



**ABORIGINAL JUSTICE STRATEGY
FORMATIVE EVALUATION
Summary, Recommendations and Management Response**

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**Evaluation Division
Policy Integration and Coordination Section**



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1. INTRODUCTION

The Department of Justice (DOJ) established the Aboriginal Justice Strategy (AJS) in 1996 to address the overrepresentation of Aboriginal peoples in the criminal justice system. The AJS focuses on strengthening the capacity of Aboriginal communities in order to reduce victimization, crime and incarceration rates through increased community involvement in the local administration of justice. The original mandate of the AJS was renewed and expanded in 2002 to allow for increased training and support to community programs and increased capacity building in the local administration and enforcement of Aboriginal laws.

As part of its commitment to Treasury Board, as outlined in the AJS Results-Based Management and Accountability Framework (RMAF), a formative evaluation was conducted of the AJS renewal in 2004. The evaluation examined the implementation of the new components of the Strategy as well as the continuing relevance of the AJS, the Strategy's success in moving towards its objectives, and whether there are alternatives to the current delivery/design that would increase the effectiveness of the Strategy. This summary report presents the findings of the formative evaluation, recommendations for improvement in relation to the implementation and delivery of the AJS, as well as the DOJ Aboriginal Justice Directorate's (AJD) response to the recommendations.

2. BACKGROUND

In April 1996, the Minister of Justice announced the AJS as part of the federal government's response to the *Royal Commission on Aboriginal Peoples, Gathering Strength: Canada's Aboriginal Action Plan, Securing our Future Together* and other Aboriginal Justice inquiries across the country. The AJS was intended to build partnerships within the Canadian justice system in order to support the development of improved sustainable justice policies and programs that meet the needs of Aboriginal people and address their overrepresentation in the justice system. The AJS was developed in co-operation with Indian and Northern Affairs Canada (INAC), the Privy Council Office, and the former Solicitor General (including the RCMP).

The AJS is responsible for managing the AJS, which originally consisted of three primary components: policy development and support, cost-shared programs to support the development and implementation of Aboriginal community-based justice programs, and the Aboriginal Justice Learning Network (AJLN).

In 2000, the DOJ conducted a summative evaluation of the AJS. This evaluation made the following recommendations to be addressed as part of the renewal of the AJS:

- Develop a process to co-ordinate activities with partner federal departments and with Aboriginal Justice Regional Coordinators to ensure more effective interdepartmental coordination of Aboriginal justice issues at the federal government level.
- Develop a process to ensure linkages between policy and programs that impact on Aboriginal Justice within the Department.
- Adopt a comprehensive national approach to evaluation for the community-based justice programs to facilitate performance reporting on results.
- Assign one Regional Coordinator to each of the Western provinces, Ontario, Quebec, Atlantic Region, and each Territory along with sufficient administrative support for the community-based justice programs.

- Implement an administrative process to ensure that funds are provided to communities in a timely manner for the community-based justice programs.
- Reinstate staff and resources to the original level to carry out the mandate of the AJLN, meet the need for various types of community justice training, and enhance the AJLN information distribution function.

In March 2002¹, the federal government made a commitment to renew the AJS for another five years (2002-2007) so that it could continue to address the effects of overrepresentation of Aboriginal people in the Canadian justice system and continue to support community-based justice programs. Additional funding was also received at this time for an expansion of the AJS.

The expansion included the implementation of the Self-Government Capacity Building Fund and the Training and Development Fund as well as an investment in the development of new programs to address the current regional imbalance and the under-utilized models of family and civil mediation. Between 2002 and 2007 the Department was to receive a total of \$57.26 million for the AJS.

However, as a result of a government-wide budget reallocation exercise in 2003-2004, the AJD had to reduce the amounts originally allocated by Treasury Board in its Operating and Maintenance, and Grants and Contributions budgets. The biggest impact this exercise had was on the Training and Development, Self-Government Capacity Building and AJLN components. This resulted in a reduction of \$1,231,596 to AJD's overall budget, which in turned forced AJD to restructure the scope and delivery of some of its components to fulfill its objectives.

The original intent had been to have the AJLN receive increased resources to manage the Training and Development Fund. The AJD reviewed its structure and determined that an additional position should be added to the complement of Program Analysts as the bulk of the work required would be in administering the Training and Development contribution agreements and the AJD wanted to ensure consistency of approaches on all of its contribution agreements. In 2002-2003, a Program Analyst position was created with functional direction coming from AJLN, with collaboration from the Regional Coordinators and the Program Analysts in implementing the Training and Development Fund in that year. In 2003-2004, the reporting

¹ As a result of the 2001 Speech from the Throne the federal government extended the original mandate of the AJS (1996-2001) for an additional year in 2001 to ensure that the existing commitments to the cost-shared community-based justice programs could continue.

structure for this position changed when the Regional Coordinators took over responsibility for the administration of the fund.

3. AJS OBJECTIVES & COMPONENTS

The objectives of the AJS are:

- to assist Aboriginal people to assume greater responsibility for the administration of justice in their communities;
- to reflect and include Aboriginal values within the Canadian justice system; and
- over the long term, along with other justice programs, contribute to a decrease in the rate of victimization, crime and incarceration among Aboriginal people in communities operating AJS programs.

Collectively, the following six components are intended to meet the objectives of the overall Strategy:

Policy Development: Supporting Aboriginal community justice as a key policy issue in Canada through strategic partnerships at the intradepartmental, interdepartmental and intergovernmental levels. AJS provides policy advice on Aboriginal justice issues to the DOJ, self-government negotiators and other federal departments.

Community-based Justice Programs: Aboriginal communities provide culturally relevant community based programs such as diversion, community sentencing, and mediation in family and civil matters through cost-share agreements between the federal and provincial/territorial governments. This allows Aboriginal people to assume a significant role in working with offenders and resolving civil and criminal disputes in their own communities.

Currently the AJS is funding community-based justice programs in every province and territory in Canada. A total of 79 community-based agreements were signed with various Aboriginal groups in 2002-2003. In 2003-2004, the number agreements increased slightly to 83 with approximately 454 communities being served by these agreements. In 2004-05, 89 community-based agreements were signed with a reach to 451 communities.

AJLN: Provides a forum for Aboriginal communities to exchange best practices and creative solutions to Aboriginal justice issues and supports training and information sharing on alternative restorative justice processes consistent with Aboriginal values and traditions. An Advisory Committee of community representatives acts as an advisory body for the AJLN. The AJLN also helps to ensure Aboriginal women participate as full partners in development and implementation of the community based programs.

In 2002/03, AJLN funded approximately 51 activities. These included continued work with the Advisory Committee; community initiatives; community justice forums; training sessions; workshops; awareness promotion of the AJS; partnerships with the National Aboriginal Achievement Foundation and sweat lodges. Due to both the government wide and DOJ internal budget reallocation exercises the number of activities supported by the AJLN was reduced to 9 in 2003/04 and 7 in 2004/05.

Training and Development Fund: Focus is on providing sustainable training to justice stakeholders, community capacity building, and program development for the community-based justice programs or communities that do not currently have a program funded through the AJS. Since its inception in 2002-2003, 75 Training and Development agreements have been signed across Canada, serving 629 communities. The fund has been used to support such activities as attendance at seminars, conferences, strategy planning session, and training as identified in call for proposals or by regional coordinators with the appropriate province/territory.

Self-Government Negotiations: AJD provides legal/policy advice and support to self-government and claims negotiators regarding the administration of justice provisions. Currently, AJD legal counsel supports 13 self-government tables across Canada.

Self-Government Capacity Building: In conjunction with INAC, the AJD develops pilot projects and resource material to support capacity building in the local administration and enforcement of Aboriginal laws. This is a separate component from the implementation phase of self-government negotiations.

In 2004-05, AJD formally approved two self-government capacity building projects with the Federation of Saskatchewan of Indian Nations (FSIN) and the Union of Ontario Indians (UOI). The FSIN proposal is for a community consultation involving First Nations and Aboriginal communities province-wide. The latter proposal is designed to assist the UOI with further

developing capacity for appeal and redress mechanisms (and necessary training) for the effective adjudication of their regulatory and civil laws when their Self Government Agreement comes into force. AJD is currently considering other funding proposals for fiscal year 2005-06.

The table below outlines AJD's funding for fiscal years 2002-2003, 2003-3004 and 2004-2005.

Table 1: Funding

Year	Funds Requested	Approved by TBS	After Reductions	Actual Spent
2002-2003 ²	18,840,000.00	10,894,757.00	NA	9,505,151.09
2003-2004	23,340,000.00	10,894,757.00	9,882,719.00 ³	8,984,346.21
2004-2005	27,840,000.00	10,894,757.00	10,481,006.00 ⁴	9,173,160.58

² The original request for funding was from 2001-2002 to 2005-2006. Delays in mandate approval meant that the new mandate began in 2002-2003. Figures for funds requested from Treasury Board Secretariat (TBS) in 2001 have therefore been shifted forward by one fiscal year to reflect timeframe of final approved mandate.

³ This reduction was a result of a government wide reallocation exercise.

⁴ This reduction was a result of a DOJ internal reallocation exercise.

4. METHODOLOGY

The formative evaluation consisted of five main data collection methods:

- **Telephone Interviews:** 40 officials identified by DOJ from federal departments including DOJ, Provincial and Territorial governments, and the AJLN Advisory Committee.
- **Case Studies:** 6 communities across Canada were identified by the AJD. The studies included in-person interviews of 14 community justice staff (including community justice coordinators), 24 other community members, 10 mainstream justice officials (police, judiciary, lawyers, probation, etc.), 2 victims and one offender. The DOJ asked the community justice coordinators to identify the mainstream officials, victims and offenders for interview.
- **Survey of all Community Justice Coordinators:** A total of 95 surveys were distributed by mail to community justice coordinators identified by DOJ. Community justice coordinators who were interviewed during the site visits were not included in the survey. The completion rate for the survey was approximately 47%.
- **File Review:** A total of 46 community based program files (including the 6 case study program files) were chosen at random for review, subject to adequate proportionate regional representation in the sample.
- **Document Review:** 10 documents were reviewed including the AJS RMAF, AJS 1998 mid-term and 2000 summative evaluations, correctional studies, AJS Operational Plan (1996), AJS Trends in Program Organization and Activity 1996-97, 1997-98 and 1998-99 (2000); and financial data.

5. KEY EVALUATION FINDINGS AND RECOMMENDATIONS

5.1. Continued Relevance of the AJS

The AJS was established as part of the federal government response to the overrepresentation of Aboriginal people in the Canadian criminal justice system. Although Aboriginal people comprise about 2% of the Canadian adult population, the federal Aboriginal offender population has risen sharply since 1991-92, when it was 11% of the total, to 17% in 2001-02. In 1997-98, Aboriginal offenders comprised 15% of those in provincial/territorial custody and 20% of provincial and territorial admissions to sentenced custody in 2001-02⁵.

The United Nations Special Rapporteur, after his official visit to Canada in 2004, highlighted the AJS as one of the key programs the Government of Canada has implemented in response to the issues faced by Aboriginal people in the justice system. Furthermore, the Special Rapporteur recommended that efforts be increased to reduce and eliminate the overrepresentation of Aboriginal people in detention, and that Aboriginal alternative justice institutions and mechanisms be officially recognized and fostered with the full participation of Aboriginal communities⁶.

The Aboriginal population is growing much more rapidly than the general Canadian population. The average number of children born to Canadian women overall is about 1.7; the fertility rate for registered Aboriginal women is approximately 2.9 children, thus driving a rapid rate of population growth. Across Canada, the Aboriginal population is younger and has been growing more quickly than the non-Aboriginal population. In 1997, almost half of First Nations people registered with the Indian Act (49.0%) were less than 25 years of age. For Canada as a whole, 33.5% of the population fell into under the 25 age cohort. The Aboriginal population rate for those under twenty-five years of age will have a significant impact upon the criminal justice

⁵ Statistics Canada, 2001

⁶ Commission on Human Rights, 2004

system, as research indicates that the most vulnerable age group to criminal justice processing is between 15-24 years of age⁷.

Crime rates within Aboriginal communities are generally higher than the national crime rate. This is often attributed to the low socio-economic status of Aboriginal people. For instance, the Aboriginal unemployment rate continues to be higher than for the rest of the Canadian population (19.1% and 7.1% respectively in 2001). In 2000, the median income of Aboriginal individuals was \$13,593 compared to the non-Aboriginal population with a median income of \$22,431⁸. However, this is only one of many causes of high crime rates and the others, more prevalent and generally accepted are the legacy of colonialism, the loss of culture and the threat to identity.

Providing meaningful input for victims and supporting them throughout the process are key elements of the AJS. According to the 1999 General Social Survey (GSS) approximately 35% of the Aboriginal population reported having been the victim of at least one crime⁹. Aboriginal people also experienced violent crime at a rate that was nearly three times greater than that of non-Aboriginal people¹⁰. As such, the AJS works with the federal Policy Centre for Victims Issues, the federal Family Violence Initiative and related provincial/territorial initiatives to ensure that policies are in place to provide for support and assistance of victims.

The challenges to which the AJS must respond are deeply and obstinately rooted in the disadvantaged socio-economic conditions that continue to describe the context of Aboriginal Justice. Taken together, demographic, socio-economic, criminogenic evidence and other factors strongly supports the continuing need to find more appropriate means by which Aboriginal communities can work to address their socio-economic problems and apply culturally appropriate remedies with potential for long-term sustainable impact.

The evaluation found that the objectives of the AJS continue to be relevant and will be more so with the expected increase in the Aboriginal population, particularly youth. Also, Justice continues to be a necessary aspect of greater Aboriginal self-government; a system run by Aboriginal people and reflecting Aboriginal values will better respond to the needs of Aboriginal

⁷ Aboriginal Initiatives Branch CSC, 1999

⁸ Statistics Canada, 1996 and 2001

⁹ Robinson, 2001

¹⁰ Ibid.

offenders and reduce recidivism; and the Aboriginal approach to justice which focuses on restoration of community harmony rather, than punishment, which is more consistent with Aboriginal traditions and values.

5.2. Implementation of the New AJS Components

The evaluation revealed that many community respondents were unaware of or lacked information about the Self-Government Capacity Building and the Training and Development Funds. This may be due to a lack of promotion of these two new components¹¹ or it may reflect the status of their implementation.

The Self-Government Capacity Building Fund was established when the Aboriginal Justice Strategy's mandate was renewed in 2001. The objectives of the fund are as follows: to develop and disseminate information to Aboriginal communities about effective approaches to the administration and enforcement of laws; to assist Aboriginal governments to develop necessary capacity to develop, administer, and enforce their laws; to assist Aboriginal communities to understand the civil and regulatory aspects of the Canadian justice system; and to assist Aboriginal communities who are in self-government negotiations to enhance capacity and to develop models for the enforcement of their laws.

There are a number of reasons why the utilization of the fund has not occurred since 2002. First, the progress of self-government negotiations have been impeded by complex policy issues in relation to the fiscal sustainability of self-government, both at the negotiation and implementation phases. As a result, capacity building initiatives have not proceeded as expeditiously as originally anticipated, given the uncertainty regarding these larger macro policy issues.

Secondly, the two First Nations that were encouraged to submit proposals in 2003 and 2004 lacked resources to submit sufficiently detailed proposals that could be assessed in relation to the specific objectives under which the Fund was created.

Thirdly, while the administration of justice component of self-government agreements remains an essential aspect of governance under the Inherent Right Policy, many self-government

¹¹ Self-Government Capacity Building Fund is intended for a targeted audience, communities that are involved in self-government negotiations with INAC.

negotiations have been focused on program and service types of jurisdictional authority, such as land management, education, language and culture.

The Training and Development Fund is one of five components affected by the 2003-2004 budget cuts. As such, in 2003 the Training and Development component of the AJLN was redirected to the community justice projects. Since the amount available under the Training and Development Fund was reduced from \$700,000 to \$350,000, it was decided that the AJD would no longer support new community development proposals but rather it would support efforts that maximized the training initiatives for the existing AJS sponsored community-based justice programs. Given this focus on existing programs, it was determined that the Regional Coordinators would be responsible for administering this Fund and each Region was allocated about \$30,000. Regional Coordinators then tried to partner with their respective provincial/territorial colleagues to maximize training opportunities within each Region. For most Regions, this meant contributing to one workshop to which the various funded programs were invited providing opportunities for existing projects to network and share their practices and lessons learned with others as well as obtaining training on specific topics such as program management; forming justice committees; recruiting and retaining volunteers; self care for justice workers and dealing with clients with special needs.

The AJD was then advised in the fall of 2004 that the amount allocated for the Training and Development Fund had reverted to the amount previously approved in the TB Submission for 2004-05. An amount of \$50,000 was set aside for self-evaluation with the remaining amount divided up, with each region receiving \$40,000. Regional Coordinators again consulted with their respective provincial and territorial counterparts and contributed to one regional training workshop within each region.

Recommendation 1: Review the implementation and budget for the Self-Government Capacity Building Fund and Training and Development Fund to determine their status and if there are any issues that need to be addressed prior to full implementation.

Management Response:

Under the current mandate this recommendation has been implemented to the extent possible as all monies allocated for these components are committed. In the interim, the importance of the Self-Government Capacity Building and Training and Development funds are well established and it seems that resources and energy are better used in implementing current programs/projects than in promoting the concept.

However, the objectives, eligibility and implementation for the Self-Government Capacity Building and Training and Development components will be considered in conjunction with decisions on renewal of the Strategy beyond March 2007. This will include working with provincial/territorial partners and Indian and Northern Affairs Canada to assess the ongoing need and sustainability of the components.

It is anticipated that this recommendation will be implemented by January 2006.

5.3. Design and Delivery of the Strategy

5.3.1. Stakeholder Cooperation on Aboriginal Justice Issues

The 2000 AJS evaluation identified a need for more federal presence and coordination of the work of federal departments at the community-level and the various Aboriginal strategies including making linkages between policies and programs that impact on Aboriginal Justice within the DOJ.

In terms of increasing the Regional presence of the AJS and working with other federal programs, the AJD has explored and implemented some innovative approaches to delivering the Strategy in some of its regions. The AJD has Memorandums of Understanding (MOUs) with the National Crime Prevention Strategy (initially under DOJ and then, under Public Safety and Emergency Preparedness Canada) to share salary and operating dollars to deliver both strategies in the Yukon, Northwest Territories, Nunavut and Alberta. There is also a MOU between the AJD and the British Columbia Regional Office to regionalize some of the AJD's functions including an agreement on cost sharing.

Since the last evaluation there has been a positive impact on the level of cooperation between various Aboriginal justice stakeholders including: between the different divisions in DOJ, between DOJ and provincial/territorial ministries, and between officials in Aboriginal communities and local mainstream justice officials.

A variety of cooperative relationships have supported local Aboriginal justice initiatives, including support from the DOJ (particularly AJD staff) through the provision of training programs/workshops. Mainstream justice members who have participated in justice committee

and inter-agency meetings and in cross-cultural workshops have shown themselves to be open to new ideas and have encouraged community awareness of justice issues, which are valuable methods of promoting local cooperation.

The cooperation between federal and provincial/territorial officials, especially in relation to memorandums of understanding and cost-sharing agreements, was also highlighted as positive. However, in order to increase the effectiveness of these AJS supporting structures, it has been suggested that provincial/territorial officials be included early in the planning and priority setting stage to facilitate consistency between federal and provincial funding required by the cost-sharing agreements.

Recommendation 2: AJD review current support structures to ensure better coordination on Aboriginal justice issues with partners and early identification of priorities for next mandate.

Management Response:

This recommendation is being implemented as follows:

- In June 2004, the Deputy Ministers of Justice created a Federal Provincial Territorial (FPT) Working Group on Aboriginal Justice Issues, with a mandate to report back by January 2006 on 5 issues of concern to Aboriginal communities: community justice (including crime prevention, victims' services, alternative measures, restorative justice, etc.), policing, corrections, interpersonal and family violence, and youth justice.
- Director General (DG) Coordinating Working Group on Aboriginal Justice to focus the Department of Justice's discussions and developments related to Aboriginal Justice by:
 - Identifying strategic approaches and best practices to advance coordination, integration and development/delivery of Aboriginal related justice policies and programs in the department.
 - Providing a forum within the department for setting strategic direction and cooperation aimed at supporting holistic program delivery at a grass roots level.
 - Analyzing challenges, opportunities and identifying solutions related to the policy concerns across the department.
 - Determining a common understanding of Aboriginal justice priorities.
- Continued use of program roundtable as a means of bringing representatives of the Aboriginal justice-related program and policy areas across the federal government together for sessions to advance coordination, integration and development/delivery of Aboriginal

related justice policies and programs amongst these areas in order to facilitate positive results at the regional level and in Aboriginal communities.

- Continued use of partnerships between National Crime Prevention and AJD on delivery of community-based justice programming.
- AJD will continue to be involved in the Saskatchewan Justice Reform and in the development of an Ontario AJS.

Anticipated completion date: While a portion of the work will be completed in January 2006, a majority of the work (e.g., partnership building through the DG Coordinating Working Group on Aboriginal Justice) will be ongoing.

5.3.2. Local and mainstream justice system support for community-based justice programs

The federal and provincial/territorial governments both share responsibilities in relation to the administration of justice. There are times, when federal and provincial/territorial jurisdictions overlap in the interest of developing better policies and programs for Canadians. This aspect of shared jurisdiction emphasizes the importance of provincial/territorial engagement and support when negotiating meaningful justice agreements in Aboriginal communities and facilitating the necessary horizontal collaboration that will contribute to the success of the AJS.

The provincial/territorial officials meet with community and federal counterparts (AJD Regional Coordinators) on a regular basis as well as within the FPT Working Group on AJS. Each provincial/territorial department has its own set of reporting and accountability provisions and efforts are made to harmonize with community and federal requirements wherever possible through the respective contribution agreements.

There has been strong support for the community-based justice programs by most community members and the mainstream justice system including development of protocols and referral of cases for both diversion and community sentencing and the participation and acceptance of community sentencing circle recommendations.

However, the evaluation identified a number of factors, which could affect the success of the community-based justice programs. These include:

- challenge of winning the confidence and support of the community, band and mainstream justice officials, which can affect the number of referrals to the program;
- negative perceptions (e.g., the alternative measures are restricted to Aboriginal people, the AJS supports a separate justice system for Aboriginal people, that community justice is an “easy out” for the offender, and the AJS could lead to “net-widening”);
- lack of cooperation among some provincial/territorial and local mainstream justice officials and service providers; and
- the need for programs to be able to respond to the varying needs of the communities and not be overly restricted by outside requirements, such as provincial/territorial restrictions placed on the types of cases that can be diverted (e.g., domestic violence) to community-based justice programs, the types of services that can be provided and how they should be delivered (e.g., victim support).

Recommendation 3: AJD work with their provincial/territorial and other partners to increase community and mainstream justice officials’ awareness of the community-based justice programs being funded and promote them as an alternative to mainstream programs.

Management Response:

This recommendation will be implemented as follows:

- Provinces and territories generally have the lead in working with the mainstream justice officials in their respective jurisdictions however AJD will assist in this regard on a case by case basis or through meetings, presentations at conferences, and/or workshops involving mainstream justice officials.
- At the community level, AJD may initiate stakeholder meetings around specific community-based programs as a way to promote awareness of the benefits of these types of programs. This may include community members and mainstream justice officials.
- Through partnerships with the National Aboriginal Achievement Foundation, AJD has developed an education video and work kit entitled “Industry in the Classroom”. The initiative directly addresses increasing the presence of Aboriginal people in justice careers and has produced a curriculum module that will be delivered in 30 to 50 Aboriginal high school classrooms in the fall of 2005.
- Through a session of “brown bag” lunches AJD will promote the video within the department.

- AJD will also use their communication plans under the Outreach and Partnership Unit (formerly the AJLN) as a means of addressing this issue.

It is anticipated that this recommendation will always be ongoing as raising awareness is a continuous task.

5.3.3. Awareness of the Specific AJS Components

The lack of awareness of the specific AJS components, outside of the community-based justice programs, by some of the community respondents was identified as an issue in this evaluation.

AJLN

Few community officials had contact or knowledge of the AJLN. However, those that had benefited from the training sponsored by the Network were very positive and supportive of this component. There was also recognition of the AJLN's impact on increasing awareness and sensitivity among mainstream officials and its other target audiences. However, a number of concerns were also raised with regards to the implementation and delivery of the AJLN. These included: limited contact with the communities; unclear mandate, priorities, goals and objectives; and frequent turnover of leadership. The 2000 AJS evaluation identified the need to enhance the AJLN information distribution function. At that time, the AJD indicated it would broaden the scope of their web-based on-line newsletter LINK, provide a resource tool for programs to network/exchange information with each other, and share lessons learned from the workshops and conferences sponsored by the AJLN. These enhancements to the AJLN website have not yet been implemented. The AJD indicated that the budget allocated to the AJLN has decreased since 2001. Although this is standard with start-up initiatives, the resources available have directly impacted the reach and scope of the AJLN. Some of the respondents suggested that AJLN funds could be better spent at the community level to meet local training and development needs.

Training and Development

The role of training and development for the community-based justice programs was identified as critically important, not only in the initial program implementation phase but later as new programs are introduced and as staff turn over. However, many of the respondents were unaware of the funds that were available for this purpose, which may be related to the status of the implementation of the Training and Development Fund.

Self-Government

There was also a lack of awareness of the AJS Self-Government components. Given that the Self-Government Negotiations component is about coordination of departmental officials and legal and policy advice to self-government and claims negotiators, it is not surprising that many community justice and other community members indicated that they lacked information about or were unaware of this component. Although there was little awareness of the Self-Government Capacity Building Fund, which may be related to the status of implementation of this component, there was a belief by many of the government officials and community members that everything they were doing, especially the community-based justice programs, had the effect of building a capacity for self-government. The need for training to build capacity was also identified.

Policy Development

There appears to be some confusion about the policy development role that the AJD plays compared to the Aboriginal Policy Unit at DOJ and that of INAC. There was also some concern expressed that there is a lack of consultation and communication with communities and provincial/territorial governments on AJS policy changes and that local priorities are not always adequately reflected.

Recommendation 4: AJD undertake a review of the AJLN to determine whether its structure is sufficient to fulfill the mandate of the AJLN.

Management Response:

This recommendation is currently being implemented as follows:

In 2004 an options paper on restructuring the role of the AJLN was developed as it was recognized that its current structure was unable to fulfill its mandate. The options paper examined the ways that the AJLN could be restructured to increase two-way communication between Aboriginal communities and those who work in the justice system – such as judges, lawyers, and police – to improve the administration of justice for Aboriginal people.

AJS has identified as part of its 2005-06 business plan the building of a new AJLN with the goal of becoming a communication centre for Aboriginal justice.

It is anticipated that this recommendation will be implemented by November 2005.

Recommendation 5: AJD develop and implement a communication strategy to raise awareness of the separate AJS components and in particular the new Training and Development Fund and Self-Government Capacity Building Fund.

Management Response:

Under the current mandate the Self-Government Capacity Building and Training and Development components of this recommendation have been implemented to the extent possible as all monies allocated for these components are committed within this fiscal year. In the interim, the importance of the Self-Government Capacity Building fund is well established and it seems that resources and energy are better used in implementing current programs/projects than in promoting the concept.

The AJLN component of this recommendation will be implemented as follows:

- External to DOJ communication plan aimed at building awareness and knowledge of AJS to external partners and communities.
- Internal to DOJ communication plan aimed at building awareness and knowledge of AJS to departmental partners.
- Develop AJS/Outreach and Partnership website and key dissemination points for Aboriginal Justice related information.
- Contribute to the organization of key events such as the National Aboriginal Achievement Foundation as well as attending events to promote the AJS.
- Strategy for DOJ outreach and partnership building such as identifying a champion and opportunities to deliver AJS message.

It is anticipated that this recommendation will be implemented by November 2005.

5.3.4. Resources

As expressed in the 2000 AJS evaluation, there is a continued need for additional funding for training. Since the training and development component was not fully implemented, due to budget cuts, there continues to be a lack of resources for training.

Other concerns related to funding include the need to receive community justice program funding early in the year, which continues to be a problem, and long-term funding commitments are necessary to ensure the continuation of programs and to provide stability for long-term growth. Also, as programs that have been in existence for many years continue to grow, there is a need to reassess funding levels to account for increased demands/referrals on the program and for salary increases (i.e., same salary levels as 1996 for some programs). There is also a need for additional funding for new programs that have the capacity to increase the number of referrals.

Recommendation 6: AJD review the scope of each component in relation to the current resource levels to ensure they are still able to meet the overall objectives of the AJS.

Management Response:

This recommendation will be implemented as follows:

- Through the use of a business plan and individual work plans for each component AJD has identified where work needs to be done. This includes a renewal strategy component that will examine the current resources and where more funds will be needed if the strategy is to exist beyond 2007.
- With the assistance of DOJ's Research and Statistical Division, AJD has begun the process of assessing the community-based programs in relation to the current resources level as well as the cost associated in expanding to all Aboriginal communities.
- As part of the summative evaluation AJD will be undertaking a review of the various components in relation to the current resource levels to ensure they are still able to meet the overall objectives of the AJS.
- AJD will review the evaluations conducted by community programs as well as training activities.

It is anticipated that all parts of this recommendation will be fully implemented by August 2006.

Recommendation 7: AJD review the administration of contribution agreements to determine if there are better approaches to providing funding to projects in a more timely and suitable manner.

Management Response:

This recommendation will be implemented as follows:

- Continued program eligibility depends on provisions of final project reports. Project funding is withheld where expenditures and interim program reports (if required) are not provided by

due dates. Problems experienced with late payments in its first year of renewal have been rectified.

- AJD is committed, as part of its renewal strategy, to exploring the use other funding mechanism such as Flexible Transfer Payments and/or Multi-year funding with DOJ Finance Branch, Treasury Board and its provincial/territorial parents. The use of multi-year agreements would significantly reduce the time spent negotiating agreements on a year by year basis. It further recognises the on-going nature of the funding relationship.
- AJD will also explore seeking exemptions to the Treasury Board Transfer Payment Policy for its existing Terms and Conditions to facilitate advance payments.
- Better communication between AJD and community-based justice programs to ensure that conditions of entering into agreements are met.

It is anticipated that this recommendation will be implementation by January 2006.

5.3.5. Performance Information

The 2000 AJS evaluation recommended that a comprehensive national approach to evaluation for the community-based justice programs be implemented to facilitate performance reporting on results. The AJD has indicated that their national approach is one of self-evaluation. Each year a number of community-based justice programs undergo a self-evaluation.

The file review of 46 community-based justice programs found that although the files are well organized, the performance data provided is limited and differs across programs. Most of the data available is related to program activities rather than outcomes or impacts. The quarterly activity reports vary between programs and there appears to be differences in how data is reported. As such, it is not clear whether all programs are using the same definitions for their types of programs or cases. The lack of standardization of these reports makes it very difficult to aggregate the statistics to assess the overall impacts of the programs.

A work plan and activity reporting template has been implemented by most of the Programs in Ontario and Manitoba that requests information on performance and outcomes. Some of the other regions are also moving towards using a similar reporting template.

There is also limited performance data on the other five components of the AJS resulting in the evaluation's heavy reliance on stakeholder perceptions to examine program impacts.

Recommendation 8: Review the AJS RMAF prior to the next evaluation (2006) and implement a strategic performance management strategy that will allow for the collection of relevant performance data for each component of the AJS.

Management Response:

This recommendation will be implemented as follows:

- AJD has identified as part of its business plan for fiscal year 2005-2006 to undertake a review and update as necessary its existing RMAF. This will include reassessing the current information (articulated at a strategic level), evaluation strategy (are we asking the right questions), are the performance measures accurate for decision-making, and are key linkages made to the Program Activity Architecture.
- To facilitate this process AJD will hold a strategy session in September 2005, which include representatives from AJD, DOJ's Evaluation Branch, Research and Statistics Divisions and regional representatives.
- A recidivism study which will examine AJS' objective of contributing to a decrease in the rate of incarceration among Aboriginal people in communities operating AJS programs.
- Utilize self-evaluation workshops from community-based training and development projects to develop an increased amount of effective success indicators.
- Regional coordinators have begun to identify common elements for statistical reporting. Further work with provincial/territorial partners is needed.
- Implementation of the Grants and Contribution Information Management System (GCIMS) which would see not only a standardization of data collection within AJD but would also link AJD to other DOJ programming, thus building on efficiencies within the department. The implementation of GCIMS would be in keeping with standardized audit (including risk) component being sought by Treasury Board.

It is anticipated that this recommendation will be fully implemented by December 2005.

5.4. Preliminary AJS Success

According to the evaluation respondents, the success of the AJS has taken several forms, including: healing in communities; the improvement of individual lives following an intervention; youth connecting with Aboriginal culture; more awareness of victims issues; greater mainstream justice system awareness and recognition; greater community ownership, control and involvement in community justice; more networking and information exchange;

more resource sharing with other community services; and improvements in the general capacity of the community.

Responsibility for the Administration of Justice

The very creation of the community justice program itself as an alternative that the mainstream system could support is a success of the AJS. The evaluation found that the Aboriginal communities that have community-based justice programs have assumed substantial responsibility for the administration of *Criminal Code* offences. Some are also handling drug offences, civil and family disputes, band by-law offences and a small proportion of serious cases or cases without official police involvement.

The case studies of the six community-based justice programs¹² indicated that the programs have helped individuals and the communities as a whole; however, they are still not operating to their full potential. A number of communities indicated that they have had a low number of referrals and feel that they can handle more cases if they have ongoing training and additional resources. With additional resources and a reassessment of eligibility requirements, the programs could be expanded to include a focus on prevention, youth that are repeat offenders, and provide proper follow-up with clients. An assessment of best practices and lessons learned by the AJD would assist the community-based justice programs with improving their effectiveness.

A greater responsibility for the administration of justice in communities could be attained if there was an increase in the number of referrals to the community-based justice programs; through increased capacity; acceptance of the community-based justice programs through public education; and protocols with the police and crown to specify more precisely the conditions under which referrals should usually be made in order to support greater cooperation.

Aboriginal Values in the Canadian Justice System

The AJS is seen as a positive step toward healing historical mistrust in the mainstream justice system and the benefits of restorative justice are beginning to be seen at the community level. Although there is support for the notion of restorative justice, which is critical to an Aboriginal approach to justice, there is still a need for more emphasis on Aboriginal values within the

¹² See Appendix A for a description of the six community-based justice programs.

Canadian justice system¹³. One community indicated that the most successful programs are the ones where cultural practices are emphasized. Greater involvement of elders, inclusion of Aboriginal ceremonies, and the increase in the number of Aboriginal translators available in mainstream courts were identified as steps towards achieving this objective.

Victimization, Crime and Incarceration Rates

The reduction in victimization, crime, and incarceration rates were not specifically examined in this evaluation. However, a study of five community programs that was conducted as part of the 2000 AJS evaluation found evidence that the five programs were more effective in reducing recidivism than comparative mainstream programs, and thus crime among Aboriginal offenders in their communities. A more comprehensive study on this topic is now being conducted by the DOJ and the results will be included in the next evaluation (2006). Similar reductions in recidivism rates have been found in other studies on restorative justice programs¹⁴.

The impact of the AJS on victimization, crime and incarceration rates will be examined in the summative evaluation (2006).

5.5. Effectiveness and Alternative Delivery and Design

Alternatives

The evaluation identified a number of activities that could enhance the effectiveness of the AJS. Some appear to be within the scope of the existing program, and they are unmet because of the lack of funds. Examples include: more victim services; a greater use of healing circles; more intensive supervision to ensure compliance with diversion conditions; more elder involvement; more family mediation; and a greater application of Gladue principles¹⁵ in sentencing recommendations.

¹³ Since there is a diversity of Aboriginal values across Canada there needs to be an examination of what Aboriginal values means

¹⁴ Latimer, 2001

¹⁵ R.V.Gladue (1999) states that s.718.2 cc applies to all Aboriginal offenders that come within the scope of s.25 of the Charter and s.34 of the Constitution Act, not just those residing on a reserve. S.718.2 encourages sentencing judges to have recourse to a restorative approach to sentencing.

Other needs were in areas that may seem to be beyond the scope of the existing program. Mentioned here were: bail supervision, pre-release planning/reintegration planning, parolee mediation circles involving both victims and police; family and child welfare, child protection and family violence programs; crime prevention programs; and alcohol and drug treatment. Most of these activities occur through other programs suggesting that greater integration of these programs with community justice could address some of these gaps.

In addition to identifying additional activities, the evaluation respondents were asked to prioritize the current funding for the different AJS components and community justice program models. The community-based justice programs received the most support from the respondents (community, governmental and mainstream justice officials), followed by continued money for the Training and Development Fund. However, as noted previously, some of the respondents suggested that resources for the Training and Development Fund could be better spent at the community level to meet local training and development needs. For the other components, there was less support provided for the AJLN and Self-Government Capacity Building Fund, and the least for Self-Government Negotiation. This may be a reflection of the lack of awareness of these components by the respondents.

With regards to the community justice models, the diversion model received the most support while the family and civil mediation models received the least, which is in-line with the 2000 AJS evaluation that found these models are under-utilized. The lack of support for these models may be a reflection that more of the evaluation respondents are involved in criminal than civil law or it may be an indication that there is less need for these models. Further research will be required to determine the reason.

Finally, there was a call for more research and evaluation to identify best practices related to the community-based justice programs, training and self-government activities and to share the resulting information.

Cost-Effectiveness

An assessment of cost-effectiveness should be included in the next evaluation. This should include an assessment for a potential increase in the number of referrals to the community-based programs accompanied by referral guidelines and sufficient funding to ensure there is capacity for the referrals; and an analysis of the costs associated with the different community-based justice programs compared to similar mainstream justice programs.

Recommendation 9: AJD gather information on community-based justice programs, training and self-government activities best practices and share the information with other communities. This will enhance effectiveness of the programs and assist other communities with development of their own programs and activities.

Management Response:

As part of its overall business plan AJD has committed to undertaking the following:

- Case studies which will involve in-person interviews with various stakeholders of the selected community-based justice programs as well as a review of program documents. The results of the case studies will be used in the summative evaluation to assess the extent to which the Strategy has contributed to a reduction of rates of victimization, crime and incarceration among Aboriginal people in communities operating these programs. The study will also examine best practices and lessons learned in order to identify factors that affect the success of a community justice program.
- Furthermore, AJD will develop an AJD/AJLN interactive website and key dissemination points for Aboriginal Justice related information including:
 - communication plans;
 - good news stories (best practices/lessons learned);
 - links to other related programs;
 - contact lists;
 - list of material and videos available; and
 - tracking number of visits on the sites and any documents being viewed by visitor.

It is anticipated that this recommendation will be implementation by December 2005.

6. CONCLUSION

There is a continued need for the AJS. This is emphasized by the fact that there remains a disproportionately high rate of incarceration of Aboriginal people. Unless there are alternatives to incarceration, the rate of incarceration is expected to rise in accordance with the anticipated Aboriginal population growth particularly among youth. There is also a need for community-based justice programs that reflect Aboriginal cultures and values and focus on the demographic and socio-economic factors that bring Aboriginal people into contact with the criminal justice system.

Since renewal, the AJS has continued to provide funding to the community-based justice programs, AJLN, for policy development, and self-government negotiations. Although funding was identified for the Training and Development Fund and the Self-Government Capacity Building Fund at the time of renewal, due to budget restrictions these two components have not been fully implemented. The scope of each component needs to be reviewed to ensure it is possible to meet the objectives of the overall AJS within the current resource levels.

There has been strong local, federal, provincial and territorial support for the community-based justice programs which can be seen through the development of protocols, referral of cases and participation and acceptance of community sentencing circle recommendations. However, the success of these programs could be affected by the number of referrals and their capacity to deal with these referrals. Therefore, there is a need for training, long-term funding, and public education awareness of the programs.

The limited awareness and understanding by stakeholders of the activities under the other five components is an issue identified during the evaluation. Although there was positive feedback provided by individuals who had contact with these components, there is a need to increase awareness and access to all components if the objectives of the AJS are to be realized.

Although the stakeholders indicated that there has been progress towards achieving the AJS objectives, without performance data it is difficult to assess the impact of the AJS. There is a

need for implementation of a performance information system that will serve the purposes of management, accountability and future evaluations to assess the effectiveness of the AJS.

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APPENDIX A:
AJS Formative Evaluation Case Studies:
Community-based Justice Programs Descriptions

The following is a brief description of each of the community-based justice programs that participated in a case study for the formative evaluation of the AJS.

Gitxsan Unlocking Aboriginal Justice Program

The Gitxsan Unlocking Aboriginal Justice Program (GUAJ) operates a pre and post-diversion program for six bands in the northern British Columbia region, with a total population of about 8000. The structure of the GUAJ is based on the House system. In this system, the actions and behaviour of one individual reflect upon the whole of the House. Therefore, the entire House is affected by the offences of an individual. The GUAJ is active in community sentencing and mediation. The acceptance of a referral depends on House support of the offender and the victim as well as the offender's willingness to participate and the victim's consent. Referrals come from individuals, the RCMP, the Crown and other community agencies. The program also has an integral role in sentence management in regard to cases of community supervision as per its contract with the Province. The program uses a range of dispositions including various feasts, visiting with Elders and researching genealogy. For youths, the dispositions used more often are curfews, mandatory school attendance and relationship building with family and siblings. A victims' assistance program is also offered under the program.

Community Justice Program of the Champagne and Aishihik First Nation and the Village of Haines Junction

The Haines Junction Community Justice Committee operates a pre and post charge diversion program for the residents of Haines Junction in south-western Yukon. The community includes 1140 registered members of the Champagne and Aishihik First Nation and the Village of Haines Junction has a population of about 770. The 6-member justice committee uses community sentencing and mediation. The aim is to address crime effectively and encourage the community to play an active role in crime prevention. The program uses sentencing and healing circles to address the harms associated with crime and talking circles are used to address disputes before they become serious acts or criminal events.

Yellowhead Tribal Community Corrections Society (YTCCS) - Alexis Cree

YTCCS Community Justice Program involves the development and implementation of First Nation Custom Advisory Panels designed to set out the traditional methods utilized to address

conflicts in a manner that is transparent to all members and to others that will have to deal with the First Nations government or institutions.

More specifically, there are presently no institutional settings in these First Nation communities where resolution of conflicts, unethical behavior, political and community discord can be brought to and resolved in a fair, just and orderly fashion. Conflicts, what ever they may be, are a growing concern and would be the types of test cases that may appear before the First Nation Custom Advisory Panels.

All five of the Yellowhead Tribal Council member First Nations have implemented a First Nation Custom Advisory Panel in their communities. These are the Alexander, Alexis, Enoch, O'Chiese, and Sunchild First Nations.

In Alexis, there is a unique relationship between the provincial court and the restorative justice program. The provincial court sits in Alexis and works with the justice committee to address offenders as individuals with consideration for the person's circumstances and history. Dispositions are treatment-oriented, instead of punitive, and seek to address the underlying causes of crime.

The YTCCS serves the Alexis community of 1500 in northern Alberta using a restorative justice model. In Alexis the RCMP, Justice Committee and the Court operate as one Restorative Justice entity. There are referrals and discussions conducted between the three groups. The Program assumes the role of coordinating these three groups.

Awasis First Nation Family Justice Initiative (*Meen-noo-stah-tan Mini-si-win Project*)

The Mee-noo-stah-tan Mi-ni-si-win Project is a unique system of family justice, premised on resolving conflict in a manner similar to family group conferencing. The community the project serves is located near Thompson in northern Manitoba and has a population of about 2000. Its purpose is to assist families in addressing child and family concerns outside of the regular child and family services and justice systems. The project brings together family, extended family, community members, Elders, and community service providers in the resolution of child protection concerns through the use of properly trained O-kwes-ki-mo-wews or family mediators. The mediators use a combination of traditional peacemaking and family mediation skills.

Depending on the needs of the case, both internal and external organizations and agencies, including RCMP, health services, schools, probation, alcohol and drug programs, court services, magistrates and churches, are involved in the mediation process. If a resolution is reached, the mediator ensures that the conditions are met and harmony is restored. If resolution cannot be reached the case is referred, in the first instance, to outside support services, who may, after consideration, refer the case back to the Project. If, upon a second referral the case cannot be resolved it is referred to a magistrate, who may refer it to the provincial court, or directly to the provincial court.

Aboriginal Legal Services of Toronto Community Council Project

ALST is an urban diversion program operating in Toronto, Ontario. It serves an Aboriginal population of about 60,000 and with current resources deals with about 100 diversions per year. Its' mandate is to accept Aboriginal offenders charged under the Criminal Code or the Narcotics Act who have been diverted from the formal court system to an "Aboriginal Community Council".

The Community Council uses community conferences as a method to address its diversion cases and selects from a wide range of dispositions including apologies, restitution, referrals to Aboriginal agencies, traditional counseling, employment, and education.

ALST's adult criminal court workers identify and select native people to participate in the program. If eligible and the person's consents, their case is diverted to the council and their charges are either stayed or withdrawn by the court.

The success of the community council program depends in large measure upon victim participation in the process. For this reason, after a case has been diverted, all efforts will be made by ALST to ensure that the victim takes part in the council hearing.

If the individual fails to appear at the council hearing, the charges may be revived at the time. Following a completed hearing, the court worker will inform the team leader of the council's decision. If the individual does not comply with the decision of the council, charges will not be revived except in exceptional circumstances. Individuals who do not comply with the decisions of the council will not be eligible for diversion to the council on other matters for a particular period of time.

Elsipogtog Restorative Justice Program

The Elsipogtog First Nation, located in New Brunswick with a population of 2500, operates an alternative justice program. A Community Justice Committee made up of 15 members oversees this program. The Committee members represent the full spectrum of internal agencies, services and programs, as well as community members (Elders, youth and women). Committee members are called upon to provide recommendations to Chief and Council regarding justice issues and to inform the larger community of Big Cove about the development and implementation of the Restorative Justice Initiative. Services currently being provided include those associated with diversion activities, alternative measures and sentencing circles. The Committee is also working on developing a community-based policing program in Big Cove and is currently promoting linkages with the RCMP, the Big Cove Police and the community of Big Cove.

Furthermore, a new component has been added to the Big Cove First Nation. The new element is a Victims' Assistance Program by which it provides support and pre-trial preparation services to victims and their immediate families. The program also sensitizes the general public by raising awareness of the needs of victims.