



# Evaluation of the Indigenous Justice Program Final Report

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Evaluation Branch  
Internal Audit and Evaluation Sector

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## ACRONYMS

AOJO	Administration of Justice Offences
Criminal Code	Criminal Code of Canada
CJS	Criminal Justice System
CJWs	Community Justice Workers
FASD	Fetal Alcohol Spectrum Disorder
FPT WG	Federal-Provincial-Territorial Working Group
ICW	Indigenous Courtwork Program
IJ	Indigenous Justice
IJD	Indigenous Justice Directorate
IJP	Indigenous Justice Program
MMIWG	Missing and Murdered Indigenous Women and Girls
MMP	Mandatory Minimum Penalty
RCMP	Royal Canadian Mounted Police
TRC	Truth and Reconciliation Commission
WG	Working Group

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>i</b>
<b>1. INTRODUCTION</b> .....	<b>1</b>
1.1 Purpose of the Evaluation .....	1
1.2 Evaluation Scope .....	1
<b>2. PROGRAM PROFILE</b> .....	<b>1</b>
2.1 Program Description.....	1
<b>3. EVALUATION METHODOLOGY</b> .....	<b>3</b>
3.1 Lines of Evidence .....	3
3.2 Evaluation Challenges and Limitations .....	5
<b>4. FINDINGS</b> .....	<b>7</b>
4.1 Relevance.....	7
4.1.1 Continued Need for the Program .....	7
4.1.2 Factors Contributing to Indigenous Overrepresentation in the Criminal Justice System.....	10
4.1.3 Program Responsiveness to Identified Needs.....	12
4.1.4 Program Alignment with Federal and Justice Canada Priorities.....	13
4.2 Program Effectiveness .....	14
4.2.1 Increasing Indigenous Involvement in the Administration of Justice .....	14
4.2.2 Increasing Community Capacity to Deliver the Program .....	16
4.2.3 Partnerships with Community Services and the Criminal Justice System.....	17
4.2.4 Federal Indigenous Justice Policy Informed by Indigenous Community Justice Partners.....	21
4.2.5 Indigenous Cultural Values Are Reflected in the Administration of Criminal Justice	22
4.2.6 Program Contribution to the Well-Being of Program Participants .....	23
4.2.7 Reduced Rates of Victimization, Crime and Incarceration.....	24
4.3 Efficiency and Economy .....	26
<b>5. CONCLUSIONS AND RECOMMENDATIONS</b> .....	<b>31</b>
5.1 Conclusions .....	31
5.1.1 Relevance .....	31
5.1.2 Performance.....	31
5.2 Recommendations .....	32

## List of Figures

Figure 1: Relative Number and Percentages of Admissions of Indigenous Adults and Youth to Provincial and Territorial Correction Services .....	8
Figure 2: Reported Rates of Crime (per 100,000) in Majority Indigenous and non-Indigenous Populations (2018).....	9
Figure 3: Change in Collaboration Reported by Community Justice Workers.....	18

## List of Tables

Table 1: Financial Resources Allocated to the Program from 2016-17 to 2020-21 .....	3
Table 2: Survey Completion.....	4
Table 3: Number of Participants in Case Studies.....	5
Table 4: Percentage of Offenders who have Re-Offended, by Time and IJP Program Participation.	25
Table 5: IJP Spending per Program Participant 2017-18 to 2019-20 .....	27
Table 6: Differences in Costs per Case between IJP and CJS in 2014-15.....	29
Table 7: Planned vs Actual Expenditures from 2016-17 to 2020-21 .....	30

# EXECUTIVE SUMMARY

## Introduction

The Evaluation of the Indigenous Justice Program (IJP or the Program) was conducted by the Department of Justice Evaluation Branch and covers fiscal years 2016-17 to 2020-21. The evaluation was completed in accordance with the Treasury Board's *Policy on Results* (2016). The evaluation examined relevance in terms of whether there is a continued need for the Program, its performance in terms of achieving intended outcomes, and the Program's efficiency and economy.

## Program Description

The IJP is a federally-led initiative that is cost-shared with all thirteen provinces and territories and delivered in partnership with Indigenous communities. The overall objective of the Program is to address the overrepresentation of Indigenous people in the criminal justice system (CJS), both as offenders and as victims. The Program has two funding components that are included in the evaluation: the Community-Based Justice Fund and the Capacity-Building Fund.

## Findings

### Relevance

The need for the Program is evidenced by an increasing overrepresentation of Indigenous people in the CJS and higher rates of crime in communities where a majority of the population is Indigenous. Indigenous people account for 5% of the Canadian population yet they represent about 30% of provincial/territorial and federal correctional admissions. Factors contributing to Indigenous overrepresentation in the CJS are well established. Colonial policies and practices of systemic oppression of Indigenous culture, language and traditions, residential schools and the '60s scoop' resulted in intergenerational trauma and marginalization of Indigenous communities that continue to have major social, economic and health consequences today.

The IJP provides culturally appropriate alternatives to the mainstream CJS, and helps the accused understand and address the underlying factors contributing to the offences such as mental health issues, addiction, socio-economic issues (such as poverty), inadequate housing, etc. In this respect, the community-based justice programs have largely been responsive to the needs of offenders who have participated in their programs and, more broadly, to victims and community members.

Given the continued systemic discrimination and racism combined with limited resources, the Program is unable to keep pace with the magnitude and complexity of needs. In addition, the lack of awareness and knowledge of the community-based justice programs, discrimination, and in some cases, negative perceptions regarding these programs among CJS representatives is an important barrier, given the decision to divert individuals to community-based justice programs remains largely with the CJS.

The Program is well aligned with the priorities of the federal government and the Department of Justice. The government has stated the need to address the systemic inequities that contribute to the overrepresentation of Indigenous people in the CJS as well as the need to increase access to diversion programs. The government has announced funds in the 2020 Fall Economic Statement and the 2021 Budget to address those needs.

## Effectiveness

The IJP has increased Indigenous communities' involvement in designing and delivering a wide range of justice related programming including prevention, diversion, civil and family mediation, reintegration, and supporting individuals on bail and probation. The communities are becoming increasingly involved in providing referrals to the programs. Elders play a key role in community programs, helping to engage both offenders and victims and are frequently involved in community justice committees.

Community-based justice programs' capacity and resources, including the level of collaboration and trust established with the local government, stakeholders and residents, impact community involvement in the Program. Program visibility and capacity to engage in various community activities and engage with stakeholders are dependent upon the availability of staff, resources and infrastructure, as well as skills and ability of Community Justice Workers (CJWs) to build relationships. The IJP Capacity Building Fund supported a number of regional gatherings and workshops where CJWs, community members, and CJS representatives (such as police officers or Crown attorneys) come together to share best practices, learn about various issues and topics impacting communities, and build relationships. There is significant interest in further training and capacity building activities covering a wide range of issues, including building relationships with community stakeholders and the CJS.

The partnerships and collaboration established at the community level and with CJS representatives have an effect on all other aspects of the Program. The evaluation found that in many communities collaboration has increased across a range of stakeholders. Improvements in collaboration with the Crown attorneys/provincial prosecutors were most often reported, as they are most likely to refer clients to the Program. The relationship with police remains a challenge. This is largely due to frequent rotation among the RCMP/provincial police force, limited engagement, discrimination and misperceptions about the programs, and a lack of formal guidance and protocols regarding referrals. While many reported an increase in collaboration with Indigenous Courtwork and Victim services, there were other communities with limited access to these services and limited local capacity and structure to support collaboration.

The IJP has undertaken various efforts to increase the awareness and visibility of the community-based justice programs and increase acceptance of Indigenous values and traditions into the CJS; however, it is too early to see a tangible increase in diversions to the community programs.

The Indigenous Justice Directorate (IJD) regularly contributes to federal Indigenous justice policy development and leads program-specific initiatives. In particular, the IJD provides input and feedback from Indigenous community partners and stakeholders to policy leads through ongoing communication and information sharing across a number of working groups. IJP and federal-provincial-territorial (FPT) partners collaborated on a range of issues and policy initiatives including the development of a plan to implement *Gladue Principles* within the CJS. The IJD, including regional staff, serves as an important link between the Department and Indigenous communities.

The IJP has significant impact on the well-being of offenders and victims, as well as the broader communities. The restorative and Indigenous justice processes delivered by community-based justice programs help offenders understand the causes and the impacts of the offences committed and create a satisfactory resolution process for both the offenders and victims. An estimated 90% of clients successfully complete their obligation. For those diverted post-charge, the majority have the charges withdrawn or dismissed. The restorative and Indigenous justice process impacts the broader

community by working to keep families together, heal the community, reduce recidivism and increase safety. The evaluation found evidence of reduced victimization rates, and reduced rates of recidivism among those who participated in the community-based justice programs.

## **Efficiency**

The Program is well managed and data shows that both its efficiency and economy have improved since the last evaluation. The cost of the Program per client is low. As the costs of the IJP community-based justice programs, number of clients served, and reductions in participant recidivism rates tend to remain fairly stable over time, it is reasonable to assume that the future costs savings incurred each year would be similar to those reported in the 2016 evaluation, which was \$1,604 per participant in immediate savings to the CJS, or \$14,498,556 for the full cohort of participants. An updated recidivism study including a cost analysis will be completed at a later date to validate the continued efficiency of the Program.

## **Recommendations**

- 1) The Indigenous Justice Directorate, in collaboration with provincial, territorial and community partners, develop a compendium of training, resource materials and best practices available to Community Justice Workers.
- 2) The Indigenous Justice Directorate, in collaboration with federal, provincial and territorial partners, identify program-level initiatives to help address systemic inequities in the criminal justice system.



# 1 INTRODUCTION

## 1.1 Purpose of the Evaluation

The evaluation of the Indigenous Justice Program (IJP or the Program) was conducted in accordance with the Treasury Board's *Policy on Results* (2016) and the *Financial Administration Act*. The Evaluation Branch of the Department of Justice Canada conducted the evaluation as per the 2020-21 to 2024-25 Integrated Audit and Evaluation Plan.

## 1.2 Evaluation Scope

The Program has been evaluated five times, most recently in 2016. This evaluation covered five fiscal years, namely the period from 2016-17 to 2020-21. It examined questions related to the relevance, effectiveness, efficiency and economy of the Program. In terms of relevance, the evaluation assessed the need for the Program, its responsiveness to emerging issues, as well as the alignment of the Program with federal and departmental priorities. The evaluation also examined the effectiveness of the Program in achieving its expected outcomes. In an effort to build upon the previous evaluation, this evaluation explored several areas of the community programming in more detail including: prevention activities; civil/family mediation; family violence programming; and the experiences of victims participating in restorative justice processes.

Reduced recidivism rates is one of the key measures of IJP success. Previous recidivism studies have examined the prevalence and likelihood of re-offending after program participation. Though it could not be completed in the timeframe of this evaluation, the current recidivism study will expand upon the analysis of recidivism rates by including data from additional provinces and territories. Lastly, the assessment of efficiency was expected to include a comparative costing analysis to estimate the impact of the IJP on reducing costs of the criminal justice system (CJS). The recidivism study and costing analysis will be completed at a later date.

# 2 PROGRAM PROFILE

## 2.1 Program Description

Operating since 1991, the IJP is a federally-led initiative that is cost-shared with all thirteen provinces and territories and delivered in partnership with Indigenous communities. The Program aims to address the overrepresentation of Indigenous people in the CJS, both as offenders and as victims, and to increase access to culturally-relevant justice services and options.

IJP was renewed seven times: in 1996, 2002, 2007 (with enhanced funding), 2012, 2013, and 2014. With Budget 2017, it was renewed on an ongoing basis at existing funding levels (\$12.7 million per year) to provide long term and stable investment in the Program.

### Overview of Program Components

The Program has two funding components:

- **Community-Based Justice Fund:** Through this fund, the IJP directly supports 211 community-based justice programs serving 650 communities across the country. Funded programs work to address root causes of crime and deliver programming that reflects the

justice values, traditions and culture of their community. Their activities can fall at any point along the justice continuum including prevention, pre-charge, post-charge, post-sentence and reintegration. Programs use restorative and traditional Indigenous justice processes that bring together victim, offender and community to focus on repairing harm and holding offenders accountable. IJP programs work in close partnership with justice officials, including police, Crown and judges.

- **Capacity-Building Fund:** This smaller fund is designed to support capacity-building efforts in Indigenous communities, particularly as they relate to building increased knowledge and skills for the establishment and management of community-based justice programs.

### **Program and Policy Development**

IJD staff engage with Indigenous, as well as provincial and territorial partners, to enhance the Program and to provide input into other federal government programs and policies impacting Indigenous people. This engagement occurs through several established and ad hoc working groups, as well as other direct contact in the day-to-day management of funding agreements. Regular and ongoing engagement with Indigenous community partners not only provides input and direction on how to improve the Program, but also invaluable information regarding the needs of justice-involved individuals (such as offenders or victims) and the justice priorities of the Indigenous communities.

### **Governance and Key Stakeholders**

The Department's Indigenous Justice Directorate (IJD) is responsible for developing and maintaining provincial and territorial partnerships. IJD staff and provincial and territorial partners work together to assess and address emerging justice issues and gaps in service, as well as develop new community-based justice programs.

As partners, provincial and territorial governments:

- Provide investment in the IJP community-based justice programs (fiscal and/or in-kind);
- Provide regional specific knowledge and perspectives, integral program support and partnerships (e.g., victim services, corrections, probations, policing) on a regional basis; and
- Participate in and co-chair the IJP Federal-Provincial-Territorial Working Group (FPT WG), which serves as a policy forum for ongoing monitoring of inter-jurisdictional issues that concern the IJP.

Indigenous communities and Indigenous non-governmental/non-profit organizations (IJP funding recipients) design and deliver community-based justice programs that meet the needs of the specific communities they serve, and are responsible for meeting the reporting requirements in the contribution agreement. They provide valuable information and feedback to the Department and provincial/territorial governments on community justice needs; and partner with stakeholders at the provincial/territorial and community level to ensure program effectiveness. They also may contribute resources, both fiscal and in-kind, to the operation of their community-based justice programs.

Other federal government departments are also involved including:

- Public Safety Canada which provides Indigenous-specific funding in justice focussed areas including: community-safety planning, crime prevention, reintegration and community corrections, as well as First Nations and Inuit Policing.
- Correctional Service of Canada which may work with community-based justice programs to support local justice committees in the reintegration planning and support that is required at the community level for offenders released under section 84 of the *Corrections and Conditional Release Act*;
- Royal Canadian Mounted Police (RCMP) which provides pre-charge referrals to community-based justice programs in appropriate circumstances and participates with the programs through regular communication, membership on program committees, involvement in community justice panels, etc.

### Program Resources

During the period covered by the evaluation, Justice allocated approximately \$72.6 million to the Program.

**Table 1: Financial Resources Allocated to the Program from 2016-17 to 2020-21**

Categories	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Grants and Contributions	\$13,581,043	\$12,700,000	\$13,009,920	\$13,056,109	\$12,700,000
Salary	\$1,197,840	\$1,769,237	\$1,444,850	\$1,008,006	\$1,099,134
Operations and Maintenance	\$102,514	\$130,189	\$396,719	\$248,000	\$133,000
<b>Total</b>	<b>\$14,881,397</b>	<b>\$14,599,426</b>	<b>\$14,851,489</b>	<b>\$14,312,115</b>	<b>\$13,932,134</b>

Source: Department of Justice Financial Data

## 3 EVALUATION METHODOLOGY

The evaluation was guided by an evaluation matrix developed as part of the planning phase, which outlined evaluation questions and corresponding indicators and data sources.

### 3.1 Lines of Evidence

The evaluation included multiple lines of evidence and employed the following data collection methods.

- Document and data review. The purpose of the document review was to systematically review relevant secondary data that provided descriptive information on the activities of the Program and evidence responding to most evaluation questions. Types of documents reviewed included:
  - IJP Program data (2017-18 to 2019-20)
  - Success stories reported by IJP programs in annual reports
  - Capacity building and training materials
  - Partnership Initiatives (e.g., RCMP training, mapping of community programs, development of information pamphlet and resources, online database development)

- State of the Criminal Justice System Report and online Dashboard
- FPT WG documents.
- Literature review: The literature reviewed included research reports and statistics related to Indigenous people, law and policy.
- Surveys of community-based justice programs (2019) and workers (2021) and CJS representatives (2021): Three surveys were completed and reviewed as part of this evaluation.
  1. IJD administered the survey of community-based justice programs in 2019 to better understand the type of programs and services provided.
  2. A separate survey of the front-line service providers, the Community Justice Workers (CJWs) was conducted by the Evaluation Branch in 2021 to collect data relevant to the evaluation questions. Given that there are about 200 CJWs employed (vacancies may impact number of CJWs employed at any given time), the response rate among CJWs was about 50%.
  3. A survey of CJS representatives was also completed by the Evaluation Branch. Of 54 CJS representatives, half were RCMP officers and half were provincial prosecutors (a few defence counsel and a judge also participated). Respondents were from 10 jurisdictions: British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Yukon, Northwest Territories, and Nunavut.

**Table 2: Survey Completion**

Survey	Number of Respondents
Community-based justice programs (2019)	110
CJW (2021)	94
CJS Reps	54

- Interviews with Key Informants: Telephone interviews were conducted with 39 individuals to collect perceptions of federal representatives from Justice Canada and Indigenous Services Canada (n=14), provincial/territorial representatives (n=22) and IJP community-based justice program representatives (n=3).
- Case Studies: Three case studies were conducted with 12 communities focusing on prevention, civil/family mediation and family violence programming, and experiences of victims and survivors of crime.

The community programs selected for the case studies demonstrate a wide range of programming offered, serving both offenders and victims. Since they are not intended to be representative of the many diverse and unique programs supported by IJP, efforts were made to select programs with particular expertise in the area of study so that best practices and lessons learned could be identified and shared. The communities were selected to ensure regional representation as well as a mix of urban, rural and remote communities.

Each case study included a document and data review, interviews, and where possible, site

visits. The focus of each case study is described below followed by a summary of the participants in Table 3:

- Four communities participated in the case study exploring crime prevention activities and measures. The focus was to explore the extent and type of prevention activities undertaken by the community program, characteristics of clients participating in the prevention measures (e.g., youth, former offenders, high-risk individuals, etc.), other partners and stakeholders involved, barriers to and impact and effectiveness of these activities. The four communities that agreed to participate were from Northwest Territories, Saskatchewan, Quebec, and British Columbia. A total of 29 interviews were completed mostly with program partners and stakeholders.
- Three communities participated in the case study designed to provide observation of selected community-based initiatives related to civil/family mediation and family violence. The participating communities included two from Alberta, and one from Saskatchewan. The methodology consisted of interviews with 38 individuals across three communities (all but three interviews were conducted in-person during community visits), and observation of two client circle groups.
- Five communities participated in the case study examining the experiences of victims and survivors of crime who had participated in restorative justice processes delivered by IJP community-based justice programs. The five communities that participated included: two from Quebec; and one each from Nunavut, Saskatchewan and British Columbia. The site-visits resulted in a total of 17 interviews with survivors and victims of crime, 7 interviews with self-referred participants in non-criminal matters, 19 interviews with program managers and staff, and 27 community members (Elders and community participants in the restorative justice process).

**Table 3: Number of Participants in Case Studies**

Case studies	CJWs	Community Members (Elders) and Stakeholders	CJS Reps.	Program Participants (offenders and victims)	Total
Prevention (4 communities)	4	22	3	0	29
Civil/family mediation and family violence (3 communities)	9	13	7	9	38
Victims and survivors of crime (5 communities)	19	27	0	24	70
<b>Total</b>	<b>32</b>	<b>62</b>	<b>10</b>	<b>33</b>	<b>137</b>

### 3.2 Evaluation Challenges and Limitations

The evaluation encountered a few methodological limitations or challenges, including:

- Reliability of the program data. There are inconsistencies in how data is reported across community programs resulting from different data collection systems (some jurisdictions

have their own systems) and capacity for reporting in a timely manner. Program data was not available for all provinces and territories across the three years reviewed.

- Limited representativeness of CJS respondents. Though the CJS respondents were from 10 jurisdictions, half of the RCMP officers participating in the survey were from Nunavut, and most of the provincial prosecutors were from three provinces (Ontario, Manitoba and Saskatchewan).
- Respondent bias. Most of the findings are based on opinions (surveys, interviews) which introduce a potential for respondent bias from the sampling approach (selective, non-random), the voluntary nature of participation, and self-reporting (reporting on own activities).
- Evidence presented here does not apply to all programs. As noted in section 2.1, the community-based justice programs are based on their traditions and culture, and so they vary in their design, structure, operations and capacities. Some funded community organizations are well established, long-operating, and well known in the community while others may be more recently established or have limited resources and a lower profile in the community. Thus, any findings presented in this evaluation relating to community-based justice programs will apply to some but not all communities. Case studies were not intended to be representative of a wide a range of programming, therefore, any data from the case study interviews should be interpreted with caution.
- Most of the data was collected during the COVID-19 pandemic. The current circumstances related to community programs' ability to deliver services, such as limited in-person support, lack of travel, and limited engagement with community, may have influenced their perceptions of the Program. The pandemic and remote working conditions impacted the evaluation data collection resulting in delays and limited access to community organizations during the prevention case studies (e.g., all case study interviews were conducted over the phone. It was hard to reach some community organization representatives because they were not in the office).
- Inability to complete the recidivism study and comparative costing analysis within the evaluation timeframe. The planned recidivism study was delayed due to the COVID-19 pandemic restrictions that prevented participating community-based justice program staff from accessing their offices to complete the data entry. Similarly, the RCMP division that completes the criminal records checks experienced pandemic restrictions resulting in further delays to the project. As the comparative costing analysis incorporates the findings of the recidivism study, it also has been delayed. The work on both studies will be completed at a later date.

The evaluation methodology involved multiple lines of evidence, primary and secondary sources of quantitative data (program data and surveys), and qualitative data (interviews of key informants and case studies). Limitations were mitigated by triangulating the data from these lines of evidence to arrive at the evaluation findings presented in this report.

## 4 FINDINGS

### 4.1 Relevance

#### 4.1.1 Continued Need for the Program

The need for the Program is reflected in ongoing and increasing Indigenous overrepresentation in the CJS, and higher rates of crime in Indigenous communities.

Indigenous people continue to be overrepresented in the CJS both as victims and offenders. In 2018-19, Indigenous people accounted for about 5% of the population in Canada<sup>1</sup> but represented about 30% of total adult custody admissions to provincial and territorial correctional services<sup>2</sup> and 29% of total admissions in federal corrections.<sup>3</sup>

Figure 1 shows that in terms of relative numbers and as a percentage of total admissions, there has been a significant increase in admissions of Indigenous people to provincial and territorial correctional services. Indigenous youth are significantly more over-represented (42% in 2018-19) compared to adults (29%). The number of Indigenous youth admitted to provincial and territorial correctional services has decreased by about 2,000 admissions (from 8,260 in 2016-17 to 6,258 in 2018-19), yet the percentage admissions of Indigenous youth remained the same (43%), which is due to a larger drop in youth admissions among non-Indigenous youth.

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<sup>1</sup> Statistics Canada. (2017). Aboriginal Peoples in Canada: Key results from the 2016 Census.

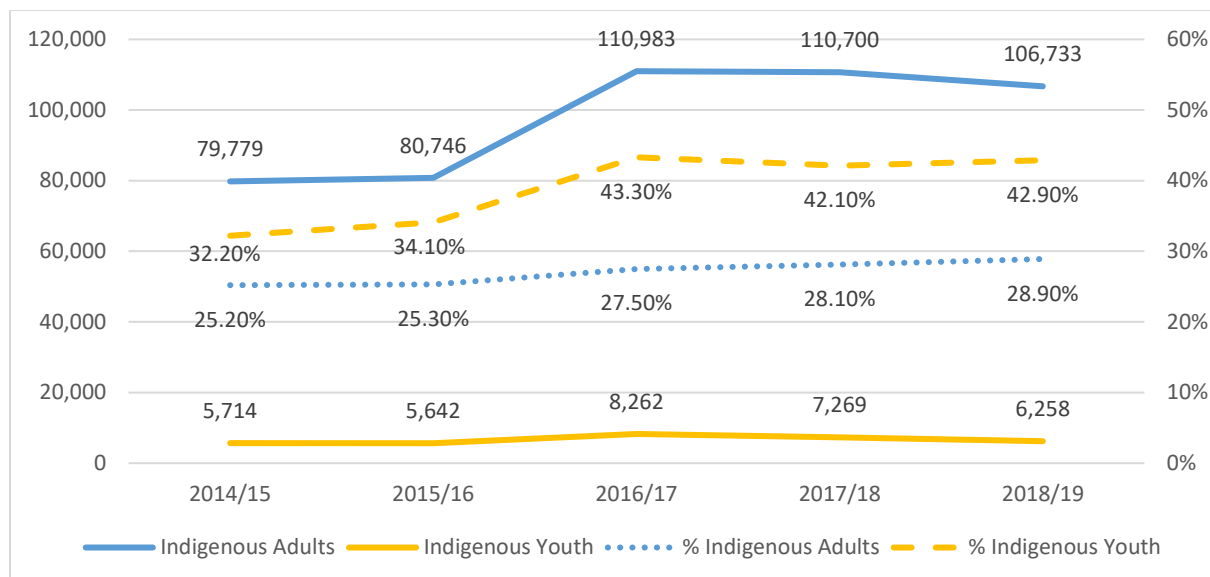
<https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm?indid=14430-1&indgeo=0>

<sup>2</sup> Statistics Canada. (2020). Adult Custody Admissions to Correctional Services by Aboriginal Identity. Table 35-10-0016-01. <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=3510001601>

<sup>3</sup> Department of Justice Canada. (2020). State of the Criminal Justice System Dashboard.

<https://www.justice.gc.ca/socjs-esjp/en/#wb-bd-cont>

**Figure 1: Relative Number and Percentages of Admissions of Indigenous Adults and Youth to Provincial and Territorial Correction Services**



Source: Justice Canada Statistical Dashboard (2021)

Indigenous women also tend to be significantly more overrepresented in the CJS. Indigenous women made up a greater proportion of custody admissions than their male counterparts, accounting for 42% of the women admitted into custody.<sup>4</sup> In 2016-17, Indigenous female youth accounted for 60% of all female youth admitted to provincial and territorial corrections systems.<sup>5</sup> Similarly, over the last ten years, the number of federally sentenced Indigenous women increased by 60%, growing from 168 in March 2009 to 270 in March 2018.<sup>6</sup>

Indigenous people are also more likely to be the victims of violence. The rate of self-reported violent victimization among Indigenous Canadians is 54.95 compared to non-Indigenous Canadians' rate of 36.55 per 1,000 population.<sup>7</sup> In 2018, 63% of Indigenous women reported to have had experienced physical and sexual assault since the age of 15 as compared to 45% of non-Indigenous women.<sup>8</sup>

The urban population of Indigenous people has been increasing for decades in Canada. About 60% of Indigenous people live in urban settings.<sup>9</sup> However, little is known about the crime rates and

<sup>4</sup> Department of Justice Canada. (2019). Just Facts -Indigenous overrepresentation in the criminal justice system. <https://canada.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/may01.html>

<sup>5</sup> Statistics Canada. (2018). Adult and Youth Correctional Statistics in Canada, 2016/2017. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm>

<sup>6</sup> Department of Justice Canada. (2019). Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses. <https://www.justice.gc.ca/eng/rp-pr/jr/oip-cjs/oip-cjs-en.pdf>

<sup>7</sup> Statistic Canada. (2020). Self-reported Violent Victimization Among Indigenous People. Table 35-10-0168-01. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510016801>

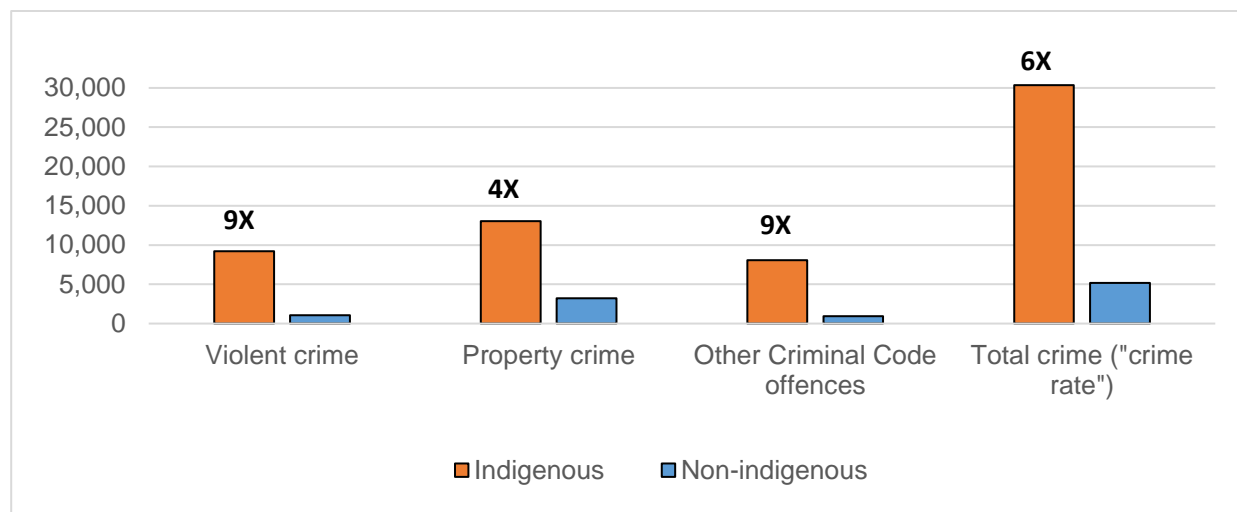
<sup>8</sup> Statistics Canada. (2021). Intimate Partner Violence: Experiences of First Nations, Métis and Inuit Women in Canada, 2018. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00007-eng.htm>

<sup>9</sup> Statistics Canada. (2017). Aboriginal Peoples in Canada: Key results from the 2016 Census. <https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm?indid=14430-1&indgeo=0>



victimization among the urban Indigenous population, where they are a minority group. Statistics Canada reports on the crime rates in communities where the majority of the population is Indigenous (on-reserves) compared to the rates of non-Indigenous communities. As illustrated in Figure 2, the rate of police-reported total crimes is six times higher in Indigenous communities than in non-Indigenous communities and are significantly higher across different types of crimes.<sup>10</sup> Similarly, rates (per 100,000 persons) of accused homicides reported by the police are 9.93 for Indigenous populations and 0.91 for non-Indigenous populations.<sup>11</sup>

**Figure 2: Reported Rates of Crime (per 100,000) in Majority Indigenous and non-Indigenous Populations (2018)**



Source: Statistics Canada (2019)

The trends related to the types of crimes and crime rates in Indigenous communities are not necessarily well understood. In some communities, family violence incidents are significantly underreported.<sup>12</sup> Research conducted by Justice Canada<sup>13</sup> reports that crime rates in Indigenous communities are the result of the communities being both over-policed and under-policed. For example, data reported by police services in 2018 shows that Indigenous people are about three times more likely to be charged with mischief (30% of total crime in Indigenous communities vs. 11% in non-Indigenous) and disturbing the peace (12% vs. 4%)<sup>14</sup>. Conversely, policing practices, systemic discrimination, and limited partnerships and trust between policing services and communities remain an issue in many Indigenous communities. These and other systemic issues that are impacting Indigenous communities and their relationship with the CJS are further discussed in the following sections.

<sup>10</sup> Statistics Canada. (2020). Crime Reported by Police Serving Areas where the Majority of the Population is Indigenous, 2018. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00013-eng.htm>

<sup>11</sup> Statistics Canada. (2020). Crime reported by police serving areas where the majority of the population is Indigenous, 2018. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00013-eng.htm>

<sup>12</sup> Statistics Canada. (2021). Family violence in Canada: A statistical profile, 2019. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00001-eng.htm>

<sup>13</sup> Department of Justice Canada. (2019). Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses. <https://www.justice.gc.ca/eng/rp-pr/jr/oip-cjs/oip-cjs-en.pdf>

<sup>14</sup> Statistics Canada. (2020). Crime Reported by Police Serving Areas where the Majority of the Population is Indigenous, 2018. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00013-eng.htm>

#### 4.1.2 Factors Contributing to Indigenous Overrepresentation in the Criminal Justice System

Factors contributing to overrepresentation in CJS are well established and are largely related to intergenerational trauma caused by colonial practices such as residential schools. There is increasing recognition of systemic racism and discrimination in the Canadian justice system.

Factors contributing to Indigenous overrepresentation in the CJS are well established. Colonial policies and practices of systemic oppression of Indigenous culture, language and traditions, residential schools and the '60s scoop' resulted in intergenerational trauma and marginalization of Indigenous communities that continue to have major social, economic and health consequences today.<sup>15</sup> According to most interviewees, these historical practices as well as current systemic discrimination have had significant impacts on the health and well-being of both victims and offenders, which are the root causes of the ongoing Indigenous overrepresentation in the CJS. For example, Indigenous offenders are more likely to suffer from:

- Fetal Alcohol Spectrum Disorder (FASD). Both offenders and victims can suffer from FASD, which is recognized as a lifelong disability involving cognitive and physical disabilities and concurrent medical issues. The estimated prevalence is understood to be high, but the true rates of FASD among those involved with the CJS are not clear due to the lack of standardized screening methods used in the CJS.<sup>16</sup> Feedback from key informants and CJWs aligned with the findings in the literature<sup>17</sup> indicating that individuals with FASD are more likely to come in contact with the CJS at a young age, more likely to plead guilty and experience anxiety, have difficulties understanding the process, and following directions, etc. In the 2019 survey, community-based justice programs estimated that an average of one-third of the offenders they work with suffer from cognitive disabilities that may include FASD.
- Significant mental health issues. Fifty-six percent of CJWs estimated that more than half of the offenders have mental health needs, while about 28% reported that more than half of the victims have mental health needs. Similarly, 71% of the CJWs reported that limited access to mental health and health services contributes to crime and victimization in their communities. Much like FASD, emotional and psychological trauma, depression, suicide ideation, lack of supports, and the associated stigma, lead to crises that often result in ongoing contact with the CJS.
- High rates of alcohol and substance abuse. Mental health issues are highly correlated with alcohol and drug addictions. According to case study interviews, many Indigenous people who come in contact with the CJS, are dealing with their trauma by self-medicating with alcohol and drugs. This was the number one factor, identified by 90% of surveyed CJWs, contributing to high rates of crime in their communities. CJWs also estimated that more than 75% of the offenders and between 25-50% of the victims they worked with have an addiction

<sup>15</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019) Reclaiming Power and Place: Final Report. <https://www.mmiwg-ffada.ca/final-report/>

<sup>16</sup> Truth and Reconciliation Commission of Canada. (2015). Calls to Action. (CTA #34).

[https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls\\_to\\_Action\\_English2.pdf](https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf)

<sup>17</sup> Department of Justice Canada. (2020). Exploring the Use of Restorative Justice Practices with Adult Offenders with Fetal Alcohol Spectrum Disorder. <https://canada.justice.gc.ca/eng/rp-pr/jr/efasd-etcafi/index.html>

and/or substance abuse problem. Increased use of alcohol and drugs were identified by over a quarter of CJWs as an emerging issue in their communities. Some case study interviewees noted that young people are particularly vulnerable to drugs that are more potent and more easily accessible.

- Socio-economic marginalization. Most indicators, including average annual income, employment rates, quality health care, education and housing, and food security, are lower among Indigenous people.<sup>18</sup> Over 70% of CJWs also noted inadequate housing, poverty, lack of employment and limited access to services as the major factors contributing to crime and victimization in their communities.

There has been an increased recognition of systemic issues and discrimination in the Canadian justice system. In addition to issues discussed above, both key informants and CJWs interviewed talked about systemic issues, racism, and discrimination in the CJS. More than half of key informants reported that systemic discrimination continues to impact Indigenous communities. Some of the major systemic issues noted are as follows:

- Policies that disproportionately impact Indigenous communities such as Mandatory Minimum Penalty (MMP). Since its expansion in 2008, the proportion of Indigenous offenders admitted with an offence punishable by MMP has almost doubled, from 14% in 2007-08 to 26% in 2016-17.<sup>19</sup>
- Policing practices. As mentioned earlier, policing in Indigenous communities is a complex and community-specific issue (some communities have First Nations police while others are policed by the RCMP or other provincial police force). There are numerous factors that impact the relationship between the communities and police which are further discussed under the partnership section 4.2.3.
- Cultural differences between the Eurocentric justice system (punitive) and Indigenous legal traditions. The CJS is based on Western values of justice. These values differ in the perceptions of wrong-doing or harm and the approaches to justice between Indigenous and non-Indigenous cultures. Though there are many different Indigenous cultures in Canada, the overall worldviews on justice and addressing harm have many similarities. The cultural value placed on taking responsibility increases the likelihood of Indigenous offenders pleading guilty, although they may not be legally guilty, which is then reflected in the level of crime and incarceration.<sup>20</sup>
- Systemic barriers. Systemic issues such as unreasonable bail conditions, procedural delays, barriers to accessing legal aid, cultural and linguistic differences also contribute to higher rates of Indigenous people pleading guilty.

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<sup>18</sup> Department of Justice Canada. (2019). Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses. <https://www.justice.gc.ca/eng/rp-pr/jr/ojp-cjs/ojp-cjs-en.pdf>

<sup>19</sup> Department of Justice Canada. (2021). Bill C-22: Mandatory Minimum Penalties to be Repealed. <https://www.canada.ca/en/department-justice/news/2021/02/bill-c-22-mandatory-minimum-penalties-to-be-repealed.html>

<sup>20</sup> Department of Justice Canada. (2017). Guilty Pleas Among Indigenous People in Canada. <https://www.justice.gc.ca/eng/rp-pr/jr/gp-pc/gp-pc.pdf>

- Administration of Justice Offences (AOJOs). Breaching conditions of release or failure to appear in court are some of the most common Criminal Code offences, accounting for 22% of all adult criminal court cases in 2018-19.<sup>21</sup> According to a recent study by Justice Canada, AOJOs have been identified as contributing to delays and acting as a “revolving door” for many involved in the CJS, especially Indigenous individuals and vulnerable and marginalized populations.<sup>22</sup> Studies have shown that the imposition of unrealistic conditions by the courts was the main factor contributing to a high prevalence of AOJOs among Indigenous individuals.<sup>23</sup> For example, issuing an order to abstain from alcohol to an individual dealing with an alcohol dependence, especially when the individual is not referred to treatment, is imposing an unrealistic condition. Similarly, the obligation to appear frequently at a probation office or court for people who live in remote areas was considered unrealistic. The majority of the CJWs (79%) reported that the clients they work with have committed AOJOs. More than half of the CJWs estimated that breach of conditions of probation led to new charges.
- High rates of Indigenous children involved with the welfare system has been termed by many academics who study it as a “pipeline to prison”.<sup>24</sup> In Canada, 52.2% of children in foster care are Indigenous; however, they account for only 7.7% of the child population.<sup>25</sup> A few community members also highlighted the link between child welfare involvement and youth involvement in drugs, gangs and criminal behavior.

### 4.1.3 Program Responsiveness to Identified Needs

The Program has been responsive to the needs of communities and is critical to increasing access to Indigenous-led justice programs. Given the systemic discrimination and racism combined with limited resources, the Program has been unable to keep pace with the magnitude and complexity of the needs.

The Program is perceived as responsive to the needs of communities to the extent that it provides culturally appropriate alternatives to the CJS, and reduces the number of criminal charges, particularly for first time offenders. The Program is critical for increasing access to Indigenous-led justice practices (e.g., peacemaking circles), and reducing recidivism rates. About a quarter of CJWs reported that the incarceration rates among their community members have decreased. Many attributed programming responsiveness to: the flexibility to address unique and emerging community needs (82%); the involvement of Elders and spiritual leaders in programming (77%); the involvement of victims in programming (75%); and the relationships with representatives of the CJS (70%).

<sup>21</sup> Statistics Canada. (2021). Adult criminal courts, number of cases and charges by type of decision. <https://www150.statcan.gc.ca/t1/tb1/en/tv.action?pid=3510002701>

<sup>22</sup> Department of Justice Canada. (2021). 2020 State of the Criminal Justice System Report: Focus on Women. [https://www.justice.gc.ca/eng/cj-jp/state-etat/2021rpt-rap2021/pdf/SOCJS\\_2020\\_en.pdf](https://www.justice.gc.ca/eng/cj-jp/state-etat/2021rpt-rap2021/pdf/SOCJS_2020_en.pdf)

<sup>23</sup> Department of Justice Canada. (2013). Administration of Justice Offences Among Aboriginal People: Courtworkers' Perspective

<sup>24</sup> Manitoba Centre for Health Policy. (2020). The Overlap Between the Child Welfare and Youth Criminal Justice Systems: Documenting “Cross-Over Kids” in Manitoba. [http://mchp-appserv.cpe.umanitoba.ca/reference/MCHP\\_JustCare\\_Report\\_web.pdf](http://mchp-appserv.cpe.umanitoba.ca/reference/MCHP_JustCare_Report_web.pdf)

<sup>25</sup> Indigenous Services Canada. (2020). Reducing the number of Indigenous children in care. <https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851>

However, the capacity of community programs to respond to the needs in their communities varies greatly. Over half of the key informants noted that the Program is underfunded and communities are under-resourced, which limits the availability of the programming (not all communities have access), and the capacity to deliver a range of needed justice related programming (limited staffing, low salaries, high turn-over, limited focus on prevention). Forty percent of CJWs identified the limited availability of other services in the community as a barrier to meeting the needs of clients. The data shows that there are 211 funded programs serving over 650 communities, resulting in some communities having limited or no access to a community-based justice program. This is particularly challenging for the Northern regions where one CJW may cover multiple communities within large geographic areas and where cost of travel is high. The Program's limitation with respect to its reach is illustrated by the potential need compared to annual participation. For example, the Program received an average of 9,000 referrals in a year, as reported by the funded communities. Surveyed Crown Attorneys/Prosecutors estimated that an average of 18% of adult cases (up to 60% of all cases), and 35% of youth cases (up to 100% of all cases) that come before the court could have been diverted to a community-based justice program.

Some interviewees, including key informants and case study participants, noted that despite the availability and effectiveness of the community-based justice programs, there has been little systemic change to address underlying causes of criminality (poverty, housing, education, health), and the decision to divert and when (pre-charge or post-charge) remains largely within the CJS. This is further complicated by the lack of awareness or knowledge of the community-based justice programs, bias and discrimination, and, in some cases, negative perceptions of the effectiveness of the community-based justice programs among CJS representatives, and even some community members. In two communities, it was suggested that some community members are not aware of the principles and values of restorative justice, and some believe that it is a 'get-out-of-jail free card' for offenders. This is also why, as some CJWs reported, in an effort to reinforce the credibility of their programs, they carefully consider when to accept repeat offenders into the program and closely monitor their commitment and progress.

#### **4.1.4 Program Alignment with Federal and Justice Canada Priorities**

The IJP is well-aligned with the priorities of the federal government and Justice Canada.

In the 2020 Speech from the Throne<sup>26</sup>, the federal government highlighted the need to address Indigenous overrepresentations in the CJS, including taking actions to address systemic inequities. This was also reflected in the Fall Economic Statement of 2020 in which the federal government made a commitment to support increased use of diversion and to allow sentencing judges to consider the disadvantages and systemic racism that contributed to racialized Canadians' interaction with the CJS.<sup>27</sup> Furthermore, in Budget 2021, there was a commitment to improve access

<sup>26</sup> Government of Canada. (2020). A Stronger and More Resilient Canada: Speech from the Throne to open the Second Session of the Forty-Third Parliament of Canada.

<https://www.canada.ca/en/privy-council/campaigns/speech-throne/2020/stronger-resilient-canada.html>

<sup>27</sup> Government of Canada. (2020). Supporting Canadians and Fighting Covid-19. Fall Economic Statement 2020. <https://www.budget.gc.ca/fes-eea/2020/report-rapport/FES-EEA-eng.pdf>

to justice for Indigenous people and support the development of an Indigenous justice strategy to address systemic discrimination and the overrepresentation of Indigenous people.<sup>28</sup>

In his 2021 Mandate letter to the Minister of Justice and Attorney General of Canada<sup>29</sup>, the Prime Minister reinforced the priority of building relationships with Indigenous peoples: “*There remains no more important relationship to me and to Canada than the one with Indigenous Peoples.*” The letter calls for the Minister to introduce legislation and make investments that take action to address systemic inequities in the CJS, including to promote enhanced use of pre- and post-charge diversion; enable courts to impose sentences appropriate to the circumstances of individual; and work, in collaboration with provincial and territorial partners, to develop an Indigenous Justice Strategy. Justice Canada has committed to addressing the recommendations of the Truth and Reconciliation Commission (TRC) calls to action on reducing overrepresentations of Indigenous people in the CJS, addressing issues of administration of justice and renew legal relationships and equity for Indigenous people. In addition, the federal government adopted legislation to implement the United Nations Declaration on the Rights of Indigenous People, which is another tool to address the legacies of colonialism, violence, systemic racism and discrimination.<sup>30</sup>

## 4.2 Program Effectiveness

### 4.2.1 Increasing Indigenous Involvement in the Administration of Justice

The IJP has increased involvement of Indigenous people in designing and delivering a wide range of justice related services reflective of their cultures and traditions.

The IJP supports communities in providing a full spectrum of justice related services and activities. The most common activities are related to criminal diversion (reported by 95% of surveyed community-based justice programs). Diversion activities can take many forms, ranging from healing and peacemaking circles to mediation and culturally specific processes. Each community developed its diversion program based on their own unique cultural and legal traditions; in other words, each program is unique and has grown organically (bottom-up) in response to the community needs and traditions. Examples of differences in the diversion activities across programs identified in the case studies were: length of interventions, level of engagement with the clients and follow-ups, involvement of victims, involvement of Elders, integration of specific cultural components, and collaboration with other services.

In addition to diversion efforts, community-based justice programs are involved in:

- Crime prevention activities (reported by 89% of community-based justice programs). Prevention activities range from more common community educational and awareness

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<sup>28</sup> Government of Canada. (2021). Budget 2021: A Recovery Plan for Jobs, Growth, and Resilience. <https://www.budget.gc.ca/2021/report-rapport/toc-tdm-en.html>

<sup>29</sup> Office of the Prime Minister. (2021). Minister of Justice and Attorney General of Canada Supplementary Mandate Letter. <https://pm.gc.ca/en/mandate-letters/2021/01/15/minister-justice-and-attorney-general-canada-supplementary-mandate>

<sup>30</sup> Department of Justice Canada. (2021). News Release: Legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples becomes law. <https://www.canada.ca/en/department-justice/news/2021/06/legislation-to-implement-the-united-nations-declaration-on-the-rights-of-indigenous-peoples-becomes-law.html>



raising initiatives undertaken in collaboration with other community organizations to some unique measures initiated or developed by programs (e.g., targeting young parents or working with seniors to help them recognize abusive behaviors). The prevention activities reviewed are most likely to target youth and least likely to target men (only one community reported prevention activities that targeted men specifically). About half of surveyed community-based justice programs reported spending between 10% and 50% of their time on prevention activities.

- Family violence/abuse and domestic/intimate partner violence (reported by 73% of community-based justice programs). The activities related to family violence range from prevention (e.g. 'Walk a Mile in her Shoes' intended to raise awareness of the causes, serious effects, and remediation of men's sexualized violence) to programming such as 'The Way', a 52-week intensive program that focuses on healing individuals and their partners, and rebuilding their relationships with themselves, their families, and their communities.
- Civil and family mediation (reported by 55% of community-based justice programs). Civil and family mediation services are designed to assist community members to resolve disputes through a combination of mediation and traditional knowledge and ceremony. Referrals for these services usually stem from community members or individuals. Most community-based justice programs (65%) reported spending less than 10% of their time on family mediation.
- Reintegration cases or matters (reported by 60% of surveyed community-based justice programs). The community-based justice programs are typically involved in the development of a care plan, providing cultural and traditional support, linking individuals to wrap-around services such as counselling, addiction services, and referrals to other community services. About two-thirds of community-based justice programs (69%) reported spending less than 10% of their time on reintegration activities.

CJWs work with clients with diverse needs including individuals on bail and probation, victims (about a third of community-based justice programs reported their organizations have specialized victim services), youth, and individuals who are referred by community members, or self-referred seeking to repair relationships (in 2019-20, 23% of referrals were from the community and self-referrals, an increase from 15% reported in the previous year<sup>31</sup>).

The community-based justice programs are driven, created and run by communities. Of the approximately two-thirds (68%) of CJWs who reported having an active justice committee in their communities, 79% said that Elders are involved and 60% said that community service representatives are involved. Elders play a key role in the Indigenous justice process. The case studies illustrated the importance of Elders' participation in the healing circle or mediation process of engaging both victims and offenders. The victims that were interviewed indicated that their voices were heard and that offenders were held accountable in a positive, forward-looking manner, and that they were engaged with patience and respect. Community members participating in the justice processes often provide a community perspective and bring knowledge about community norms as well as available community services. Communities provided numerous examples of Elders working

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<sup>31</sup> These results should be interpreted with caution as there was a change to the reporting template in 2019-20 with respect to community and self referrals.

with at-risk youth, engaging them in traditional activities, teaching them how to make traditional foods and crafts, and reminding community members of their resilience and connection to their ancestral land.

Some key informants reported that Indigenous administration of justice includes more than community involvement in designing and delivering community-based justice programming. It is also about building community capacity to revive traditional Indigenous justice systems and structures so they can take the ownership of the administration of justice by entering into an agreement with the federal and provincial governments. In this context, administration of justice refers to Indigenous governments making and applying their own laws as a separate but parallel system to CJS, which is beyond the current scope of the IJP.

#### **4.2.2 Increasing Community Capacity to Deliver the Program**

The IJP has created a number of opportunities for communities to come together and share best practices and improve their knowledge and skills to better serve their communities. There is a significant need and interest in further training and capacity building.

The Capacity-Building Fund is intended to help funded communities build their capacity, grow their networks, share best practices, and increase relevant knowledge and skills of CJWs. Between 2016 and 2019, over 30 capacity building events were organized across Canada.

The majority (81%) of the capacity building events were multi-day regional gatherings focusing on a wide range of issues including, but not limited to, addiction and culture, mental health and conflict with the law, trauma-informed services, supporting victims of crime, building effective relationships, and working with youth.

The regional gatherings brought together various community and justice stakeholders, and partners. Over 1,000 attendees participated in the regional gatherings. Nearly half of these events reported having representatives of the CJS participate (RCMP, Crown, Corrections), about a third had other community organizations and partners involved including experts/knowledge keepers and Elders, and a quarter reported involving community leaders. The gatherings provided opportunities for CJWs to build relationships with CJS representatives. For example, in Saskatchewan, one such gathering in 2018-19 brought together CJWs, Elders, RCMP sergeants and superintendents, and other justice stakeholders to discuss opportunities to increase the utilization of Indigenous justice processes. The meeting resulted in a Memorandum of Understanding signed between the RCMP and the Tribal Council and community-based justice program.

Most CJWs reported participating in training (77%) and of those who provided feedback on training events and workshops, most found it useful or somewhat useful (75%). Participants felt more confident in their ability to understand and explain various topics and found topics relevant to their work. They appreciated having an opportunity to network and discuss issues facing their communities with other CJWs and stakeholders. It was suggested that more government representatives should attend, that holding more events on reserves would ensure greater attendance of Indigenous community stakeholders, having more Elders give talks or presentations, and ensuring that there is more dedicated time for people to network and share challenges and best practices with each other.



In addition to in-person gatherings and workshops, over 500 attendees participated in eight online webinars. The webinars were focused on the *Cannabis Act*, amendments to the *Youth Criminal Justice Act* (former Bill-75), working with youth on violence prevention and bullying, addressing addiction through culture, mental health and holistic healing, supporting victims in justice processes, statistical reporting, and community-based justice program responses to COVID-19. During the pandemic, the majority of the funds were used to provide technology and infrastructure (access to laptops, phones, internet services, etc.) to enable CJWs to work remotely. The goal was to ensure that services could remain available during the pandemic. CJWs expect to continue to use some of these adaptations to increase access to their programs post-pandemic.

About half of key informants reported that the Program has insufficient resources for capacity building (\$560,000 annually), particularly given the high cost of travel for regional gatherings.<sup>32</sup> Over 80% of community-based justice programs (n=101) expressed strong interest in training related to 25 different topics, ranging from best practices for supporting individuals with substance abuse issues and mental health issues, working with youth, dealing with compassion fatigue, vicarious/secondary trauma, and self-care to fostering relationships at the community level and with correctional services, etc. More training for technical skills were also identified such as use of new technologies, financial and statistical reporting, completing funding applications, etc.

There is a significant need and interest in further training and capacity building. Several factors affecting capacity building were identified, including: high staff turnover in some communities, requiring ongoing access to training; increased pressure on CJWs to provide additional services, requiring capacity building; and limited access to basic tools and technology (e.g., poor Wi-Fi connectivity, no access to video conferencing tools).

Although core competencies for the CJWs have not been developed largely due to diversity of programs and approaches that are designed and delivered by communities, it was noted that it would be useful to establish a set of core skills and knowledge areas to guide the development of training and support capacity building, particularly for new workers. While much of the learning and growth for those serving as CJWs comes directly from the community, it is also true that no matter where they are located, CJWs need to have a certain level of knowledge on topics such as the CJS, building partnerships and fostering relationships, working with victims, reporting and administration, etc.

### **4.2.3 Partnerships with Community Services and the Criminal Justice System**

There has been some increase in collaboration across different partners and stakeholders, which had a positive impact on nearly all aspects of community-based justice programs. The relationships with the RCMP and other police forces continue to be a challenge in many communities.

To be effective, CJWs must build strong relationships with a diverse set of partners and stakeholders including local governments, community members, community service organizations, community justice professionals (victim workers, Indigenous Courtworkers) and criminal justice representatives including judges, Crown prosecutors, police officers, defence counsel, etc. This can be very

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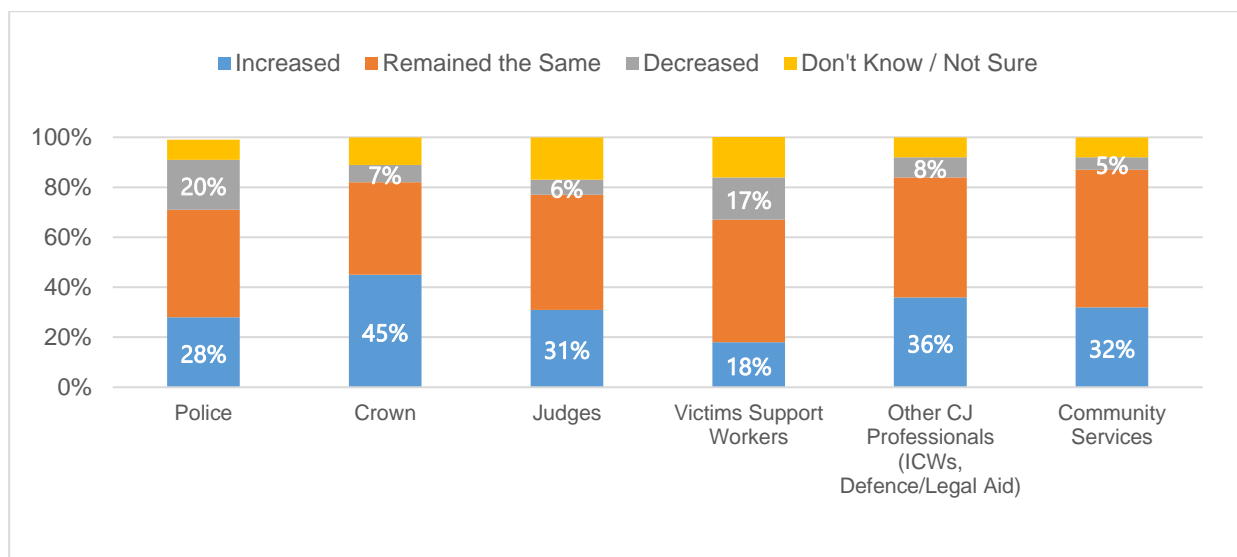
<sup>32</sup> During the pandemic, a number of training sessions were available virtually, but it is too early to determine how regional gatherings will be impacted in the longer-term.

challenging not only because of the diversity of stakeholders and the time and expertise required to build relationships, trust, and credibility, but also because of the rotations to new postings, particularly among CJS representatives. CJWs also identified racism, discrimination and a lack of understanding of Indigenous justice processes as barriers to building collaborative relationships with CJS representatives.

The community-based justice programs' standing and reputation among its partners and community stakeholders impacts all other aspects of the program delivery. The level of collaboration was perceived to have the strongest impact on the CJWs' ability to serve offenders, victims and the community members, and to engage in prevention activities. In developing strong relationships with CJS representatives, CJWs are able to change the negative perceptions about the Program's effectiveness. Overall, most surveyed CJS representatives noted that they were more likely to divert cases if they had a good understanding of the programs and their effectiveness. Prior awareness, knowledge and understanding of Indigenous justice processes correlated strongly with victims' willingness to participate in and support diversion programs. The case study interviews also illustrated that the community organizations and community members were more likely to refer individuals to the community-based justice programs if they had a good relationship with the CJWs and understood the impact of Indigenous justice processes on community members. This was particularly true for youth referrals and referrals for family mediation.

As illustrated in Figure 3, overall CJWs reported an increase in collaboration across a range of stakeholders over the last four years.

**Figure 3: Change in Collaboration Reported by Community Justice Workers**



Source: CJWs Survey (2021)

The level of collaboration varies across the communities and type of partners and stakeholders. The following subsections present the extent of collaboration and any notable changes within the evaluation period.

**Collaboration with Crown Attorneys and Prosecutors**

There has been a considerable increase in collaboration with Crown attorneys/prosecutors (45% of CJW reported an increase in collaboration). CJWs were most likely to report that they have a partnership with Crown Attorneys/Prosecutors. Program data also suggest that Crown prosecutors are the most common source of referrals for the community programs (about half of all referrals).

### **Collaboration with Police**

Although more than a quarter of surveyed CJWs reported an increase in collaboration with the police, the partnership with police is more challenging. This is largely due to rotations to new postings among the RCMP/provincial police force, limited engagement with the programs, discrimination, misperceptions about the effectiveness of the programs, and lack of formal guidance and protocols regarding referrals. For example, pre-charge referrals from the police remain low (ranging from many communities not receiving any pre-charge referrals up to 20% in others). Very few communities have formalized partnerships with police and/or established protocols for referrals and information sharing, which in turn influences the level of referrals (71% of surveyed CJS representatives reported that internal protocols and policies regarding referrals influence diversion decisions). The lack of knowledge and of strong relationships with CJWs lead to misperceptions among police officers about the effectiveness of the community-based justice programs, and their capacity to handle referrals. Most common reasons for not diverting cases to the programs reported by surveyed RCMP were lack of awareness and information about specific programs and concerns about the Program capacity.

### **Collaboration with Indigenous Courtworkers**

Over a third of CJWs reported an increase in the collaboration with Indigenous Courtworkers and 18% with victim support workers. Of the CJWs (67%) that reported having Indigenous Courtwork services in their area, 76% indicated that they work closely with the Courtworkers. Others noted that the relationship between the Indigenous Courtworkers, victims' services and CJWs is complicated due to limited access to these services. For example, about a fifth (18%) of CJWs reported that their area does not have Indigenous Courtwork services, and nearly half of those who reported having a Justice Committee in their communities do not have victim service support involved.

Some CJWs reported that they never or rarely work with victim services to help engage victims in the restorative justice process. About 10% of surveyed CJWs reported that major barriers to collaboration are the lack of Indigenous Courtwork services in their communities and limited touch points (the Indigenous Courtworker supports clients through the court process, while CJWs work with clients diverted from the CJS). Some CJWs and a few key informants noted a lack of clarity of roles (e.g. accompaniment of clients in the court), competition for workers (Indigenous Courtworkers are paid better) and limited local capacity, structure and support provided by the local government to encourage collaboration. A few key informants reported that in some communities, the relationship with the Indigenous Courtworker and victim support workers remains poor.

### **Collaboration with Community Services**

Prevention activities and initiatives are an important avenue for CJWs to collaborate and build closer relationships with community services including schools, youth programs, wellness programs, cultural programs, police, legal aid services, shelters, and others. All prevention activities reviewed as part of the case studies involved one or more community partners. In one community, events were organized on a cost-shared basis, in collaboration with other community services,

focusing on traditional practices including potlaches and stories about traditional ways of administering justice.

The focus of FPT and interdepartmental measures has been on engagement with the police. More FPT collaboration is needed to support efforts at the community level.

A number of initiatives have been undertaken to increase engagement with representatives of the CJS. For example, the IJD collaborated with the RCMP on the development of training for officers to increase pre-charge diversion to Indigenous community-based justice programs. The training is intended to provide information about the community-based justice programs and the principles of restorative and Indigenous justice, and its benefits for offenders, victims, communities, and the system. It focuses on busting common myths such as diversion is “soft on crime” and restorative justice is only for youth and first-time offenders and describes steps officers can take to refer someone to a community-based justice program.

Also with the RCMP, a pre-charge diversion pilot to improve collaboration and diversion from the RCMP was implemented in Nova Scotia. The RCMP established positive working relationships with a number of justice-related stakeholders and as a result, this contributed to achieving a target of a 2% increase in RCMP pre-charge referrals. The approach moving forward is for the IJD and RCMP to identify one or two IJP programs with high-capacity and low pre-charge referrals, and the nearest RCMP attachments in each province and territory with the goal of helping participating sites build better working relationships and ultimately increase pre-charge diversions. The RCMP and IJD will provide support to programs and detachments by facilitating introductions, providing training and tools (i.e. referral forms), working together through the development of protocols, and formalizing partnership agreements.

There is also work specifically aimed at increasing the visibility of the IJP community programs. A joint promotional pamphlet is being developed to provide basic information about the IJP and its benefits and effectiveness in reducing recidivism. It will include information about locating a program using an online mapping tool developed by the IJD and the RCMP. The online map locates the RCMP detachment and the IJP programs and the communities they serve. The officers can click on their location on the map and find more information about the Program including contact information of the Program staff and IJP regional staff.

In terms of initiatives in support of formalizing relationships with stakeholders, the IJP/ICW WG developed a Partnership Agreements toolkit. This resource can be used by the community-based justice programs to initiate the discussions with various stakeholders in the CJS and establish formal partnership agreements with the Crown, police, or another community-based agency.

Provincial and territorial partners developed their own initiatives to strengthen relationships and partnerships between the community-based justice programs and CJS representatives. For example, in one jurisdiction a letter of agreement template has been developed to help formalize the relationships. In another, a pilot project has been implemented to develop tools and best practices for increasing partnerships and pre-charge referrals.

Though a lot of effort has been initiated with police services to increase awareness of the programs, it is too early to see the resulting impacts at the community level, i.e. an increase in pre-charge referrals. The unanimous view, across all groups of respondents, is that more collaboration is

needed at all levels of government and its partners, as well as at the community level. A need for specific measures to increase pre-charge diversion and reduce AOJOs was noted, as well as the need to increase awareness of the community-based justice programs among police officers and other justice officials (e.g., Crown, defence counsel and duty counsel).

#### 4.2.4 Federal Indigenous Justice Policy Informed by Indigenous Community Justice Partners

Federal Indigenous justice policy is informed by Indigenous community partners via ongoing communication and collaboration with the IJD and between IJD and various Justice Canada programs.

Though other areas of Justice Canada are responsible for leading the Indigenous justice policy work, key informants noted that the IJD regularly contributes to the policy development process. IJD staff engage with Indigenous, as well as provincial and territorial partners, to enhance the Program and to provide input into other Justice Canada programs and policies related to Indigenous people. This engagement occurs through several established and ad-hoc working groups, as well as other direct contact in the day-to-day management of funding agreements. Program officials use the information and feedback gathered from partners in their program design and development activities, including requesting additional funding (budget asks), developing tools and resources for programs, and ongoing performance management. IJP staff also consult partners for additional information and views on specific issues and projects.

Both provincial/territorial and federal representatives are involved in a number of inter-governmental WGs, such as the IJP FPT WG, the Aboriginal Justice FPT WG, and the ICW FPT WG. The issues discussed at these working groups are wide-ranging and included the overrepresentation of Indigenous persons in the CJS (e.g., establishing more holistic and integrated ways to address overrepresentation); training needs (e.g., differences in training and knowledge in the provinces and territories) and preparation of training documents or materials; community safety and well-being; and funding-related issues.

For example, in the Fall Economic Statement (FES), \$49.3 million was announced to support the implementation of *Gladue Principles* in the mainstream justice system and Indigenous-led responses with the aim to reduce the overrepresentation of Indigenous peoples in the criminal justice and correctional systems.<sup>33</sup> The IJD co-led the development of a plan to support programs and services to implement *Gladue Principles* with the Indigenous Courtwork Program (ICW).

An example in which the IJD contributed to the development of Indigenous policy work led by another group, was its contribution to the development of the Federal Pathway to Address Missing and Murdered Indigenous Women and Girls (MMIWG)<sup>34</sup> in response to the National Inquiry into MMIWG. The IJD also contributed to a number of research studies and reports focusing on, for example, factors and issues contributing to the overrepresentation of Indigenous people in the CJS,

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<sup>33</sup> Government of Canada. (2020). Supporting Canadians and Fighting COVID-19: Fall Economic Statement 2020. <https://www.budget.gc.ca/fes-eea/2020/report-rapport/toc-tdm-en.html>

<sup>34</sup> Crown-Indigenous Relations and Northern Affairs Canada. (2021). Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People. <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2021/06/federal-pathway-to-address-missing-and-murdered-indigenous-women-girls-and-2slgbtqgia-people.html>

specific issues regarding FASD and restorative or Indigenous justice, Indigenous victimization, the impact of MMP on Indigenous and other minority groups, etc.

Key informants reported that the feedback on policies, strategies and programs are sought from the communities and Indigenous partners on a regular basis. Over half (56%) reported that the IJD supported the Department in obtaining feedback from community-programs through participating in regional gatherings, surveys, and engagement sessions. Most key informants reported that IJD Regional Coordinators are an important link between federal Indigenous justice policy makers and communities. Other Justice programs often reach out to the IJD policy team and Regional Coordinators to seek input and connect with the communities. The IJD policy team regularly collaborates with other policy areas within the Department and leads the development of the IJP input into specific policy initiatives. Section 4.2.3 describes the policy team's work with other federal departments, such as the RCMP.

Collaboration within Justice Canada is perceived to be effective (70% of key informants). However, some key informants (15%) noted that Indigenous representation is lacking in many WGs, and while much of the discussion at the WG level is useful for sharing knowledge and information, they often do not lead to tangible and impactful changes to the system or for the communities. Over two-thirds of key informants suggested that there is a broader need to work more closely across federal departments such as Public Safety Canada, Indigenous Services Canada, Crown-Indigenous Relations and Northern Affairs Canada, Employment and Social Development Canada, the Canada Mortgage and Housing Corporation, and Heritage Canada. Some ad-hoc collaboration and information sharing across federal government departments does exist; however, a more structured, whole-of-government approach is needed to address complex root causes of Indigenous overrepresentation in the CJS.

#### **4.2.5 Indigenous Cultural Values Are Reflected in the Administration of Criminal Justice**

Indigenous cultural values have been more widely accepted and integrated in the CJS. However, it requires ongoing efforts to build trust and raise awareness of the Indigenous community-based justice programs.

The intention of the IJP is to support community-based justice programs that offer alternatives to the CJS and reflect local cultural values. Efforts have been made to increase awareness of the Indigenous values and traditions that are incorporated in the community-based justice programs. The majority of the CJS representatives (83%) reported that they had participated in activities and/or received materials intended to raise their awareness of the community programs. Over two-thirds reported learning about specific community programs and community-based sentencing options. Others noted learning about victims' participation in the programs (56%), diversion or pre-charge referrals (47%), and the effectiveness of Indigenous community-based justice programs (31%).

The Program has contributed to better integration of Indigenous values of healing and reconciliation and justice practices in the CJS. As evidence of this, both CJS representatives and CJWs highlighted increased diversion to Indigenous-led justice programs (83% of CJS). Others noted engagement of Elders and knowledge keepers in restoring peace. The implementation of culturally relevant community-based justice programs helps to address the impact of cultural differences within the CJS. Indigenous approaches reflect restorative justice principles and healing. The



programs are delivered in a way that reflects the relationships between those involved, i.e., the offender and the victim and are an effective approach to problem-solving and addressing harm by offering support and opportunities for healing.

#### 4.2.6 Program Contribution to the Well-Being of Program Participants

The IJP has had a significant impact on the well-being of program participants and communities.

The IJP contributes to the well-being of program participants by linking them to professional and traditional services to help address the underlying causes that led to conflict.

There is a considerable impact on victims and the broader community because the process focuses on accountability while creating the space for understanding and forgiveness, thus improving the safety of the communities.

CJWs rated their programs as having the most significant impact on increasing the well-being of offenders, followed by community members and victims, which was confirmed by the evaluation.

- **Offenders.** The Indigenous justice approach to repairing and restoring relationships has a significant impact on offenders, by helping them understand the wrong that has been done and take accountability for their actions. According to program data, an estimated 90% of clients are likely to complete the program obligations.<sup>35</sup> For offenders diverted post-charge who complete their obligations (ranging from participating in traditional and cultural programming, counselling services, restitution to victims), charges are likely to be withdrawn or dismissed by the Crown or judge. This is very important, particularly for youth, because a criminal record creates significant barriers for employment opportunities, applying for credit, childcare, and living with the stigma and labels of having been involved in the CJS. The programs often help offenders reunite with their families through the community justice process and healing.
- **Victims.** The evidence from the case studies shows that the Program has an impact on the well-being of victims who choose to engage in the restorative justice process. The reasons victims choose to participate in the restorative justice process are varied and often complex. Although some victims wanted restitution to cover losses in cases of property damage, many said their main goal, along with their own freedom from the fear and anxiety resulting from the crime, was to see the offender guided toward a better path in their life. This was especially the case where the offender was a youth. The majority of victims participating in the case studies, reported a high level of satisfaction with the restorative justice process. Program data shows that victims participate in about 80% of cases referred to the community-based justice programs.<sup>36</sup>
- **Community members.** The various case studies demonstrated that restorative and Indigenous justice processes delivered by the community-based justice programs also impact the broader community by working to keep families together, heal the community,

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<sup>35</sup> Calculating client completions is difficult because of the ongoing cases and inconsistencies in how data is recorded. The completion rate for 2018 was calculated out of the intake cases for that calendar year.

<sup>36</sup> Victim participation was calculated using 2018-19 program statistics, and includes participation by the victim or a surrogate. It is important to note that not all cases involve a victim.

reduce victimization, and increase safety. For example, family mediation programs were shown to help couples gain the skills and confidence to overcome problems, which resulted in families staying together. The restorative or Indigenous justice process also provides the opportunity for meaningful engagement of Elders and mentors within the community. Elders talked about the satisfaction and pride they feel about being able to support their communities, despite the emotional toll it takes. Others talked about taking control and decision-making power to address issues and concerns in their communities, as well as connections with traditional knowledge, culture, and ceremony (meaningful engagement with Elders).

CJWs and Elders expressed a need to build the capacity for following up with program participants once they completed their obligations, to better understand the longer-term outcomes for those who participated in the program. This would not only increase pride in their work, but also allow them to demonstrate the impact and the effectiveness of their programs to community partners, community members, and CJS representatives.

In addition to having an impact on individual community members, community stakeholders noted the importance of prevention activities in bringing the community together and building healthier and safer communities. For example, when a community suffered from a high level of youth suicide and suicidal ideation, a youth coordinator worked with school counsellors and facilitators to organize healthy living activities and engage youth in meaningful and fun traditional activities. One program serving several communities implemented the PARTY (Preventing Alcohol and Risk Related Trauma in Youth) program, a one-day annual event involving many essential services in the community including the justice committee members, teachers, mental health services, the RCMP and fire department, Elders, etc. The goal of the program is to create a realistic experience of the dangers and consequences of driving while under the influence of drugs or alcohol. These are just a few examples of activities that also help bring the community together.

#### **4.2.7 Reduced Rates of Victimization, Crime and Incarceration**

There is evidence that the Program contributed to reduced victimization and recidivism rates.

Although most indicators used by Justice Canada show an increasing over-representation of Indigenous people in the CJS, the victimization and recidivism rates would likely be higher without the IJP. This is evidenced by the decrease in self-reported violent victimization rates from 112.54 in 2009 to 76.28 in 2014 (per 1,000 Indigenous population).<sup>37</sup>

The planned recidivism study could not be completed within the evaluation timeframe. However, there have been several studies with consistent results, demonstrating that individuals participating in IJP-funded programs are significantly less likely to re-offend than those referred but who did not participate (who were included as a comparison group). Table 4 shows that the differences between the likelihood of re-offending for program participants and non-participants (comparison group) are particularly pronounced in the years immediately following the Program, but even after eight years,

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<sup>37</sup> This indicator represents the rate of violent victimization incidents per 1,000 Indigenous population, aged 15 and older, who self-reported being victimized in the previous 12 months. It includes sexual and physical assault and robbery. Department of Justice Canada. (2020). State of the Criminal Justice System Dashboard. <https://www.justice.gc.ca/socjs-esjp/en#wb-bd-cont>



the cumulative effects remain. The 2016 results are presented here to demonstrate the impact of the program on recidivism<sup>38</sup>:

- After one year, 20.7% of comparison group members had been convicted of at least one new crime, compared with 11.9% of program participants.
- After four years, 38% of comparison group members had re-offended, compared with only 23% of program participants.
- After eight years, 47.3% of comparison group members had re-offended, compared with 29.6% of program participants.
- Participants were 43% less likely to re-offend than non-participants after one year and remained substantially (37%) less likely to re-offend after eight years.<sup>39</sup> This suggests that in a high proportion of cases, the community-based justice programs are having a lasting positive impact on the lives of those who participated. These findings are very close to those reported in the 2012 and 2006 evaluations.

**Table 4: Percentage of Offenders who have Re-Offended, by Time and IJP Program Participation**

Time After Program Completion	Cumulative Percentage of Referrals Who Have Re-Offended <sup>40</sup>					
	2016 <sup>41</sup>		2012		2006	
	Participants	Comparison Group	Participants	Comparison Group	Participants	Comparison Group
1 year	11.9	20.7	10.9	18.2	10.9	21.8
2 years	17.6	29.8	17.6	28.5	17.6	33.8
3 years	20.4	34.1	22.0	35.1	22.3	41.7
4 years	23	38	24.8	39.1	26.7	48.6
5 years	24.7	40.5	27.2	42.4	29.9	53.2
6 years	26.7	43.2	28.7	44.5	31.3	55.1
7 years	28.1	45.3	30.4	46.7	32.2	57.4
8 years	29.6	47.3	32.0	48.8	32.2	59.2

The Program impact with respect to reducing crime rates varies across communities due to factors discussed earlier, including program stability (staff turn-over), the level of collaboration with the CJS and community partners, awareness of the community programs and referrals from the CJS, program reputation, resources available in the communities, among others. Half of the CJWs reported that rates of crime and victimization in their communities remained the same or decreased

<sup>38</sup> For the purpose of this study, recidivism was defined as a criminal conviction following participation in a program.

<sup>39</sup> A Cox Proportional Hazard Model was used to calculate the likelihood of re-offending. The Cox Proportional Hazard Model is a parametric statistical test that can be used to predict the rate of recidivism at any given point in time following an individual's program release. It can control for the impact of several covariates at the same time, including the amount of time someone is at risk of re-offending. The test produces a hazard ratio for each covariate inputted into the model, which can be interpreted as a percentage increase or decrease in the rate of recidivism.

<sup>40</sup> Results from the 2000 Recidivism Study are not included in the table as the same information was not included in the report.

<sup>41</sup> Note: Recidivism rates are fitted from the Cox Proportional Hazards Model and are based on the average characteristics of the national sample. For 2016:

- number of prior convictions – drug (mean=0.22)
- number of prior convictions – violent (mean=1.18)
- number of prior convictions – non-violent (mean=2.1)

over the last three to five years, while about 66% reported that rates of incarceration have remained the same or decreased.

Most of the CJS representatives perceived the community programs to be somewhat effective in contributing to the reduction in crime rates, victimization, and incarceration. Most surveyed CJWs and CJS representatives recommended increasing the capacity and visibility of the community-justice programs, supporting better integration and collaboration among various programs in the community, and ensuring better understanding of the benefits and impacts of the Program.

### 4.3 Efficiency and Economy

The Program is well managed and administered efficiently. Both the efficiency and economy of the Program have improved and the costs associated with serving clients are low.

As noted in the description of the Program, Justice Canada has agreements in place which provide communities with funding to support community-based justice programs and capacity-building efforts. At the time of the evaluation, there were 211 community-justice programs serving 650 communities. The programs are cost-shared with the provincial and territorial governments. It is important to note that while IJP received an ongoing mandate in 2017, the federal funding level remained at \$12.7 million per year.

#### Operational Efficiency

Operational efficiency can be defined as the extent to which the costs of producing program outputs are reasonable. In the context of this evaluation, the operational efficiency was assessed by calculating the total operating costs (salary and O&M) spent to administer the G&Cs funds to support the communities. The administrative costs expressed as a percentage of total operating costs were:

- $\$7,763,509$  (salary and O&M) /  $\$73,344,279$  (total expenditures) x 100 = 10.6%

This means that the Program spent 11% of the total budget on administration, which is an improvement from 16% in 2016.<sup>42</sup> The administrative efficiency ratio (salary and O&M / G&Cs) awarded was:

- $\$7,763,509$  /  $\$65,580,761$  = \$0.12

This means that for every dollar invested in G&Cs, the Department spent \$0.12 in administrative costs to support the delivery of the two funds (Community-based Justice Fund and Capacity-building Fund). Although a systematic comparison with other federal G&C programs is beyond the scope of

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<sup>42</sup> Fiscal restraint measures impacted the human resource management of the Program during the previous evaluation, resulting in significant underspending on salary and O&M. Had the full allocated resources been expended, the administrative costs expressed as a percentage of total operating costs would have been 16% in 2016. Department of Justice Canada. (2016). Evaluation of the Aboriginal Justice Strategy. <https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2016/ajs-sja/index.html>

the evaluation, the \$0.12 in administrative costs reflects an increase in efficiency compared to \$0.15 in 2016.<sup>43</sup>

Qualitative evidence indicates that the ratio of administration costs should be assessed in light of the structure of the IJD, which is a decentralized program. The Program has regional staff who have direct linkages with the community-based justice programs and work closely with provincial/territorial representatives. Though the delivery costs are higher due to the complexity of administering cost-shared contribution agreements to 211 community programs, which also include the provision of increased support to funding recipients, there are benefits from this delivery model. As noted in section 4.2.4, the regional presence provides the Department with regional expertise and linkages to communities, resulting in an awareness of unique regional and community realities and needs. The IJD is a key point of contact for community engagement for the Department. In this context, the IJD administrative cost ratio is deemed to be low.

### Allocative Efficiency

The focus of allocative efficiency of the Program is to examine the relationship between resources spent and the outcomes achieved. The total costs of the IJP programs were calculated based on the amounts allocated from the Department and cost-shared contributions from the provinces and territories. As seen in Table 5, the cost per client is estimated to be about \$3,342, but when victims are included the cost per program participant decreases to about \$2,754. It should be noted that not all cases have a victim and not all victims participated in person, meaning that the number includes those who sent letters expressing the hurt done or surrogate victims, such as a community members. Victim participation is voluntary and, as noted in section 4.2.6, victims participated in about 80% of cases.

**Table 5: IJP Spending per Program Participant 2017-18 to 2019-20**

**Table 5: IJP Spending per Program Participant 2017-18 to 2019-20**

	2017-18	2018-19	2019-20
G&C	\$26,590,703	\$25,686,874	\$19,950,744
Clients (offenders)	7,421	7,232	6,904
Clients + Victims*	9,716	8,881	7,572
<b>Cost per client</b>	<b>\$3,583</b>	<b>\$3,552</b>	<b>\$2,890</b>
Cost per client + victim	\$2,736	\$2,892	\$2,635 <sup>44</sup>

Source: Department of Justice Financial Data and IJP participant data

The planned comparative costing analysis, which would have been another measure of the impact of reducing recidivism, could not be completed within the evaluation timeframe. The allocative efficiency of the Program would be assessed by comparing the average cost per IJP participant to

<sup>43</sup> Similarly, had the full allocated resources been expended, the efficiency ratio in 2016 would have been \$0.15. Department of Justice Canada. (2016). Evaluation of the Aboriginal Justice Strategy. <https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2016/ajs-sja/index.html>

<sup>44</sup> The number of clients were not reported for two jurisdictions so they were removed from the calculations in 2019-20.

costs avoided by the CJS as a result of diverting offenders to IJP community-based justice programs. Table 6 provides a summary from the previous evaluation, which compared the average cost per participant of the IJP programs in 2014-15 (\$2,831) to CJS court costs. Recognizing that the main point of diversion from the CJS for participants of IJP programs is the court, costs of administering court services, legal aid and prosecutions were used to determine the costs of the CJS for comparison.<sup>45</sup> The average costs per case proceeding through the CJS in 2014-15 was \$4,435. Therefore, the IJP provided immediate savings to the CJS in the amount of approximately \$1,604 per program participant (\$4,435 - \$2,831), or \$14,498,556 for the full cohort in 2014-15 (\$1,604 x 9,039).<sup>46</sup>

As the costs of the IJP programs, number of clients served, and reductions in participant recidivism rates tend to remain fairly stable over time, it is reasonable to assume that the future costs savings incurred each year would be similar.

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<sup>45</sup> Policing costs were excluded from the analysis as these costs are generally the same whether an offender is referred to a community-based justice program or proceeds through the CJS.

<sup>46</sup> Department of Justice Canada. (2016). Evaluation of the Aboriginal Justice Strategy. <https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2016/ajs-sja/index.html>

**Table 6: Differences in Costs per Case between IJP and CJS in 2014-15**

IJP Costs Per Case		CJS Costs Per Case	
Total Program Allocations	\$25,591,295	<b>Court Costs</b>	
Number of Clients	9,039	Total Criminal Court Costs	\$455,886,822.60 <sup>47</sup>
<b>Total IJP Cost Per Case</b>	<b>\$2,831.20</b>	Number of Criminal Cases	393,295 <sup>48</sup>
		Average court costs per case	\$1,159.15
		<b>Prosecution Costs</b>	
		Total criminal prosecution costs <sup>49</sup>	\$837,950,931.00
		Number of criminal cases	393,295 <sup>50</sup>
		Average prosecution costs per case	\$2,130.59
		<b>Legal Aid Costs</b>	
		Total criminal legal aid costs <sup>51</sup>	\$356,431,000.00
		Total criminal legal aid cases	311,158 <sup>52</sup>
		Average Legal aid costs per case	\$1,145.50
		Total CJS costs	\$1,650,268,753.60
		<b>Total CJS costs per case</b>	<b>\$4,435.24</b>
<b>Difference in cost per case</b>			
		Total CJS costs per case	\$4,435.24
		Total IJP costs per case	\$2,831.20
		<b>Difference</b>	<b>\$1,604.04</b>

## Economy

An analysis of economy assesses the extent to which resources are used optimally. Table 7 shows that the variance in spending, which is the difference between planned and actual expenditures, has improved since the last evaluation, and is -1.1% over the 5 years (compared to -10% as reported in 2016).

<sup>47</sup> As provinces and territories do not distinguish the costs between civil and criminal cases, total criminal court costs were calculated based on the total civil and criminal court costs (\$1,507,472,174) taken from public accounts, financial statements, or annual reports for the 2014-15 fiscal year, and then divided by the total number of civil and criminal cases (1,300,501). Where identified, capital expenditures and administrative services were excluded.

<sup>48</sup> Numbers for adult and youth criminal cases were projected based on available 2013-14 Adult Criminal Courts CANSIM data (table 252-0053) and Youth Criminal Courts CANSIM data (table 252-0064).

<sup>49</sup> Total criminal prosecution costs were calculated from criminal court expenditures taken from FPT public accounts, financial statements, or annual reports for the 2014-15 fiscal year. Capital expenditures were excluded.

<sup>50</sup> Numbers for adult and youth criminal cases were projected based on available 2013-14 CANSIM data.

<sup>51</sup> Legal aid statistics. 2014-15 CANSIM data (table 258-0007).

<sup>52</sup> Legal aid statistics. 2014-15 CANSIM data (table 258-0010).

**Table 7: Planned vs Actual Expenditures from 2016-17 to 2020-21**

	<b>Allocated</b>	<b>Actual</b>	<b>Variance</b>	<b>% unspent/ overspent</b>
G&C	\$65,047,072	\$65,580,761	-\$533,689	-0.8%
O&M	\$1,010,422	\$731,383	\$279,039	27.6%
Salary	\$6,519,067	\$7,032,126	-\$513,059	-7.9%
<b>Total</b>	<b>\$72,576,561</b>	<b>\$73,344,270</b>	<b>-\$767,709</b>	<b>-1.1%</b>

Source: Department of Justice Financial Data

The G&C funding has been fully expended in all years, with the variance in spending occurring in 2020-21, when additional funding was reallocated in response to the COVID-19 pandemic. The additional funds were used to support small, directed funding opportunities to existing recipients to adjust their delivery models and to support their work under the ongoing pandemic restrictions. The variance in salary was a result of budget decreases, while staffing levels remained the same and there were increases associated with new collective agreements. The Program underspent O&M resources in all but one year (2019-20), which is related to variations in staff travel.

Most key informants regarded the Program as being administered efficiently. The cost-shared approach to funding, streamlined reporting requirements and good FPT collaboration were noted as contributing to the efficiency of the Program. However, the program data sharing between FPT partners could be improved. The Referral Reporting application, an online client reporting tool and database, being developed by the IJD is intended to improve access to data and statistical reporting for provincial/territorial partners as well as for the community-based justice programs. It is also expected to standardize and improve the quality of program data.

## 5 CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conclusions

#### 5.1.1 Relevance

The need for the Program is evidenced by an increasing overrepresentation of Indigenous people in the CJS. The factors contributing to the overrepresentation are well established and are a result of the colonial policies and practices. The IJP serves to provide culturally appropriate alternatives to the mainstream CJS, and is responsive to the needs of the accused by helping them understand and address the underlying factors contributing to those offences such as mental health issues, addiction, and socio-economic issues (such as poverty).

The Program is well-aligned with the priorities of the federal government to address the systemic inequities that contribute to the overrepresentation of Indigenous people in the CJS as well as the need to increase access to diversion programs.

#### 5.1.2 Performance

##### Effectiveness

The IJP has increased Indigenous communities' involvement in designing and delivering a wide range of justice related programming. Elders play a key role in community programs, helping to engage both offenders and victims and are frequently involved in community justice committees.

Community-based justice programs' capacity to engage with stakeholders is dependent upon the availability of staff, resources and infrastructure as well as skills and ability of CJWs to build relationships. While the IJP Capacity Building Fund supported a number of regional gatherings and workshops, there is significant interest in further training and capacity building activities covering a wide range of issues, including building relationships with community stakeholders and the CJS.

The partnerships and collaboration established at the community level and with CJS representatives have an effect on all other aspects of the program. The evaluation found that in many communities collaboration has increased across a range of stakeholders. Improvements in collaboration with the Crown prosecutors were most often reported, and they are most likely to divert clients to the Program. The relationship with police remains a challenge, largely due to frequent rotation among the police force, limited engagement, discrimination and misperceptions about the programs, as well as a lack of formal guidance and protocols regarding referrals. While many reported an increase in collaboration with Indigenous Courtwork and Victim services, there were other communities with limited access to these services and limited local capacity and structure to support collaboration.

The IJP has undertaken various efforts to increase the awareness and visibility of the community-based justice programs, but many of the initiatives are still in the early stages and have not yet resulted in tangible changes for the community programs. Given the decision to divert individuals to community-based justice programs remains largely with the CJS, lack of awareness of the community-based justice programs and discrimination denote an important barrier.

The federal Indigenous justice policy is informed by Indigenous community partners and stakeholders through ongoing communication and information sharing across a number of working groups involving various justice programs. Though the policy work is usually led by other areas of the Department, the IJD policy and regional staff serve as an important link between the Department and the Indigenous communities.

The IJP has significant impact on the well-being of offenders and victims, as well as the broader communities. The restorative and Indigenous justice processes delivered by community-based justice programs help offenders understand the causes and the impacts of the offences committed and create a satisfactory resolution process. An estimated 90% of clients successfully complete their obligation. For those diverted post-charge, the majority have the charges dismissed. The evaluation found evidence of reduced victimization rates, and reduced rates of recidivism among those who participated in the community-based justice programs.

### **Efficiency and Economy**

The Program is well managed and data shows that both its efficiency and economy have improved since last evaluation. As the costs of the IJP community-based justice programs, number of clients served, and reductions in participant recidivism rates tend to remain fairly stable over time, it is reasonable to assume that the future costs savings incurred each year would be similar to those reported in the 2016 evaluation, which was \$1,604 per participant in immediate savings to the CJS, or \$14,498,556 for the full cohort of participants.

## **5.2 Recommendations**

Based on the findings described in this report, the following recommendations are made:

- 1) The Indigenous Justice Directorate, in collaboration with provincial, territorial and community partners, develop a compendium of training, resource materials and best practices available to Community Justice Workers.
- 2) The Indigenous Justice Directorate, in collaboration with federal, provincial and territorial partners, identify program-level initiatives to help address systemic inequities in the criminal justice system.