



**ABORIGINAL JUSTICE STRATEGY
SUMMATIVE EVALUATION
Final Report**

April 2007

Evaluation Division



TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
1. INTRODUCTION.....	1
1.1. Context of the evaluation	1
1.2. Objectives of the evaluation.....	1
1.3. Structure of the report	2
2. Description of the Aboriginal Justice Strategy	3
2.1. Context.....	3
2.2. Program logic.....	5
2.3. Organizational structure.....	10
2.4. Resources	11
3. METHODOLOGY	13
3.1. Document review	13
3.2. Case studies.....	13
3.3. Key informant interviews	14
3.4. Surveys of stakeholders	14
3.5. Recidivism study.....	15
3.6. Cost analysis	16
4. KEY FINDINGS	17
4.1. Community-based programs	17
4.2. Training and development	32
4.3. Self-government capacity building	34
4.4. Policy development and support.....	35
4.5. Outreach and partnerships.....	36
4.6. Self-government negotiations support	38

5. CONCLUSIONS AND LESSONS LEARNED	39
5.1. Program relevance	39
5.2. Design and delivery	40
5.3. Success.....	44
5.4. Cost-effectiveness and alternatives.....	48
APPENDIX A : List of Evaluation Issues and Questions	51
APPENDIX B : Summary of Case Studies.....	55
APPENDIX C : Evaluation of the Impact of the Aboriginal Justice Strategy on Rates of Re-offending	67

EXECUTIVE SUMMARY

1. Introduction

In 1991, the federal government launched the Aboriginal Justice Initiative, which supported a range of community-based justice initiatives such as diversion programs, community participation in the sentencing of offenders, and mediation and arbitration mechanisms for civil disputes. Five years later (in 1996), the federal government renewed and expanded the Aboriginal Justice Initiative, which then became the Aboriginal Justice Strategy (AJS). In 2002, the federal government renewed the AJS for a further five years, covering the period from 2002-03 to 2006-07. The Department of Justice conducted a summative evaluation of the current AJS funding and this document constitutes the evaluation's final report.

2. Program description

The AJS is one component of the federal government's response to the well-documented fact that a disproportionate number of Aboriginal people are in conflict with the law. The program pursues three key objectives:

- 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, to contribute to a decrease in the rate of victimization, crime and incarceration among Aboriginal people in communities operating AJS programs.

To support the achievement of these program objectives, the AJS focuses on six key activities:

- *Community-based programs:* Through contribution agreements signed with participating provinces, territories, and Aboriginal communities (as applicable), the federal government

covers up to 50 percent of the contribution made toward Aboriginal community-based justice programs, such as diversion, pre-sentencing options, sentencing circles, Justices of the Peace, family and civil mediation, or other related initiatives. The Aboriginal Justice Directorate signs and manages these contribution agreements.

- *Training and development:* Available to communities that do not yet have community-based programs or communities that run such programs, but require further training and capacity-building, this component offers support for training activities that address the developmental needs of communities, support the development of new programs, or support women's and victims' roles in restorative justice initiatives. The AJS may cover up to 100 percent of the activities under this component. The Aboriginal Justice Directorate signs and manages these contribution agreements.
- *Self-government capacity building:* This component supports the development of pilot projects and resource material designed to build self-government capacity. It is closely linked to self-government agreements, as it prepares Aboriginal communities to enforce their own Aboriginal laws. The AJS may cover up to 100 percent of the activities under this component. The Aboriginal Justice Directorate signs and manages these contribution agreements.
- *Policy development and support:* The Aboriginal Justice Directorate, in collaboration with the Aboriginal Law and Strategic Policy group, participates in a number of departmental, interdepartmental and intergovernmental committees and working groups to support a coordinated response to Aboriginal policy and program delivery. The Directorate also conducts research and evaluation activities in support of an effective delivery of community-based activities.
- *Outreach and Partnerships:* This component was originally known as the Aboriginal Justice Learning Network (AJLN). The AJLN became Outreach and Partnerships in 2005-06. Under this new component, the Aboriginal Justice Directorate carries-out communication and promotional activities on the AJS.
- *Self-government negotiations support:* A legal counsel with the Department of Justice provides advice to federal negotiators involved in self-government negotiations with the First Nations. This legal counsel provides advice relating specifically to justice chapters whenever such chapters are included in the self-government agreements.

3. Methodology

The methodology used to conduct this evaluation has six main components:

- a document and file review;
- case studies with 10 communities that have established community-based justice programs through AJS funding;
- interviews with representatives from the Aboriginal Justice Directorates, other federal departments, provinces and territories;
- a survey of justice coordinators located in Aboriginal communities that have implemented community-based justice programs funded through the AJS, and a survey of mainstream justice personnel who collaborate with Aboriginal communities that offer community-based justice programs;
- a study on the impact of the AJS on rates of re-offending;
- an analysis of cost implications of the AJS.

4. Program relevance

The three 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, to contribute to a decrease in the rate of victimization, crime and incarceration among Aboriginal people in communities operating AJS programs.

A disproportionate number of Aboriginal people are still in conflict with the law. They are over-represented in correctional facilities, and the rates of crimes and victimization in Aboriginal communities are still well over those found in non-Aboriginal communities. AJS programs represent an alternative to the mainstream justice system that effectively reflects Aboriginal beliefs and values.

Multiple government initiatives, including programs like the AJS and changes to the *Criminal Code* with respect to sentencing and alternative measures, have contributed to reflecting and including Aboriginal values within the Canadian justice system. Despite this progress, there continues to be fundamental differences between the notion of justice among Aboriginal communities and in the mainstream justice system. These differences may contribute to the problem of over-representation of Aboriginal people in the justice system and as such, it remains important for the AJS, along with other programs and initiatives, to continue to make progress toward attaining this over-arching and longer term AJS goal.

The federal government has repeatedly acknowledged the problems that Aboriginal communities face when it comes to enforcing Aboriginal and non-Aboriginal laws and also to address criminal and non-criminal conflicts, as well as the importance of having Aboriginal communities directly involved in the administration of justice in their communities. In that sense, the AJS is still relevant to federal policy and programs priorities. Furthermore, the program directly supports the federal government's efforts to implement self-government agreements in Aboriginal communities.

5. Design and delivery

5.1. Selection of projects and programs

Under the current AJS funding allocation, federal, provincial and territorial governments have selected few new community-based justice programs. When they did select new projects, respective governments jointly reviewed the existing proposals and reached a joint decision on which new program to fund. They did not issue calls for proposals in order to avoid creating large expectations among the Aboriginal communities. In that sense, the process has proven to be efficient, but restrictive.

Regional coordinators with the Aboriginal Justice Directorate have worked in collaboration with their provincial and territorial counterparts and Aboriginal communities to select training and development initiatives and self-government capacity-building initiatives, in tandem with the department of Indian and Northern Affairs Canada (INAC). Since the vast majority of these projects have served communities that already have community-based justice programs, it appears that the selection process was also largely focussed on continuing to serve these communities, instead of serving the communities that are planning to implement new programs.

5.2. Management and monitoring

Through its regional coordinators and program analysts, the Aboriginal Justice Directorate is particularly involved in the daily management of projects funded through contribution agreements. The only exception to this are projects in the Northwest Territories and Nunavut, where the Aboriginal Justice Directorate has signed flow-through agreements. Both the Aboriginal communities managing AJS programs and their provincial and territorial partners appreciate the support provided by regional coordinators and program analysts.

At this point, tools and procedures for performance measurement vary across regions, particularly as a result of provincial and territorial reporting requirements that also vary among jurisdictions. When combined to the challenges experienced by Aboriginal communities in meeting their reporting requirements, these variations still make it challenging to provide a national picture of what the AJS is supporting and achieving.

Since both the Aboriginal Justice Directorate and the provincial and territorial governments closely monitor (through both formal and informal means) the implementation of the AJS programs, they are in a position to determine whether contribution agreements are carried out as required and no significant concerns have emerged during the consultations. It should be noted that, in the cases of the Northwest Territories and Nunavut, where flow-through agreements have been signed, the territories have primary responsibility for the administration of contribution agreements and shares all relevant program information with the Aboriginal Justice Directorate

5.3. Distribution of roles and responsibilities

The roles and responsibilities among all parties involved are generally well-defined and understood. Federal, provincial and territorial partners do play a complementary role in supporting the implementation of the AJS programs. The fact that the Department of Justice has been funding community-based justice programs for the past 16 years (through the Aboriginal Justice Initiative and the AJS) has allowed partners to gain experience and effectively define their roles.

5.4. Activities carried-out internally within the AJD

In 2006, the Department of Justice realigned the policy development and support functions by assigning them primarily to the Aboriginal Law and Strategic Policy group, as a result of its

policy capacity. The ALSP works closely with and collaborates with the Aboriginal Justice Directorate.

At the time of the evaluation, a shift in priorities had largely brought the Outreach and Partnerships component to a halt. While the Aboriginal Justice Directorate had carried out activities in previous years, the current level of resources assigned to this component makes it unlikely that it will achieve any significant outcomes.

The self-government negotiation support is a conventional advisory role that legal counsel within the Department of Justice are expected to fulfill. This program component appears to be effectively delivered.

5.5. Follow-up to the 2005 formative evaluation

The recommendations from the 2005 formative evaluation of the AJS have been partially implemented. Since the formative evaluation report was tabled, the AJS has been largely focussing on maintaining existing programs and preparing the renewal of the program. It has had neither the time nor the resources to implement significant changes to the program. A number of recommendations from the formative evaluation will be considered during the renewal process relating to the AJS.

6. Success

6.1. Program reach

Program reach represents the greatest challenge to the achievement of the AJS's expected outcomes at any large scale. Only a fraction of Aboriginal offenders have access to the AJS programs. While these programs are generally having a positive impact on those individuals who access them, many more Aboriginal offenders, who would benefit from such programs, are sent into the mainstream system, often triggering the negative consequences that have been documented over the years.

6.2. Enforcement of Aboriginal laws

The AJS has a limited role in allowing Aboriginal communities to administer and enforce Aboriginal laws and Band by-laws. It must nonetheless be noted that AJS programs could technically be used to enforce Aboriginal laws and Band by-laws. In this sense, it is important to recognize that the AJS programs are not limited to dealing with Aboriginal individuals who have committed a criminal offence.

6.3. Coordinated approach

There is an expectation that both the Aboriginal Justice Directorate and the Aboriginal Law and Strategic Policy Group will play a leadership role in coordinating activities that relate to the implementation of community-based justice programs across Canada. There is no expectation, however, that these two organizations will coordinate an integrated approach to addressing all issues facing Aboriginal people, and this view is consistent with their established mandate.

Both resource limitations and a relatively high turn over level within the Aboriginal Justice Directorate, particularly at the management level, have limited its ability to fully coordinate provincial, territorial and federal efforts in relation to the implementation of community-based justice programs. Provincial and territorial partners have expressed a desire to have the Directorate play a more active role in that area in the future.

6.4. Impact on mainstream justice personnel

Communities that do have community-based programs generally also benefit from the support of mainstream justice personnel. Where challenges exist, they appear to predominantly result from staff turnover among police officers, prosecutors and community justice workers. While all the groups within the mainstream system generally support the AJS programs, by referring cases and holding a positive view of these types of programs, judges appear to be particularly supportive of them.

6.5. Involvement of victims

Involving victims is fundamentally linked to restorative justice and does reflect the Aboriginal values of healing and caring. Case studies conducted in support of this evaluation illustrate the benefits that victims may achieve by participating in community-based justice programs.

Another fundamental principle is for the involvement of the victims to remain voluntary, and, in some communities, the consultations indicate that some victims hesitate to participate in these programs. This is a challenge that justice coordinators in participating communities are likely to face on an ongoing basis.

6.6. Support to self-government negotiations

The legal counsel associated to the AJS has provided ongoing support to self-government negotiators. The legal counsel provides expertise related specifically to the administration of justice chapters within these self-government agreements, and as this negotiation process is likely to continue for some time, so will be the need for this type of support.

6.7. Assuming greater responsibility for the administration of justice

The reach of the AJS programs has largely determined the extent to which Aboriginal people have been able to assume a greater responsibility for the administration of justice. Those communities that have implemented community-based justice programs, particularly diversion programs, have considerably increased their involvement in the administration of justice. Since these programs apply to more than just criminal offences, they have also allowed Aboriginal communities to tackle family conflicts or implement preventative measures. Communities that have signed self-government agreements are also in a position to use the AJS programs to enforce Aboriginal laws that relate to a variety of circumstances other than criminal offences.

Implementing AJS programs does not imply that all Aboriginal individuals who could benefit from such programs will systematically have access to them. Many Aboriginal communities still have a limited capacity to offer community-based justice programs. And many other communities have yet to implement such programs.

6.8. Impact on the overall administration of justice in Canada

Undoubtedly, AJS programs have contributed to a greater inclusion of Aboriginal values in the administration of justice within the participating Aboriginal communities. These programs have also had a generally positive impact on mainstream justice personnel (judges, prosecutors, and police officers) who collaborate in the implementation of these programs by referring Aboriginal offenders or participating in sentencing initiatives.

6.9. Impact on crime rates

Individuals who participate in the AJS programs are more likely to get rehabilitated than those who are sent into the mainstream justice system. The recidivism study conducted in support of this evaluation indicates that offenders who participate in AJS-funded programs are approximately half as likely to re-offend as are offenders who do not participate in these programs.

6.10. Other relevant programs

A number of other programs, such as crime prevention initiatives, First Nations policing, youth justice initiatives, the Aboriginal Court Worker Program, and family violence initiatives, play a complementary role to the AJS programs. The amendments to the Criminal Code on alternative measures and sentencing also contribute to the achievement of the AJS's long-term outcomes.

6.11. Lessons learned

This evaluation points to a number of lessons learned:

- The reach of the AJS is still limited, and this appears to be the result of both limited available resources and a limited capacity among some Aboriginal communities to implement these complex and labour-intensive programs.
- The support of participating communities and mainstream justice personnel is paramount to the success of community-based justice programs.
- When implemented, these programs represent a cost-effective model for dealing with Aboriginal offenders, which reflect Aboriginal values and beliefs. Considering the severity of the problems that Aboriginal offenders continue to face within the mainstream justice system, the AJS appears to be particularly relevant.
- The implementation of the AJS programs is a complex process, and the support that federal, provincial, and territorial governments offer on an ongoing basis is critical to the successful implementation of these programs.
- Reporting and ongoing performance measurement continue to be problematic for many participating communities. These challenges considerably limit the ability of the Department of Justice to systematically measure the set of results that these programs are achieving.

7. Cost-effectiveness and alternatives

The level of resources allocated to the AJS's main component—namely the community-based justice program—has slightly increased over the past four years, while the level of resources dedicated to training and development and to Outreach and Partnerships activities has been substantially reduced. The level of funding for the other program component appears to have remained largely constant.

In this context, the extent to which sufficient resources have been allocated to each program component largely depends on the objectives that the AJS is expected to pursue. At this point, the current level of resources could, at best, maintain the set of program activities presently available to participating communities. It will certainly not favour an expansion of the AJS or address the gap in program reach identified in this evaluation.

This evaluation has not identified a different program model for achieving the objectives of the AJS. Allowing Aboriginal communities to administer community-based justice programs represents a cost-effective alternative to the mainstream justice system, and it supports the broader self-government objectives that both the federal government and Aboriginal communities are pursuing.

1. INTRODUCTION

In 1991, just as the Royal Commission on Aboriginal Peoples was undertaking its work, the federal government launched the Aboriginal Justice Initiative, which supported a range of community-based justice initiatives such as diversion programs, community participation in the sentencing of offenders, and mediation and arbitration mechanisms for civil disputes. Five years later (in 1996), partly in response to the Commission's reports and recommendations, the federal government renewed and expanded the Aboriginal Justice Initiative, which then became the Aboriginal Justice Strategy (AJS). In 2002, the federal government renewed the AJS for a further five years, covering the period from 2002-03 to 2006-07. The Department of Justice conducted a summative evaluation of the current AJS funding and this document constitutes the evaluation's final report.

1.1. Context of the evaluation

This evaluation fulfills a departmental commitment to conduct the AJS summative evaluation during the 2006-07 fiscal year. In its Results-Based Management and Accountability Framework (RMAF), prepared in support of the current AJS funding allocation, the Department of Justice committed to conducting a formative and a summative evaluation of AJS.¹ The Department completed the AJS formative evaluation in 2005.²

1.2. Objectives of the evaluation

The core objective of this evaluation is to review AJS activities that were funded between 2002-03 and 2006-07 and assess their impacts. As a summative evaluation, this study focuses on the program's rationale, results, and cost-effectiveness, but also covers a number of issues relating to

¹ See Department of Justice (2002). *Results-Based Management and Accountability Framework (RMAF) 2002-2007 Aboriginal Justice Strategy*. Ottawa.

² For the formative evaluation of AJS, see Department of Justice (2005). *Aboriginal Justice Strategy Formative Evaluation: Summary, Recommendations and Management Response*. Ottawa.

program implementation. Appendix A lists all the evaluation issues and questions that this evaluation is covering.

This evaluation is also required to meet Treasury Board requirements, as the AJS is scheduled to sunset in March 2007.

1.3. Structure of the report

This report contains five sections, including the introduction. Section 2 describes the AJS, while Section 3 describes the methodology for the evaluation; Section 4 summarizes the key findings per program component; and Section 5 presents the conclusions and lessons learned.

2. DESCRIPTION OF THE ABORIGINAL JUSTICE STRATEGY

This section of the report describes the AJS. It discusses the policy context relating to the Strategy and describes its program logic, its management structure, and its financial resources.

2.1. Context

The AJS is one component of the federal government's response to the well-documented fact that a disproportionate number of Aboriginal people are in conflict with the law. A recent account of this problem came from the Correctional Investigator, who reported that the incarceration rate for Aboriginal people is still approximately 10 times higher than the rate for non-Aboriginal persons:

“Aboriginals account for a disproportionate share of the prison population. They represent 18 per cent of the federal prison population although they account for just 3 per cent of the general Canadian population. (...) [T]he best estimate of the overall incarceration rate for Aboriginal People in Canada is 1,024 per 100,000 adults. Using the same methodology, the comparable incarceration rate for non-Aboriginal persons is 117 per 100,000 adults.”³

In previous years, numerous studies have documented the problematic relationship between Aboriginal peoples and the mainstream justice system. The Royal Commission on Aboriginal Peoples issued a particularly disturbing conclusion on this issue:

“The Canadian criminal justice system has failed the Aboriginal peoples of Canada – First Nations, Inuit and Métis people, on-reserve and off-reserve, urban and rural – in all territorial and governmental jurisdictions. The principal reason for this crushing failure is the fundamentally different world views of Aboriginal

³ The Correctional Investigator Canada. “Annual Report of the Office of the Correctional Investigator 2005-2006.” Ottawa, p. 11.

and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice.”⁴

The Supreme Court of Canada also emphasized the far-reaching consequences of maintaining Aboriginal offenders in a system that largely fails to serve and rehabilitate them:

“Not surprisingly, the excessive imprisonment of aboriginal people is only the tip of the iceberg insofar as the estrangement of the aboriginal peoples from the Canadian criminal justice system is concerned. As this Court recently noted (...), there is widespread bias against aboriginal people within Canada, and “[t]here is evidence that this widespread racism has translated into systemic discrimination in the criminal justice system.”

(...) These findings cry out for recognition of the magnitude and gravity of the problem, and for responses to alleviate it. The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system.”⁵

Other related developments were specific amendments to the *Criminal Code* that Parliament adopted in 1995 to deal with diversion and sentencing:

- Section 717 of the *Criminal Code* clarifies conditions to be met for using alternative measures (such as diversion programs funded through AJS) when dealing with a person alleged to have committed an offence.
- Sub-section 718.2 (e) of the *Criminal Code* dictates that “all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.”

In sum, both the funding provided to community-based justice programs and the changes to the *Criminal Code* reflect a desire to divert, when applicable and reasonable, offenders from the mainstream justice system, and to consider a variety of sanctions other than imprisonment when offenders—and particularly Aboriginal offenders—do end-up in the mainstream justice system.

⁴ Royal Commission on Aboriginal Peoples. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*. Ottawa. The Commission (1996) p. 309.

⁵ R. v. Gladue [1999]. 1 S.R.C. 688, par. 61 and 64.

It is in this context that the Department of Justice has been funding community-based justice programs for the past 16 years, including the past five years under the current AJS funding allocation that is the object of this evaluation.

2.2. Program logic

The AJS supports a range of activities that are expected to contribute to the achievement of specific policy goals. This section describes the AJS' program logic and is based on the model included as Figure 1 on page 9.

2.2.1. Program goals and objectives

The AJS pursues objectives that relate both to the administration of justice within Aboriginal communities and to the administration of the mainstream justice system. More specifically, the AJS pursues three objectives:

- 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, to contribute to a decrease in the rate of victimization, crime and incarceration among Aboriginal people in communities operating AJS programs.⁶

2.2.2. Program activities and outputs

The AJS includes six program components that can be grouped into two categories, namely community-based activities, which are supported through contribution agreements, and support measures, which are carried out internally within the Department of Justice.

Community-based activities

- *Community-based programs*: This component stands at the core of the AJS. Through contribution agreements, the federal government covers up to 50 percent of the contribution

⁶ See Department of Justice (2002). *Results-Based Management and Accountability Framework (RMAF) 2002-2007 Aboriginal Justice Strategy*. Ottawa.

made toward Aboriginal community-based justice programs, such as diversion, pre-sentencing options, sentencing circles, Justices of the Peace, family and civil mediation, or other related initiatives. The Aboriginal Justice Directorate signs and manages these contribution agreements, which can either be bilateral or tripartite. As a result of this contribution, the federal government expects that community-based justice programs will be implemented to serve Aboriginal communities.

- *Training and development:* Available to communities that do not yet have community-based programs or communities that run such programs, but require further training and capacity-building, this component offers support for training activities that address the developmental needs of communities, support the development of new programs, or support women's and victims' roles in restorative justice initiatives. The AJS may cover up to 100 percent of the activities under this component. The Aboriginal Justice Directorate signs and manages these contribution agreements. As a result of this contribution, the federal government expects that training and developmental activities will be implemented in Aboriginal communities.
- *Self-government capacity building:* This component supports the development of pilot projects and resource material designed to build self-government capacity. It is closely linked to self-government agreements, as it prepares Aboriginal communities to enforce their own Aboriginal laws. The AJS may cover up to 100 percent of the activities under this component. The Aboriginal Justice Directorate signs and manages these contribution agreements. As a result of this contribution, the federal government expects that self-government capacity building projects will be implemented in Aboriginal communities, particularly those that have signed self-government agreements or that are in the process of signing such agreements.

Support measures

- *Policy development and support:* The Aboriginal Justice Directorate, in collaboration with the Aboriginal Law and Strategic Policy group, participates in a number of departmental, interdepartmental and intergovernmental committees and working groups to support a coordinated response to Aboriginal policy and program delivery. The Directorate also conducts research and evaluation activities in support of an effective delivery of community-based activities. As a result of these activities, the Department of Justice is expected to engage in Aboriginal justice fora and provide policy advice based on research and evaluation activities.

- *Outreach and Partnerships*: This component was originally known as the Aboriginal Justice Learning Network (AJLN). The AJLN became Outreach and Partnerships in 2005-06. Under this new component, the Aboriginal Justice Directorate carries-out communication activities on the AJS and on Aboriginal involvement in the legal profession. As a result of these activities, stakeholders are expected to access information and promotional events relating to the administration of justice within Aboriginal communities.
- *Self-government negotiations support*: A legal counsel with the Department of Justice provides advice to federal negotiators involved in self-government negotiations with the First Nations. This legal counsel provides advice relating specifically to justice chapters whenever such chapters are included in the self-government agreements.

2.2.3. Expected impacts

Activities listed in the preceding subsection are expected to contribute to the achievement of the following initial outcomes:

- *Access to community-based justice programs and other community services tailored to Aboriginal needs*: It is expected that the federal contribution that is provided through the AJS, combined with other financial contributions (particularly those of the provinces and territories), will translate into actual access to community-based justice programs for Aboriginal communities. While the federal government established no specific target for achieving this, the extent to which AJS-funded initiatives are reaching Aboriginal offenders is a key consideration in assessing the achievement of this outcome.
- *Increased capacity to implement community-based justice programs and other community-based services*: Not all Aboriginal communities are in a position to effectively implement and manage community-based justice programs. Through the training and development initiatives that the AJS is funding, it is expected that a number of Aboriginal communities will increase their capacity to offer such programs or to improve the delivery of the programs they already offer.
- *Increased capacity to administer and enforce Aboriginal laws*: Self-government capacity building initiatives that the AJS is funding are expected to increase the capacity of First Nations to administer and enforce their Aboriginal laws, which, in turn, supports an effective implementation of self-government agreements.

- *Increased knowledge of Aboriginal justice issues:* The Aboriginal Justice Directorate is expected to play a leadership role in coordinating federal initiatives relating to the administration of justice in Aboriginal communities, and also in linking the federal initiatives with provincial and territorial ones.
- *Increased knowledge of AJS among targeted groups:* Activities funded under the former Aboriginal Justice Learning Network and the current Outreach and Partnerships component are expected to increase knowledge of the AJS among key stakeholder groups such as provincial and territorial ministries, prosecutors, judges and social workers.
- *Self-government agreements adequately address Aboriginal justice requirements:* The federal government expects that self-government agreements signed with the First Nations will adequately address issues relating to the administration of Aboriginal laws, and also the enforcement of federal and provincial legislation, as applicable.

The AJS activities are also expected to contribute to the achievement of three intermediate outcomes:

- *Reduced crime and incarceration rates in communities with funded programs:* The federal government expects that AJS-funded initiatives will reduce the victimization and crime rates in participating Aboriginal communities.
- *Community-based justice programs and other community services in place:* The AJS-funded activities are expected to allow more Aboriginal communities to implement community-based justice programs, and also to allow those Aboriginal communities that already have such programs to increase their capacity to administer them.
- *Aboriginal laws enforced in First Nations communities:* It is expected that more First Nations will successfully enforce their Aboriginal laws as a result of the AJS funded activities.

Finally, the AJS activities are expected to contribute to the achievement of three long-term outcomes:

- That Aboriginal communities assume greater responsibility for community-based justice programs and other community services in the administration of justice in their communities;
- That Aboriginal values are reflected and included in the administration of justice in Canada;
- That there be a reduction in the rates of crime, victimization and incarceration among Aboriginal peoples.

Logic Model - Aboriginal Justice Strategy

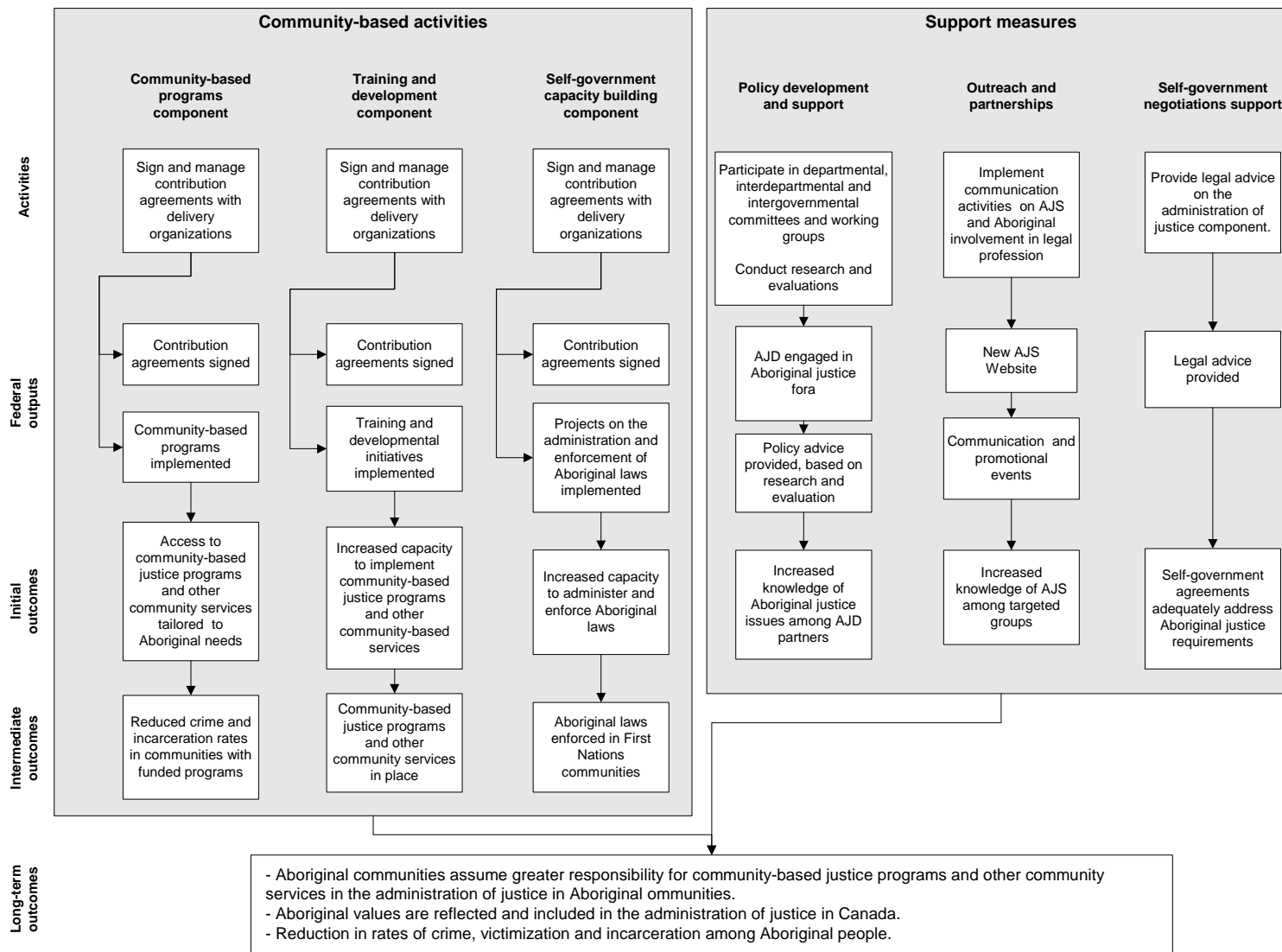


Figure 1

2.3. Organizational structure

During the first four years of the current AJS funding allocation (2002-03 to 2005-06), the Aboriginal Justice Directorate managed all components of the AJS. In June 2006, the Department of Justice realigned the AJS management structure as follows:

- It transferred the Aboriginal Justice Directorate, which was formally included in the Aboriginal Affairs Portfolio, to the Programs Branch within the Policy Sector (see Figure 2). The role of the Directorate was also redefined to focus primarily on the management of the contribution agreements signed under the AJS.
- The Department realigned the AJS related policy functions to the Aboriginal Law and Strategic Policy group within the Aboriginal Affairs Portfolio, as a result of its policy capacity. In collaboration with the Aboriginal Justice Directorate, the Aboriginal Law and Strategic Policy group leads federal-provincial-territorial working groups on Aboriginal justice issues and the renewal process for the AJS, and provides legal advice on self-government negotiations.

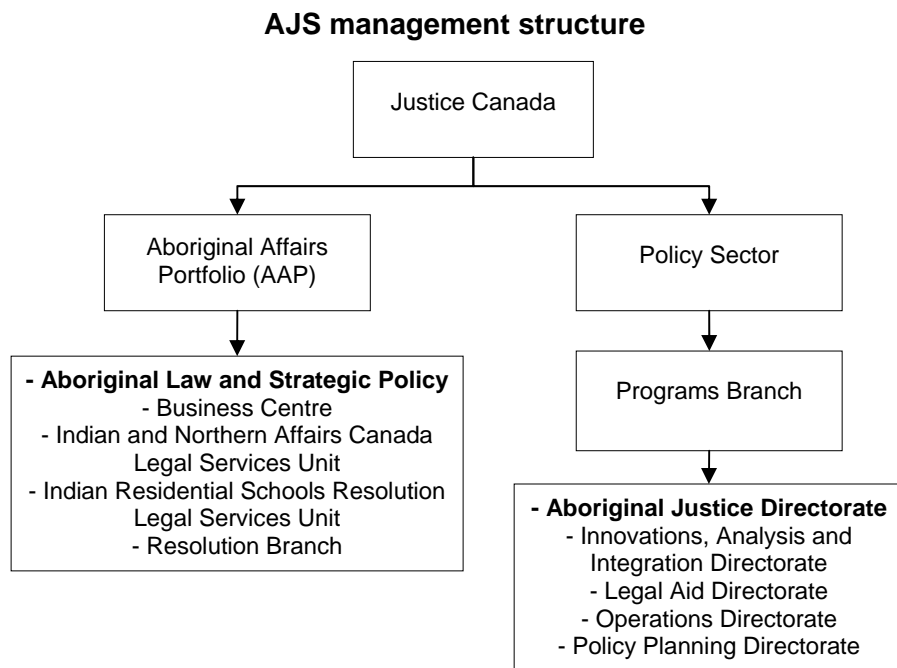


Figure 2

2.4. Resources

When the federal government first launched the AJS in 1996, it allocated \$4.5 million annually to the program, a figure that increased to \$8.6 million annually by the end of the first funding allocation in 2000-01. While it initially allocated \$11.5 million annually to AJS in the current funding allocation, the federal government applied budget-reallocation and adjustments to the AJS such that the program's actual allocation has been varying between \$9.4 and \$10.3 annually (see Table 1 for details).

Table 1: AJS funding allocation						
Initial allocation	2002-03	2003-04	2004-05	2005-06	2006-07	Total
- Vote 1, Operations and Maintenance	3,902,097	3,902,097	3,902,097	3,902,097	3,902,097	19,510,485
- Vote 5, Grants and Contributions	7,550,000	7,550,000	7,550,000	7,550,000	7,550,000	37,750,000
- Total	11,452,097	11,452,097	11,452,097	11,452,097	11,452,097	57,260,485
Reduction*	1,108,161	2,098,105	1,496,110	1,580,867	1,178,521	7,461,764
Revised allocation	10,343,936	9,353,992	9,955,987	9,871,230	10,273,576	49,798,721
* These reductions resulted from both government-wide budget re-allocations and departmental adjustments within the Department of Justice.						
Source: AJS annual reports and official documentation.						

Both the Department of Justice and the Department of Indian and Northern Affairs Canada allocate funding to the AJS. The Department of Indian and Northern Affairs Canada contributes \$2 million annually while the Department of Justice contributes the remaining portion.

The Department of Justice allocates most of its AJS funds to the funding of community-based justice programs. In 2005-06, close to 70 percent of the total AJS funding went to support such programs, which provincial and territorial governments also support through direct funding or in-kind contributions.

3. METHODOLOGY

Several lines of evidence have been used to address the evaluation issues and questions listed in Appendix A.

3.1. Document review

Primary sources of information, provided by the Aboriginal Justice Directorate, were reviewed. The list of these documents included AJS annual reports, internal briefing notes, AJS official documentation, program data, as well as samples of contribution agreements, memoranda of understanding, activity and financial reports.

Secondary sources of information were also reviewed, including statistics from the Canadian Centre for Justice Statistics, as well as recent studies and court decisions addressing issues relating to Aboriginal offenders. These documents are referenced throughout this report.

3.2. Case studies

In 2006, the Department of Justice's Evaluation Division conducted case studies with 10 communities that have established community-based justice programs through AJS funding and that volunteered to participate in this process. The selected case studies include a diverse mixture of programs that serve different types of communities (including on- and off-reserve communities). As part of these studies, documents for each of the selected communities were reviewed and five individuals for each of the case study programs were interviewed, including justice coordinators, police officers, victims, offenders, justice committee members, city officials, elders, prosecutors, probation officers, and defence counsel. A total of 63 individuals were interviewed.

The method known as Photovoice[®] was also used to explore the impacts of community-based justice programs.⁷ In a process spanning one to two days, participants were given cameras and asked to take pictures based on the following themes:

- What does justice mean to you and your community?
- What are the strengths, challenges, and concerns your community has in dealing with justice issues?
- What impact has the community-based justice program had in your community?

These individuals subsequently met, either individually or in a small group, to put their words and stories to the pictures. A total of 41 people participated in the Photovoice[®] exercise. It should be noted that findings from these case studies cannot be viewed as representative of all AJS funded community-based justice programs. Pictures and quotes from case study participants are included in this report for illustrative purposes only. A summary of the case studies is included in appendix B.

3.3. Key informant interviews

During the months of October and November 2006, a total of 28 semi-structured interviews were conducted with representatives from the Aboriginal Justice Directorate, other federal departments, provinces and territories. These interviews were conducted either in-person or over the phone. All key informants received an interview guide prior to the interview itself.

3.4. Surveys of stakeholders

Two surveys were conducted as part of this evaluation:

- *Survey of justice coordinators*: Between November 10, 2006 and January 12, 2007—following a pre-test of the instrument—a paper-based survey questionnaire was sent, by fax or e-mail, to 95 justice coordinators located in Aboriginal communities that have

⁷ For more information on Photovoice[®], see: www.photovoice.com.

implemented community-based justice programs funded through the AJS.⁸ The Aboriginal Justice Directorate provided the list of these justice coordinators. Two written reminders were sent by fax, to all justice coordinators included in the sample. A total of 34 justice coordinators returned a completed survey questionnaire, for a response rate of 36%. The data collected was entered into the Computer Assisted Telephone Interviewing (CATI) program, before transferring it to the Statistical Package for the Social Sciences (SPSS) program for analysis.

- *Survey of mainstream justice personnel:* Between December 11, 2006 and January 12, 2007, a survey questionnaire was sent, by fax or e-mail, to 56 mainstream justice personnel (prosecutors or police officers) who collaborate with Aboriginal communities that offer community-based justice programs by means of referring Aboriginal offenders to these programs. The individuals who responded to the above-mentioned survey of justice coordinators were asked to identify mainstream justice personnel who could receive this survey questionnaire. This approach explains the delay between the distribution of survey questionnaires to justice coordinators and the distribution of survey questionnaires to mainstream justice personnel. One written reminder was sent, by fax, to all individuals included in the sample. A total of 16 mainstream justice personnel returned a completed survey questionnaire, for a response rate of 29%. The data that was collected into CATI before transferring it to SPSS for analysis.

3.5. Recidivism study

In July 2006, the Department of Justice's Evaluation Division completed a study on the impact of the AJS on rates of re-offending (hereafter referred to as the recidivism study). A summary of this study is included in appendix C. The criminal behaviour of individuals who participated in an AJS program was compared with the criminal behaviour of individuals who were referred to, but did not participate in, an AJS program. In total, the study considered 4,246 offenders (3,361 AJS program participants and 885 comparison group members) from nine programs across Canada. Close to 60% of offenders in the total sample were tracked for at least four years. In order to determine whether AJS program participants and comparison group members differed in their likelihood of re-offending, a series of survival analyses were used.

⁸ The total population of justice coordinators is unknown, but considering that approximately 110 AJS programs were operating at the time of the evaluation, and that one coordinator may be managing more than one program, the large majority (if not all) justice coordinators received a survey questionnaire.

As a result of methodological limitations, the interpretation of findings from the recidivism study must be made with caution. Among other things, it was not possible for the study to use random assignment to either the program participant group or the comparison group; to use data from offenders who systematically went through the mainstream justice system; or to use a more representative sample of AJS participants. Despite these limitations, and as further discussed in this report, the consistency of the findings provides helpful insights on the impacts of AJS on Aboriginal offenders.

3.6. Cost analysis

A cost analysis was undertaken to explore the cost implications of the AJS. To this end, activity and financial reports were reviewed for nine AJS programs located in Ontario, Manitoba, Saskatchewan, and British Columbia. In addition, justice spending in Newfoundland and Labrador, Ontario, and British Columbia was reviewed, covering court expenditures (including prosecution) and legal aid, but excluding policing and costs associated with carrying out sentences, including those incurred by correctional facilities. These last items were excluded on the basis that policing work is needed in both AJS and non-AJS scenarios, and that the ratio of offenders who would end up sentenced, and the type of sentence they would be given, could not be established. Only court expenditures relating to summary offences were considered for this study, as these offences most closely resemble those for which an Aboriginal offender could be referred to a community-based justice program. A number of critical factors and methodological limitations for this methodology are identified in the discussion of the cost-effectiveness of community-based justice programs in Section 4.0.

4. KEY FINDINGS

This section of the report presents evaluation findings as they relate to each AJS program component. It combines information from all lines of evidence that were described in Section 3.

4.1. Community-based programs

Approximately 100 community-based justice programs were in place at the time of the evaluation. This sub-section examines the rationale for implementing these programs, their selection and monitoring, their impact on Aboriginal communities, as well as their cost-effectiveness.

4.1.1. Rationale for community-based justice programs

The rationale for implementing community-based justice programs typically highlights their perceived capacity to address the fact that a disproportionate number of Aboriginal people are in conflict with the law, and that Aboriginal offenders are over-represented in correctional facilities throughout Canada. As noted in sub-section 2.1, studies documenting the shortcomings of the mainstream system in dealing with Aboriginal offenders are accumulating, while little progress is being recorded in shifting of these alarming trends on victimization, offending and incarceration involving Aboriginal people.

The value of having Aboriginal offenders avoid the mainstream justice system altogether and participate instead in community-based justice programs is becoming increasingly recognized. Over time, both federal and provincial governments have implemented initiatives to



“Aboriginal justice is a holistic sense of what is right and how to correct things. This picture reminds us that we have our own justice and we need to get back to ‘the ground.’ The justice program gives our people an opportunity to choose a path that has been laid out by their ancestors, which has been missing for a long time.”

Source: Photovoice participant

improve the ways in which the mainstream justice system deals with Aboriginal offenders. Of particular interest is the 1995 amendment to the *Criminal Code* on the sentencing of Aboriginal offenders and its interpretation by the Supreme Court of Canada in the *Gladue* decision.⁹ These changes are particularly relevant when we consider the fact that, arguably, some Aboriginal offenders and some offences cannot be dealt with by a justice system other than the mainstream one. But it is unlikely that these changes can effectively address the disproportionate numbers of Aboriginal people in conflict with the law, and who are entering or re-entering correctional facilities. Community-based justice programs have emerged as an alternative to the mainstream justice system, allowing Aboriginal communities to address some conflicts in accordance with their own values of caring and healing. As indicated by the Royal Commission on Aboriginal People, there are fundamentally different world views between Aboriginal and non-Aboriginal people on what constitutes justice and how it can be achieved.¹⁰ Community-based justice programs are seen as a mechanism that allows that different world view to express itself institutionally.

Experience, to date, indicates that community-based justice programs also respond to a variety of needs beyond dealing with criminal offences:

- *Family conflicts*: In some communities, being in a position to offer mediation to deal with family conflicts is a strong incentive to implement community-based justice programs. The format of a number of AJS programs is particularly well suited to deal with family conflicts.
- *Implementation of self-government agreements*: As Aboriginal communities expand their ability to pass Aboriginal laws in accordance with their self-government agreements, they are increasingly faced with the challenge of establishing strategies to enforce these laws in ways that reflect Aboriginal values. When used to enforce Aboriginal laws, community-based justice programs no longer only relate to criminal offences, but also deal with issues relating to land management, social and health policies, fishing and hunting, or other matters as defined by self-government agreements.
- *Enforcement of Aboriginal by-laws*: For those communities that have not signed self-government agreements, community-based justice programs can still be implemented to enforce their Aboriginal by-laws, which deal with matters other than criminal offences.

⁹ See Section 718.2 (e) of the *Criminal Code* and *R. v. Gladue*, [1999] 1 S.R.C. 688.

¹⁰ Royal Commission on Aboriginal Peoples 1996. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*. Ottawa: The Commission. p. 309. See also the case study involving the Stó:lō Nation in Department of Justice 2006. *Case Studies Report: Aboriginal Justice Strategy Community-Based Justice Programs*. Ottawa.

- *Community prevention:* Finally, the rationale for implementing community-based justice programs also includes the need to offer conflict resolution assistance to individuals and families. In these cases, community-based justice programs largely act as preventive measures.

In sum, the rationale for having community-based justice programs is based on the fact that, in the absence of such programs, Aboriginal offenders are bound to go back into a mainstream justice system that has proven problematic, and other issues tackled through AJS programs may simply remain un-addressed.

4.1.2. Level of activities

Following an initial increase, the number of community-based justice programs supported through AJS has remained largely constant during the past three years. At the end of 2005-06, the AJS was supporting 110 of these programs, which were located in 433 Aboriginal communities (see Table 2). Fluctuations in the number of communities covered by these programs resulted, for the most part, from a one-time initiative delivered in 2003 and 2004. The total amount of program funding committed to community-based justice programs increased by 12% since 2002.

	2002-03	2003-04	2004-05	2005-06	2006-07 ¹
Number of AJS agreements	79	83	89	96	90
Number of programs operated	88	105	109	110	108
Number of communities served	415	457	453	433	387
Total program funding committed	\$6,112,092	\$6,469,344	\$6,636,259	\$6,873,400	\$6,806,662

¹ These are preliminary data, updated as of January 31, 2007

The distribution of programs among jurisdictions has also remained largely constant. The one significant change occurred in Nunavut, where the number of programs went from one in 2002-03 to 13 in 2003-04 (see Table 3).

Jurisdiction	2002-03	2003-04	2004-05	2005-06	2006-07
Nunavut	1	13	14	14	n/a
Northwest Territories	5	5	5	6	n/a
Yukon	8	8	9	9	n/a

Jurisdiction	2002–03	2003–04	2004–05	2005–06	2006–07
British Columbia	18	20	19	19	n/a
Alberta	5	5	5	5	n/a
Saskatchewan	24	24	24	24	n/a
Manitoba	7	7	6	6	n/a
Ontario	10	10	10	10	n/a
Quebec	7	9	12	11	n/a
New Brunswick	1	1	2	2	n/a
Nova Scotia	1	1	1	1	n/a
Prince Edward Island	1	1	1	1	n/a
Newfoundland and Labrador	0	1	1	2	n/a
Total programs	88	105	109	110	n/a

The funding allocation per jurisdiction reflects the number of programs that each province or territory has implemented. Approximately 40 percent of the funding allocated to community-based justice programs is invested in Saskatchewan and British Columbia.

Jurisdiction	2002–03	2003–04	2004–05	2005–06	Cumulative funding
Nunavut	25,000	255,400	262,400	237,400	780,2
Northwest Territories	145,000	145,000	145,000	193,100	628,1
Yukon	404,440	403,792	416,940	436,060	1661,232
British Columbia	980,668	1,070,600	1,068,548	1,090,588	985,632
Alberta	632,717	563,672	674,900	677,700	2548,989
Saskatchewan	1,611,545	1,616,418	1,630,545	1,629,920	8,914
Manitoba	756,713	896,962	832,136	885,500	3371,311
Ontario	709,590	710,932	740,813	771,535	2932,87
Quebec	559,679	489,767	465,557	473,097	1988,1
Nova Scotia	142,300	142,300	142,300	150,000	576,9
New Brunswick	94,440	96,500	118,500	145,000	454,44
Prince Edward Island	50,000	39,993	50,000	50,000	189,993
Newfoundland and Labrador	0	75,000	75,000	133,500	283,5
Total funding	\$6,112,092	\$6,506,336	\$6,622,639	\$6,873,400	26,114,467

Most community-based justice programs funded through AJS are diversion or alternative measures programs. These types of programs have systematically constituted close to 80 percent of all programs funded (see Table 5). A number of communities also offer a mix of models that may include diversion or alternative measures.

Table 5: Number of programs by program model by fiscal year

Program model	2002–03		2003–04		2004–05		2005–06		2006–07
	(n)	(%)	(n)	(%)	(n)	(%)	(n)	(%)	
Diversion/Alternative measures	65	76%	81	79%	83	78%	n/a	78%	n/a
Community sentencing	3	4%	3	3%	4	4%	n/a	6%	n/a
Family/civil mediation	3	4%	3	3%	4	4%	n/a	7%	n/a
Other activities	5	6%	4	4%	5	5%	n/a	10%	n/a
Mix of models	9	11%	11	11%	10	9%	n/a	n/a	n/a
Total programs*	85	100%	102	100%	106	100%	n/a	100%	n/a

* In each fiscal year, the nature of three programs is not identified.
Note: Totals may not sum to 100% due to rounding and estimates.

4.1.3. Selection of AJS programs

The Aboriginal Justice Directorate selected few new community-based justice programs during the current AJS funding allocation. Since they are considered *programs* and not *projects*, these community-based justice initiatives normally remain in place for as long as they meet their funding requirements. In many regions, this means that the AJS funding has sustained programs that had been in place before 2002.

When resources became available due to existing programs folding down, the Aboriginal Justice Directorate, and the respective provincial or territorial government, typically turned to existing proposals to allocate the available funding. They did not issue an open call for proposals in order to avoid creating expectations that could not be met. To this day, Aboriginal communities interested in implementing a community-based justice program can submit proposals throughout the year, but new programs will only be funded when funds become available.

The actual process used to select new projects varied among jurisdictions. The Terms and Conditions that are applicable to contribution agreements signed under the AJS do identify criteria to be considered in reviewing proposals, but they do not specify a specific process to be followed when selecting a new project. While there has been no formal proposal review committee in place, provincial or territorial governments have played a predominant role in selecting new programs. Both the Aboriginal Justice Directorate and the respective provincial or territorial government have reviewed existing proposals and have worked with the community to implement the program.

4.1.4. Monitoring of contribution agreements

Regional coordinators and program analysts with the Aboriginal Justice Directorate, and provincial or territorial government representatives, are involved in the monitoring of community-based justice programs. The monitoring process includes three key components:

- Federal and provincial or territorial representatives jointly conduct site-visits and provide informal and ongoing support to participating communities. Interviews with key informants from federal and provincial or territorial governments indicate that both levels of government are playing complementary roles and are working closely to offer support to communities. While there are variations among regions, regional coordinators with the Aboriginal Justice Directorate tend to focus on supporting communities to ensure an effective implementation of their contribution agreement, whereas provincial or territorial representatives tend to provide support on substantive issues relating to alternative measures or they address specific issues with courts, prosecutors, or police services. Those justice coordinators working in Aboriginal communities who participated in the evaluation survey largely echoed this view. Approximately 77% of those who provided an opinion on whether the Aboriginal Justice Directorate was providing helpful support to address challenges that they were facing during program implementation, indicated that the support was helpful or very helpful. It should be noted that regional coordinators with the Aboriginal Justice Directorate have a more limited involvement in the delivery of programs in the Northwest Territories and Nunavut. In these two jurisdictions, the Aboriginal Justice Directorate has signed “flow-through agreements,” whereby the federal government transfers financial resources to territorial governments with no further role in the implementation of the community-based justice programs.
- Contribution agreements identify the reports that participating communities are expected to submit. The list of these reports includes cash flow statements, interim financial statements, year-end financial statements, and interim and year-end activity reports, and statistical reports. At the time of the evaluation, many participating communities were still facing challenges to meet these reporting requirements. Both the federal and provincial representatives consulted as part of this evaluation acknowledged that communities are making efforts to comply with these requirements, but that challenges remain. The survey of justice coordinators who work in Aboriginal communities confirms that reporting remains difficult and that improving this process is seen as one avenue to improve the delivery of community-based justice programs. Moreover, the format for reporting activities also varies among regions. What constitutes a “case” or a “referral”, or what constitutes a “client” or a “service” is not consistently defined, making national reporting difficult and incomplete. The

fact that these challenges remain 16 years after the first community-based justice programs were implemented under the Aboriginal Justice Initiative points to a fundamental gap in organisational capacity.

The 2005 formative evaluation of the AJS made recommendations regarding the implementation of a strategic performance management strategy “that will allow for the collection of relevant performance data”.¹¹ It is expected that this issue will be addressed as part of the renewal process of AJS.

- Three field audits, both program and financial, are conducted on an annual basis. For the most part, these audits are done on a rotational basis, by jurisdiction, and recommended by coordinators. Regional coordinators are also part of the audit team as they perform a file assessment to ensure that the objectives of the program were delivered and that the terms of the agreement were respected (timelines, deliverables).

4.1.5. Program impact – reach

AJS-funded programs are now located in every province and territory. As indicated in Table 3 (page 19), no program existed in Newfoundland and Labrador until 2003-04. Also, the number of programs in Nunavut expanded considerably (from one program in 2002-03 to 13 programs in 2003-04), contributing to a 25 percent increase in the overall total number of AJS programs over the first four years of the current funding allocation.

Despite this progress, community-based justice programs are still only reaching a small portion of Aboriginal offenders. Many Aboriginal communities have yet to access these community-based justice programs, and even where such programs exist, not all Aboriginal offenders who may benefit from these programs can access them. Crime statistics provide an incomplete, yet, helpful illustration of this important gap in program reach. In



Freedom. I found that people who I know who've gone through the court system in the city...it doesn't help them...the exact details don't come out in court. Native people know what we go through. [With the program], we're able to get to the core and get people on the right track to healing. You can see the impact on people and their families.”
Source: Photovoice participant

¹¹ Department of Justice (2005). *Aboriginal Justice Strategy Formative Evaluation: Summary, Recommendations and Management Response*. Ottawa. p. 26.

2004-05, AJS programs accepted approximately 7,400 clients.¹² Of this total, approximately 4,500 clients were accepted for non-violent *Criminal Code* offences. During the same year (2004), a total of 28,600 individuals were charged in Canada for offences committed on-reserve including 17,126 individuals charged with non-violent offences, which are the type of offences that are typically referred to the community-based justice programs.¹³

While incomplete – particularly since they do not include off-reserve offences committed by Aboriginal individuals – these statistics illustrate the extent of the gap that remains in program reach. As long as for every 4,500 Aboriginal individuals, or so, who are directed toward community-based justice programs, there are still well over 17,000 Aboriginal offenders who are sent into the mainstream justice system for non-violent criminal offences, it is unlikely that the AJS will trigger radical shifts in national trends on Aboriginal victimization, offending, and incarceration.

In its Speech from the Throne in 2001, held on the eve of renewing the AJS, the government of Canada made the following commitment:

“It is a tragic reality that too many Aboriginal people are finding themselves in conflict with the law. Canada must take the measures needed to significantly reduce the percentage of Aboriginal people entering the criminal justice system, so that within a generation it is no higher than the Canadian average.”¹⁴

However successful each individual AJS program proves to be, the current reach of the AJS makes it unlikely that this program will be in a position to contribute, at least to a significant extent, to the achievement of this policy goal.

At a broader level, there are other programs that may well contribute to the achievement of AJS’ stated goals and objectives. Crime prevention initiatives, First Nations policing, youth justice initiatives, the Aboriginal Court Workers Program, or family violence initiatives – to name but a few – are all related initiatives that may play a complementary role to AJS programs, but they cannot compensate for the current gaps in program reach.

¹² See Aboriginal Justice Directorate (2006). *Aboriginal Justice Strategy (AJS): Community-based justice programs, a comparison of program data (1998-99 & 2004-05). Draft*. Ottawa. These data are based on 89 percent of programs reported.

¹³ See Canadian Centre for Justice Statistics (2006). *Juristat: Victimization and offending among the Aboriginal population in Canada, Vol. 26, no. 3*. Ottawa.

¹⁴ Government of Canada (2001). *Speech from the Throne to open the First Session Thirty-Seventh Parliament of Canada*. Ottawa.

4.1.6. Program impact on Aboriginal offenders, victims, and communities

Community-based justice programs are reported to have a number of positive impacts on Aboriginal offenders. When appropriate, these programs represent a positive alternative to the mainstream justice system.

The AJS programs allow the rehabilitation process to occur within the community. As reported by an Aboriginal person involved in a community-based justice program, this approach is well suited to smaller communities and better reflects Aboriginal values:

“Court is cold, hard to understand, alienating, and far-removed from the way a small community like ours works. To deal with justice issues is part of a functioning community – one that is willing to take on things that make the community a better place.”¹⁵

By incorporating Aboriginal values, these programs focus on healing and caring, instead of punishing and isolating:

“[The program] is spiritual and that is our culture; it’s been here for thousands of years and it is what (our ancestors) have always used. Since residential schools, it has been put away but now it is being brought out again. We don’t point fingers and we don’t lay blame; it is not the person who is bad, it is what they did that was bad (...) that thing can be put aside and we can deal with the person and help them on the right path.”¹⁶



“Now they are back together and trying. I see that their kids are happy. They are growing. I see it as a positive thing for our community. Working with the program they learned to communicate, to share, to cry, and to express themselves. It brings families together. I feel really thankful for the family mediation program.”
Source: Photovoice participant

Central to community-based justice programs is the concept of having offenders acknowledge their wrongdoing and of having victims engaged in the rehabilitation process. As indicated by one victim who participated in a restorative program: “I was impressed with the openness and willingness of the participants [in the circle]. I was able to talk to the offender, could participate

¹⁵ Department of Justice (2006). *Case Studies Report: Aboriginal Justice Strategy Community-based Justice Programs*. Ottawa, Section 4.2.

¹⁶ Ibid.

more in the process, and had a say in the punishment.”¹⁷ The very process involved in implementing community-based justice programs ultimately reaches many portions of communities beyond offenders and victims:

*“By sharing their own experiences in a circles, for example, other people involved in the resolution of an offence, such as justice committee members, family members, and Elders, are also provided with a means of healing. Furthermore, the programs also help community members have a say about justice in their community.”*¹⁸

These benefits extend to programs that deal with issues other than criminal offences. For instance, family mediation programs allow conflicts to be resolved within the community, and avoid the escalation of these conflicts into criminal offences.

Perhaps the strongest quantitative indicator of program success is the fact that participants in AJS-funded programs are less likely to re-offend compared to offenders who do not participate in these programs.¹⁹ Age, gender, and the number of prior convictions are all factors that are closely associated to recidivism. Once these background characteristics are held constant, a recent study on recidivism done by the Department of Justice lends strong support to the assertion that AJS program participation reduces the likelihood of recidivism, when compared to offenders who were referred to these programs but did not participate in them. These trends in recidivism stand both in the short-term and in the long-term.²⁰

Percentage who re-offended after...	AJS participants	Non-participants
6 months	6%	13%
4 years	27%	49%
8 years	32%	59%
Source: Department of Justice (2006). Evaluation of the Impact of the Aboriginal Justice Strategy on Rates of Re-offending.		

¹⁷ Ibid, Section 5.9.

¹⁸ Ibid, Section 4.1.

¹⁹ See Department of Justice (2006). *Evaluation of the Impact of the Aboriginal Justice Strategy on Rates of Re-offending*. Ottawa.

²⁰ The study conducted by the Department of Justice on recidivism does have methodological limitations, particularly as it relates to the sampling done to select the control group. While indicative and helpful, these results must be used with caution.

By allowing communities to deal with conflicts themselves and in accordance with Aboriginal traditions and values, by offering an alternative process for offenders who are prepared to acknowledge their wrongdoing, and by offering an opportunity for victims to play an active role in the rehabilitation process, community-based justice programs offer a positive alternative to the mainstream justice system and have proven to be more effective in rehabilitating Aboriginal offenders.

4.1.7. Level of support among mainstream justice personnel

The impact of the AJS extends beyond Aboriginal communities and also reaches mainstream justice personnel. Justice coordinators who are located in Aboriginal communities and who participated in the evaluation survey pointed to a strong level of support for community-based justice programs from mainstream justice personnel, particularly from judges:

Table 7: How would you describe the attitude of the following mainstream justice personnel groups toward the community-based justice programs that your community has implemented?			
	Police officers	Crown Attorneys	Judges
Very supportive	18%	34%	41%
Supportive	62%	56%	47%
Not supportive	12%	12%	0%
Opposed	0%	0%	0%
Don't know / no response	9%	9%	12%
Source: Survey of justice coordinators (n=34) Totals may not sum to 100% due to rounding.			

Mainstream justice personnel who responded to the evaluation survey also echoed this view. Not surprisingly, a high level of support among mainstream justice personnel systematically increases the likelihood of program success:

“One thing is certain: when the level of support and involvement of police officers in the program is high, it contributes to the program’s effectiveness. (...) [T]his case shows that when the RCMP officers are knowledgeable about the program, supportive, and involved, it contributes to the success of the mediation process. It also has the added benefit for the RCMP of fostering good relations between themselves and the community they serve, and, in this case, with youth.”²¹

²¹ Department of Justice (2006). *Case Studies Report: Aboriginal Justice Strategy Community-based Justice Programs*. Ottawa, Section 5.4.

The 2005 formative evaluation of the AJS recommended that the Aboriginal Justice Directorate, in collaboration with provincial and territorial partners, work to increase awareness among mainstream justice personnel.²² While challenges remain, communities that have implemented the AJS programs generally appear to be benefiting from a strong level of support from mainstream justice personnel.

4.1.8. Cost-effectiveness of community-based justice programs

As discussed in this sub-section, while they constitute an incremental cost to the federal government, community-based justice programs represent a cost-effective strategy for dealing with Aboriginal offenders.

In determining the cost-effectiveness of community-based justice programs, it is critically important to take into account a number of factors and methodological limitations:

- Community-based justice programs deal with more than criminal offences. As mentioned throughout this report, these programs address a number of community needs that include family conflicts, preventative interventions, and increased awareness and education about community justice issues. As a result, ending all AJS programs would not trigger the transfer of all AJS program participants into the mainstream justice system. It would rather mean that communities would have one less mechanism to deal with conflicts that are criminal and non-criminal in nature.
- When it comes to criminal offences, programs funded through the AJS represent, by themselves, an alternative to the mainstream justice system. We have identified no alternative to these programs, other than the mainstream system. Therefore, it is assumed that in the absence of such a program, Aboriginal offenders would be either re-directed toward the mainstream justice system or the charge would be dropped altogether. This latter scenario is particularly relevant when we consider the fact that community-based justice programs typically deal with summary offences, which are less serious offences, and are therefore more likely to be dropped.
- While statistics exist on the cost of processing a summary conviction in the mainstream justice system, they are provincial averages that do not take into account the costs of holding a trial in a remote location. The vast majority of AJS programs are located outside of urban

²² Department of Justice (2005). *Aboriginal Justice Strategy Formative Evaluation: Summary, Recommendations and Management Response*. Ottawa, p. 20.

areas (on-reserve, in the territories, or in off-reserve rural areas). We must therefore assume that processing a charge involving AJS participants in the mainstream justice system would trigger expenditures that are at a level higher than the provincial average.

- While the federal government pays one-half the cost of AJS programs, the provinces are typically responsible for covering virtually all the costs of processing a summary offence in court (court expenditures, judges, Crown²³ and legal aid). In that sense, should all AJS programs be hypothetically ended, this decision would remove a direct cost to the federal government, and the provinces would need to cover any additional costs triggered by the transfer of AJS participants into the mainstream justice system. Since the number of AJS participants represents approximately one percent of all individuals charged yearly in criminal court in Canada,²⁴ it is difficult to precisely measure the financial impact of this transfer of participants into the mainstream justice system.
- Other costs, such as policing or costs associated with carrying out sentences, including incarceration, are excluded from the analysis. Police work is typically required both for charges directed toward the mainstream justice system and cases referred to AJS programs, but the extent of this work may vary. Additionally, it is not possible to forecast the extent to which offences for which referrals are made would result in a finding of guilt, or what type of sentence would be imposed (e.g. incarceration or probation). What can be assumed, however, is that the cost of sending an Aboriginal offender into the mainstream system increases considerably when that person is given certain types of sentences, such as incarceration.
- There are a number of societal costs associated with crime, which have been well documented in the literature. These have not been considered as part of this analysis.

Taking these factors into account, we can first consider the cost of referring an Aboriginal offender to an AJS program, which we estimate at approximately \$973 per referral. Since every AJS program is unique, it is challenging to establish an average cost per referral. Recognizing that, we reviewed activity reports and the financial information of nine AJS programs located in Ontario, Manitoba, Saskatchewan, and British Columbia. We included contributions from both the federal and provincial governments, and, in most cases, we considered two recent fiscal years of activities and expenditures. When dividing total program expenditures by the total number of referrals, we end up with an average cost of \$973 per referral.

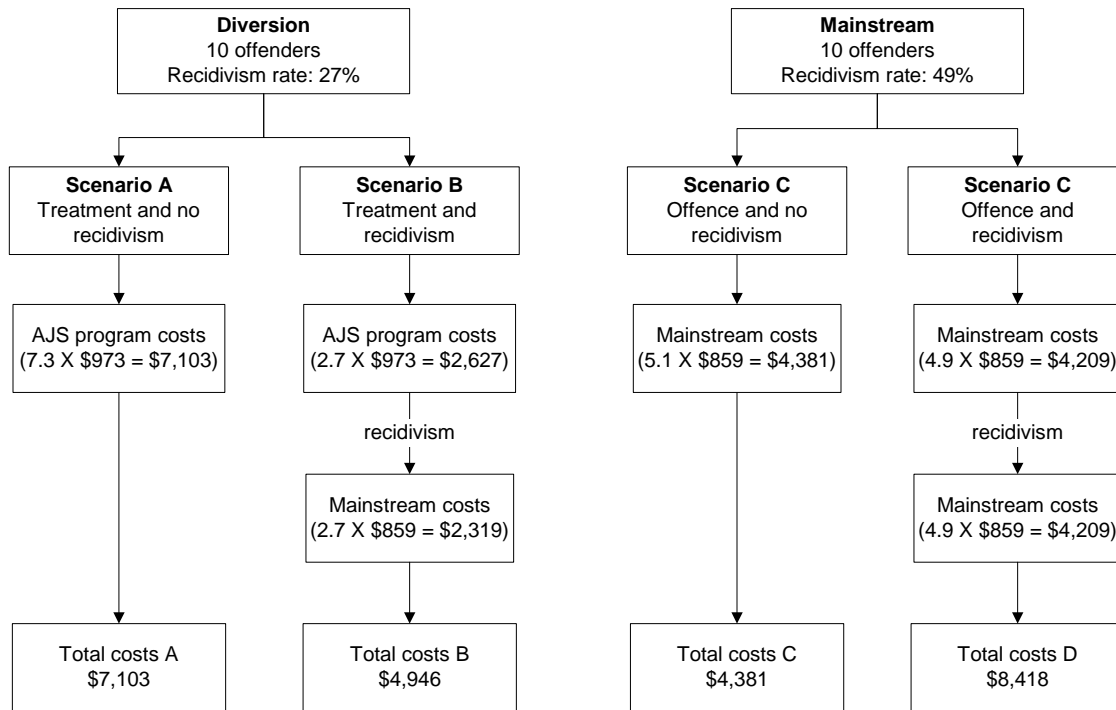
²³ The federal government covers the costs of the Crown in the territories.

²⁴ See Canadian Centre for Justice Statistics (2004). *Juristat: Adult Criminal Court Statistics, 2003/04*. Ottawa, and Canadian Centre for Justice Statistics (2004). *Juristat: Youth Court Statistics, 2003/04*. Ottawa.

Turning now to the mainstream justice system, we can estimate the cost of processing a summary offence case through the court system, which we estimate at approximately \$859 per charge. This average cost is based on provincial court expenditures (court expenditures, prosecution costs, and legal aid) from three jurisdictions in Canada (Newfoundland and Labrador, Ontario, and British Columbia) relating to summary offences charges. This provincial average does not reflect the cost of conducting a trial in a remote location, which is considerably higher. As mentioned earlier, many Aboriginal offenders currently referred to AJS programs are living in a remote location. It is possible that having the mainstream justice system deal with these offenders could trigger a need to hold a trial in a remote location, which would cost systematically more than the provincial average of \$859.

Even without considering the higher costs of holding a trial in a remote location, the AJS is still a more cost-effective approach to dealing with offenders than is sending them into the mainstream justice system. As illustrated in Figure 3 (next page), while the cost per unit for an AJS referral is higher than the cost per charge in the mainstream justice system, the considerably lower recidivism rate among AJS participants means that, over time, the justice system is achieving savings.

Cost analysis (4 year period)



Under these premises, the net cost saving of the AJS to the system is $(C + D) - (A + B)$ or $(\$4,381 + \$8,418) - (\$7,103 + \$4,946) = \$750$ for 10 offenders or \$75 per offender.

Figure 3

For illustrative purposes, we compared the direct costs, over a four-year period, associated with 10 AJS participants to those associated with 10 offenders proceeding through the mainstream justice system. The results of this analysis are based on the following assumptions:

- That the offence of an AJS participant is equivalent to that of an offender committing summary offence.
- That an AJS participant who re-offends will have his or her case brought to the mainstream justice system, and not back to a community-based justice program.
- That AJS participants and comparison group offenders who re-offend will only re-offend once over the four-year period.

- That the cost associated with each AJS participant is the average cost of \$973 described in this sub-section.
- That the cost associated with the mainstream justice system is the average cost of \$859 described in this sub-section. It does not account for the higher costs of holding a trial in a remote location.

Based on these assumptions, and considering both the recidivism rate and the cost per unit for both the AJS and the mainstream justice system (provincial averages), the net cost saving of the AJS to the justice system is \$75 per offender. When considering the costs associated with holding a trial in a remote location, or the costs associated with sentencing options, the net savings would be considerably higher.

4.2. Training and development

Training and development projects assist communities in building their capacity to manage a community-based justice program. This subsection assesses the level of activities to date and the key results that this component has achieved during the current AJS funding allocation.

4.2.1. Rationale

There is a strong rationale for offering training and development activities. Community-based justice programs are dealing with complex issues, and Aboriginal communities have historically been restrained from using restorative justice (since Aboriginal offenders were systematically sent to the mainstream justice system), contributing to a loss in capacity to offer community-based justice programs. During the consultation with federal, provincial and territorial governments, key informants often pointed to the lack of capacity among Aboriginal communities to effectively manage community-based justice programs. Additionally, justice coordinators who participated in the evaluation survey acknowledged that their communities are facing challenges in implementing community-based justice programs. More than 80% of survey respondents indicated that they have faced important challenges during the implementation of their AJS programs.

Aboriginal communities face a range of challenges in the implementation of their community-based justice programs, including the high level of turnover among the program staff and mainstream justice personnel (prosecutors, police officers) who refer Aboriginal offenders.

Participants in one of the case studies conducted in support of this evaluation also identified other challenges that their community had been facing:

“[Participants] emphasized the importance of having resources to conduct training. Training is required to help mediators deal effectively with difficult people especially since communication and coping skills were identified by interviewees as lacking in the communities. Many of those who participated in the case study made a reference to the importance of receiving training in the areas of communication, healing, developing circles, and dealing with the effects of residential schools.”²⁵

4.2.2. Level of activities

During the first four years of the current AJS funding allocation, the program supported over 100 training and development projects (see Table 8). Some of these initiatives have been entirely funded by the AJS, while others have been co-funded by provincial or territorial partners. These projects supported a range of activities, such as conferences, workshops, seminars, strategic planning sessions, and a variety of other training initiatives tailored to needs that funding recipients had identified. Some of the training topics addressed during these activities include program management, forming justice committees, recruiting/retaining volunteers, dealing with special-needs clients, conflict resolution, mediation, and substance abuse screening.

	2002–03	2003–04	2004–05	2005–06	2006–07
Number of AJS T&D agreements	26	17	32	25	n/a
Support to new programs	5	4	6	n/a	n/a
Support to existing programs	21	13	26	n/a	n/a
Number of communities served	193	191	245	n/a	n/a
Total AJS T&D funding	\$652,175	\$358,663	\$490,055	\$421,022	n/a

Source: AJS annual activity reports.

²⁵ Department of Justice. (2006). *Case Studies Report: Aboriginal Justice Strategy Community-based Justice Programs*. Ottawa. Section 5.5.

4.2.3. Key results

Training and development activities are essentially supporting communities that already manage AJS programs. As indicated in Table 8, approximately 80% of agreements signed under this component supported communities that already manage community-based justice programs. In that sense, this program component is predominantly addressing the developmental needs of current funding recipients, but it is making a limited contribution to the goal of supporting the development of new programs.

While they may incidentally support the victims' role or women's role in restorative justice initiatives (which are part of the funding criteria), it is unclear that these two goals are the primary focus of training and development activities.

4.3. Self-government capacity building

This program component, funded entirely by the federal government, supports the development of pilot project and resource material designed to build self-government activities.

4.3.1. Rationale

Activities funded under this program component relate only indirectly to community-based justice programs. This program component's target audience is Aboriginal communities that have signed self-government agreements or that are in the process of signing one. The central goal is to support these communities as they exercise their authority to pass Aboriginal laws. As they consider strategies to enforce these laws, communities under self-government agreements may decide to use community-based justice programs funded through the AJS.

4.3.2. Key results

Since 2004, the AJS has funded four projects under this program component involving the following Aboriginal entities:

- The Federation of Saskatchewan Indian Nations Project
- The Union of Ontario Indians Project
- The Teslin Tlingit Council (Yukon)

- The Deline First Nation (Northwest Territories)

The range of activities supported to date includes the development of communication tools and the delivery of training on the administration, adjudication, and enforcement of local laws.

The fact that the program has funded a limited number of projects to date is largely attributed to policy issues regarding the fiscal sustainability of Aboriginal law enforcement models, a lack of resources necessary to prepare proper submissions, and a different set of priorities addressed in the self-government agreement. Many negotiations have focused on topics other than the administration of justice, such as land management, education, language, and culture.

The 2005 formative evaluation of the AJS emphasized the need to monitor this program component as well as to address any issues that would impede its full implementation.²⁶ Since the Aboriginal Justice Directorate committed all the financial resources available for this program component, it has considered this program component fully implemented for the purpose of the current AJS funding allocation.

4.4. Policy development and support

Under the current funding allocation, AJS policy-related activities have been limited. The program has not experienced major shifts in the type of activities undertaken or the intensity of these activities. Regional coordinators and program analysts from the Aboriginal Justice Directorate have been providing ongoing support to provincial, territorial and Aboriginal partners, but this support relates primarily to the implementation of contribution agreements and not to the development of new policy initiatives.

4.4.1. Division of roles and responsibilities

As a result of the June 2006 realignment of roles and responsibilities (see section 2.3), the AJD now focuses its activities on the implementation of AJS contribution agreements, while the Aboriginal Law and Strategic Policy group focuses on a wide range of policy and legal issues, including the renewal of the AJS and the support to self-government negotiations in collaboration with the AJD. Representatives from federal, provincial, and territorial governments consulted as part of this evaluation have emphasized the need to maintain a close collaboration

²⁶ Department of Justice (2005). *Aboriginal Justice Strategy Formative Evaluation: Summary, Recommendations and Management Response*. Ottawa, p. 16.

between these two groups to ensure an efficient and consistent approach in the implementation of the AJS.

The 2005 formative evaluation of the AJS recommended that the AJS review its current support structures “to ensure better coordination on Aboriginal justice issues with partners and early identification of priorities for next mandate.”²⁷ At the time of this evaluation, limited resources from either the Aboriginal Justice Directorate or the Aboriginal Law and Strategic Policy group were directed toward a broad coordination of Aboriginal justice issues within the federal government or with the provincial and territorial partners.

4.4.2. Turnover within the Aboriginal Justice Directorate

Provincial and territorial partners involved in supporting community-based justice programs, have expressed concerns with the consequences of the level of turnover within the Aboriginal Justice Directorate. In light of the active role that the Aboriginal Justice Directorate plays in the implementation and monitoring of the contribution agreements, any shift in personnel, particularly at the regional coordinator or management level, may trigger delays or adjustments. The reduced number of coordinating meetings held between the federal and provincial/territorial governments has been attributed, in part at least, to the turnover within the Aboriginal Justice Directorate.

4.5. Outreach and partnerships

During the first three years of its current funding allocation, the AJS supported the Aboriginal Justice Learning Network (AJLN). In 2005–06, the Department of Justice reorganized the AJLN and assigned its functions to the new Outreach and Partnerships (O&P) component.

4.5.1. Rationale

Community-based justice programs are varied and complex—they address sensitive issues, and, as a result, there is a need for those involved in the delivery of these programs to exchange information and best practices, and to generally learn from each other about restorative justice as it applies to Aboriginal communities. As indicated by those justice coordinators who were surveyed, the vast majority of Aboriginal communities with AJS programs are facing important

²⁷ Ibid, p. 18.

challenges in the delivery of these programs. Representatives from federal, provincial, and territorial governments consulted, as part of this evaluation, also referred to the need for capacity-building—particularly if the AJS was to be expanded to other communities.

4.5.2. Key results

Internal resource pressures required the Aboriginal Justice Directorate to focus primarily on the community-based justice programs. As a result, a portion of O&P funding was allocated to other governmental priorities. The annual budget of over \$330,000 that was allocated in 2002-03 was reduced to close to \$38,000 in 2004-05. During this period, the number of activities went from 29 to 5 (see Table 9).

Table 9: Overview of AJLN-funded projects by fiscal year			
	2002–03	2003–04	2004–05
Total committed funding	\$330,236	\$102,960	\$37,807
Number of initiatives	29	9	5
AJLN-funded activities:			
- Conferences and training sessions	X	X	
- AJS awareness-building and promotion	X		
- Youth fairs	X	X	X
- Sweat lodge program	X	X	X
- National Aboriginal Achievement Awards		X	X
Source: AJS annual reports			

At this point, stakeholders are largely unaware of what the Aboriginal Justice Directorate is implementing through the O&P component. This is essentially due to the fact that these activities are carried-out internally. In 2005–06, the Directorate worked on a new visual identity and logo for the AJS, as well as a redesigned and updated website, and the identification and solicitation of partners who would support the AJS within their professional networks. The Directorate also identified and attended events that were suited to the promotion of justice professions as a career option for Aboriginal people.

The 2005 formative evaluation of the AJS recommended that the Aboriginal Justice Directorate review the structure of this program component to determine if its structure was sufficient to fulfill its mandate.²⁸ It appears that the Aboriginal Justice Directorate has yet to clearly articulate

²⁸ Department of Justice. (2005). Aboriginal Justice Strategy Formative Evaluation: Summary, Recommendations and Management Response. Ottawa, p. 22.

the goals associated with this program component, which is expected to be addressed as part of the program renewal process.

4.6. Self-government negotiations support

Like the self-government capacity-building component, the self-government negotiations support component relates primarily to self-government agreements, and not to community-based justice programs. A legal counsel with the Department of Justice is providing legal advice to self-government on justice-related issues. The goal is to allow First Nations communities to access the tools they need to enforce, administer and adjudicate their own laws consistent with Canada's policy parameters, without enshrining AJS community-based programs within self-government agreements.

Self-government negotiations are ongoing, and so is the need for support. At the time of the evaluation, the legal counsel was developing guidelines for the administration of justice in self-government agreements, but these guidelines have yet to be finalized.

5. CONCLUSIONS AND LESSONS LEARNED

This final section of the report presents conclusions and lessons learned based on the findings presented in the previous sections. The information is structured along the evaluation issues and questions that are included in Appendix A.

5.1. Program relevance

1. To what extent are the stated objectives of the AJS still relevant to Aboriginal people?

The three stated 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.

A disproportionate number of Aboriginal people are still in conflict with the law. They are over-represented in correctional facilities, and the rates of crimes and victimization in Aboriginal communities are still well over those found in non-Aboriginal communities. AJS programs represent an alternative to the mainstream justice system as they effectively reflect Aboriginal beliefs and values.

Multiple government initiatives, including programs like the AJS and changes to the *Criminal Code* with respect to sentencing and alternative measures, have contributed to reflecting and including Aboriginal values within the Canadian justice system. Despite this progress, there continues to be fundamental differences between the notion of justice among Aboriginal communities and in the mainstream justice system. These differences may contribute to the problem of over-representation of Aboriginal people in the justice system and as such, it remains

important for the AJS, along with other programs and initiatives, to continue to make progress toward attaining this over-arching and longer term AJS goal.

To what extent are the objectives of the AJS still relevant to the federal policy and program priorities?

The federal government has repeatedly acknowledged the problems that Aboriginal communities face when it comes to enforcing Aboriginal and non-Aboriginal laws and also to address criminal and non-criminal conflicts, as well as the importance of having Aboriginal communities directly involved in the administration of justice in their communities. In that sense, the AJS is still relevant to federal policy and program priorities. Furthermore, the program directly supports the federal government's efforts to implement self-government agreements in Aboriginal communities.

5.2. Design and delivery

2. Has the AJD implemented effective and clear procedures for selecting projects funded through contribution agreements (community-based initiatives, training and development initiatives, and self-government capacity building initiatives)?

Under the current AJS funding allocation, federal, provincial and territorial governments have selected few new community-based justice programs. When they did select new projects, respective governments jointly reviewed the existing proposals and reached a joint decision on which new program to fund. They did not issue calls for proposals in order to avoid creating large expectations among the Aboriginal communities. In that sense, the process has proven to be efficient, but restrictive.

Regional coordinators and program analysts with the Aboriginal Justice Directorate have worked in collaboration with the provincial and territorial governments and the Aboriginal communities to select training and development initiatives and self-government capacity-building initiatives. Since the vast majority of these projects have served communities that already have community-based justice programs, it appears that the selection process was also largely focussed on continuing to serve these communities, instead of serving the communities that are planning to implement new programs.

Recommendation 1: Should the AJD seek funding to expand the reach of the AJS, AJD should consider implementing measures so the selection of new programs is done in a more formalized and accessible manner.

Management Response:

Agreed. Given the decision to renew and expand the AJS as announced as part of Budget 2007 in March, the AJD will engage with AJS partners in fiscal year 2007-08 on a number of issues related to implementing AJS renewal, including the development of new selection criteria and joint processes for the selection of new programs.

Due to the cost-shared, partnership-based nature of the AJS, decisions on how to select new programs cannot be made unilaterally by the AJD and will need to involve provincial, territorial and Aboriginal partners.

Recommendation 2: The AJD should take measures so communities that can benefit from training and development initiatives—particularly those communities that are planning to implement a new program—are aware that support is available and can access it.

Management Response:

Agreed. The AJD is committed to supporting the development and delivery of training and development initiatives that meet the needs of existing AJS communities as well as those communities that are planning to implement a new program. Within the funding parameters established for the “Capacity Building” component of the renewed AJS, existing and potential AJS communities will have the opportunity to seek funding for training and development initiatives tailored to their communities’ needs. This component will help support the goal of increasing the reach of the AJS in a targeted manner so that a greater number of Aboriginal communities and people have access to justice programs developed to the needs of participating communities.

Specific details on this new funding component, including funding criteria and a communications strategy, will be developed in fiscal year 2007-08 in collaboration with AJS partners, including provinces, territories and Aboriginal communities.

3. Does the AJD provide effective management to oversee the funding awarded through contribution agreements? Does the AJD have the required tools and procedures to ensure proper accountability and performance measurement?

Through its regional coordinators and program analysts, the Aboriginal Justice Directorate is particularly involved in the daily management of projects funded through contribution agreements. The only exception to this are projects in the Northwest Territories and Nunavut, where the Aboriginal Justice Directorate has signed flow-through agreements. Both the Aboriginal communities managing AJS programs and their provincial and territorial partners appreciate the support provided by these regional coordinators.

At this point, tools and procedures for performance measurement vary across regions, particularly as a result of provincial and territorial reporting requirements that also vary among jurisdictions. When combined with the challenges experienced by Aboriginal communities in meeting some of their reporting requirements, these variations still make it challenging to provide a national picture of what the AJS is supporting and achieving.

Recommendation 3: The AJD, in collaboration with provincial, territorial, and Aboriginal partners, should implement measures so that, at a minimum, a set of core performance indicators from the community-based justice programs can be systematically collected and reported upon at a national level. As part of these measures, AJD should enhance the capacity of those programs to report on relevant performance measures.

Management Response:

Agreed. The systematic collection and reporting of core performance indicators at a national level is a key AJS renewal priority. This work will be done in collaboration with provincial, territorial and Aboriginal partners to improve present statistical reporting and data collection activities. This information is needed to demonstrate the continued relevance, value for money and success of AJS programs. Specific measures will include the development of core performance indicators, a standardized reporting template and exploring various data collection options.

Participating AJS communities will be able to apply for funding under the new “Capacity Building” component for resources for training initiatives on improved program reporting.

<p>4. <i>Are the activities described in the contribution agreements carried out as required by the contribution agreements?</i></p>
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Since both the Aboriginal Justice Directorate and the provincial and territorial governments closely monitor (through both formal and informal means) the implementation of the AJS

programs, they are in a position to determine whether contribution agreements are carried out as required and no significant concerns have emerged during the consultations. It should be noted that, in the cases of the Northwest Territories and Nunavut, where flow-through agreements have been signed, the territories have primary responsibility for the administration of contribution agreements and share all relevant program information with the Aboriginal Justice Directorate.

5. Are the roles and responsibilities among all parties involved in contribution agreements clearly defined and understood?

The roles and responsibilities among all parties involved are generally well-defined and understood. This evaluation has found that federal, provincial and territorial partners do play a complementary role in supporting the implementation of the AJS programs. The fact that the Department of Justice has been funding community-based justice programs for the past 16 years (through the Aboriginal Justice Initiative and the AJS) has allowed partners to gain experience and effectively define their roles.

6. Are the activities carried-out internally within the AJD (policy development and support, Outreach and Partnerships, and Self-government negotiation support) delivered effectively?

7. Are the roles and responsibilities of those involved in the delivery of activities carried out internally within the AJD clearly defined and understood?

As a result of the June 2006 realignment of roles and responsibilities, the Aboriginal Law and Strategic Policy group leads the policy development and support functions, in collaboration with the AJD. At this point, it is too early to assess the full impact of that realignment.

Furthermore, funding cutbacks to the Outreach and Partnerships component have largely brought that program component to a halt. The current level of resources assigned to it makes it unlikely that it will achieve any significant outcomes.

The self-government negotiation support is a conventional advisory role that legal counsel within the Department of Justice are expected to fulfill. This program component appears to be effectively delivered.

8. To what extent have the recommendations from the formative evaluation been implemented?

The recommendations from the 2005 formative evaluation of the AJS have only been partially implemented. Since the formative evaluation report was finalized, the AJS has been largely

focussing on maintaining existing programs and preparing the renewal process. It has had neither the time nor the resources to implement significant changes to the program.

5.3. Success

9. To what extent are alternative measures and other related services made available in Aboriginal communities as a result of AJS?

This evaluation has found that program reach represents the greatest challenge to the achievement of the AJS's expected outcomes at any large scale. Only a fraction of Aboriginal offenders have access to the AJS programs. While these programs are generally having a positive impact on those individuals who access them, many more Aboriginal offenders, who would benefit from such programs, are sent into the mainstream system, often triggering the negative consequences that have been documented over the years.

Recommendation 4: Should the AJD secure additional funding for AJS renewal, increasing the number of, and participation in, community-based justice programs should be a funding priority.

Management Response:

Agreed. Increasing the reach and number of AJS programs is one of the fundamental arguments put forward by the AJD as it sought policy renewal for the program. With a renewed mandate, the AJS will build upon its success as an effective alternative to the mainstream justice system and will continue to yield positive impacts at the community level as the number of, and participation in, community-based justice programs increases. The renewed and enhanced mandate of the AJS includes a targeted increase in the reach and number of AJS programs, with more Aboriginal communities and people accessing justice programs tailored to their needs. This objective was reiterated in Budget 2007, with the announcement of enhanced funding for fiscal years 2007-08 and 2008-09, and meeting this objective is key to successfully implementing AJS renewal.

How are Aboriginal communities fairing in administering and enforcing Aboriginal laws?

The AJS has a limited role in allowing Aboriginal communities to administer and enforce Aboriginal laws and Band by-laws. It must nonetheless be noted that AJS programs could technically be used to enforce Aboriginal laws and Band by-laws. In this sense, it is important to

recognize that the AJS programs are not limited to dealing with Aboriginal individuals who have committed a criminal offence.

10. To what extent has the AJS fostered a coordinated approach to addressing issues facing Aboriginal people (within DOJ, and with other federal departments, provinces and territories)? Has the AJD taken a leadership role in coordinating an integrated approach to addressing issues facing Aboriginal people?

There is an expectation that both the Aboriginal Justice Directorate and the Aboriginal Law Strategic Policy Group will play a leadership role in coordinating activities that relate to the implementation of community-based justice programs across Canada. There is no expectation, however, that these two groups will coordinate an integrated approach to addressing all issues facing Aboriginal people, and this view is consistent with their established mandate.

Both resource limitations and a relatively high staff turnover, particularly at the management level, within the Aboriginal Justice Directorate have limited its ability to fully coordinate provincial, territorial and federal efforts in relation to the implementation of community-based justice programs. Provincial and territorial partners have expressed a desire to have the Directorate play a more active role in that area in the future.

Recommendation 5: The AJD should take measures to increase the level of coordination of provincial, territorial, and federal efforts in relation to the implementation of community-based justice programs.

Management Response:

Agreed. Under the AJS renewal mandate, the AJD will continue to cultivate and maintain individualized relationships with our P/T partners through frequent communications by telephone, letters, email and in person. Existing forums such as the F/P/T Working Group on Aboriginal Justice meetings, conference calls and meetings focussed on AJS renewal are forums that will facilitate discussions and initiatives focussed on improving program coordination.

The Aboriginal Law and Strategic Planning unit, in collaboration with the AJD, will also enhance effective partnerships at the federal level through the establishment of a Director General level working group. Examples of areas where the AJD can build on partnerships and improve horizontality under the renewed AJS mandate include federal partners such as

Aboriginal Policing (Public Safety Canada), Aboriginal Corrections (Public Safety Canada) and the Urban Aboriginal Strategy (Indian and Northern Affairs Canada).

11. To what extent has the AJS fostered relationships between community-based programs and the mainstream justice system?

12. Has the work of the AJS had an impact on the attitudes of justice personnel working in the mainstream system?

Communities that do have community-based programs generally also benefit from the support of mainstream justice personnel. Where challenges exist, they appear to predominantly result from staff turnover among police officers or prosecutors. While all the groups within the mainstream system generally support the AJS programs, by referring cases and holding a positive view of these types of programs, judges appear to be particularly supportive of them.

13. What role have victims had in community-based programs?

Involving victims is fundamentally linked to restorative justice and does reflect the Aboriginal values of healing and caring. Case studies conducted in support of this evaluation illustrate the benefits that victims may achieve by participating in community-based justice programs. Another fundamental principle is for the involvement of the victims to remain voluntary, and, in some communities, the consultations indicate that some victims hesitate to participate in these programs. This is a challenge that justice coordinators in participating communities are likely to face on an ongoing basis.

14. Is the legal advice on the administration of justice component sufficient to enable self-government negotiators to be effective in their role?

The legal counsel associated to the AJS has provided ongoing support to self-government negotiators. He provides expertise related specifically to the administration of justice chapters within these self-government agreements, and as this negotiation process is likely to continue for some time, so will be the need for this type of support.

15. To what extent have Aboriginal people been able to assume greater responsibility for alternative measures and other community services in the administration of justice in Aboriginal communities?

The reach of the AJS programs has largely determined the extent to which Aboriginal people have been able to assume a greater responsibility for the administration of justice. Those communities that have implemented community-based justice programs, particularly diversion programs, have considerably increased their involvement in the administration of justice. Since these programs apply to more than just criminal offences, they have also allowed Aboriginal communities to tackle family conflicts or implement preventative measures. Communities that have signed self-government agreements are also in a position to use the AJS programs to enforce Aboriginal laws that relate to a variety of circumstances other than criminal offences.

As this evaluation indicates, implementing AJS programs does not imply that all Aboriginal individuals who could benefit from such programs will systematically have access to them. Many Aboriginal communities still have a limited capacity to offer community-based justice programs. And many other communities have yet to implement any community-based justice programs.

16. To what extent has the work of the AJS contributed to greater inclusion of Aboriginal values in the administration of justice in Canada?

Undoubtedly, AJS programs have contributed to a greater inclusion of Aboriginal values in the administration of justice within the participating Aboriginal communities. These programs have also had a generally positive impact on mainstream justice personnel (judges, prosecutors, and police officers) who collaborate in the implementation of these programs by referring Aboriginal offenders or participating in sentencing initiatives.

17. To what extent have community-based programs had an impact on crime rates in the communities where they are implemented?

Individuals who participate in the AJS programs are more likely to get rehabilitated than those who are sent into the mainstream justice system. The recidivism study conducted in support of this evaluation indicates that offenders who participate in AJS-funded programs are approximately half as likely to re-offend as are offenders who do not participate in these programs.

18. Which programs and activities other than those directly funded through the AJS contribute to the achievement of AJS's long-term outcomes?

A number of other programs, such as crime prevention initiatives, First Nations policing, youth justice initiatives, the Aboriginal Court Worker Program, and family violence initiatives, play a complementary role to the AJS programs. The amendments to the Criminal Code on alternative measures and sentencing and a number of provisions in the *Youth Criminal Justice Act*, also contribute to the achievement of the AJS's long-term outcomes.

19. What lessons have been learned from the various community based programs? What works? What does not work? Why/why not?

This evaluation points to a number of lessons learned:

- The reach of the AJS is still limited, and this appears to be the result of both limited available resources and a limited capacity among some Aboriginal communities to implement these complex and labour-intensive programs.
- The support of participating communities and mainstream justice personnel is paramount to the success of community-based justice programs.
- When implemented, these programs represent a cost-effective model for dealing with Aboriginal offenders, which reflects Aboriginal values and beliefs. Considering the severity of the problems that Aboriginal offenders continue to face within the mainstream justice system, the AJS appears to be particularly relevant.
- The implementation of the AJS programs is a complex process, and the support that federal, provincial, and territorial governments offer on an ongoing basis is critical to the successful implementation of these programs.
- Reporting and ongoing performance measurement continue to be problematic for many participating communities. These challenges considerably limit the ability of the Department of Justice to systematically measure the set of results that these programs are achieving.

5.4. Cost-effectiveness and alternatives

20. Were sufficient resources allocated to each component of the AJS? Were there any unexpected costs? Were activities delivered in an efficient manner?

21. Should the current configuration of the AJS change? If so, how should it change and how would resources be allocated?

The level of resources allocated to the AJS's main component—namely the community-based justice program—has slightly increased over the past four years, while the level of resources dedicated to training and development and to Outreach and Partnerships activities has been substantially reduced. The level of funding for the other program components appears to have remained largely constant.

In this context, the extent to which sufficient resources have been allocated to each program component largely depends on the objectives that the AJS is expected to pursue. At this point, the current level of resources could, at best, maintain the set of program activities presently available to participating communities. It will certainly not favour an expansion of the AJS or address the gap in program reach identified in this evaluation.

22. Are there more effective ways of achieving the objectives of the AJS?

This evaluation has not identified a different program model for achieving the objectives of the AJS. Allowing Aboriginal communities to administer community-based justice programs represents a cost-effective alternative to the mainstream justice system, and it supports the broader self-government objectives that both the federal government and Aboriginal communities are pursuing.

APPENDIX A:
List of Evaluation Issues and Questions

Evaluation matrix
Questions
Program relevance
1. To what extent are the stated objectives of the AJS still relevant to Aboriginal people?
2. To what extent are the objectives of the AJS still relevant to the federal policy and program priorities?
Design and delivery
3. Has the AJD implemented effective and clear procedures for selecting projects funded through contribution agreements (community-based initiatives, training and development initiatives, and self-government capacity building initiatives)?
4. Does the AJD provide effective management to oversee the funding awarded through contribution agreements? Does the AJD have the required tools and procedures to ensure proper accountability and performance measurement?
5. Are the activities described in the contribution agreements carried out as required by the contribution agreements?
6. Are the roles and responsibilities among all parties involved in contribution agreements clearly defined and understood?
7. Are the activities carried-out internally within the AJD (policy development and support, Outreach and Partnerships, and Self-government negotiation support) delivered effectively?
8. Are the roles and responsibilities of those involved in the delivery of activities carried-out internally within the AJD clearly defined and understood?
9. To what extent have the recommendations from the formative evaluation been implemented?
Success
10. To what extent are alternative measures and other related services made available in Aboriginal communities as a result of AJS?
11. How are Aboriginal communities fairing in administrating and enforcing Aboriginal laws?
12. To what extent has the AJS fostered a coordinated approach to addressing issues facing Aboriginal people (within DOJ, and with other federal departments, provinces and territories)? Has the AJD taken a leadership role in coordinating an integrated approach to addressing issues facing Aboriginal people?
13. To what extent has the AJS fostered relationships between community-based programs and the mainstream justice system?
14. Has the work of the AJS had an impact on the attitudes of justice personnel working in the mainstream system?
15. What role have victims had in community-based programs?
16. Is the legal advice on the administration of justice component sufficient to enable self-government negotiators to be effective in their role?
17. To what extent have Aboriginal people been able to assume greater responsibility for alternative measures and other community services in the administration of justice in Aboriginal communities?
18. To what extent has the work of the AJS contributed to greater inclusion of Aboriginal values in the administration of justice in Canada?
19. To what extent have community-based programs had an impact on crime rates in the communities where they are implemented?
20. Which programs and activities other than those directly funded through the AJS contribute to the achievement of AJS's long-term outcomes?

Evaluation matrix
Questions
21. What lessons have been learned from the various community based justice programs? What works? What does not work? Why/why not?
Cost-effectiveness and alternatives
22. Were sufficient resources allocated to each component of the AJS? Were there any unexpected costs? Were activities delivered in an efficient manner?
23. Should the current configuration of the AJS change? If so, how should it change and how would resources be allocated?
24. Are there more effective ways of achieving the objectives of the AJS?

APPENDIX B:
Summary of Case Studies

The following provides a summary of the main themes from the case studies that were conducted in support of the evaluation. In examining the case studies, there were a number of themes that emerged from the qualitative data collected. This appendix includes only those themes that were evident in five or more of the cases examined, as well as some other observations made by the evaluators. The separate case studies report should be reviewed for more details on each particular case examined as part of the evaluation. Contributions to the photovoice exercise are provided throughout this summary to illustrate the findings and observations that are made.

4.1 Program impacts

Victims

A common theme from the case studies was that victims can benefit from their involvement with the programs because they are given a voice in the process. In cases where victims have a role in the program, they are provided with an opportunity to face their offenders and clear the air. This is especially important for those cases where the victims and offenders live in small or isolated communities. For example, interviewees described how the Pangnirtung Justice Committee, which serves the Hamlet of Pangnirtung in Nunavut Territory, has an important role in bringing victims together with the offender. As one person said, *“Through the justice committee, the offender can apologize to the victim. You never see them do that in court.”* Victims are also provided with a means of better understanding the offenders, the offenders’ background, and the circumstances that led to the offence.

Offenders

There were also some common themes related to the impacts that the programs are having on offenders who participate in them.²⁹ The focus of most of the programs in the study is on the person, not the offence, and on healing and restoring harmony between the offender and the community. The programs attempt to look at an offender’s history and background, thereby attempting to get to the core of the issue with a holistic view of the offence. In the case of the Community Council Program administered by Aboriginal Legal Services Toronto, for example, it was noted by one person that the entire proceedings of the Council can go by without anyone even discussing the offence, instead only discussing the root causes that lead the person to it. The following photovoice contribution from a person involved with the Tsuu T’ina Nation

²⁹ Some of the programs refer to the offenders as “clients” or to both the victim and offender as “party A” and “party B” to avoid labelling them during their proceedings.

Peacemaker program was indicative of the sentiments of participants from many of the different cases:



“Freedom. I found that people who I know who’ve gone through the court system in the city... it doesn’t help them... the exact details don’t come out in court. Native people know what we go through. [With the program], we’re able to get to the core and get people on the right track to healing. You can see the impact on people and their families.”

Offenders can take responsibility for their actions in a forum that focuses on maintaining family ties and community connections. They can learn from their mistakes and give back to their community. Offenders involved with the study also note that the programs are beneficial because they can avoid having a criminal record and avoid incarceration—the latter being one of the main objectives of the AJS. One photovoice participant from the Haida Gwaii Restorative Justice Program reflected on the impact of this particular program on her:



“This is a picture of an empty cell in the jail up town. With the program, I didn’t end up there.”

Community

The evaluators noted evidence of a number of benefits that the programs are having on the communities they serve. For one, they help re-establish connections between the offenders, the victims, and the community. They also help open up communication and provide a forum for dialogue between people affected by either an offence or another issue brought to one of the programs. This forum for communication would not generally be available through the

mainstream justice system. The subsequent photovoice contribution from a participant from the Meenoostahtan Minisiwin Program illustrates the importance of community and the role the community has had in helping her:



“This is a group learning about healing in their community. They are passing on the Elders’ teachings. The community needs these resources and support... I’m glad I went there. It lifted me up and took all those things off my shoulders I didn’t need anymore.”

The programs also have a role in building strong communities. In many of the cases examined, regardless of the program model used, the impacts of the program extend beyond the principal participants. By sharing their own experiences in a circle, other people involved in the resolution of an offence, such as justice committee members, family members, and Elders, are also provided with a means of healing. The programs help community members have a say about justice in their community by involving them in the process. The role of the programs in helping children and youth is also evident. As one person involved with the Aboriginal Justice Program of the Mi’kmaq Confederacy of PEI Inc. said, *“‘Keep the Circle strong’ is one of our sayings. To raise one child, it takes a whole community.”*

4.2 Elements of a successful program

Three main factors have contributed to the success of the programs included in the study: having skilful and dedicated program coordinators, involving the community in developing and running the program, and basing the program on the values, culture, and teachings of those people it serves while meeting AJS objectives.

Program coordinators

Program coordinators have an essential role in developing and marketing the program, building support among community members and stakeholders, and fostering links with other agencies. Interviewees noted that a successful and well-respected program coordinator is dedicated, optimistic, discrete, and generally cares about the well being of the program’s clients and the

community the program serves. An interviewee discussing the coordinator for the Métis Family and Community Justice Initiative provides an example of the high regard held for many of the people in this role: “[The coordinator] is very good at what she does. She gives victims a voice and helps the offender really understand what he’s done. She has a lot of patience.”

In some of the smaller communities in particular, the justice program coordinator may have many different roles and responsibilities in the community. For example, in one of the communities, the coordinator is also Chief of Council while, in another, the coordinator is also a Justice of the Peace. While these multiple responsibilities mean that there are many demands upon the time of the program coordinators, it also provides them with many valuable links to different parts of their community.

Community involvement

In a number of the cases, the capacity to achieve program objectives is enhanced when the program is owned by the community and the people it serves. This includes consulting community members and Elders during the program’s development and seeking consensus and support for program changes so that “*the community members feel it is their program.*” While there is a need for program objectives to align with the overall objectives of the Strategy, it is important for the community to define success in its own terms and to take the time that is necessary during the development phase of the program. As one person stated, “*it is important to give programs time to do proper development and respond...that is, to be implemented and start demonstrating results.*”

One of the case studies, the Aboriginal Justice Program of the Mi’kmaq Confederacy of PEI Inc., is currently in the developmental stage. There is a strong sense among those interviewed that taking the time necessary to develop the program is essential to ensure the program’s success.

Traditional values, culture and teachings

Many of the study participants view their program favourably because those programs are based on the traditional values, culture, and teachings of the people they serve. An interview respondent involved with *Qwi:qwelstóm*, the Stó:lō Nation Justice Program, illustrated their views:

[The program] is spiritual and that is our culture; it's been here for thousands of years and it is what (our ancestors) have always used. Since residential schools, it has been put away but now it is being brought out again. We don't point fingers and we don't lay blame; it is not the person who is bad, it is what they did that was bad...that thing can be put aside and we can deal with the person and help them on the right path.

The programs provide a means of resolving conflict that is more familiar to the participants because the programs are based on the traditional values, culture, and teachings of the people they serve. The process followed by the programs for resolving conflict is more aligned with their views on justice and, in some cases, can be available in the participant's language of choice. It was common for the participants to see their programs as not only a means of resolving conflict and restoring harmony but also as a means of reclaiming their traditional forms of justice.

4.3 Challenges encountered

Historical challenges

The historical challenges faced by many of the Aboriginal communities have been well documented: poverty, family violence, housing shortages, drug and alcohol abuse, unemployment, and residential school experiences.³⁰ These were noted in most of the case studies as challenges for the community-based justice programs. It is not the intention of this report to delve in-depth into these issues, however, the historical experience of Aboriginal people in Canada has direct impacts today: *"the past is more than something to be recalled and debated intellectually...it has important contemporary and practical implications, because many of the attitudes, institutions and practices that took shape in the past significantly influence and constrain the present."*³¹

While the people involved in the study discussed these historical challenges in detail, photovoice participants from almost all of the case studies identified alcohol and drug abuse as significant challenges in their communities and, by extension, for achieving justice, harmony, and balance in their communities. As shown in the next photovoice contribution, the participants also linked substance abuse with broader community issues such as depression, violence, poverty, and vandalism:

³⁰ See Royal Commission on Aboriginal Peoples, 1996. www.ainc-inac.gc.ca/ch/rcap/index_e.html

³¹ See Royal Commission on Aboriginal Peoples, 1996. www.ainc-inac.gc.ca/ch/rcap/index_e.html



“We see a lot of the negative activities such as alcohol abuse, graffiti, and drug use.”

Resource levels

The amount of funds available to the programs continues to be an issue; especially the lack of funds to hire additional staff. Interviewees also tended to discuss how they do not generally have enough paid and volunteer human resources. Programs are having difficulty attracting and retaining qualified staff and volunteers, especially in smaller or isolated communities.

The need for funding to acquire meeting space was also identified. In smaller communities, the programs often share office and meeting facilities with other organizations. Sharing space makes it difficult for the programs to maintain a level of confidentiality with their clients.

This study did not conduct a thorough assessment of the funding requirements for the programs; however, this could be a beneficial focus of future research.

Training for program staff and volunteers

Also related to funding levels, interview respondents discussed how they would like to have more funding available to train and develop their staff and volunteers. Some programs are able to provide training and professional development to their staff members and volunteers. Others, however, do not have the resources or capacity to provide training on an ongoing basis.

Lack of support

For many of the cases, interviewees perceived a lack of support among police agencies and Crown Counsel for their programs. This was attributed, in part, to the high level of turnover among police and Crown Counsel, which is often every two to three years. There is also a belief that there may be a low level of awareness among these officials of the programs and the alternatives they provide to the mainstream justice system.

The level of support among police agencies and the Crown for community-based justice programs is a critical factor for their success. This support is most important for those programs that rely on referrals from these groups. The level of support among police agencies and the Crown for the community-based justice programs, and therefore their likelihood of referring cases, seems to depend on the following factors: their awareness of the program, their past experiences with restorative justice or similar programs, their original thoughts about the efficacy of alternative measures, whether they view the program as credible and well managed, and their perception of the types of offences the program is capable of handling (i.e., more serious offences).

4.4 Additional observations

Federal government support

The information gathered during interviews and informal discussions during the site visits points toward a strong desire among community members for the federal government to have a role in funding the programs.

Access to additional resources

Access to resources is important to the success of a program. Programs located next to the services and resources of larger urban centres seem to have an advantage in attracting and retaining staff and volunteers. These programs also have access to additional resources to help their clients, such as addictions treatment and mental health counselling.

The programs included in the study were diverse

The case studies confirmed the evaluators' initial assumption that the programs served by the AJS vary greatly. Although the delivery of AJS is national in scope, the programs funded under the strategy vary greatly in terms of their model of delivery, the clients and communities they serve, and the traditions on which they are based. Accordingly, the cases examined support the notion that attempts to standardize these types of programs should be discouraged.

Views of “justice” vary significantly

The evaluators identified differences in how the participants in the study define “justice.” Most of the interviewees and primarily program coordinators, tended to view justice in one of three ways: as relating to *Criminal Code* offences where there is a victim and an offender, in ways

more aligned with the teachings and traditions of the particular community, or a combination of these views. Some viewed their more traditional justice systems working collaboratively with the mainstream system, while others viewed the links between their program and the mainstream system as a “stepping stone” to reclaiming traditional forms of justice.

The photovoice exercise participants, however, tended to view justice in a broad historical and social justice context. In many of the communities included in the study, there is no equivalent word or concept in their language comparable to the mainstream or western understanding of the term. In their view, justice is about more than just the offence. It is about restoring harmony in their communities and can also be linked to broader community goals of restoring cultural traditions and values. Most of those participating in photovoice were “regular” members of the community, that is, with no formal legal training or experience and peripheral links to the program. In many of the communities, the participants were program clients. The photovoice contributions below show some of the different ways participants view justice:



“There is a big difference between the police and justice. Justice for me equals getting understanding and growth. Knowing the answers helps you figure things out. You know what questions to ask.”



“Just looking at the mountain and nature brings to mind justice to me. The mountain symbolizes to me that our ancestors are watching over us; that’s what keeps us ‘in line.’ Revitalizing our teachings helps us spread justice throughout our community.”

The views of the photovoice participants about justice should be noted by the department as it continues to administer and evaluate the AJS. These participants for the most part represent the intended reach of the strategy: people residing and living in Aboriginal communities. Therefore, the programs directed towards them should be aligned with their views about justice. While programs must contribute to the broad objectives of the AJS, it is also important to ensure there are mechanisms in place that allow the AJS funded programs to participate in defining program success in a manner that is aligned with the communities' views about justice.

Results of the photovoice pilot

As a pilot project, the evaluators feel this methodology was successful. Participants were open to the photovoice process and the combination of stories and photos helped to illustrate the impacts that the aboriginal justice programs are having within the communities. As intended, photovoice enabled the evaluators to perceive the world from the viewpoint of the community members—those who are most involved and impacted by the community-based justice programs.

Use of participatory evaluation techniques

As mentioned, the photovoice approach is considered a participative research methodology. Participative methodologies generally involve the participants voicing their ideas on the issues and concerns that are important to them. The information gained through the research is then shared with the people and communities who participated in the study. Participatory and community-based research is viewed as being most appropriate for Aboriginal communities:

Because of the decimation of Aboriginal communities through colonizing practices historically, there is a tendency in the Aboriginal research culture to favour community-based research as a way to bring communities back together.³²

Many of the program coordinators who participated in the study voiced a level of mistrust for more conventional evaluation approaches, particularly those that rely heavily on quantitative data. There was also some reluctance on their part to participate in projects that take information away from the community without sharing the results with those who participate and contribute to the project.

³² Carolyn Kenny, *A Holistic Framework for Aboriginal Policy Research*. (Funded by Status of Women Canada's Policy Research Fund, August 2004). www.swc-cfc.gc.ca/pubs/pubspr/0662379594/200410_0662379594_13_e.html#1

Given the positive response to the photovoice pilot, which was a more participative and community-based approach, future evaluation plans for the AJS should seek to further integrate more participative research approaches to complement more traditional evaluation techniques.

APPENDIX C:
Evaluation of the Impact of the Aboriginal Justice Strategy
on Rates of Re-offending

This appendix provides a condensed and non-technical summary of the study and its results. The reader should refer to the full text of the report for this study, *Evaluation of the Impact of the Aboriginal Justice Strategy on Rates of Re-offending*, for a more detailed description of the study's methodological approach, findings, and limitations.

1. Background

In 2000, the Department of Justice conducted a study to assess the impact of five AJS programs on recidivism (i.e., on the likelihood that individuals who have committed a crime will re-offend).³³ The study had generally favourable findings; it remained unclear, however, whether the findings would be applicable to other AJS programs, due to methodological limitations. The current study builds on the previous one with the goals of including more programs, increasing the size of the comparison group, and assessing the impacts of the AJS for a longer period following the participation of offenders in the respective programs.

2. Methods

This study compared the likelihood of re-offending of individuals who participated in an AJS program with that of individuals who were referred to, but did not participate in, an AJS program. It is intended to provide insights into the impact of the AJS programs on clients' likelihood of re-offending over time.

To assess this, a series of survival analyses were conducted. Survival analysis assesses the occurrence and timing of an event (in this case recidivism) while still accounting for the possibility that, in some cases, the event may never take place. Survival analysis is well suited to control for the differences in the background characteristics of the two groups examined, such as age, gender, and number of prior convictions. These background characteristics were held constant in the statistical model so that trends in rates of re-offending could be assessed.

Although there were many reasons why offenders would be referred to an AJS program but did not participate in that program, the two most common reasons for non-participation were (a) refusal by the Crown, the program, the victim or the offender, and (b) the offender had moved away prior to program commencement.

³³ Department of Justice Canada. Final Evaluation: Aboriginal Justice Strategy, October 2000.

3. Study Limitations

The interpretation of findings reported here should be made with caution. Practical constraints precluded the use of random assignment to the program participation or the comparison groups, the use of a true control group (i.e., a group of offenders who went through the mainstream Canadian justice system), and the use of a more representative sample of AJS program participants.

4. Definitions

Offenders who participated in an AJS program are referred to throughout this summary as “program participants.” Offenders who did not participate in an AJS program are referred to as “comparison group members.” Criminal behaviour is defined in terms of criminal offences that result in convictions (or findings of guilt in the case of young offenders).³⁴

5. Characteristics of Offenders in the Study

In total, 4246 offenders (3361 AJS program participants and 885 comparison group members) from nine programs across Canada were part of this study. Four of these nine programs had also been included in the 2000 study and most of those offenders (59.88%) in the total sample were tracked for at least four years following the completion of the AJS program to which they had been referred.

The background characteristics of offenders in the total sample were as follows:

- The majority were men (60.67%)
- Their average age was just under 29 years old
- Only a small portion (8.78%) were youth under the age of 18
- Most had never been convicted of a crime prior to their referral to the AJS (60.67%)
- Most were referred to the AJS program for non-violent crimes (72.52%)

The program participants and comparison group members tended to be similar in background characteristics but some key differences between the two groups were identified: comparison

³⁴ Throughout the report, “convictions” refers to both convictions under the *Criminal Code* and also to “findings of guilt” under the *Youth Criminal Justice Act*.

group members tended to have more prior convictions, to have been more recently referred to an AJS program, and to be slightly older.³⁵

6. Findings

The results from the study lend strong support to the assertion that AJS program participation reduces the likelihood of recidivism. Though more pronounced in the years immediately following program completion, the discrepancy in recidivism scores between program participants and comparison group members continues at every point in time after program completion. Table 1 shows the estimated recidivism rates for program participants and the comparison group at various points in time after participation in the program.

Table 1: AJS Average Recidivism Rates		
Time After Program Completion	Cumulative Percent Who Have Re-Offended	
	Participants	Comparison Group
6 months	6.12	12.64
1 year	10.85	21.77
2 years	17.57	33.84
3 years	22.32	41.72
4 years	26.73	48.57
5 years	29.86	53.16
6 years	31.25	55.11
7 years	32.20	57.41
8 years	32.24	59.18

As the table shows, recidivism rates are significantly lower among program participants at every point in time after completing the program. In terms of the extent of the impact, AJS program participants are approximately half as likely to re-offend as are comparison group members:

- At six months, 12.64% of comparison group members had been convicted of at least one other crime compared with 6.12% of AJS program participants.
- At four years, 48.57% of comparison group members had re-offended compared with only 26.73% of AJS program participants.
- At eight years, a full 59.18% of comparison group members had re-offended compared with 32.42% of AJS program participants.

³⁵ These group differences might be due to selection bias (i.e., the background characteristics of an offender may influence whether or not this individual is selected—or self-selects—to participate in an AJS program).

The effect of the AJS programs on the likelihood of re-offending is particularly pronounced in the years immediately following the program, but the cumulative effects, even after eight years, appear to remain.

The beneficial impact of the AJS is evidenced consistently across all AJS programs under consideration. When each of the AJS programs is examined independently, the findings generally mirror those of the total sample and again show that the risk of recidivism is reduced among program participants, relative to comparison group members.