



# ADMINISTRATION OF JUSTICE OFFENCES: ABORIGINAL COURTWORK PROGRAM CLIENTS' PERSPECTIVE

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## 1. Research Background

The Aboriginal Courtwork (ACW) program was created in the 1960s and seeks to ensure that Aboriginal people charged with a criminal offence receive fair, equitable and culturally sensitive treatment by the criminal justice system. In 1978, ACW program became an ongoing contribution program funded by the federal and provincial/territorial governments.

There are currently ACW programs in all Canadian jurisdictions except Prince Edward Island and New Brunswick. In most jurisdictions, Aboriginal courtwork services are provided by Aboriginal organizations except in Manitoba and the Northwest Territories, where courtworkers are government employees, and in Nunavut, where legal services clinics provide courtwork services.

In general, the role of Aboriginal courtworkers (hereinafter courtworkers) is to provide Aboriginal people charged with a criminal offence with information about the criminal justice system, to assist them during the court process and to direct them to the appropriate legal, social and community justice programs. In addition, courtworkers encourage communication and strengthen the relationship between the justice system and Aboriginal communities.

ACW programs regularly send administrative data to the Department of Justice. These data support previous research which show that Aboriginal people have a high prevalence of administration of justice offences (AOJOs).<sup>1,2,3,4,5</sup> AOJOs are an important issue for the criminal justice system and ACW programs for several reasons, including the following:

- The time and resources required to process these offences negatively impact the effectiveness of the criminal justice system.
- AOJOs seem to be linked to the likelihood of reoffending. A study conducted in Saskatchewan<sup>6</sup> showed that 50% of those found guilty of an administration of justice offence (AOJO) returned to correctional services in the four years following their release.
- Some authors believe that AOJOs could be considered one of the factors historically associated with the overrepresentation of Aboriginal people in the justice system because these offences add considerably to their criminal records.<sup>7,8</sup>

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<sup>1</sup> In this report, the acronyms AOJO/AOJOs refers to such offences as failure to comply with a probation order, conditional sentence order or release order (such as a bail or judicial interim release order), failure to appear in court and being unlawfully at large.

<sup>2</sup> Statistics Canada, "Adult Criminal Court Statistics, 2008/2009," *Juristat* 30 no. 2 (2010).

<sup>3</sup> Statistics Canada, "The incarceration of Aboriginal people in adult correctional services," *Juristat* 29 no. 3 (2009).

<sup>4</sup> C. Lafreniere, N. Fontaine, E. Comack, "The Challenge for Change: Realizing the Legacy of the Aboriginal Justice Inquiry Report," (Paper presented at the Provincially Appointed Independent Committee for Consultation on a New Women's Correctional Facility in Manitoba, Canadian Centre for Policy Alternatives, 2005).

<sup>5</sup> Statistics Canada, "Outcomes of Probation and Conditional Sentence Supervision: an analysis of Newfoundland and Labrador, Nova Scotia, New Brunswick, Saskatchewan and Alberta, 2003-2004 to 2004-2005," *Juristat* 26 no.7 (2006).

<sup>6</sup> Statistics Canada, "Returning to correctional services after release: A profile of Aboriginal and non-Aboriginal adults involved in Saskatchewan from 1999-2000 to 2003-2004," *Juristat* 25 no.2 (2005).

<sup>7</sup> C. LaPrairie, "Examining Aboriginal Corrections in Canada," (Ottawa: Ministry of Solicitor General Canada, 1996).

Studies examining factors that contribute to AOJOs among Aboriginal offenders are rare. A research study conducted in Alberta<sup>9</sup> interviewed Aboriginal persons, charged with AOJOs, who were or had recently been on probation. Conclusions showed that the three most frequently stated factors mentioned by participants to explain the commission of AOJOs were: drug and alcohol consumption, peer pressure and interaction with the person specified in the no-contact order (usually a family member or spouse).

Given the prevalence of AOJOs among ACW program clients and the potentially harmful effects of these offences on Aboriginal persons and the criminal justice system, the Tripartite Working Group<sup>10</sup> on the Aboriginal Courtwork Program in collaboration with the Research and Statistics Division have developed a body of research aiming to learn about the perceptions and experiences of the various players within the justice system on this issue.

In this research report, we will present data obtained through interviews with ACW program clients about AOJOs with which they were charged/ convicted.

## 2. Objective

The purpose of this study is to learn the perceptions of ACW program clients with regard to the following:

1. the most commonly committed AOJOs
2. the reasons given for these offences
3. the conditions that were imposed on them by the court, if any.

## 3. Methodology

In the fall of 2011, 684 ACW program clients in nine jurisdictions were invited to fill out questionnaires on AOJOs. They make up the total sample of this study. The questionnaire, consisting of six multiple-choice questions, was administered during a face-to-face interview. The following topics were covered in the questionnaire:

- The type(s) of AOJO(s) committed out of five options (failure to comply with a probation order, failure to comply with a conditional sentence order, failure to comply with a release order, failure to appear in court or unlawfully at large) with which the participant was charged;

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<sup>8</sup> R.Pelletier, “The nullification of section 718.2(e): aggravating Aboriginal overrepresentation in Canadian prisons,” *Osgoode Hall L.J.* 469 no.39 (2001).

<sup>9</sup> P. LaBoucane-Benson, “Aboriginal Administration of Justice Offences Research Project: Aboriginal Probation Client Qualitative Research Report,” Native Counselling Services of Alberta: BearPaw Research.

<sup>10</sup> The Tripartite Working Group (TWG) is an FPT Working Group that reports to Federal-Provincial-Territorial Deputy Ministers Responsible for Justice. The TWG is composed of representatives from the Department of Justice, a representative from each province and territory (except New Brunswick and PEI) and a representative from the service delivery agency in each jurisdiction.

- The condition(s) breached and the client’s perception of the condition(s) set by the court, if applicable;<sup>11</sup>
- The reasons given by clients for AOJOs.

The interviewers consulted the participants’ court files in order to validate the information concerning the AOJOs charges they were facing at the time of the interviews.

### 3.1 Participants

A total of 684 Aboriginal people who are ACW program clients took part in the study. The participants were from 18 to 60 years old, with the majority being between 20 and 40 years old (60%). Men represented over half of the participants (66%) interviewed in nine jurisdictions (see Table 1).

TABLE 1: PARTICIPANTS BY JURISDICTION

Jurisdiction	N	%
Alberta	7	1.0
Saskatchewan	192	28.1
Manitoba	155	22.7
Ontario	64	9.4
Quebec	120	17.5
Nova Scotia	16	2.3
Yukon	32	4.7
Northwest Territories	72	10.5
Nunavut	26	3.8
Total	684	100.0

### 4. Limitations of the study

The sample of participants for this study is not a randomly selected sample, therefore cannot be considered representative of ACW program clients population. It is possible that clients who were charged with or convicted of at least one AOJO at the time of the interview would have been more likely to agree to fill out a questionnaire about AOJOs. This fact could lead to an overestimation of the frequency of these offences among ACW program clients. In addition, it is important to note that the distribution of participants by jurisdiction is not equitable relative to the overall population of ACW program clients (see Table 1).

Finally, the information below is mainly based on self-reporting by participants. For this reason, the statistical data must be interpreted cautiously. They represent only the participants’ perceptions or state of knowledge regarding the questions asked.

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<sup>11</sup> These questions were not asked of participants who stated that they had been charged with or convicted of failure to appear in court and/or of being unlawfully at large because these offences do not necessarily involve the imposition of conditions by the court.

## 5. Results

The main results of this study will be presented in the form of answers to each of the research questions.

### 5.1 On the day of the interview, did the participants appear in court to face AOJOs charges?

The information obtained from the files shows that 46% of participants were in court to face at least one AOJO charge. That number rises to 54% if the information given by participants in the interviews is taken into account.<sup>12</sup>

It is possible that the difference in percentages is due to the fact that breaches of a conditional sentence order are not considered a criminal offence and, for that reason, do not appear in the offender's court file.

### 5.2 According to the participants, what AOJOs charges were they facing on the day of the interview?

Of the 54% of participants who appeared in court to face AOJOs charges:

- 51% stated that they had been charged with failure to comply with a probation order;
- 41% with failure to comply with a release order (such as a bail or judicial interim release order);
- 29% with failure to appear in court;
- 11% with failure to comply with a conditional sentence order; and
- 5% with being unlawfully at large<sup>13</sup>.

### 5.3 According to the participants, what conditions set by the court did they breach, if applicable?

The participants who stated that the court had imposed conditions on them (those charged with failure to comply with a probation, release or conditional sentence order, who made up 46% of the total sample of participants, n=318) were questioned on the conditions imposed on them, which they had allegedly breached.

The following conditions set by the court were most often stated by the participants:

- Abstain from alcohol or drugs (57%)
- Keep the peace and be of good behaviour (30%)
- Comply with a curfew (24%)
- Appear before/report to the authorities as instructed (19%)

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<sup>12</sup> It is possible that these rates underestimate the rates of AOJOs committed by participants because they represent only the charges for which the participants appeared in court on the day of the interview.

<sup>13</sup> These percentages add up to more than 100% because most participants stated that they were being accused of more than one administration of justice offence.

- Abstain from communicating with the victim, witness or any other identified person (18%)
- Stay at a specific place with a specific person (12%)
- Participate in a treatment program or counselling sessions (11%)
- Did not remember the conditions (4%)<sup>13</sup>

#### 5.4 When the court set the conditions of the release, probation or conditional sentence order, was the client consulted regarding the possibility of complying with these conditions?

Over half (53%) of the participants who were subject to conditions set by the court (those charged with failure to comply with a probation, release or conditional sentence order) stated that they had been consulted with regard to the possibility of complying with the conditions and that they had discussed it with someone. Of those, 48% discussed this matter with the judge, 41% with counsel for the defence, 16% with the probation officer, 13% with the Aboriginal courtworker and 17% with another person (e.g., a police officer, a family member or a court employee). It is important to note that around 30% of these participants discussed the possibility of complying with their conditions with more than one person.

#### 5.5 Do ACW program clients consider their probation, release or conditional sentence order conditions fair and appropriate?

Thirty-two percent of participants who were subject to conditions set by the court found that the conditions imposed were fair and appropriate, 15% were of the view that the conditions were not fair or appropriate, 5% were indifferent with regard to the conditions and 28% approved of some of the conditions and disapproved of others<sup>14</sup>.

However, among the participants who stated that they had been consulted with regard to the possibility of complying with the conditions when they were imposed on them (53% of participants who were subject to conditions set by the court), the percentage of those dissatisfied with the conditions imposed was significantly lower. Only 7% of this group found that the conditions were inappropriate, 39% found them appropriate, 3% were indifferent and 21% approved of some of the conditions and disapproved of others<sup>15</sup>.

#### 5.6 According to the participants, why did they commit the AOJOs?

Of the participants who stated that they had been in court to face at least one AOJO charge (54% of the total sample of this study), 4% stated that they had not committed an AOJO, suggesting that the charges laid against them were unfounded.

Other participants stated several reasons related to their AOJOs, including the following:

- Use of drugs and or alcohol (36%)
- Disapproval of conditions set, refusal to comply or apathy towards the charge (13%)
- Long distance between the community and the court or probation office and/or difficulty in finding transportation (12%)

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<sup>14</sup> 12% of participants did not respond to this question.

<sup>15</sup> 30% of participants did not respond to this question.

- Person did not know why they committed an AOJO (12%)
- Impossibility of finding and keeping a steady job and/or permanent address (11%)
- Poor understanding of legal terms and procedures because of a language barrier or for other reasons (10%)
- Forgetting (4%)
- Person was outside of their community at work, at the hospital or travelling (4%)
- Person was afraid to appear in court or confused about the court's expectations of them (4%)
- Person was unable to avoid contact with certain people identified in the court order (2%)
- Perception that the conditions set were not appropriate (5%).

When asked about why they found some conditions inappropriate, the majority of participants answered that they found it very difficult to abstain from drugs or alcohol or to avoid contact with certain people in order to comply with the law (especially contact with their spouse and children).

## 6. Conclusion

Through a questionnaire administered during face-to-face interviews, this study explored the perceptions of Aboriginal people who are ACW program clients with respect to AOJOs.

The results indicate that over half of the participants stated that they were facing at least one AOJO charge at the time of the interview, and this information was confirmed by the court files of the majority of participants. According to the participants, the types of AOJOs most commonly committed were failure to comply with a probation order and failure to comply with a release order.

With regard to the participants who stated that they were subject to conditions set by the court, “abstain from alcohol and drugs” and “keep the peace and be of good behaviour” were the conditions most frequently mentioned. Over half of those participants stated that they had been consulted regarding the possibility of complying with the conditions imposed, and, in most cases, the conditions had been discussed with the judge and/or with defence counsel.

Around 15% of the participants who were subject to a condition found that the conditions imposed were not fair. However, if we consider only those who stated that they had been consulted regarding the possibility of complying with the conditions set by the court, the percentage of those dissatisfied with the conditions drops to 7%.

The participants stated various reasons explaining why they had committed the AOJOs. The most frequently mentioned reasons were the use of drugs or alcohol, disapproval of conditions set, refusal to comply or apathy toward the charge, long distance between the community and the court or probation office and/or difficulty in finding transportation, impossibility of finding and keeping a steady job and/or permanent address and poor understanding of legal terms and procedures.

*Research Report*

AOJOs are an important issue for ACW program. The rare studies on AOJOs among Aboriginal people show that it could have a significant impact on a personal, social and legal level. This report provides a preliminary analysis of the perception of Aboriginal people who are ACW program clients regarding AOJOs. However, the findings are rather limited because the majority of the information presented is based on self-reporting by clients and the sample of participants is not representative of the Aboriginal population receiving ACW program services in the various Canadian jurisdictions.

This report is one of three studies. The other two reports present the perceptions of courtworkers and court officials on AOJOs committed by Aboriginal people.