a greater service delivery flexibility, which is considered a necessity due to their relatively smaller, more remote populations. This flexibility is critical, since the lines between legal aid and ACW and PLEI services are not as clearly drawn in all three territories as they are in the provinces. Additionally, the consolidation of the contribution agreements offers the potential for administrative efficiencies and cost savings to the territories.

There is alignment between the roles and responsibilities of the federal government and the provision of funding to the territories for legal aid, ACW and PLEI services.

The federal government has a role to play in the provision of criminal and civil legal aid, ACW and PLEI funding to the territories, as access to justice is a shared responsibility between the federal and territorial governments. Further, funding for legal aid, ACW and PLEI services enables the federal government to “ensure that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice”, as articulated in the Department of Justice’s mission statement.

Taking a specialized approach to the provision of this funding to the territories is aligned with the priorities of the federal government.

The federal priorities of “promoting social and economic development in the North”, and of “improving and devolving northern governance so that Northerners have a greater say in their own destiny” are delineated in Canada’s Northern Strategy. As pointed out by AJA stakeholders, the federal government has demonstrated its commitment to the North by establishing agreements which allow for a flexible approach to be taken in the delivery of legal aid, ACW and PLEI services that recognizes the contexts and circumstances that are unique to each of the three territories.

3.2. Effectiveness

Without the federal contribution, the capacity of the territories to deliver criminal and civil legal aid and ACW and PLEI services would be significantly affected. Key informants acknowledged the importance of the federal funding to support these initiatives.

The delivery of criminal legal aid is effectively providing territorial residents with the assistance they need to ensure a fair and accessible justice system. Stakeholders identified gaps in the provision of civil legal aid in the territories.

The minimum standards for legal aid – both criminal and civil – are met in all three territories. However, the increasingly high costs of legal services in the territories do impede the jurisdictions from providing assistance in all the areas for which there is demand, and gaps in the areas of family law and civil matters were noted.

The effectiveness of ACW services in the territories varies by jurisdiction and depends on the capacity of the individual courtworkers. However, stakeholders agree that the Program is operating as effectively as possible within the constraints inherent in each delivery model, and that Aboriginal accused greatly benefit from the services provided.

The minimum standards regarding the provision of courtworkers services are being met in the territories. Aboriginal courtworkers bridge the gap between Aboriginal accused and the justice system that is even more heavily felt in the territories than in the rest of Canada. The level of effectiveness of the services depends on the individual courtworkers providing the services, and challenges to the effective management of the ACW component, such as high turnover rates and

isolation, impede some territories' ability to deliver a program that is consistent from community to community.

PLEI activities, when undertaken, are done in a manner appropriate to the context of the North. Officials recognize that more activities could be done, but are reluctant to designate funds to this area at the expense of providing legal aid to residents facing possible incarceration.

As PLEI is generally delivered in an informal way by the same people who provide legal aid and ACW services in two of the territories, it is difficult to quantify the number of PLEI activities that are undertaken or to establish their impacts. However, this alternative delivery approach is appropriate given the realities of the North, and territorial governments and/or service delivery agencies find innovative ways of providing PLEI services to residents despite challenges such as multiple official languages, high distribution costs and low levels of Internet accessibility.

There is general agreement among Program stakeholders that the consolidated agreement is a better alternative to separate funding agreements.

Interview respondents agreed that the consolidated agreement recognizes the unique context of the territories, providing them with the flexibility to deliver the services appropriately. In some instances, the provision of legal aid, ACW and PLEI services is coordinated by one body, and delineating the resources and time spent between the three program components is not always feasible. In other instances, where not all of the budgeted resources in a specific program area are able to be spent, the AJA flexibility allows territorial officials to use the funds in one of the other program components rather than lapsing resources.

Further, territorial officials recognize the administrative efficiencies achieved as a result of completing one annual claim instead of three. Some respondents also noted the benefit of their having a single point of contact within Justice Canada.

Territorial officials noted various obstacles to effective performance measurement and to the completion of audited financial statements. As a result, the submission of annual claims can be delayed.

Although there are varying degrees of performance measurement capacity in each of the territories, officials from all three territories agree that there is room for improvement in this area. Based on interview comments, the expense and time required to complete an audit of financial statements present the greatest challenge; however, other factors such as inconsistent

data collection methods and high staff turnover also contribute to the difficulty in collecting the required financial and performance data.

3.3.Efficiency and Economy

The AJAs are economical and efficient. All stakeholders agree that a reduction in federal funding would result in a reduction in services.

The LAP, ACW and JPIP evaluations all conclude that these programs are efficient and economical.

A certain level of economy is achieved at the departmental level as a result of the consolidated agreements. Interviewees from Justice Canada highlighted the financial benefit directly realized by having one agreement to negotiate with each of the territories instead of three, as well as having only one claim to review from each territory. At the territorial level, officials underlined the administrative efficiencies obtained by having one consolidated agreement in the place of three. For the most part, efficiencies are achieved as a direct result of the efforts made by the territorial governments and/or service delivery agencies to maximize the impacts of legal aid, ACW and PLEI services within the current funding levels.

1. INTRODUCTION

Since 1997, the federal government and the three territories (Nunavut⁴, Northwest Territories [NWT] and Yukon) have entered into Access to Justice Services Agreements (AJAs) that provide federal support for legal aid⁵, Aboriginal Courtwork⁶ (ACW) and public legal education and information⁷ (PLEI) services in each territory. These consolidated agreements replaced individual agreements for each of the aforementioned program areas. The Department of Justice Canada administers each agreement on behalf of the Government of Canada. The current agreements have been in place since April 2007.

1.1 Context

In the past, the Department of Justice has provided performance information on the AJAs to Treasury Board Secretariat through its Departmental Performance Report. Justice has also undertaken evaluations of its investments in legal aid services, ACW and PLEI investments; however, the AJA funding agreements, that is the consolidated arrangements by which the funds are provided to the territories, have never been evaluated.

The AJAs constitute a sub-sub activity within the Department of Justice Program Activity Architecture.

⁴ Nunavut was created on April 1, 1999.

⁵ The Department of Justice Canada administers the Legal Aid Program, which provides contributions to the provinces for criminal legal aid (funding for criminal and civil legal aid in the territories is provided through the Access to Justice Agreements) . Federal funding for civil legal aid in the provinces is provided primarily through the Canada Social Transfer, which is the responsibility of the Department of Finance.

⁶ The Department of Justice Canada administers the ACW Program that assists Aboriginal people in obtaining fair, just, equitable and culturally sensitive treatment in the criminal justice system.

⁷ The Department of Justice Canada supports PLEI activities that advance public understanding of the law and legal issues, thereby facilitating a fair, efficient and accessible justice system, in accordance with the November 2009 Policy on Public Legal Education and Information.

1.2 Objectives of the Evaluation

The most recent evaluations of the Legal Aid Program (LAP), the ACW Program and the Justice Partnership and Innovation Program (JPIP) (which provides funding to PLEI organizations in each of the provinces), establish the relevance, effectiveness, efficiency and economy of these funding programs. The primary purpose of the AJA evaluation is to consider these results in light of the territorial context, and to examine the relevance and performance of the consolidated agreement as an alternative to three separate funding agreements. The evaluation primarily covers the 2006/07 to 2010/11 period; however, as annual claims from 2010/11 are not yet available for all three jurisdictions, data from 2005/06 is used for comparative purposes. The program is in support of the Department's mission to ensure that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice.

1.3 Definition of Terms

For the purpose of this document, "access to justice services" refers to legal aid and ACW and PLEI services, as defined in the AJAs as presented below:

- **Legal aid:** In the context of the AJAs, legal aid refers to "legal advice and representation provided through any delivery model, including all duty counsel⁸ and *Brydges* services⁹, by a member of the bar of the territory or a person otherwise authorized by law to provide legal advice and representation in relation to any of the matters referred to" in the agreements. The AJAs address criminal and civil legal aid as specified in their terms and conditions. The LAP is a national program, supported in each of the provinces through separate funding agreements. In the territories, legal aid forms one of the program components within the AJAs.
- **ACW:** In the context of the AJAs, ACW refers to "services that provide counselling to eligible Aboriginal persons and the provision of legal advice where authorized by law, in relation to court procedures, rights under the law and availability of legal aid or other resources and referral thereto of eligible persons". The ACW Program seeks to ensure that Aboriginal people charged with criminal offences receive fair, equitable and culturally sensitive treatment before the criminal justice system. It is a national program, supported in

⁸ Duty counsel refers to legal services provided without charge by a lawyer, generally provided at court or place of detention. Most often, the services provided are brief, and pertain to provision of summary advice or representation at a first appearance or plea court.

⁹ *Brydges* duty counsel: any individual who has been arrested or detained has the right to be informed by the police of the availability of legal aid and duty counsel. A toll-free line is generally available for immediate advice.

each of the provinces through separate funding agreements. In the territories, ACW services form one of the program components within the AJAs.

- **PLEI:** In the context of the AJAs, PLEI refers to “an activity that seeks in a systematic way to provide people with the opportunity to obtain information about the law and the justice system in a form that is timely and appropriate to their needs, but does not include advocacy or representation on behalf of individuals, nor the provision of legal advice”. PLEI organizations are funded through JPIP funding in the provinces. In the territories, PLEI forms one of the program components within the AJAs.

2. PROGRAM DESCRIPTION

2.1 Program Rationale and History

In 1997, at the request of the territories, the federal government established AJAs that provide federal support for legal aid and ACW and PLEI services in each territory. Agreements have been in place in the NWT and Yukon since 1997 and in Nunavut since its creation in 1999.

The AJAs are consolidated agreements replacing individual agreements for each of the three aforementioned program areas. The agreements operate under the recognition of the respective responsibilities that federal and territorial governments have for the administration of justice and justice services.

The agreements address the territories' request for greater flexibility to meet the unique needs and circumstances (geographical, cultural and linguistic) in their jurisdiction as well as to ensure that the Department of Justice supports access to justice services for all northern Canadians.

The purpose of consolidation is to enable greater flexibility for territories in providing services in accordance with their role and responsibilities for the management and administration of justice services. Given the unique and diverse demographic, cultural and geographic contexts and fiscal frameworks of each territory, the flexibility of the AJAs supports a more responsive approach to the three program components. For example, the capacity for non-governmental organizational service delivery for programs such as ACW and PLEI in northern communities is limited. Given the small size of many northern communities, it is difficult to justify, and logistically provide, separate specialized programs and services. Consolidation offers the potential for greater efficiency, flexibility and effectiveness compared with having separate contribution agreements for each program component. It may also streamline accountability requirements in a way that is more appropriate and reflective of northern justice administrative and service delivery models.

2.2 Program Logic

2.2.1 Goals and Objectives

Recognizing the unique circumstances of Canada's territories, the current goal of the AJAs is to support the provision of improved legal aid and ACW and PLEI services in the territories.

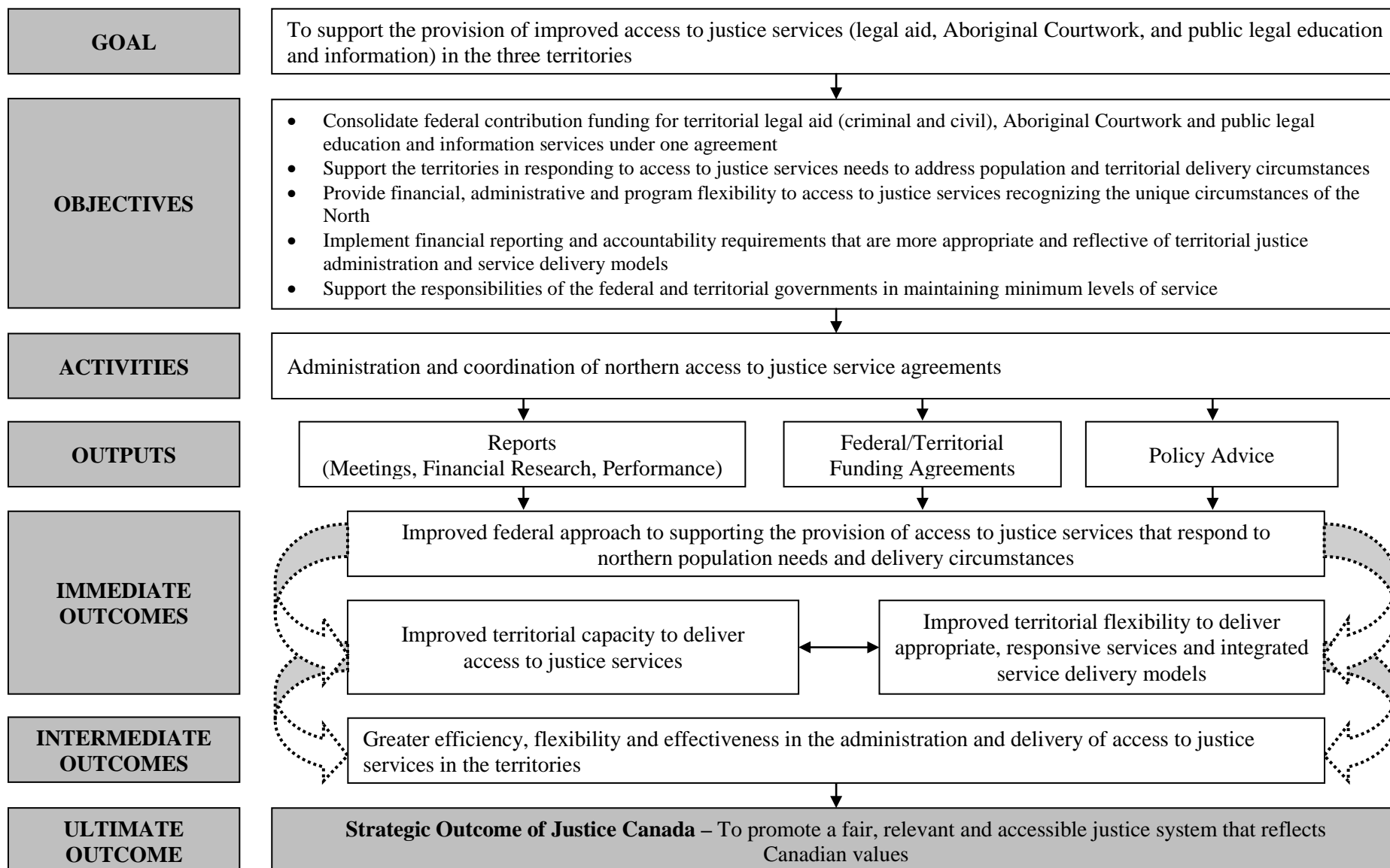
The objectives of the AJAs are as follows:

- Consolidate federal contribution funding for territorial legal aid (criminal and civil), ACW and PLEI services under one agreement.
- Support the territories in responding to access to justice services needs to address population and territorial delivery circumstances.
- Provide financial, administrative and program flexibility to access to justice services, recognizing the unique circumstances of the North.
- Implement financial reporting and accountability requirements more appropriate and reflective of territorial justice administration and service delivery models.
- Support the responsibilities of the federal and territorial governments in maintaining minimum levels of service.

2.2.2 Expected Impacts

The AJA Logic Model depicts the activities, outputs and expected results of the AJAs. Figure 1 presents a graphic depiction of the AJA Logic Model.

Figure 1: AJA Logic Model



2.3 Delivery Models

Territorial governments are key partners and work in collaboration with the Department of Justice Canada on improving access to justice services in the territories. Through the single agreement approach provided by the AJAs, Justice's contribution supports the territories in the design and delivery of "access to justice services" which are appropriate to the northern context and population needs. Service delivery models for AJA service components vary for each territory.

The NWT has an integrated territorial model of service delivery. The NWT Legal Services Board (LSB) oversees the administration of legal aid and ACW and PLEI services. All legal aid lawyers and Aboriginal courtworkers are employees of the Government of the NWT.

Nunavut now has an arms-length, integrated model of service delivery through the Nunavut LSB, although initially services were delivered by the territorial government. All legal aid and ACW and PLEI services are delivered through one of three law clinics located in Cambridge Bay, Rankin Inlet and Iqaluit.

Yukon allocates AJA funds to separate third-party delivery agencies. Legal aid is provided by the Yukon Legal Services Society, which has three law clinics across the territory. Yukon Justice oversees the activities of ACW services, which are delivered by six different delivery centres. Finally, the Yukon Public Legal Education Association provides PLEI services out of an office located in Whitehorse.

2.4 Resources

The allocations to each territory are specified in Table 1.

Table 1: Annual AJA Federal Allocations to the Territories, 2010/11

	Legal Aid	ACW	PLEI	Total
Yukon	\$864,119	\$158,028	\$70,000	\$1,092,147
NWT	\$1,704,154	\$198,173	\$70,000	\$1,972,327
Nunavut	\$1,489,683	\$232,436	\$70,000	\$1,792,119
Total	\$4,057,956	\$588,637	\$210,000	\$4,856,593

Funding is apportioned to the three territories, with the provision that the total amount of the federal contribution shall not exceed 70% of total AJA expenditures for each territory. As is evident in the above table, legal aid is the major contribution investment area.

The Senior Director, Policy Implementation Directorate, Programs Branch of the Policy Sector is accountable for the overall management and direction of the AJAs and works in collaboration with each specific program area on issues of common interest to ensure national program consistency and minimum standards.

The AJAs are administered by Programs Branch staff. Table 2 provides an overview of the Department's human resources (full-time equivalents) dedicated to the administration of the AJAs, as indicated by program representatives.

Table 2: Human Resources Dedicated to the Administration of the AJAs

Position	FTE
Senior Director, Policy Implementation Directorate	0.15
Senior Policy Analyst, Policy Implementation Directorate	0.75
Policy Analyst, Policy Implementation Directorate	0.25
Financial Advisor, Grants and Contributions Financial Services	0.5
Financial Administrator, Grants and Contributions Financial Services	0.3

3. METHODOLOGY

A relatively straightforward methodology was employed to carry out the AJA evaluation, due to the low-risk nature of the Program. This program is deemed low risk because its components have been individually evaluated at the national level¹⁰, as well as its modest level of resources at \$4.857M per year. A description of the methodological approaches utilized as part of the evaluation follows. Findings from multiple lines of evidence were triangulated.

3.1 Document Review

A review of program-related documents, including AJA terms and conditions, the AJA Evaluation Framework, and research studies regarding legal aid, ACW and PLEI in the territories, was conducted. One purpose of the document review was to gather descriptive information about the Program. The review also provided information on departmental and government priorities. Further, evaluation reports of the LAP and ACW Program, as well as a sub-study comprised of surveys of PLEI organization stakeholders, at the national level, provided specific information regarding the background and relevance of each of the three program components.

3.2 File Review

AJA program files, including administrative files, correspondence, meeting minutes, and work plans and reports were reviewed. Additionally, the available annual claims from each territory for the fiscal years covered by the evaluation were reviewed. These claims include financial information as well as performance data related to each of the three program components.

3.3 Site Visits

Site visits to each of the territorial capitals were an important element of the evaluation approach, as they provided the opportunity to observe first-hand service delivery in each jurisdiction in order to better understand the context in which the territories operate. When possible, key

¹⁰ The LAP was most recently evaluated in 2012; the PLEI Program was evaluated as part of the JPIP in 2012; and the ACW Program is currently being evaluated (it was previously evaluated in 2008).

informant interviews with territorial officials (as described in Section 3.4) were conducted during the site visits. The length of each site visit was two or three days, depending on the number of AJA stakeholders to be interviewed.

3.4 Key Informant Interviews

In total, 32 interviews were conducted with various AJA stakeholders. Within Justice, 6 key informants were interviewed, including staff responsible for the administration of the AJAs, as well as representatives from each of the three program components. From the territories, 23 stakeholders were interviewed overall, between 4 and 11 individuals were interviewed in each territory. These numbers vary depending on the territory's service delivery model. Finally, 3 representatives from the Public Prosecution Service of Canada (PPSC) were interviewed. Key informant interviews were used to acquire more in-depth information about selected evaluation questions.

3.5 Limitations

Not all of the territories are up to date in providing annual claims including financial information verified by an accountant, as is required as part of the annual claim process. The annual claims contain both the statistical program information and financial information regarding the agreements. To mitigate this limitation, Nunavut provided annual reports from its LSB (budget information and some statistical information) for the purpose of analysis for this evaluation.

Program information with respect to ACW services is not consistent within and between the territories. As the delivery models differ between territories, specific ACW Program information, such as number of people assisted, is not available for each territory. As a result, the evaluation is not able to report on the number of people who have been assisted in the territories by Aboriginal Courtworkers.

A second limitation with regards to the ACW component relates to the primary source of evidence for the effectiveness of the ACW Program at the national level: surveys undertaken as part of the ACW Program national evaluation. Three surveys, that is of courtworkers, Justice officials and courtworker clients, are conducted on a five-year cycle in order to inform the program-level evaluation. The limitation for the AJA evaluation is that these survey results are aggregated at the national level, and results specific to the territories are not available. Although the statistical information regarding ACW services specific to the territories collected through these surveys is not available for the AJA evaluation, stakeholder comments and site visit

observations provide evidence regarding the ACW component and how it is working in the territories.

Finally, site visits were conducted as part of the evaluation to provide a better understanding of the contextual challenges faced in the territories. As the current evaluation focussed on the consolidated funding arrangements of the AJA and not a program review, site visits were limited to the territorial capitals, the site of the territorial government offices; however, stakeholder feedback throughout the interview process informed the evaluation as to the unique circumstances in the North that must be accounted for when examining the relevance and performance of the agreements.

4. FINDINGS

4.1 Relevance

4.1.1 Continued Need for the Program

There is a continued need to provide funding to the territories for legal aid, ACW services and PLEI activities.

Legal Aid

The rationale for federal contribution funding for legal aid is based on constitutional and Charter obligations. A recent evaluation of the LAP found that nationally, the Program continues to serve the public interest and need as long as there are economically disadvantaged accused facing the likelihood of incarceration. As evidence of the continued need for legal aid, the evaluation cites the increasing demand for such services. Between 2005/06 and 2009/10, the average increase in the number of applications for criminal legal aid was approximately 6% nationally¹¹. The increase in the number of criminal legal aid applications in the territories for the same period¹² is much greater, at approximately 33%¹³, demonstrating continued need for criminal legal aid in the territories.

Socio-economic factors in the territories are seen as driving the need for civil legal aid. However, data from the Canadian Centre for Justice Statistics on the number of civil legal aid applications in the territories indicated a decrease in all three territories over the five-year period covered by the evaluation. Some key informants in the legal aid evaluation noted that when available resources do not cover legal aid costs, civil legal aid is affected first due to the constitutional requirements with respect to criminal legal aid. This possibility is supported by the increasing

¹¹ Statistics Canada, *Legal Aid in Canada: Resource and Caseload Statistics 2009/10*, April 2011.

¹² For Nunavut, the year 2008/09 is used instead of 2009/10 as Statistics Canada noted a possible underreporting in 2009/10 due to issues with information tracking systems. This is the case throughout the report.

¹³ Statistics Canada, *Legal Aid in Canada: Resource and Caseload Statistics 2009/10*, April 2011.

proportion of territorial legal aid costs directed to criminal matters between 2005/06 and 2009/10¹⁴.

Further evidence of the need for legal aid funding in the territories was obtained during interviews conducted as part of the AJA evaluation. Interview respondents, including representatives from the PPSC, noted that in the territories, the majority of the population cannot afford legal representation; one territorial key informant referred to legal aid as the “only game in town”.

ACW Services

Several factors contributing to the need for the ACW national Program were referenced in the ACW Program evaluation, including the overrepresentation of Aboriginal people in the criminal justice system. The 2008/09 Annual Report of the Office for the Correctional Investigator indicates that Aboriginal rates of incarceration are almost nine times the national average: one in five federally incarcerated offenders is of Aboriginal ancestry, while Aboriginal people represent 3.8% of the total Canadian population¹⁵.

In the territories, where Aboriginal people represent a much higher percentage of the population, the need for ACW services is higher: Aboriginal people account for 34% of the population in the Yukon, 50% in the NWT, and fully 85% in Nunavut¹⁶. These numbers further justify the need for courtworkers who can bridge the cultural gap that has traditionally existed between Aboriginal people and the justice system.

PLEI Services

A survey of PLEI organization stakeholders undertaken as part of the JPIP evaluation identified a need for the Canadian public to better understand the law in general in order to participate knowledgeably in a democratic society and be aware of the laws that govern Canadians. This survey found that the general public lacks knowledge and thus misunderstands the functioning of the justice system. The primary purpose of PLEI is to increase this understanding.

Further, several reports, studies and consultations substantiate the need for PLEI specifically among Aboriginal people, who, as indicated above, represent a higher percentage of the territorial population. With regard to Aboriginal people and the justice system, the Canadian

¹⁴ Statistics Canada, 2011. *Legal Aid in Canada: Resource and Caseload Statistics 2009/10*

¹⁵ Statistics Canada Census 2006 data

¹⁶ Statistics Canada Census 2006 data

Criminal Justice Association recognizes that there is a divergence between Aboriginal and non-Aboriginal values in Canada, and that many values common to Aboriginal groups are fundamentally different to the non-Aboriginal justice system¹⁷. For this reason, the level of understanding of how the Canadian justice system operates is lower among Aboriginal people than the general public. A Justice Canada Research Series report concerning legal aid provision in Northern Canada¹⁸ noted an extensive unmet need for PLEI services in all three territories. Additionally, consultations held with justice stakeholders in the territories¹⁹ confirm the need for effective PLEI services to address the “vast lack of understanding of the justice system among community members”. This need was found to be particularly pronounced in Nunavut, a determination that is further corroborated by the Nunavut Court of Justice Formative Evaluation²⁰, which points out the clear need for PLEI throughout that territory.

The consolidated agreement meets a need that would not otherwise be met with three separate funding agreements.

With a consolidated agreement, territorial governments have a greater service delivery flexibility, which is considered a necessity due to their relatively smaller, more remote populations. Through the AJAs, territories can allocate funds within and between the three components in order to provide financial support for access to justice services, as long as minimum service standards continue to be met and that the territories contribute the required percentage of the total shareable expenditures. This flexibility is critical, since the lines between legal aid and ACW and PLEI services are not as clearly drawn in all three territories as they are in the provinces. For instance, in these northern jurisdictions, it is not uncommon to have either legal aid lawyers or courtworkers delivering PLEI services, rather than a separate PLEI service deliverer. In this case, it is a challenge for territorial officials to delineate the resources being spent on legal aid or ACW services versus PLEI activities. The flexibility of the agreements means that not all costs need to be attributed exclusively to one of the three program components.

Additionally, the consolidation of the contribution agreements offers the potential for administrative efficiencies and cost savings to the territories. All stakeholders interviewed recognized the benefit in terms of reduced administration of having only one agreement to ratify

¹⁷ Canadian Criminal Justice Association, *A special issue of the Bulletin*, May 15, 2000.

¹⁸ De Jong, Pauline, *Legal Aid Provision in Northern Canada: Summary of Research in the Northwest Territories, Nunavut and the Yukon*, Department of Justice Canada, January 2003.

¹⁹ Justice Canada, *Northern Justice Consultations, 2006: Selected Recommendations for Discussion*, 2006.

²⁰ Justice Canada, *The Nunavut Court of Justice Formative Evaluation – Final Report*, January 2007.

rather than three, and expressed the appropriateness of this arrangement given the small size of the territorial governments and the fact that it is often the same territorial official who is responsible for all three program components.

4.1.2 Federal Roles and Responsibilities

There is alignment between the roles and responsibilities of the federal government and the provision of funding to the territories for legal aid and ACW and PLEI services.

The federal involvement in legal aid promotes equitable access to the justice system, a core value as reflected in the *Canadian Charter of Rights and Freedoms*, by providing funding for legal representation for individuals who are economically disadvantaged.

The basis for the federal role in the provision of criminal legal aid is found in Canada's foundational documents and in law. Under the *Constitution Act*, criminal justice is an area of shared responsibility between the federal and provincial governments: the federal government is responsible for criminal law and the provinces are responsible for the administration of justice. With respect to the territories, the *Criminal Code* defines "Attorney General" as the Attorney General of Canada.

Civil legal aid is handled differently. The provinces have constitutional authority over civil matters and procedures, and the federal government supports civil legal aid in the provinces through the Canada Social Transfer. In the territories, civil law matters are retained by the federal government, but delegated to the territorial councils through the specific territorial acts (the *Yukon Act*, the *Northwest Territories Act* and the *Nunavut Act*). These powers closely parallel the powers given to the provinces by the *Constitution Act*. The federal government is responsible for civil law in the territories and directly funds civil legal aid in the territories.

The federal government respects this shared responsibility for access to justice by contributing to the funding for criminal legal aid (and civil legal aid in the territories) while leaving its delivery to the provinces and territories.

It is the Department of Justice's mission that establishes the federal role with respect to providing funding for ACW and PLEI services. This mission, "to ensure that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice", is partly achieved through ACW and PLEI program funding, both of which contribute to the accessibility and fairness of the Canadian justice system. As stated in the Department's 2009/10 Report on Plans and Priorities, "the needs of Aboriginal people related to culture, economic position and/or social

circumstances must be taken into account to make the system more relevant and effective”. The ACW national Program is one of the ways in which Justice takes these needs into account. The Report also indicates that “access to justice initiatives provide an important structural support to an efficient and effective justice system, and as such underpin public confidence in the justice system”. The aim of PLEI is to increase the understanding of the general public with respect to the justice system and, consequently, accessibility to the justice system.

4.1.3 Alignment with Government Priorities

The provision of funding for legal aid and ACW and PLEI services to the territories is aligned with government priorities.

Canada has demonstrated its view of the importance of legal aid to democratic values by signing the *International Covenant on Civil and Political Rights*, which requires signatories to provide legal counsel to individuals facing criminal charges who cannot afford their own counsel. Agreements such as this are evidence of the federal commitment to legal aid.

Additionally, support of ACW services directly contributes to the government priority of “renew[ing] and deepen[ing] our relationship” with Aboriginal peoples, as outlined in the 2011 Speech from the Throne. Finally, the JPIP evaluation indicates that the Department is responsive to government priorities through the development of policies, laws and programs in areas such as Aboriginal justice, criminal justice, youth justice, family justice, and international public and private law as a result of PLEI activities in these areas.

Taking a specialized approach to the provision of this funding to the territories is aligned with the priorities of the federal government.

The federal priorities of “promoting social and economic development in the North”, and of “improving and devolving northern governance so that Northerners have a greater say in their own destiny”, are clearly delineated in Canada’s Northern Strategy. As pointed out by AJA stakeholders, the federal government has demonstrated its commitment to the North by establishing consolidated agreements which allow for a flexible approach to be taken in the territories in the delivery of legal aid and ACW and PLEI services that recognizes not only the differences between the territories and the provinces, but also the contexts and circumstances that are unique to each of the three territories.

4.2 Effectiveness

4.2.1 Effectiveness of the Provision of Funding for Legal Aid and ACW and PLEI Services to the Territories

The evaluations of the LAP, ACW Program and JPIP establish the effectiveness of these national funding programs. However, these evaluations of a national scope do not examine in detail the particularities of delivering these services in the territories, and their findings may not reflect the reality of how services are delivered in the North. The AJA evaluation was carried out primarily to examine these particularities in greater detail.

Without the federal contribution, the capacity of the territories to deliver criminal and civil legal aid and ACW and PLEI services would be significantly affected. Key informants underlined the importance of the federal funding to support these initiatives.

Over the five years covered by the evaluation, from 2005/06 to 2009/10, the dollar amounts of total shareable expenditures for legal aid and ACW and PLEI services have increased by 29.3% in the NWT and 17.7% in Nunavut, and have decreased by 5.3% in the Yukon. Table 3 presents total shareable expenditures by territory and fiscal year.

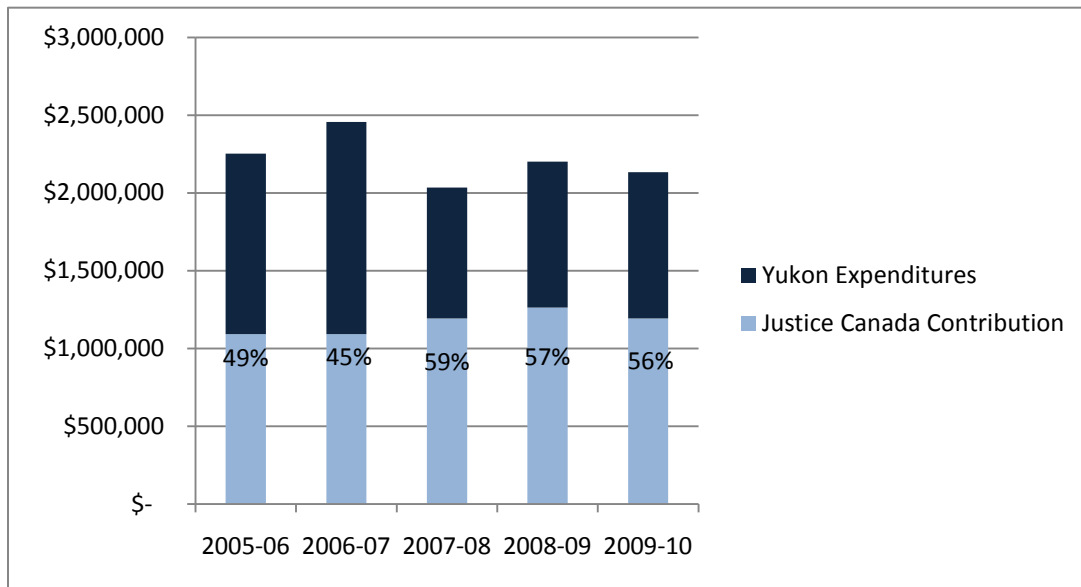
Table 3: Total Shareable Expenditures by Territory and Fiscal Year

	NWT	Yukon	Nunavut ²¹
2005/06	\$4,540,893	\$2,252,956	\$5,322,595
2006/07	\$4,669,022	\$2,455,569	\$6,023,470
2007/08	\$5,654,748	\$2,033,477	\$5,471,191
2008/09	\$5,330,988	\$2,201,460	\$5,859,415
2009/10	\$5,871,566	\$2,132,664	\$6,263,757
Difference (2005/06 to 2009/10)	\$1,330,673	(\$120,292)	\$941,162
Percent change	29.3%	(5.3%)	17.7%

In the Yukon, total shareable expenditures have remained relatively stable over the five years covered by the evaluation. The federal contribution represented 56% of the total shareable costs in 2009/10. Figure 2 presents the federal contribution to shareable expenditures in Yukon by fiscal year.

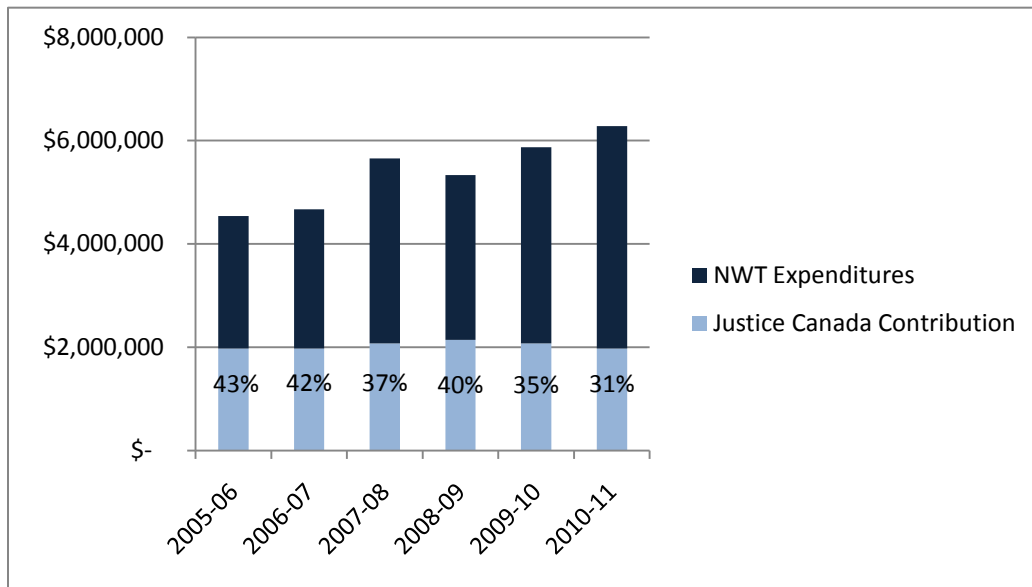
²¹ Nunavut has not yet submitted annual claims for 2007/08 to 2009/10. The numbers included in this table are based on preliminary expenditures data provided by the territory, which have not yet been verified through an independent audit.

Figure 2: Federal Contribution as a Percent of Total Shareable Expenditures in Yukon



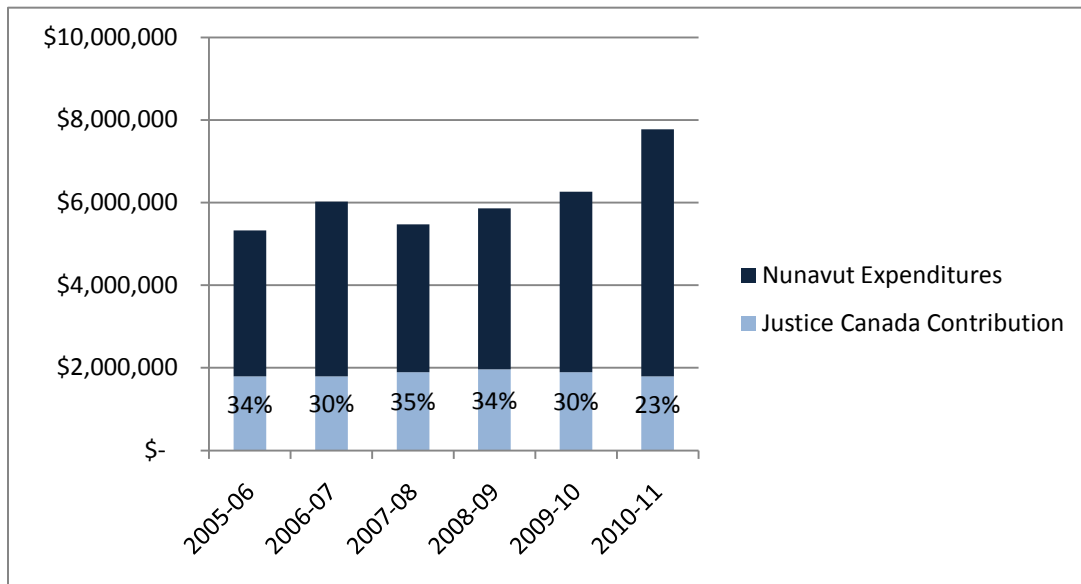
The 2010/11 annual claim from NWT indicates that total shareable costs with respect to the provision of legal aid and ACW and PLEI services increased from 2009/10 to 2010/11 by over \$400,000. The federal contribution represented 31% of the total expenditures for the AJA program in 2010/11. Figure 3 presents the federal contribution to shareable expenditures in NWT by fiscal year.

Figure 3: Federal Contribution as a Percent of Total Shareable Expenditures in NWT



Stakeholders from the Nunavut LSB indicated that the territorial Justice Department significantly increased its budget in 2010/11. The percentage representing the federal contribution to legal aid and ACW and PLEI services in that territory was 23% in 2010/11. Figure 4 presents the federal contribution to shareable expenditures in Nunavut by fiscal year.

Figure 4: Federal Contribution as a Percent of Total Shareable Expenditures in Nunavut²²



The delivery of criminal legal aid is effectively providing territorial residents with the assistance they need to ensure a fair and accessible justice system. Stakeholders identified gaps in the provision of civil legal aid in the territories.

There has been a 28% increase in the number of applications approved for criminal legal aid in the territories between 2005/06 and 2009/10²³. Although the number of approved applications has decreased, respondents agree that civil legal aid is effective. Gaps in this area were identified and are explained in further detail below, but all respondents agree that it is appropriate for the provision of criminal legal aid to take precedence over the provision of funding for civil legal aid, and that processes are in place to select the civil legal aid cases which most warrant legal aid funding.

All respondents agree that legal aid, both criminal and civil, is effective, in that the minimum standards are being met, and that the people who most need legal aid do have access to it.

Generally, territorial residents cannot afford private lawyers and nearly all accused qualify for legal aid; for example, Nunavut officials estimate that legal aid covers between 95% and 98% of all matters in the justice system. In NWT and Nunavut, a policy of presumed eligibility is in

²² Amounts for 2008/09 to 2010/11 are draft amounts only, as claims were not audited at the time of the evaluation.

²³ For NWT, the year 2008/09 is used instead of 2009/10 as data for 2009/10 is unavailable.

place in order to address the high level of eligible accused in these territories. This policy is defined as follows²⁴: “All persons shall be presumed to be financially eligible for circuit and duty counsel services as of January 1, 1997. Circuit and duty counsel services may be provided without consideration of financial eligibility, i.e., without application and approval for legal aid.”

Another challenge in the delivery of legal aid in the territories is the use of circuit courts. Although all stakeholders recognize that circuit courts are the only means of providing services for most of the remote communities across the territories, they also point out the high costs associated with this approach. NWT and Nunavut, especially, face high costs as a result of circuit courts, since most of the communities in those territories are accessible only by air. Inclement weather, which is often a concern in the territories, further exacerbates the issues associated with circuit courts as these are often cancelled or delayed at the last minute, resulting in additional costs to the system.

The effectiveness of ACW services in the territories varies by jurisdiction and depends on the capacity of the individual courtworkers. However, stakeholders agree that the program component is operating as effectively as possible within the constraints inherent in each delivery model, and that Aboriginal accused greatly benefit from the services provided.

The number of people receiving ACW services is one measure used in the ACW evaluation to determine that the national Program is effective. Although the collection of this data is a requirement as part of the consolidated contribution agreements with the territories, it has not been collected consistently or uniformly across the territories throughout the reporting period. In order to resolve this issue, a definition has now been prepared by the Department of Justice as to what constitutes “a client”²⁵, and territories will begin to collect this information in a way that allows comparison in the future.

Further evidence for the effectiveness of the ACW national Program is gathered through the national level surveys of Aboriginal courtworkers, ACW clients and Justice officials as part of the ACW evaluation. These surveys have established that ACW is an effective national Program in that Aboriginal accused are represented in court, understand the nature of the charges against them, and are connected to the appropriate community services. However, the impacts of ACW

²⁴ Justice Canada, Research and Statistics Division, Nunavut Legal Services Study Final Report, October 2002

²⁵ A “courtworker client” is now defined as “an accused person receiving services at any time during the course of a fiscal year in relation to a charge or a set of charges that are processed concurrently in court (but not necessarily with the same end date).”

services in the territories cannot be specifically measured through these results, because they are reported only on a national (and not provincial/territorial) basis.

Despite the lack of direct quantitative evidence, territorial officials generally agree that ACW services are effective in their jurisdictions. As with legal aid, they note that the minimum standards are being met. All respondents emphasized the importance of such a program in bridging the gap between the Aboriginal accused and the justice system, highlighting that especially in smaller territorial communities, courtworkers are the primary connection to the justice system and represent the “face of justice” for accused. Stakeholders note that the role of the courtworker is crucial to the effective functioning of the justice system, for instance in ensuring that the accused appears in court on the right day at the right time. One respondent pointed out that territorial residents have an increased confidence in the justice system when they see Aboriginal people as part of the system.

That said, all respondents conceded that there are differences in the effectiveness of ACW services between jurisdictions as well as within each of the three territories, and that the ACW services provided depend on the individual courtworkers providing those services.

The differences between territories seem to be largely a question of the service delivery model. In NWT, where courtworkers are employees of the territorial government, there is more consistency in training and less turnover in staff due to the higher salaries and benefits earned when employed as a public servant.

Nunavut noted great difficulties in keeping ACW positions staffed, as courtworkers there, who are employees of the three legal clinics, often gain experience in the justice field and are then offered higher paying positions within the territorial government. Many respondents indicated that experience plays as important a part in the learning process as training, and it is therefore a challenge to ensure consistency between courtworkers. Offering training to Nunavut courtworkers is further complicated in that many of them live in remote communities, often without Internet access.

Officials from Nunavut pointed out that many of its courtworkers do not have the opportunity to practice the skills acquired through training on a regular basis, as circuit courts only cycle through the small communities approximately every three months. Courtworkers in remote communities, who are isolated from other courtworkers in the territory, may have all the training required, but learning can be lost when months go by without the opportunity to put the training into action. In contrast, courtworkers in Iqaluit are in court very regularly and have developed

their skills and capacity to a great extent; they are seen by the justice system personnel as being very experienced, professional and critical to the justice system.

Finally, in the Yukon, courtworkers are employees of First Nations, and as such, the ACW coordinator from the territorial Department of Justice has limited oversight over their work and training. Further, because six separate delivery agencies are responsible for the delivery of ACW services, inconsistencies exist regarding the level of service delivery across the territory.

Despite these challenges, respondents in all three territories believe they are achieving an effective level of service given their resources and the frameworks in which they must operate. The Nunavut LSB is currently looking to hire someone to serve as the Courtworker Coordinator to put more focus on resolving the issues there, while in the Yukon, the change of management of the ACW Program component to the Community Justice Branch has resulted in a clearer focus and refreshed vision of how to improve the ACW services in that territory.

The two main challenges identified by stakeholders regarding the ACW Program component in the territories are recruiting and training courtworkers. Respondents indicated that finding people with the appropriate skill set and education regarding the legal system is extremely difficult, and that the courtworker role is very demanding, especially in the territorial communities where residents all know one another and legal issues present delicate situations. All interviewees expressed the need to establish more avenues for training, but recognize the challenges inherent in providing training to courtworkers in remote areas.

PLEI activities, when undertaken, are done so in a manner appropriate to the context of the North. Officials recognize that more activities could be done, but are reluctant to designate funds to this area at the expense of providing legal aid to residents facing possible incarceration.

The JPIP evaluation concluded that PLEI has effectively contributed to increased knowledge among the public respecting justice issues, and greater public access to the justice system.

It is difficult to extend this conclusion to the territories on the basis of evidence from the JPIP evaluation. Although two of the three territories were included in the national survey of PLEI organization stakeholders, the primary source of evidence for the PLEI findings in the JPIP evaluation, PLEI is generally delivered differently in the territories than in the provinces.

Of the three territories, Yukon's model of PLEI delivery most closely resembles that of the provincial PLEI organizations, in that Yukon has a separate delivery agency whose sole

responsibility is the delivery of PLEI. It is, however, a much smaller operation than in the provinces, as the Yukon Public Legal Education Association employs only one person: a lawyer whose primary role is to answer individual requests for information. Most requests are made by telephone using the Association's toll-free telephone number, or by email, but some residents of Whitehorse make requests for information in person. Statistics regarding the number of people assisted by PLEI in Yukon are provided to the Department of Justice as part of the annual claim. These statistics are broken down by location (the vast majority of inquirers reside in Whitehorse), subject (over the five-year period, 34% of the requests were regarding family law, while questions regarding access to law, wills and estates, civil litigation and criminal procedure represented 13%, 10%, 10% and 8% respectively), and, since 2007/08, gender (approximately two thirds of the inquiries are made by females). During the period from 2005/06 to 2009/10, the total number of requests received by the Association ranged from a low of 2,388 to a high of 2,949. The Association has also produced some publications over the period covered by the evaluation, though less frequently in more recent years.

In addition, the Association's lawyer has done some community-speaking engagements when requested, such as sessions on wills and estates in seniors' homes, and children/custody issues in conjunction with the territory's Family Law Information Centre. The lawyer is cautious, however, about how many of these engagements he takes on, especially when travel is involved; the costs of and/or time required for information sessions can be high, and turnout is often low. Further, as the Association's only employee, any time away from the office is time that the many inquiries the Association receives by telephone are unanswered.

Although quantitative data related to the effectiveness of PLEI is not collected in a consistent manner across all territories, there is qualitative evidence provided by the territories that PLEI is taking place, albeit not in the manner typically observed in the provinces.

Annual reports provided by the LSB of Nunavut confirm that PLEI services are delivered on a regular basis there, citing examples including:

- a toll-free Family and Civil/Poverty Law Line;
- sessions conducted in various communities by a civil/poverty lawyer during court circuits; and
- shelter visits, sessions at the Baffin Correctional Centre, radio programs, local agency sessions and school visits undertaken by each of the three legal clinics.

In addition, as gateways to the justice system for Nunavut residents, all three clinics routinely field general legal information questions.

Respondents from the NWT concede that there is not a consolidated effort to deliver PLEI in the territory. Though some PLEI activities are undertaken, it does not take priority in their workloads as there is no constitutional requirement to deliver PLEI, and any time devoted to these activities is time taken away from the provision of legal aid and ACW services. Despite their recognition that PLEI is not a focus of their work, officials provided several examples of PLEI activities in NWT, including:

- Many publications are available on the NWT Justice website, especially with respect to Family Law. Most of these electronic brochures are available in English and French.
- A Family Law Manual was produced in 2008/09, which provides comprehensive information on family law matters in the NWT. It was distributed widely throughout the territory, and courtworkers were provided training to assist people in understanding the material.
- Sessions were offered by the LSB's poverty lawyer during court circuits.

Also, as is the case in Nunavut, courtworkers and staff lawyers at the legal aid clinics routinely provide basic legal information to territorial residents.

Interview respondents provided several explanations justifying the use of a PLEI delivery model that differs from the provincial approach. Due to the remoteness of many of the Northern communities, the costs associated with distribution of brochures and booklets are high. Additionally, the high cost of living, especially in Nunavut, makes the printing of these materials less cost efficient than in the provinces. The low level of accessibility to the Internet in the territories limits the reach of an online distribution approach. Moreover, the literacy rate in Nunavut being lower than the national average, distribution of written materials in any form will not reach as great a percentage of that territory's population than PLEI services delivered by alternate means, such as radio advertisements.

The number of languages spoken in each of the territories also poses a challenge in terms of the translation of PLEI documents. In NWT, for instance, there are eleven official languages, making it costly to produce materials that are accessible to all residents. Other complications arise with respect to language. As some of the languages are becoming more endangered, it is increasingly difficult to find translators. Additionally, many legal terms do not translate easily into Aboriginal languages.

Some stakeholders questioned the extent to which PLEI services are being provided in the territories. Very few pamphlets are distributed regarding various legal matters, but territorial officials confirmed that this would not be an effective or relevant means of informing the Northern public of their legal rights. Key informants generally agreed that although PLEI gets the “short end of the stick” in the way of dedicated funds compared to legal aid and ACW services and that more could be done, they maintain that they are effectively delivering PLEI services in a way that is appropriate to the cultural context in the territories. However, due to the relatively informal nature of PLEI in the territories, it is not easily counted or tracked, making it challenging to assess the effect that its delivery has on the population.

4.2.2 Effectiveness of the Consolidated Agreements as an Alternative to Separate Funding Agreements

There is general agreement among program stakeholders that the consolidated agreement is a better alternative to separate funding agreements.

Interview respondents agreed that the consolidated agreements recognize the unique context of the territories, providing them with the flexibility to deliver the services appropriately. In some instances, the provision of legal aid, ACW and PLEI services is coordinated by one body, and delineating the resources and time spent between the three program components is not always feasible. In other instances, where not all of the budgeted resources in a specific program area are able to be spent, the AJA flexibility allows territorial officials to use the funds in one of the other program components to support access to justice program requirements rather than lapsing resources.

Further, territorial officials recognize the administrative efficiencies achieved as a result of completing one annual claim instead of three. Unlike in the provinces, as a result of the small population size of the territories and their governments, the same territorial staff person is often responsible for overseeing and administering each of the three program components.

Some respondents also noted the benefit of having a single point of contact within Justice Canada. These interviewees indicated that as a result, there is more focus on the territories within the Department and, as such, it has a better understanding of the unique context in the North. They express the added advantage to them of having someone to ensure that their interests are taken into account when policies are being developed. In the case of NWT and Nunavut, the consolidated agreement also means that there is a single point of contact between the territorial

government and the delivery agency responsible for the administration of legal aid and ACW and PLEI services.

Some interviewees from Yukon, where the three services are delivered by separate delivery agencies, indicated that opportunities exist for increased coordination between the program components. This is indicative of one of the benefits of the AJAs since the territory is exploring the potential collaboration and synergies between the program components as a result of the contribution being within one funding envelope.

A suggestion raised in one jurisdiction was to expand the scope of the AJA agreements to encompass “access to justice” services more broadly, though potential challenges to this approach were also raised. Most territorial officials, however, only expect the agreements to serve as a simplified channel to obtain resources for the current three program components.

Territorial officials noted various obstacles to effective performance measurement and to the completion of audited financial statements. As a result, the submission of annual claims can be delayed.

There is general agreement among the territorial justice officials that although the performance measurement requirements of the AJAs are appropriate, there is not sufficient capacity in the territories for effective performance measurement to take place. A couple of respondents did feel that some of the requirements are burdensome, but recognize that this level of accountability is necessary for the federal government to demonstrate the ongoing funding needs for each of the program components.

Nunavut especially has experienced challenges in completing and submitting annual claims: the last complete claim received by the Department of Justice is for fiscal year 2007/08. Respondents cited several obstacles to their capacity in collecting performance measurement data, including high staff turnover both within the LSB and the Justice Department of the Government of Nunavut. Additionally, because there is a shortage of administrative resources, front-line needs often take priority over administrative tasks. Further, with three legal clinics offering services throughout the territory, reporting formats are not consistent and present additional work for the employees of the LSB.

Some interviewees also noted that the LSB does not have its own financial reporting system, relying instead on the financial system of the Government of Nunavut. This approach has its limitations, as the Government of Nunavut system does not allow for a sufficient breakdown of

expenditures to meet the reporting requirements of the AJAs. To address these limitations, the Board has recently developed its own set of “shadow books” to complement and further break down the figures listed in the Government of Nunavut’s system.

The requirement to provide audited financial statements has also presented a challenge in Nunavut. Nunavut Justice currently has an agreement with the territorial Department of Finance to have the latter verify their final claims, rather than through an independent auditing firm, which would require diverting significant financial resources away from service delivery. However, annual claims have been held up for lengthy periods of time (years, in some cases) awaiting completion of the financial audit.

Finally, the greatest impediment to Nunavut’s ability to provide statistical program information during the period covered by the evaluation was a system crash that occurred in 2007. The Board decided to take the ensuing opportunity to develop a data collection system that would better suit its needs. This system is now near completion and training for Board staff will begin shortly. Although the new system represents a step forward, some respondents recognize that the absence of data collection over the five years while the system was in development is problematic in terms of meeting reporting requirements.

Yukon officials noted issues with respect to inconsistency in reporting formats and timelines on the part of its service delivery agencies. Until recently, the territory was a number of years behind in submitting its annual claims, but it has since submitted a number of audited claims, closing the gap up to and including 2009/10.

As is the case in Nunavut, the requirement for audited financial statements presents challenges in the Yukon, where six separate First Nations or First Nation groups deliver ACW services and must each commission audits of their financial records. Here, there is a logistical challenge in that October 31, when annual claims are due to Justice Canada, coincides with the timing of the First Nations Annual General Assemblies, at which the audited financial statements are approved. This results in delays in the submission of AJA claims. Furthermore, some Yukon stakeholders expressed concern that an audit of financial statements be required for small contributions ranging from \$20,000 to \$60,000. It should be noted, however, that the agreements do allow for some flexibility in this area: one clause states that the service delivery agencies may provide a “review engagement report” signed by the territorial auditor in the place of audited financial statements, in exceptional circumstances and where agreed to by Canada and the territory.

Although the expense of acquiring an audit presents one set of challenges, it should be noted that delays in reporting of any kind to Justice Canada are also incurred as a result. Delays in submitting audited financial statements result in delays in submitting program and performance measurement information to Justice Canada, as both are submitted in a single final claim. Some respondents from the Yukon and Nunavut suggested that a possible remedy to this would be to separate the annual claim reporting into two parts: program component information and finances. This would ensure that Justice Canada receives at least some statistical information regarding the services provided by the three program areas in a timely manner, as territories wait for the completion of audited financial statements.

Interview results indicate that a shortcoming in the understanding of service delivery personnel on data collection requirements could be a cause of the challenges regarding the collection of performance measurement information. Specifically in the Yukon and Nunavut, evaluation interviews revealed that there is a difference in the level of knowledge concerning the AJA reporting requirements between the territorial government officials who sign the agreements and the service delivery agencies which deliver legal aid and ACW and PLEI services. Frontline workers expressed uncertainty as to what the AJA program reporting requirements were, and, in one instance, data collection instruments were being developed at the service delivery level without an awareness of what data are required by Justice Canada as part of the AJAs.

This is not to suggest that this model of delivery is not an effective one, only that clearer lines of communication need to be drawn. Those responsible for the signing of the agreements must be sure to articulate the requirements to the parties overseeing service delivery, who must in turn inform the bodies who deliver the services and who are responsible for collecting the data. Better defined communication channels will have an added benefit in that specific problems with respect to performance measurement requirements can also be reported up to the territorial officials, placing them in a position to negotiate changes to these requirements, if necessary, at the time of agreement renewal.

The NWT has not encountered the same issues in completing annual claims as the other two territories, perhaps because there is a single service delivery agency responsible for all services. Consequently, all statistical information is collected in a consistent manner, and only one set of audited financial statements for the three program components is required. However, NWT officials do cite obstacles to effective performance measurement. Due to the informal nature of their PLEI activities, it is very difficult to count and track PLEI services in the NWT. Although NWT officials note that they perhaps do not conduct as much PLEI work as they could (as

discussed in Section 4.2.1), they indicate that the method by which work is done in this area is not quantifiable.

Further, though they are able to compile statistical information regarding the delivery of courtworker services in the territory more easily than in the Yukon or Nunavut, respondents from the NWT caution that the numbers alone do not tell the cultural story of how the ACW Program operates in the North, and they suggest that perhaps the performance measurement indicators for this component do not accurately represent the importance of ACW services in the territories.

4.3 Efficiency and Economy

The AJAs are economical and efficient. All stakeholders agree that a reduction in federal funding would result in a reduction in services.

The LAP, ACW Program and JPIP evaluations conclude that nationally, these programs are efficient and economical. Criminal justice professionals (Provincial Court judges, prosecutors and defence counsel) interviewed as part of the LAP evaluation expressed the opinion that the cost of providing legal aid to those who cannot afford representation is likely less than the costs incurred when accused proceed unrepresented. Additionally, the national average cost per client of providing ACW services is modest at \$79. Finally, PLEI, at a cost of \$70,000 per territory per year, is a similarly modest way for the federal government to contribute to an increased access to the justice system, one of the strategic outcomes of the Department of Justice.

A certain level of economy is achieved at the departmental level as a result of the consolidated agreements. Interviewees from Justice Canada highlighted the financial benefit directly realized by negotiating one agreement with each of the territories instead of three, as well as reviewing only one claim from each territory rather than three.

At the territorial level, officials underlined the administrative efficiencies obtained by having one consolidated agreement in the place of three, as discussed in greater detail in the above Effectiveness section.

Specific ways in which legal aid and ACW and PLEI services contribute to cost savings to the justice system in the territories were raised in a number of interviews. The notion of legal aid being a potentially more efficient alternative to having unrepresented accused proceed in court was recounted by some key informants over the course of this evaluation.

The ACW component is efficient in its design in the territories, since one courtworker serves multiple communities in proximity of each other. Though respondents indicated that certain communities forego benefits of having a resident courtworker as a result, they recognize that having a courtworker in all communities would not be financially viable. Additionally, although it may not be their primary responsibility, a couple of interviewees noted that significant savings are realized by the justice system when a territorial courtworker ensures that his or her client appears in court on the right day and at the right time, when all of the other parties are prepared and ready for the continuation of a file. Some responses to the 2011 National Court Officials Survey indicated that courtworkers help the court run smoothly and increase the efficiency of legal proceedings. Finally, several justice officials in NWT and Nunavut stressed their belief that the federal contribution towards PLEI achieves more efficiencies in the territories by allowing the use of an alternative approach to PLEI delivery.

On the whole, program efficiencies are realized as a result of the efforts made by the territorial government and/or service delivery agencies. Interview respondents from each jurisdiction provided examples to illustrate the ways in which they maximize the impacts of their programs. In the Yukon, for instance, the Legal Services Society hires junior lawyers to fill vacancies, resulting in lower expenses in salaries than if more experienced lawyers were to take the positions. In Nunavut, a structural review of the LSB is being commissioned to determine ways that additional efficiencies could be realized.

Interviewees from both the territorial and federal governments could not see any way in which the AJAs could be more efficient. No alternative sources of funding exist in the territories.

5. CONCLUSIONS

5.1 Relevance

There is a continued need to provide funding to the territories for legal aid, ACW services and PLEI activities, and the consolidated agreement meets a need that would not otherwise be met with three separate funding agreements.

The evaluations of the LAP, ACW Program and JPIP (through which PLEI is provided to the territories) establish the need for each of these programs. Constitutional and Charter obligations provide the rationale for federal contribution funding for both criminal and civil legal aid in the territories. The increasing number of criminal legal aid applications further supports the need for legal aid funding. With respect to ACW services, the overrepresentation of Aboriginal accused in the justice system, which is exacerbated in the territories where a greater percentage of the population is of Aboriginal descent, forms the basis for the need for federal funding in this area. Finally, the importance of improving the public's knowledge and understanding of the justice system serves as evidence for the need for PLEI.

Due to the size and remote nature of their jurisdictions, an alternative approach to the funding of these program components is warranted in the territories. The consolidated agreements provide the territories with the needed flexibility to deliver these services that three separate agreements would not.

There is alignment between the roles and responsibilities of the federal government and the provision of funding to the territories for legal aid and ACW and PLEI services.

The federal government demonstrates a commitment to ensuring access to justice in the territories by contributing funding for criminal and civil legal aid. Further, funding for legal aid and ACW and PLEI services enables the federal government to “ensure that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice”, as articulated in the Department of Justice's mission statement.

The provision of funding for legal aid, ACW and PLEI services to the territories is aligned with federal government priorities, as is the case of taking a specialized approach to the provision of this funding

As a signatory to the *International Covenant on Civil and Political Rights*, Canada has demonstrated the importance it ascribes to the provision of legal aid to those who cannot afford their own counsel. Additionally, ACW services allow the federal government to renew and deepen its relationship with Aboriginal peoples, which it outlines as a priority in the 2011 Speech from the Throne. Finally, funding towards PLEI activities allows the Department to be responsive to government priorities through the development of policies, laws and programs in areas such as Aboriginal justice, criminal justice, youth justice and family justice.

Canada's Northern Strategy outlines the federal government's commitment to the North, which is in part demonstrated by the recognition of the unique circumstances faced in the territories and their need for agreements which allow them flexibility to operate within their contextual parameters.

5.2 Effectiveness

Without the federal contribution, the capacity of the territories to deliver criminal and civil legal aid and ACW and PLEI services would be significantly affected. Key informants acknowledged the importance of the federal funding to support these services. Funding levels have not changed since 2005/06.

The delivery of criminal legal aid is effectively providing territorial residents with the assistance they need to ensure a fair and accessible justice system. Stakeholders identified gaps in the provision of civil legal aid in the territories.

The minimum standards for legal aid – both criminal and civil – are met in all three territories. However, the increasingly high costs of legal services in the territories do impede the jurisdictions from providing assistance in all the areas for which there is demand, and gaps in the areas of family law and civil matters were noted.

The effectiveness of ACW services in the territories varies by jurisdiction and depends on the capacity of the individual courtworkers. However, stakeholders agree that the program component is operating as effectively as possible within the constraints inherent in each delivery model, and that Aboriginal accused greatly benefit from the services provided.

The minimum standards regarding the provision of courtworkers services are being met in the territories, and Aboriginal courtworkers bridge the gap between Aboriginal accused and the justice system that is even more heavily felt in the territories than in the rest of Canada. The level of effectiveness of the services depends on the individual courtworkers providing the services, and challenges to the effective management of the ACW Program component, such as high turnover rates and isolation, impede some territories' ability to deliver services that are consistent from community to community.

PLEI activities, when undertaken, are done so in a manner appropriate to the context of the North. Officials recognize that more PLEI activities could be done, but are reluctant to designate funds to this area at the expense of providing legal aid to residents facing possible incarceration.

As PLEI is generally delivered in an informal way by the same people who also provide legal aid and ACW services in two of the territories, it is difficult to quantify the number of PLEI activities that are undertaken or to establish their impacts. However, this alternative delivery approach is appropriate given the realities of the North, and territorial governments and/or service delivery agencies find innovative ways of providing PLEI services to residents despite challenges such as multiple official languages, high distribution costs and low levels of Internet accessibility.

There is general agreement among Program stakeholders that the consolidated agreement is a better alternative to separate funding agreements.

Interview respondents agree that the consolidated agreement recognizes the unique context of the territories, providing them with the flexibility they need to deliver their services appropriately. In some instances, the provision of legal aid, ACW and PLEI services is coordinated by one body, and delineating the resources and time spent between the three program areas is not always feasible. In other instances, where not all of the budgeted resources in a specific program area are being spent, the AJA flexibility allows territorial officials to use the funds in one of the other program components rather than lapsing resources.

Further, territorial officials recognize the administrative efficiencies achieved as a result of completing one annual claim instead of three. Unlike in the provinces, because of the small population size of the territories and their governments, the same territorial staff person is often responsible for overseeing and administering each of the three program components.

Territorial officials noted various obstacles to effective performance measurement and to the completion of audited financial statements. As a result, the submission of annual claims can be delayed.

Although there are varying degrees of performance measurement capacity in each of the territories, officials from all three territories agree that there is room for improvement in this area. Based on interview comments, the expense and time required to complete an audit of financial statements presents the greatest challenge; however, other factors such as inconsistent data collection methods and high staff turnover also contribute to the difficulty in collecting the required financial and performance data.

Nunavut has experienced particular challenges in completing and filing annual claims: the last claim received by the Department of Justice is for fiscal year 2007/08. The site visit to this jurisdiction revealed that annual reports of the Nunavut LSB, an arms-length body that administers legal aid, ACW and PLEI services, are available for each of the years since then, but that there have been challenges in completing the audits of the financial statements, and that not all of the program information has been collected consistently over the years. However, this deficiency in performance measurement capacity is not a result of the consolidation of agreements, and all sources indicate that the problems would exist, and possibly be compounded, with three separate funding agreements.

5.3 Efficiency and Economy

The AJAs are economical and efficient. All stakeholders agree that a reduction in federal funding would result in a reduction in services.

The LAP, ACW and JPIP evaluations all conclude that these programs are efficient and economical.

At the territorial level, officials underlined the administrative efficiencies obtained by having one consolidated agreement in the place of three. For the most part, efficiencies are achieved as a direct result of the efforts made by the territorial governments and/or service delivery agencies to maximize the impacts of legal aid and ACW and PLEI services within the current funding levels.

A certain level of economy is achieved at the departmental level as a result of the consolidated agreements. Interviewees from Justice Canada highlighted the financial benefit directly realized by having one agreement to negotiate with each of the territories instead of three, as well as having only one claim to review from each territory rather than three.

6. RECOMMENDATIONS AND MANAGEMENT RESPONSE

Issue 1: Division of Reporting Requirements

Although the expense and timing of performing an audit present one set of challenges, it should be noted that corresponding delays in submitting program component reporting to Justice Canada are also incurred as a result. Some respondents suggested that a possible remedy to this would be to separate the annual claim into two parts: program information and financial. This measure would ensure that Justice Canada receives most of the statistical information regarding the program services in a timely manner, as territories wait for the completion of audited financial statements.

Recommendation 1: Separate the annual claim reporting requirements into two components: one for the reporting of program and statistical information, and the second for the submission of the financial information and audit.

Management Response:

Agreed

The Access to Justice Services Agreements include both financial and program reporting requirements. The Policy Implementation Directorate will identify changes required to separate claim reporting into separate components.

Issue 2: Communications regarding Performance Measurement and Program Reporting

Although Justice Canada is not responsible for the gaps in communications between territorial officials and service delivery agencies, it would be greatly beneficial to the Department if the program reporting and performance measurement requirements were better understood by all parties involved in the delivery of AJA services.

Perhaps one of the underlying causes of the challenges regarding performance measurement and program reporting is a shortcoming in communications. Evaluation interviews revealed that there

is a difference in the level of knowledge concerning the AJA reporting requirements between the territorial government officials who sign the agreements and the service delivery agencies which deliver legal aid and ACW and PLEI services.

Recommendation 2: Develop a concise document detailing the reporting requirements for the AJAs, and distribute it to all parties involved in the oversight and delivery of legal aid, ACW and PLEI services.

Management Response:

Agreed.

A concise reporting document would ensure a better understanding of program reporting requirements and would also ensure “continuity” within each territory for succession planning purposes.

Issue 3: Appropriateness of Performance Measurement Indicators

The current performance indicators for the AJAs are in line with the measures used in the provinces for each of the three program components. However, some territorial and departmental officials question whether these measures can accurately represent the unique circumstances in the North and how legal aid, ACW and PLEI services play out there.

However, caution was also expressed by some that changes to these requirements could be difficult to implement given the capacity challenges that are already faced.

Recommendation 3: In consultation with territorial officials, determine whether unique performance measures – rather than indicators pulled from each of the program components – would better reflect the effectiveness of the AJA funding in the territories, and whether the collection of this data would be feasible.

Management Response:

Agreed

Performance indicators will be reviewed to determine if additional measures would better reflect the unique circumstances in the North.

Appendix A:

Interview Guide

Access to Justice Services Agreements Evaluation Interview Guide

1. To begin, what is your role with respect to the Access to Justice Services Agreements (AJAs)? How long have you been in this role?

The Agreements in general

2. What circumstances existed (or continue to exist today) in the territories to support the creation of a consolidated agreement?
 - a. Why is there a need to be able to reallocate funds between program areas in the territories but not in the provinces?
3. In what ways have the AJAs improved the **federal government's approach** to supporting the provision of access to justice services in the territories?
4. In what ways is the **territorial government's capacity** to deliver access to justice services improved as a result of the AJAs?
5. To what extent have the AJAs contributed to **improved territorial flexibility** to deliver appropriate, responsive and integrated services delivery models?
6. Are there any other benefits of the consolidated agreement? *Compare to experience with separate agreements, if possible*
7. What drawbacks exist as a result of the consolidated agreement? *Compare to experience with separate agreements, if possible*
8. Is the balance of spending between the program components appropriate? Why do you believe this?
9. In what ways have the AJAs contributed to a fair, relevant and accessible justice system?
10. Overall, are the consolidated arrangements working?
11. What unexpected outcomes (positive/negative) have occurred?

12. (JUS professionals and program contacts only) How are the AJAs aligned with federal government priorities? With departmental priorities/strategic outcomes?

Legal Aid

13. Are the current agreements able to support your ability to provide legal aid? If so, how? If not, why not?
14. Are there gaps in services? What are the gaps?
15. What delivery challenges exist in the territories with respect to legal aid?
16. Are you aware of the policy rationale behind funding civil legal aid through the AJAs? Is it appropriate?
17. Is the balance of resources used for criminal legal aid and civil legal aid appropriate?
18. Is gender equity reflected in access to legal aid?
19. Are the minimum standards being met? (see end of document for minimum standards)

Aboriginal Courtworker

20. Are the current agreements able to support your ability to provide ACW services? If so, how? If not, why not?
21. Are there gaps in services? What are the gaps?
22. What delivery challenges exist in the territories with respect to Aboriginal Courtworker services?
23. Is it appropriate to provide ACW services to victims/witnesses/family members, etc. (as well as to the accused) in the territories? Why? Are these services being delivered?
24. Is the minimum standard being met? (see end of document for minimum standards)

PLEI

25. Are the current agreements able to support your ability to provide PLEI? If so, how? If not, why not?

26. Are there gaps in services? What are the gaps?
27. What delivery challenges exist in the territories with respect to PLEI?
28. What are the advantages or disadvantages of having contributions made directly to the territorial government (as opposed to an NGO/designated agency)?
29. Is the minimum standard being met? (see end of document for minimum standards)
30. Currently, what PLEI activities are being undertaken? Are there other activities that would be undertaken if additional resources were available?

Implementation and Administration

31. Have the AJAs been administered and implemented as intended?
32. Do the territories have the appropriate opportunity to provide input into federal policy decisions with respect to legal aid, ACW and PLEI services? Are there challenges in this respect?
33. Are the roles and responsibilities appropriate and fulfilled as intended
 - a. Between the federal government and the territorial governments?
 - b. Between program components?
34. Is there sufficient capacity to support performance measurement?
35. In your opinion, are the reporting requirements appropriate? Why or why not? What are the reporting challenges?
36. Are there any alternative ways that the expected results of the AJAs could be delivered?
37. On a scale of 1 to 4, please indicate your overall satisfaction with the consolidated agreements as an alternative to three separate funding agreements.
 - 1 = very dissatisfied
 - 2 = dissatisfied
 - 3 = satisfied

- 4 = very satisfied

38. Are there any other funding programs that you believe could be added to the AJAs? If so, which ones? Why?

39. Do you have any other comments?

Minimum Levels of Service

Legal aid: priority is given to cases where/such that...

- Criminal
 - There exists reasonable likelihood of custody/imprisonment if convicted.
 - Proceedings are pursuant to Part XX.1 of the *Criminal Code* (related to Mental Disorders) or Extradition/Fugitive Offenders Acts.
 - There is an appeal by the Crown in the above.
 - An appeal in the above if it has merit.
 - Any proceeding involving a young offender.
- Civil
 - Gender equity is ensured.
 - The fundamental social, economic or civil rights of individuals are in jeopardy.

ACW

- To facilitate and enhance access to justice by assisting Aboriginal people involved in the criminal justice system to obtain fair, just, equitable and culturally sensitive treatment.

PLEI

- Timely and appropriate to their needs and cultural identity.
- Made accessible through a variety of delivery mechanisms and media
- Participate in annual priority setting activities on PLEI to endeavour to provide PLEI to the identified priority component

Appendix B:

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