



Evaluation of the Indigenous Courtwork Program

Final Report

March 2023

Evaluation Branch
Internal Audit and Evaluation Sector

ACKNOWLEDGEMENT

The A/Chief Audit and Evaluation Executive would like to thank the Evaluation Working Group, evaluation team and individuals who contributed insights and input to this evaluation. Evaluation participants included employees from the Department of Justice Canada, provincial and territorial government representatives, Indigenous Courtwork Program service delivery agencies, Indigenous Courtworkers, judicial and court officials, and Indigenous Courtwork Program clients.

ACRONYMS

2SLGBTQI+	2S: at the front, recognizes Two-Spirit people as the first 2SLGBTQI+ communities; L: Lesbian; G: Gay; B: Bisexual; T: Transgender; Q: Queer; I: Intersex, considers sex characteristics beyond sexual orientation, gender identity and gender expression; +: is inclusive of people who identify as part of sexual and gender diverse communities, who use additional terminologies.
CSC	Correctional Service of Canada
FASDs	Fetal alcohol spectrum disorders
FPT	Federal, Provincial, and Territorial
FY	Fiscal Year
GBA+	Gender-Based Analysis Plus
ICW	Indigenous Courtwork/Courtworker
IJP	Indigenous Justice Program
NIMMIWG	National Inquiry into Missing and Murdered Indigenous Women and Girls
SDA	Service Delivery Agency
TWG	Tripartite Working Group

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EXECUTIVE SUMMARY

Introduction

This report presents the results of an evaluation of the Department of Justice Canada (Justice Canada) Indigenous Courtwork (ICW) Program. The evaluation covers the period from 2018-19 to 2021-22 and addresses issues related to relevance and performance, and design and delivery.

Program Description

Established in 1978, the ICW Program' objective is to contribute to the federal government's commitment to ensuring fair, equitable, culturally relevant treatment for Indigenous peoples involved in the justice system.

The objectives of the ICW Program are to:

- Assist Indigenous peoples to understand their right to speak on their own behalf or to request legal counsel; and to better understand the nature of the charges against them and the philosophy and functioning of the justice system;
- Assist those involved in the administration of the justice system become aware and appreciate the values, customs, languages and socio-economic conditions of Indigenous peoples; and
- Respond to problems caused by communication barriers between Indigenous peoples and those who are involved in the administration of the justice system.

Financial support for participating provinces is provided through contribution agreements, and in the three territories, federal financial support is provided through the Access to Justice Service Agreements. These Agreements integrate federal support for criminal and civil legal aid, Indigenous Courtwork, and public legal education and information.

In most jurisdictions, Indigenous Courtwork services are delivered by Indigenous service delivery agencies (SDAs) under contract to the provincial or territorial government. In the Northwest Territories, Courtworkers are employees of the territorial government. In Nunavut, Courtwork services are provided through Legal Services clinics.

The ICW Program is guided by a federal, provincial and territorial (FPT) Working Group and a Tripartite Working Group (TWG), which serve as policy forums for ongoing monitoring of inter-jurisdictional issues that concern the Program.

Findings

Relevance

There continues to be a need for the ICW Program as it supports the commitment to address the overrepresentation of Indigenous peoples in the justice system. Factors contributing to this overrepresentation are multifaceted and systemic, such as higher rates of poverty, poor living environments, unemployment and disproportionate disadvantages in education and health care. ICW is seen as responsive to the needs of clients through providing assistance in navigating the court system and providing information regarding how to access in-court and out-of-court services. The

Program is also clearly aligned with several federal commitments, including efforts to advance reconciliation and work in consultation and cooperation with Indigenous peoples.

Effectiveness

The ICW Program helps clients receive fair, equitable and culturally sensitive treatment by advocating on their behalf, increasing their awareness of their rights, obligations, and available resources, and connecting them with culturally relevant programming in their community. Courtworkers also help clients understand the judicial process, court proceedings, and their specific case. Almost all clients surveyed as part of this evaluation were satisfied with the services received from their Courtworker.

The ICW Program provides valuable information and meaningful advice to judicial and court officials. Courtworkers provide information about legal aid and community resources available to clients, information about restorative justice programs (i.e., non-custodial options), and information about cultural traditions and social needs pertaining to clients. Judicial and court officials surveyed were satisfied with the usefulness of the information provided to them as it provides insight into the obstacles faced by Indigenous peoples, alternative justice programs and other available community resources. The Program is contributing to an increase in Indigenous cultural values being reflected in the justice system, as Courtworkers provide information on client circumstances, needs, and cultural values which, in turn, informs sentencing.

There is general agreement among judicial and court officials that the information provided by Courtworkers is useful and valuable; however, evidence suggests that there continues to be a need to further increase awareness of the role and value of Courtworkers amongst this group. The evaluation also identified some factors that may limit the impact the ICW Program has on Indigenous peoples involved in the justice system and in accessing culturally relevant services. These include:

- varied skill level of Courtworkers;
- limited/insufficient availability of Courtworkers in some communities; and
- gaps and availability issues in non-custodial and rehabilitative programming options for referrals.

Program Design and Delivery

The demand for Courtworker services has increased since the last evaluation. While the number of ICW clients served has been stable, the number of services per client has increased over the past five years. This increase is reflected in the continued expansion and evolution of the services Courtworkers provide. The COVID-19 pandemic resulted in additional demands on Courtworkers due to a reduction in client access to services, an increase in complexity and severity of client needs, and an expanded role to meet the urgent needs of Indigenous communities dealing with the pandemic. New barriers to access were created as services moved to a virtual delivery model and clients and Courtworkers faced technological barriers particularly in northern, rural, and remote communities.

Other changes that have occurred in the last five years are an increase in services to Indigenous persons involved in family and/or child protection justice systems, and a greater role in advocacy for restorative programs and more holistic supports. Key challenges that have had an impact on program service delivery include: an insufficient number and high turnover of Courtworkers, a lack of ongoing and enhanced Courtworker training, and a lack of mental health and peer to peer supports for Courtworkers.

GBA+ was considered in the planning and delivery of the ICW Program. Some groups of Indigenous clients require additional types of support, and Courtworkers indicated that they tailored their services for diverse groups in order to help them obtain equitable treatment in the justice system. The groups most commonly identified as needing additional support from Courtworkers include those experiencing homelessness, women, youth, and 2SLGBTQI+.¹

Efficiency

The estimated cost savings to the criminal justice system from Courtworker activities that prevent clients from avoidable arrests and unnecessary time in custody are estimated to be about \$73 million per year. The two main ways in which Courtworkers can prevent clients from unnecessary arrests and subsequent costs to the justice system are by helping ensure clients appear in court, and helping ensure that they do not break conditions of their parole. It should be noted that there are limitations to the analysis of estimated justice system cost savings, as the analysis relies heavily on Courtworker recollections and opinions about the number and nature of interactions with clients.

Recommendations

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

Recommendation 1: The Policy Implementation Directorate, in collaboration with the Tripartite Working Group, should examine ways to improve access and availability of training for Courtworkers.

Recommendation 2: The Policy Implementation Directorate, in collaboration with the provinces, territories and service delivery agencies, should identify ways to increase judicial and court official awareness of the role of Courtworkers and the value of the services they provide.

Recommendation 3: The Policy Implementation Directorate, in collaboration with the Tripartite Working Group, should explore ways to increase the wellness and mental health supports available to Courtworkers.

¹ 2S: at the front, recognizes Two-Spirit people as the first 2SLGBTQI+ communities; L: Lesbian; G: Gay; B: Bisexual; T: Transgender; Q: Queer; I: Intersex, considers sex characteristics beyond sexual orientation, gender identity and gender expression; +: is inclusive of people who identify as part of sexual and gender diverse communities, who use additional terminologies.

1 INTRODUCTION

1.1 Purpose of the Evaluation

This report presents the results of the evaluation of the Indigenous Courtwork (ICW) Program. The evaluation was conducted in accordance with the Treasury Board's *Policy on Results* (2016), which requires departments to evaluate performance and use the resulting information to manage and improve programs, policies, and services. The evaluation was undertaken by the Department of Justice Canada's (Justice Canada) Evaluation Branch, as per Justice Canada's *Internal Audit and Evaluation Plan*.

1.2 Evaluation Scope

The evaluation of the ICW Program was national in scope and covered four fiscal years (FY) from 2018-19 to 2021-22. The Program has been evaluated four times, most recently in 2018. In terms of relevance, the previous evaluations confirmed the alignment of the Program with government and departmental priorities. As well, the evaluation found a continuing need for the Program as part of the efforts to address the overrepresentation of Indigenous peoples in the justice system. To build on the previous evaluations, the assessment of relevance examined the extent to which the Program is consistent with the federal government's efforts to renew its relationship with Indigenous peoples, to work in consultation and cooperation with Indigenous peoples, and advance reconciliation.

Although efforts were made to assess the early implementation of Gladue report writing and Family Courtwork services, the evaluation focussed primarily on assessing the effectiveness of the criminal courtwork services in achieving the expected outcomes. The evaluation also included an assessment of the extent to which Gender-Based Analysis Plus (GBA+) was considered in the planning and delivery of the ICW Program. Although not originally planned as part of the scope, the report includes findings related to its design and delivery that were found to have had an impact on performance. Lastly, the assessment of efficiency includes a cost-benefit analysis to estimate potential cost-savings to the justice system.

The scope of the evaluation was determined based on a review of available information and informed by consultations with stakeholders regarding issues and questions of interest. The work of the evaluation was guided by an Evaluation Working Group, consisting of key Justice Canada ICW Program staff, provincial and territorial government, and service delivery agency (SDA) representatives.

2 PROGRAM PROFILE

2.1 Program Description

Established in 1978, the ICW Program's objective is to contribute to achieving the federal government's commitment to ensuring fair, just, equitable, and culturally relevant treatment for Indigenous peoples involved with the justice system (whether as accused persons, victims, witnesses, or family members).

The ICW Program is delivered through a relatively small network of approximately 230 full-time and part-time Courtworkers² providing services to approximately 450 communities³ across Canada, who ensure that Indigenous peoples (their clients) receive information about their legal rights and the court process. Indigenous Courtworkers facilitate communication between their clients and justice personnel, and connect them to community supports and services to address their needs. They also provide critical background and contextual information on the accused, and they make the court aware of alternative measures and options available in the Indigenous community.

There are three stakeholder groups involved in the ICW Program.

Table 1: ICW Stakeholder Groups

Stakeholder	Description
Clients	Indigenous persons ⁴ with a charge and those without a charge who are in contact with the justice system.
Justice officials	Court officials (legal aid, defence counsel, Crown counsel, clerks/judicial assistants), judiciary (judges and justices of the peace), law enforcement, parole/probation officers, and agencies responsible for transport and/or custody of Indigenous persons before the court.
Other stakeholders groups	The Indigenous community, Indigenous agencies and community justice initiatives, referral agencies, as well as families of Indigenous persons before the court (accused), co-accused, Indigenous victims, and Indigenous witnesses.

As part of the ICW Program, Courtworkers deliver a range of services directly to clients and undertake various other activities that involve ICW stakeholder groups, including:

- Providing non-legal advice and information to Indigenous persons charged with an offence and to their family members;
- Referring Indigenous persons charged with an offence to appropriate legal resources at key stages of the justice process;
- Referring Indigenous persons charged with an offence to appropriate community resources (e.g., alcohol, drug and family counselling and educational, employment and medical services);
- Providing assistance, as appropriate, to other Indigenous persons involved in the criminal justice process;
- Promoting practical, community-based justice initiatives;
- Serving as a bridge between criminal justice officials and Indigenous peoples and communities, by providing a liaison function and facilitating communication and promoting understanding between the parties;
- Providing non-legal advice and information to Indigenous persons involved in the family and/or child protection justice systems; and,
- Referring Indigenous persons involved in the family and/or child protection justice systems to appropriate legal and community resources (e.g., family group conferencing and other culturally appropriate restorative processes).

² NCCABC. 2021. Indigenous Resilience and Adaptability: The National Indigenous Courtwork Program Response to COVID-19.

³ Justice Canada. 2022. Indigenous Courtwork Program Overview. Accessed on July 6, 2022 from <https://www.justice.gc.ca/eng/fund-fina/gov-gouv/acp-apc/index.html>.

⁴ The ICW Program is open to all Indigenous peoples regardless of age, status, or residency throughout Canada where services exist. Courtworkers may also provide services to Indigenous persons involved in family, child protection, and civil matters.

Justice Canada funding to the provinces for the ICW Program is provided on a cost-shared basis through five-year bilateral contribution agreements. The federal funding available is up to a maximum of 50% of the total eligible provincial program costs for eligible services and up to the notional federal maximum level established in the contribution agreement. Funding to the territories is provided through “Access to Justice Services Agreements” which include additional contribution funding for criminal and civil legal aid as well as public legal education and information. There is no cost-shared requirement with territories. Provincial and territorial ministries are responsible for establishing the framework for the Program within their jurisdiction.

Provincial and territorial ministries are responsible for the delivery of the Program within their jurisdiction. Delivery structures for the ICW Program differ across Canada according to:

- *The type of delivery agencies used.* Courtworkers are employees of Service Delivery Agencies (SDAs) in eight provinces and one territory.
- *The number of agencies.* In four jurisdictions, there is one SDA for the whole province. For the other regions, there are four or more SDAs.
- *The type of funding agreements.* The provinces have bilateral contribution agreements, and the territories have Access to Justice Services Agreements.

In 2021, eight provinces (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Prince Edward Island) and three territories were providing Indigenous Courtwork services. Prince Edward Island launched ICW Program services in April 2021.

The ICW Program is guided by two working groups which serve as collaborative policy forums for implementation and ongoing monitoring of inter-jurisdictional issues that concern the Program: the Federal, Provincial, and Territorial (FPT) Working Group⁵ and the Tripartite Working Group (TWG).⁶

2.2 Resources

From FY 2018-19 to FY 2020-21, Justice Canada allocated an average of approximately \$10 million per year to the ICW Program. In 2021-22 the Program was allocated an additional \$14 million over five years and \$3.5 million ongoing to support the development of Gladue reports. In addition, in 2021-22, the Program was expanded and an additional \$6.7 million over three years was allocated to support the provision of culturally competent services to Indigenous persons involved in the family and/or child protection justice systems.

⁵ The FPT working group consists of federal, provincial, and territorial representatives and serves as a resource on issues related to the ICW Program and Indigenous peoples in the justice system. The FPT Working group also provides advice on ICW Program cost-sharing issues and on the potential impact of new legislation and policy changes on the ICW Program.

⁶ The TWG is composed of federal, provincial, territorial, and service delivery agency representatives and has a mandate to serve as a resource regarding Indigenous Courtworker services. The TWG also develops innovative approaches to service delivery, undertakes research, and investigates the need for services not covered by contribution agreements.

During the period covered by the evaluation, Justice Canada allocated approximately \$42.5 million to the initiative. The breakdown per fiscal year is presented in Table 2 below:

Table 2: Financial Resources Allocated to the Program from 2018-19 to 2021-22

Categories	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	Total
Operational funding*	\$336,500	\$374,205	\$375,587	\$410,670	\$1,496,962
Grants and Contributions	\$10,161,073	\$9,528,555	\$9,500,000	\$11,871,380	\$41,061,008
Total	\$10,497,573	\$9,902,760	\$9,875,587	\$12,282,050	\$42,557,970

* Operational funding includes resources related to salaries, employee benefits and operating & maintenance (O&M).

Source: Department of Justice Financial Data

3 EVALUATION METHODOLOGY

The evaluation was guided by an evaluation matrix (evaluation questions, indicators, and data sources) which was developed through the evaluation scoping and planning phase. The evaluation included multiple lines of evidence, and employed the data collection methods described below. Appendix A contains a list of the evaluation questions, and Appendix B provides a more detailed description of each methodology.

3.1 Document and Data Review

Approximately 140 secondary data sources relevant to the ICW Program were reviewed. The types of documents reviewed included the following:

- Program documents related to departmental mandate and priorities, program foundational and implementation documents, literature related to the ICW Program;
- Performance Information - ICW Program performance measurement data and COVID-19 research data; and
- Financial budget information.

3.2 Key Informant Interviews

A total of 33 interviews were conducted with stakeholders representing the following groups:

- Provincial and territorial representatives (n=16)
- Justice Canada representatives (n=4)
- Service Delivery Agency representatives (n=13)

Interviews were conducted with a representative from each province and territory in which the ICW Program was operating at the time of the evaluation.

3.3 Courtworkers and Judicial/Court Officials Surveys

Surveys were conducted with 82 Courtworkers and 94 judicial and court officials between September and November 2022. Among the Courtworkers surveyed, almost all provided services in Criminal Court (96%) and a majority provided services in Family Court (67%). The Courtworkers surveyed were located in every provincial and territorial jurisdiction with an operating ICW Program at the time of the

survey, except British Columbia and Manitoba. Among the judicial and court officials surveyed, respondents included Crown counsel (58%), judges (14%), probation officers (13%), defense counsel (10%), and court clerks (3%). The judicial and court officials surveyed were located in every provincial and territorial jurisdiction with an operating ICW Program at the time of the survey, except Quebec and Prince Edward Island.

3.4 Client Survey

Surveys were conducted with 482 ICW Program clients between August and December 2022. The client survey was administered with the assistance of SDAs implementing the ICW Program across Canada. Many SDAs had resource constraints, inhibiting their ability to collect ICW client contact data and administer the survey. As a result, some jurisdictions are not represented in the client survey data. Of the 525 client surveys distributed, 482 ICW clients completed the survey, resulting in a response rate of 92%.

The ICW clients surveyed were located throughout Canada: Quebec (32%), British Columbia (30%), and Alberta (26%), with some located in Ontario (7%), Nunavut (4%), and Northwest Territories (1%). A total of 67 communities were represented. In terms of their involvement in the justice system, 85% of clients were involved with Criminal Court, while 15% were involved with Family Court matters. For a majority of clients (61%), it was their first time receiving ICW services.

In reporting the findings from the client survey, Courtworkers and judicial/court officials surveys, the following scale was used: a few = <20% of respondents; some = 25-49% of respondents; half = 50% of respondents; majority = 51-70% of respondents; most = 71-90% of respondents; and almost all = >90% of respondents.

3.5 Case Studies

Three case studies were conducted to highlight and provide more in-depth information in three areas: 1) economic value of Courtworkers; 2) client impact stories; and 3) the role of Courtworkers in family justice matters. Data collection for each case study included survey and interview results, additional interviews specific to each case study and a review of relevant program documents, files and publicly available information (e.g., websites).

3.6 Evaluation Limitations

The evaluation encountered several methodological limitations or challenges that should be noted.

- **Attributing the impact of federal funding on the ICW Program was challenging because the Program is cost-shared and delivered by provincial and territorial governments through various delivery structures.** The role of Justice Canada with respect to the delivery of Courtwork services is limited since the delivery structures and agreements with SDAs delivering ICW services rest with provincial and territorial governments. This limitation was mitigated by focusing on the relevance, effectiveness, and efficiency of ICW Program activities that are the responsibility of Justice Canada.
- **There exists potential for respondent bias in the qualitative evidence.** The evaluation relies on qualitative methodologies such as key informant interviews, surveys and case studies. These methodologies have the potential for respondent bias. This limitation was mitigated by comparing

responses by different respondent groups. In addition, respondents were asked to provide examples to better understand and contextualize responses.

- **There exists a gap in performance data.** Complete performance data for the ICW Program was not available as some jurisdictions did not provide performance data for FY 2018-19 and FY 2019-20, and performance information for FY 2021-22 was not yet available. The lack of performance data made it difficult to assess changes in Courtworkers' workload. To mitigate this limitation, qualitative information was collected regarding changes in workload. In addition, some information outside the period of the evaluation (e.g., performance data for FY 2016-17) was included for comparative purposes and to provide context.
- **There are limitations to the client survey in terms of its implementation and completeness.** The surveys were administered by multiple different SDAs across Canada, and in many jurisdictions, organizational capacity constraints limited the number of clients that participated in the survey. This situation created the potential for inconsistencies in how the client survey was administered and/or how the survey questions were interpreted. To mitigate this, the evaluation exercised caution in analysing client survey data, and triangulated with other lines of evidence.
- **There were few case study interviews conducted.** Interviews with SDA representatives, Courtworkers, and clients was intended as a key data collection method for the case studies. Despite multiple attempts to schedule interviews with potential interviewees, a very limited number of individuals accepted to participate in an interview. For the case study regarding the role of Courtworkers in family justice matters, only two interviews were conducted, and only one interview was conducted for the client impact stories case study. As such, few client impact stories were collected, and minimal information regarding the history, context, and role of Courtworker services in Family Court was gathered. As a result, these case studies did not yield the expected information.
- **There are gaps and limitations to the analysis of cost savings to the Justice system.** The analysis of estimate cost savings to the justice system attributable to the ICW Program should be viewed with caution. The analysis relies on Courtworker recollections and opinions about how their interactions with clients contributed to a reduction in the number of client arrests and clients in custody. External research sources were used to infer the reduced costs to the justice system as a result of Courtworker actions and it was assumed that these costs were accurate and generalizable across Canada. The analysis also does not include a control group or counterfactual assessment (e.g., of costs that would have been incurred without Courtworker involvement).

4 FINDINGS

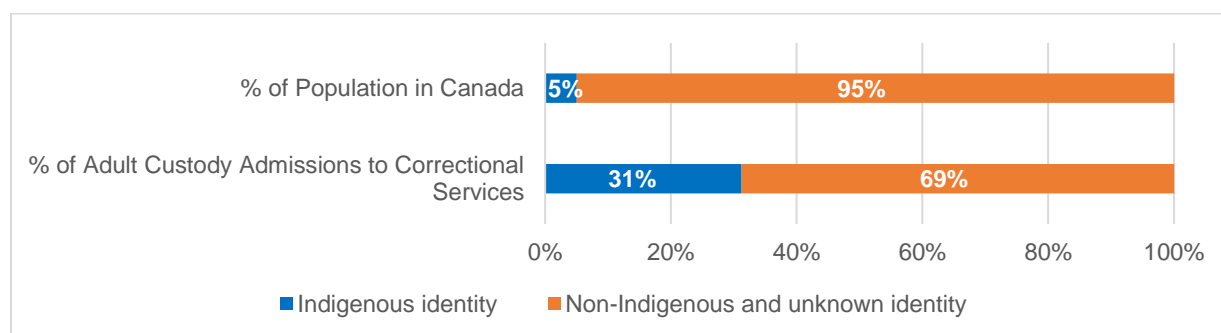
4.1 Relevance

4.1.1 Continued Need for the Indigenous Courtwork Program

There is a continued need for the ICW Program as Indigenous peoples continue to be overrepresented in the criminal justice system. Courtworkers play a unique and important role by helping Indigenous peoples navigate the justice system.

Indigenous peoples continue to be overrepresented in the criminal justice system. According to Statistics Canada data (Figure 1), Indigenous peoples accounted for 31% of total adult admissions to correctional services while representing only 5% of the Canadian population in FY 2020-2021.^{7,8} Statistics Canada data illustrates that although the number of Indigenous peoples admitted to custody per year has been in decline, from 74,823 in FY 2016-17 to 44,941 in FY 2020-21, the percentage of total adult Indigenous admissions to correctional services has increased from 26% in FY 2014-15 to 31% in FY 2020-21.⁹ Overrepresentation rates vary by provincial and territorial jurisdiction. The two provinces with the highest overrepresentation were Manitoba (77%) and Saskatchewan (77%), in FY 2020-21.¹⁰

Figure 1: Percentage of Adult Custody Admissions to Correctional Services Versus Percentage of Population of Canada by Indigenous Identity, FY 2020-21



Source: Statistics Canada. 2022. Adult custody admissions to correctional services by Indigenous identity (Table: 35-10-0016-01). <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510001601>.

Indigenous peoples have higher rates of guilty pleas and are more likely to be represented in remand and denied bail.¹¹ A study on Indigenous administration of justice offences in Alberta noted that Indigenous offenders have longer criminal histories and higher recidivism rates than non-Indigenous offenders.¹² A re-contact study with the Saskatchewan justice system found that Indigenous peoples were significantly more likely than non-Indigenous people to have re-contact with police following correctional involvement (80% versus 57%).¹³ Furthermore, a study by the Office of the Correctional Investigator found that Indigenous peoples are overrepresented in custodial settings (as opposed to supervision in the community), use of force, maximum security, structured intervention units (“segregation”), self-injury incidents, attempted suicide incidents, and suicides in correctional facilities.¹⁴

⁷ Statistics Canada. 2022. Adult custody admissions to correctional services by Indigenous identity (Table: 35-10-0016-01). <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510001601>.

⁸ Statistics Canada. 2022. Indigenous population continues to grow and is much younger than the non-Indigenous population, although the pace of growth has slowed. <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm>.

⁹ Statistics Canada. 2022. Adult custody admissions to correctional services by Indigenous identity (Table: 35-10-0016-01). <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510001601>.

¹⁰ Ibid.

¹¹ Bressan, A., & Coady, K. Justice Canada Research and Statistics Division. 2017. Guilty pleas among Indigenous people in Canada.

¹² Alberta Justice and Attorney General & Solicitor General and Public Security. 2012. Aboriginal Administration of Justice Offences Research Project: A study of Aboriginal Administration of Justice Offences as they relate to community supervision provided by probation officers in Alberta.

¹³ Brennan, S., & Matarazzo, A. 2016. Re-contact with the Saskatchewan justice system. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2016001/article/14633-eng.htm>.

¹⁴ Office of the Correctional Investigator. 2022. Office of the Correctional Investigator Annual Report 2021-2022: Ten Years since *Spirit Matters*. <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20212022-eng.aspx#s13>.

The literature indicates that various factors contribute to Indigenous overrepresentation in the criminal justice system, both as offenders and victims.¹⁵ Some factors contributing to this overrepresentation are higher rates of poverty, poor living environments, unemployment, underemployment, foster care, and overall life chances.¹⁶ Key informants similarly indicated that Indigenous peoples continue to be overrepresented in the criminal justice system due to systemic barriers such as disproportionate disadvantages in education, health care, housing, and poverty.

The continuing overrepresentation and challenges faced by Indigenous peoples in the justice system contribute to the continued demand for services offered by Courtworkers. There is consensus among key informants, Courtworkers, court and justice officials, that Courtworkers play a unique and important role. Courtworkers help Indigenous clients better understand the complex justice process and the role of various players, and inform them of the supports that are available to them and how to access these supports. They assist Indigenous peoples navigate the justice system in various ways such as filling out forms for legal aid, introducing them to a lawyer, and provide information and guidance throughout the court process. They help clients understand their rights, the questions being asked and the decisions being made. In addition, given the complexity of the justice system and court proceedings and for some, their mistrust in the justice system, Indigenous clients before the court may feel intimidated or anxious and the Courtworkers' presence and assistance also helps in this regard. Challenges such as language barriers may also result in Indigenous clients making decisions or agreeing to actions that they do not understand. Indigenous people require someone to advocate for them in court and provide follow-up support between court appearances.

“Courtworkers are the primary point of contact for clients in gaining understanding and represent a place of trust for clients. Clients come to Courtworkers for information they can rely on and safely share information. This role is unique compared with any other actor in the justice system including defense lawyers. The role of Courtworkers is for clients to know they have someone of their community to help them.”
– SDA Representative

4.1.2 Consistency with Government of Canada Commitments

The ICW Program is consistent with the Government of Canada's efforts to work in consultation and cooperation with Indigenous peoples and to advance reconciliation.

The federal government has pledged its commitment to renew its relationship with Indigenous peoples, work in consultation and cooperation with Indigenous peoples, and advance reconciliation through the development and implementation of action plans, strategies, and related legislation. The ICW Program is aligned with the most notable federal commitments in this regard. Specific examples of how the ICW Program aligns with federal commitments are described below.

Gladue Principles. "Gladue Principles" come from a Supreme Court of Canada decision in a case called R. v. Gladue. These Principles state that the overrepresentation of Indigenous peoples in the criminal justice system is a serious and complex issue rooted in systemic discrimination and the history of colonialism and that pre- and post-charge diversion, alternative measures and other community-based options should be considered for Indigenous peoples in conflict with the law, including culturally

¹⁵ Charbel Saghbini, Angela Bressan and Lysiane Paquin-Marseille, Indigenous People in Criminal Court in Canada: An Exploration Using the Relative Rate Index, Department of Justice Canada, 2021

¹⁶ Dickson, J. & Stewart, M. 2021. Risk, rights and deservedness: Navigating the tensions of Gladue, Fetal Alcohol Spectrum Disorder and settler colonialism in Canadian courts.

appropriate restorative and traditional Indigenous justice processes.¹⁷ During the evaluation period, ICW Program project funding was provided to support organizations to undertake Gladue-related projects and research, as well as training for Gladue report writing.

Truth and Reconciliation Commission Calls to Action. Undertaken between 2007 and 2015, the Truth and Reconciliation Commission culminated in a Final Report with 94 Calls to Action to further reconciliation between Canadians and Indigenous Peoples. Examples of alignment between the ICW Program and Calls to Action include Call to Action 27 to ensure lawyers receive cultural competency and Indigenous rights training; and Calls to Action 30 and 38 to reduce overrepresentation through diversion to restorative justice programs.¹⁸

National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Calls for Justice. The federal government launched a federal pathway in 2021 in response to this Calls for Justice report as part of an action plan to help end the tragedy of missing and murdered Indigenous women, girls, and 2SLGBTQI+ people. Part of this action plan includes investing in justice programs.¹⁹ In a recent update on the federal pathway, it was reported that the ICW Program had been expanded to better support Indigenous families navigating the Canadian justice system.²⁰ Another example of the alignment of the ICW Program is Call for Justice 5.11 that calls on all levels of government to expand restorative justice programs and Indigenous People's Courts. A key activity of Courtworkers is to refer their clients to these types of services.

The UN Declaration on the Rights of Indigenous Peoples (UN Declaration). In June 2021, the *UN Declaration on the Rights of Indigenous Peoples Act* received Royal Assent; it provides a roadmap for the Government of Canada and Indigenous peoples to work together to implement the UN Declaration based on lasting reconciliation, healing, and cooperative relations.²¹ The objective of the ICW Program that Indigenous peoples obtain fair, just, equitable and culturally relevant treatment aligns with Article 40 in the UN Declaration which states that: "*Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties...*" The ICW Program also aligns with Article 13, which states that: "*States shall take effective measures to ensure that ... Indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.*"²²

¹⁷ Government of Canada. 2022. Systemic change informed by Gladue Principles to address Indigenous overrepresentation in the criminal justice system. <https://www.justice.gc.ca/eng/fund-fina/home-accueil.html#s1>.

¹⁸ Crown-Indigenous Relations and Northern Affairs Canada. 2022. Truth and Reconciliation Commission of Canada. https://publications.gc.ca/site/archives-archived.html?url=https://publications.gc.ca/collections/collection_2015/trc/IR4-8-2015-eng.pdf.

¹⁹ Government of Canada. 2022. The federal pathway. <https://www.rcaanc-cirnac.gc.ca/eng/1617731561423/1617731691291>.

²⁰ Government of Canada. 2022. 2021-2022 Federal Pathway Annual Progress Report: Summary. <https://www.rcaanc-cirnac.gc.ca/eng/1654106027477/1654106059774#cp7>

²¹ Justice Canada. 2022. Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act. <https://www.justice.gc.ca/eng/declaration/index.html>

²² United Nations. 2007. United Nations Declaration on the Rights of Indigenous Peoples. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

4.2 Effectiveness

4.2.1 Provision of culturally relevant information, services and programming

Courtworkers provide Indigenous individuals with culturally relevant information that assists them in navigating the criminal justice system. While the number of ICW clients served has remained stable over the last five years, the number of services per client has increased since the last evaluation in 2018.

The ICW Program served an average of 67,201 clients a year from FY 2016-17 to FY 2019-20, which is consistent with the annual average of 68,115 ICW clients served from FY 2014-15 to FY 2015-16.²³ ²⁴ The number of clients served in FY 2020-21 has decreased slightly, perhaps due to the pandemic; however, not all provincial and territorial data was available at the time of the evaluation.

Based on data across ten provincial and territorial jurisdictions, the ICW Program served an annual average of 48,405 clients (60% male, 30% female, 9% youth, and 1% other) with a charge from FY 2016-17 to FY 2019-20. During this period, the highest proportion of these clients were located in Ontario (23%) followed by Alberta (21%) and Manitoba (15%). Indigenous clients without a charge represent a smaller number of the overall client base, with an average of 15,504 served on an annual basis from FY 2016-17 to FY 2019-20.²⁵ The highest proportion of clients without a charge that were served were located in Alberta (36%), Manitoba (28%), and Nova Scotia (12%).

The number of ICW Program services per client has increased compared to the last evaluation period. The annual average ratio of services per client increased from 1.9 for the period from FY 2014-15 to FY 2015-16 to 2.3 services per client from FY 2016-17 to FY 2019-20. As described later in the report, this increase is due to several factors including an expanded role to meet the urgent needs of Indigenous communities dealing with the pandemic, an increase in services to Indigenous persons involved in family and/or child protection justice systems, and greater involvement in advocacy for restorative programs and more holistic supports.

Courtworkers provide a wide range of in- and out-of-court services and information that clients may need. Examples of in-court services include assisting clients to appear before the court by attending court, providing information about relevant legal procedures to clients, and providing information to the court on community resources available and sentencing options. Out-of-court services include client intakes, preparing cases, and providing non-therapeutic counseling and emotional support. Performance data shows that the ICW Program provided an annual average of 151,324 services including 70,829 in-court services and 80,495 out-of-court services from FY 2016-17 to FY 2019-20.

"I make referrals to court programs such as alternative measures and mental health diversion, as well as community programs for mitigation of sentencing such as domestic violence programming, treatment, counselling, and Indigenous programming. My role is to present these factors to the court and coordinate with the Crown prosecutor to make sure they are accurately represented on record. I also explain these roles and factors to family members who are unfamiliar with the legal process. By participating in community events, panels, and volunteer programs, I work to make communities aware of the legal process and services that we can provide. I also sit on youth panel programs to provide alternative measures services and diversion to community programs and resources to avoid criminal records."
— Courtworker

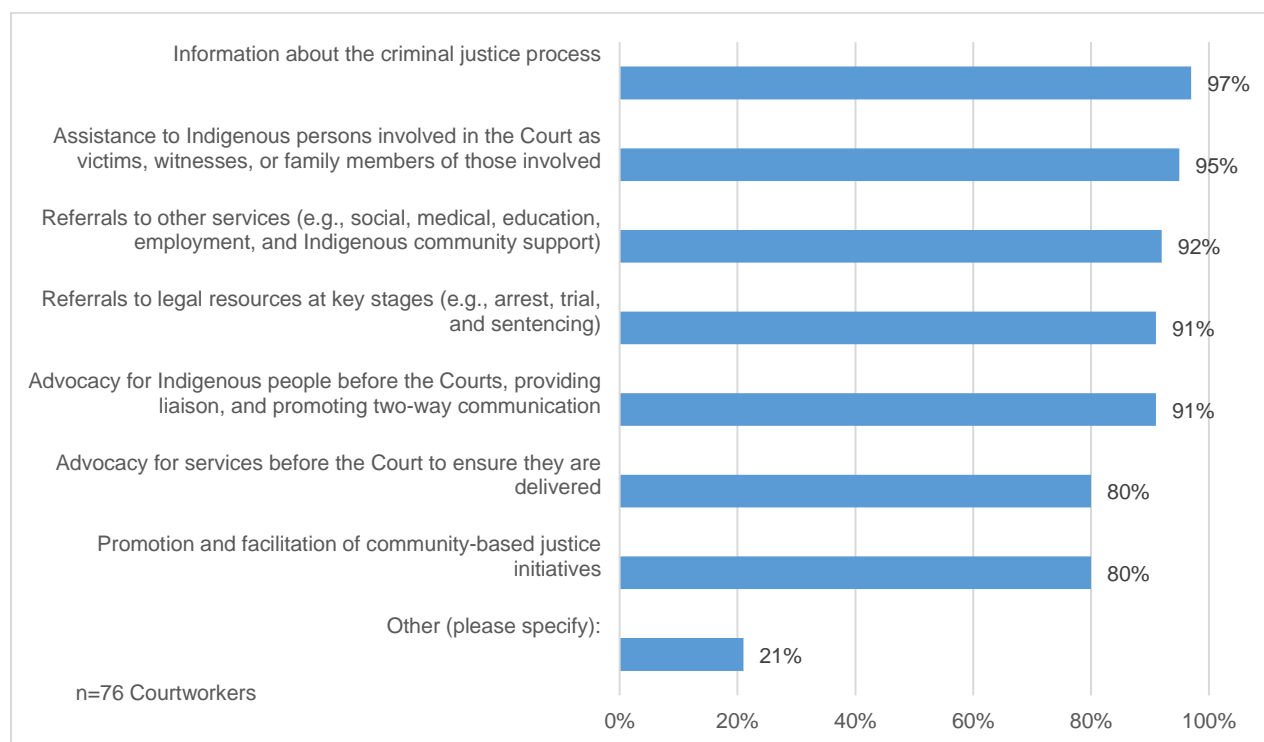
²³ Justice Canada. 2018. Evaluation of the Indigenous Courtwork Program. <https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2018/icp-papa/index.html>.

²⁴ Justice Canada. ICW Program Performance Measurement Data. 2016-17 to 2018-19.

²⁵ Gaps in performance data did not allow for a disaggregated breakdown by group for Indigenous clients without a charge.

Courtworkers played a key role by providing culturally relevant information to assist Indigenous individuals in navigating the justice system and referring them to culturally relevant services. As indicated in Figure 2, the most frequently mentioned types of information, services, and programming provided in Criminal Court by the Courtworkers surveyed are: information about the criminal justice process; assistance to Indigenous persons involved in the Court as victims, witnesses, or family members; referrals to other services (e.g., social, medical, education, employment, and Indigenous community support); and referrals to legal resources at key stages (e.g., arrest, trial, and sentencing). Other services that Courtworkers often provided to clients include advocacy for Indigenous peoples before the Court and the promotion and facilitation of community-based justice initiatives. These are similar to the most frequent services provided by Courtworkers as reported in the 2018 evaluation.

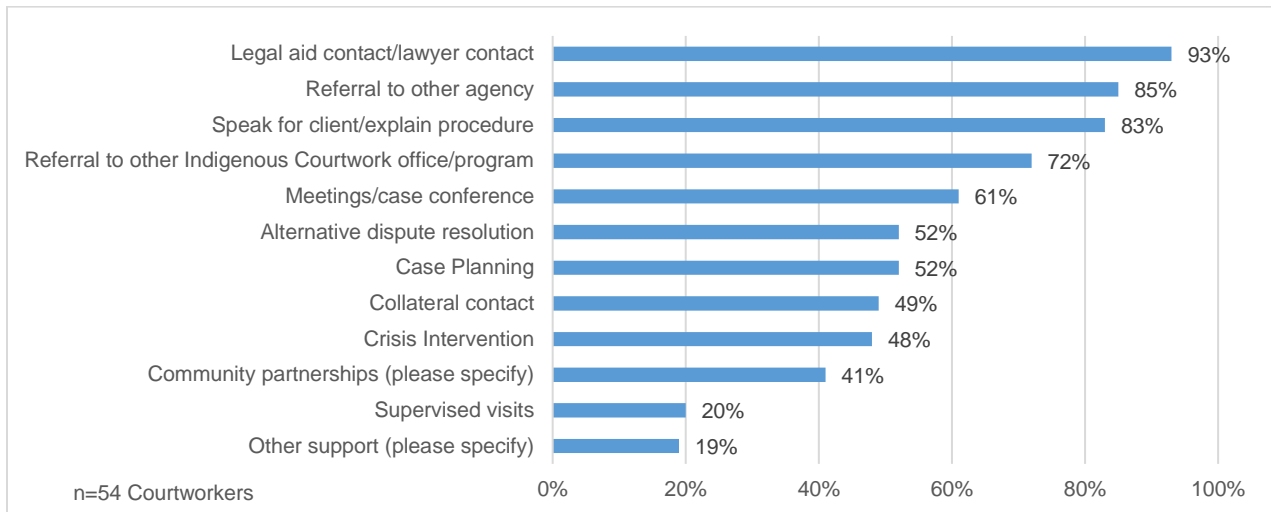
Figure 2: Types of Culturally Relevant Information, Services and Programming Provided by Courtworkers in Criminal Court



Note: "Other" included outreach to communities, education on historical trauma (e.g., Gladue reports, historical background information, etc.), other referrals, and liaising with court officials with respect to release plans, family law, and civil law issues.

Courtworkers providing services in Family Court most frequently provided contact information for legal aid or a lawyer, referrals to other agencies, and spoke for their clients or explained a procedure to them (see Figure 3).

Figure 3: Culturally Relevant Information, Services and Programming Provided by Courtworkers in Family Court



Note: "Other" included referrals to appropriate programming, application to the courts for mediation, custody and parental support, emotional support, and transportation to meetings.

A majority of Courtworkers also indicated they provided referrals for alternative dispute resolution. One such type of alternative dispute resolution is Judicial Dispute Resolutions which provide a way to reach a final resolution of less complex family law cases and is led by a Judge with the participation of the parties in question.

"I assist in Judicial Dispute Resolutions when the other party has a lawyer. If it's two self-represented litigants, I don't attend—they may not need my support there. The Judge who's mediating their conversation, they know what they're doing. They're amazing. They just want to hear the information from the parties firsthand and see if they can resolve their dispute without going to trial."
— Family Courtworker

Courtworkers are familiar with the culture, language, and history of the communities they serve and this helps them to build trust with their clients and understand the context of their involvement in the justice system. They are also able to leverage their connections to resources and programs in the community to serve clients. Examples of resources and programs that may be available in the community include programs that address intergenerational trauma, healing ceremonies (e.g., smudging), extrajudicial sanctioned programs, restorative justice programs, mediation programs, substance use and mental health programs.

4.2.2 Client's awareness of their rights, obligations and available resources

As a result of their interaction with Courtworkers, ICW clients are more aware of their rights, obligations and access available resources. The information they receive is helpful in understanding the court process, their specific case and court proceedings.

The evaluation found that the ICW Program assisted Indigenous peoples in being more aware of their right to speak on their own behalf and/or to request legal counsel. Information provided by Courtworkers also helped clients better understand the nature of their charges and the functioning of the justice system. The ICW Program clients surveyed indicated that they most frequently received information from Courtworkers on the court process, preparing for court, how to get a lawyer, how to apply for legal aid, and an explanation of their charges.

Most of the ICW Program clients surveyed indicated that the information they received from Courtworkers was helpful in making them more aware of their rights, obligations and access available resources. Clients also indicated that information provided to them by a Courtworker most frequently helped with:

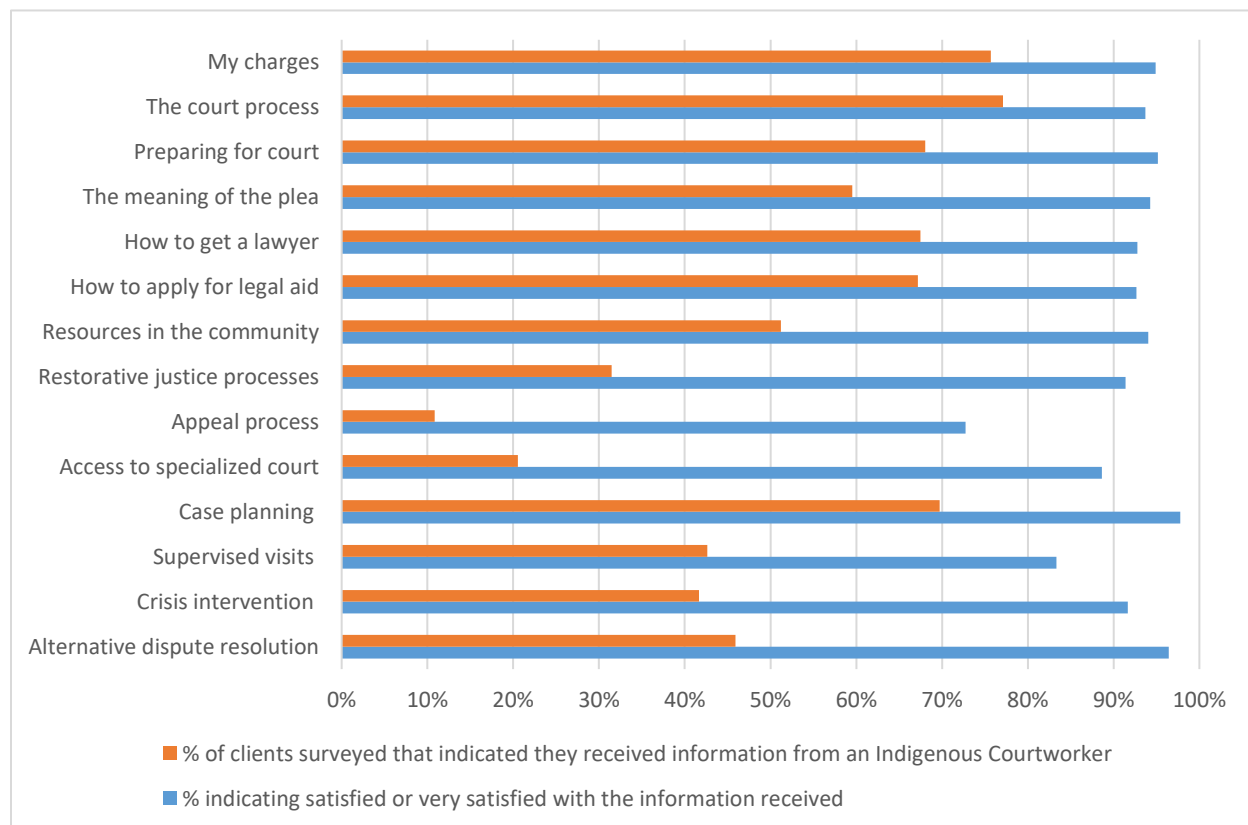
- understanding the court process (89%);
- understanding the meaning of their plea (89%); and,
- how to divert their Criminal Court case to restorative justice processes, diversion, community justice programs, or alternative justice processes (87%).

Clients also frequently mentioned that information provided to them by a Courtworker helped them:

- get a lawyer (legal aid) for their case (81%);
- connect with community resources (e.g., addictions, mental health services, housing, employment, training, etc.) (78%); and,
- access specialized courts (e.g., First Nations Court, Gladue Court, Community Court, Drug Treatment Court, Wellness Court, Mental Health Court) (75%).

As indicated in Figure 4, ICW clients also frequently reported high levels of satisfaction with the information they received from their Courtworker. These responses are similar to what was reported in the 2018 evaluation.

Figure 4: Satisfaction of Indigenous Courtwork Program Clients with the Information Provided by Courtworkers

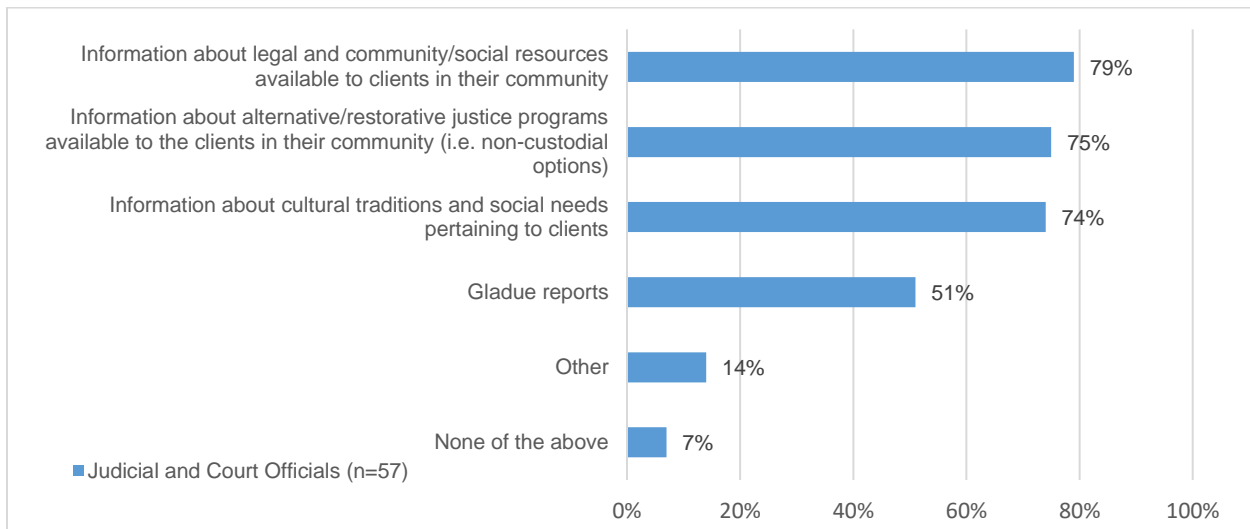


4.2.3 Provision of information and advice to judicial and court officials

Judicial and court officials are generally satisfied with the usefulness of information provided to them by Courtworkers as it provides insight into the obstacles faced by clients and the alternative/restorative justice programs and other community resources that are available.

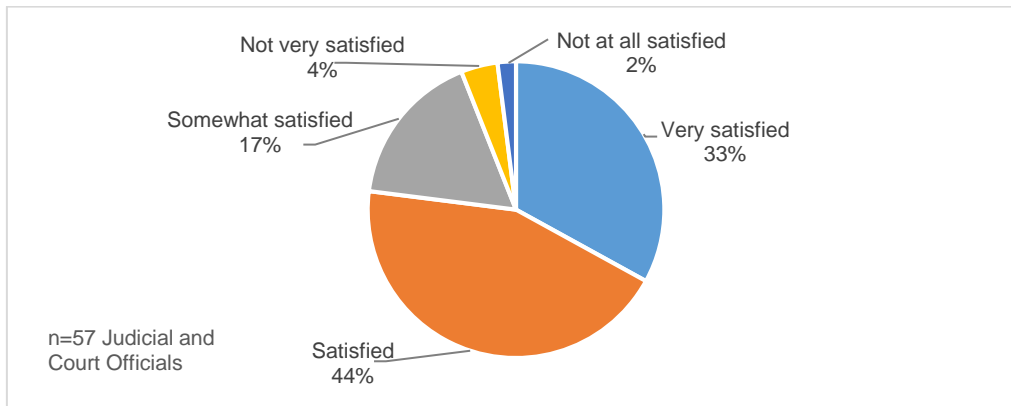
Courtworkers (86%) and judicial and court officials (79%) most frequently reported that Courtworkers provided the courts with information about legal and community/social resources available to clients, information about alternative/restorative justice programs available to clients in their community (i.e., non-custodial options), and information about cultural traditions and social needs pertaining to clients (Figure 5). Courtworkers also provided information on the client's family, the historical trauma experienced, and how these factors relate to involvement in the court system. These findings are similar to the 2018 evaluation where judicial and court officials stated that Courtworkers increased their understanding of the circumstances of the Indigenous accused persons before the court as well as the implications of cultural and historical considerations.

Figure 5: Information and Advice Provided by Courtworkers to Judicial and Court Officials



Most judicial and court officials surveyed were satisfied (44%) or very satisfied (33%) with the usefulness of the information provided to them by Courtworkers (Figure 6). This level of satisfaction is similar to that reported in the 2018 evaluation. Judicial and court officials frequently mentioned that the ICW Program is an integral part of the court process as it provides insight into a client's life and the obstacles that they face. The information they receive as a result of the Program is important information that they would otherwise not have access to.

Figure 6: Satisfaction with Information Provided by Courtworkers to Judicial and Court Officials



One of the reasons some judicial and court officials indicated a lower level of satisfaction regarding the usefulness of the information they received was Courtworkers' variable skills and abilities (i.e. different levels of training and experience), which constrained their effectiveness in providing information to the court. Judicial and court officials also indicated that the limited services available in some communities constrains the ability of Courtworkers to make referrals to basic services such as transportation, housing, education, employment, and mental health and substance use programs.

While there is general agreement among judicial and court officials that the information provided by Courtworkers is useful and valuable, evidence suggests that there continues to be a need to further increase awareness of the role and value of Courtworkers amongst this group. This need was identified across multiple provincial and territorial jurisdictions with respect to Indigenous cultural understanding, circumstances of clients and communities, and community-based programming available.

4.2.4 ICW Program contribution to Judicial and court-official decision making

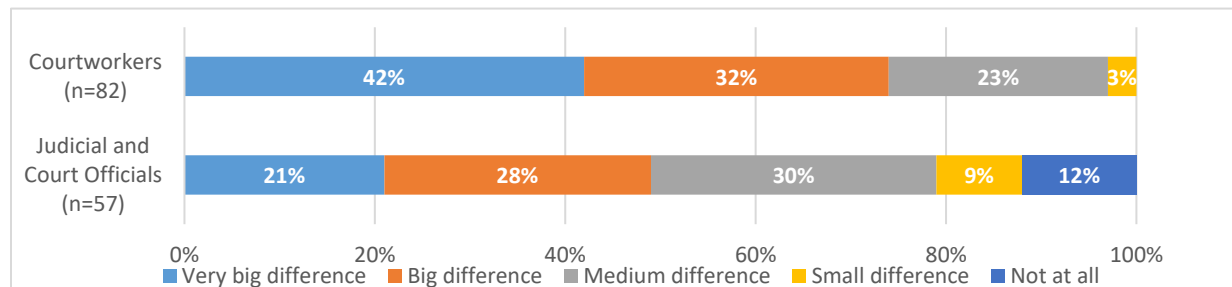
Information provided by Courtworkers is used by judicial and court officials to inform their decision-making and court processes. Although Courtworkers play an important role in increasing the use of non-custodial options and rehabilitative programming, the use of these alternatives is limited by the availability of programs in some communities.

Most judicial and court officials surveyed (85%) responded that they have used information provided by Courtworkers to inform their decision-making and court processes. More specifically, they indicated that the information:

- Raises awareness about the culture and traditions of each community in order to craft appropriate sentences.
- Assists prosecution and defense with decision making on certain court conditions (e.g., avoiding recommending court conditions with which the client would be unable to comply).
- Assists with decisions on release (e.g., information regarding personal circumstances of an offender, homes available for release, and resources and support available to him in the community).
- Assisting with decisions to refer cases to Indigenous People's Court.

As indicated in Figure 7, about half of judicial and court officials agreed that Courtworker services have made a big or very big difference in increasing the use of non-custodial options and rehabilitative programming, compared to about three quarters of the Courtworkers surveyed.

Figure 7: Impact on the Use of Non-Custodial Options and Rehabilitative Programming



Judicial and court officials who perceived that Courtworker services did not make a big difference in the use of non-custodial options or rehabilitative programming indicated that the impact is limited due to the limited programming available in some communities, particularly in remote areas. It is important to note that there is no control on whether a client follows through and participates in these programs and non-custodial options may not be appropriate depending on the nature of the crime (e.g., nature of violence).

“The information that Courtworkers provide to lawyers in court does make a large difference with increasing the use of non-custodial options. However, it is important to note that there are limited resources, community supports and/or rehabilitative programming made available in remote communities. In addition, there is a stigma associated with accessing these resources within remote communities, which in turn, deters clients from willingly accessing them. Therefore, often times Indigenous clients can find themselves appearing before the court for similar charges and thus, custodial sentences are given stronger consideration.”
 – Judicial and Court Official

4.2.5 Facilitation of partnerships between Indigenous communities, community justice systems, and the criminal justice system

Courtworkers have developed and strengthened partnerships between Indigenous communities, community justice systems, and the criminal justice system.

The extent to which the ICW Program can have a positive effect on the use of alternative measures and community resources is linked to the strength of the relationships and partnerships developed between the Courtworkers and the communities they serve. Courtworkers who have developed good working relationships with service providers in the community are not only aware of what services and supports are available, but when they may be available to refer their clients.

On average, Courtworkers reported developing 4.4 partnerships and strengthening 3.7 partnerships per Courtworker. As indicated in Figure 8, the most frequent types of partnerships developed or strengthened by Courtworkers are with judicial and court officials, treatment centres, Indigenous organizations, and youth community justice committees.

Figure 8: Courtworker Partnerships Developed or Strengthened



Courtworkers have contributed to partnerships through various means such as formal memoranda of understanding, referrals to services, and inviting judicial and court officials to participate in traditional events. They are well connected in their communities through their participation in events and activities (e.g., outreach in schools), work with community justice workers, and relationships with community organizations.

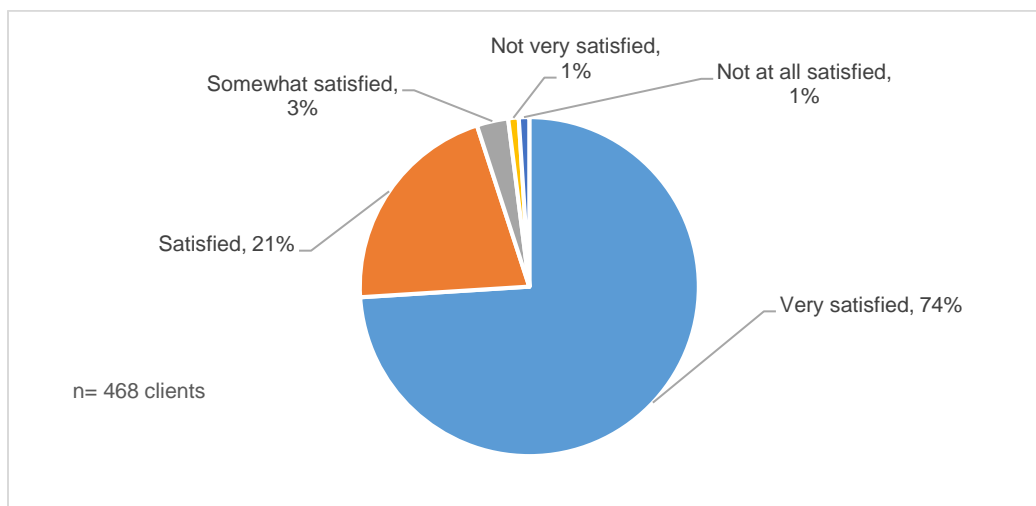
4.2.6 Contribution to fair, equitable, and culturally sensitive treatment before the Court

The ICW Program contributed to clients receiving fair, equitable and culturally sensitive treatment by advocating on their behalf, helping them navigate the justice system, and connecting them with culturally relevant programming in their community.

ICW Program clients surveyed indicated that Courtworkers advocated on their behalf when meeting with court officials and other stakeholders, educated them about the justice system and their rights, assisted with release plans and Gladue reports, and helped with access to resources such as attending mental health appointments and housing supports. They also helped them avoid unneeded time spent in custody and unnecessary additions to their criminal record, which has helped them to continue their education, preserve their hunting rights, and return to work. Clients frequently commented that they appreciated the support of Courtworkers in walking them through a difficult time in their lives, which made them feel valued, cared for, and less stressed and anxious.

Overall, 95% of clients were satisfied or very satisfied with the information provided to them by the Courtworkers as indicated in Figure 9. Almost all ICW Program clients indicated they would recommend Courtworker services to other Indigenous people.

Figure 9: Level of Client Satisfaction with Information Provided by Courtworkers



Courtworkers contributed to clients' abilities to make informed decisions before the Court. A study on guilty pleas among Indigenous peoples in Canada described factors that may contribute to guilty pleas even when an Indigenous person is not guilty, such as language barriers, distrust in the justice system, and a cultural premium placed on agreement, cooperation, and taking responsibility.²⁶ Among clients surveyed as part of this evaluation, 23% of those who pleaded guilty and 51% of those who pleaded not guilty indicated it was because their Courtworker explained the meaning of the plea which helped inform their decision.

Almost all key informants perceived that the ICW Program contributed to clients receiving fair, equitable, and culturally sensitive treatment before the court. These respondents noted that Courtworkers contributed to this goal by providing culturally relevant services and supports to clients and advocating for them before the court (e.g., explain a client's history and barriers such as access to transportation, housing and finances). In addition, Courtworkers promoted cultural values (e.g., use of Elders in providing services), ensured culturally safe spaces are provided to clients, and referred clients to culturally relevant services, including treatment options.

However, the following factors were seen to limit the impact that the ICW Program can have on a client's experience in the court and in accessing culturally relevant services:

- varied skill levels of Courtworkers in providing services;
- limited/insufficient availability of Courtworkers in some communities;
- gaps and availability issues in the program and services to which Courtworkers can make referrals; and,
- client's prior negative experience with the justice system.²⁷

²⁶ Bressan, A., & Coady, K. Justice Canada Research and Statistics Division. 2017. Guilty pleas among Indigenous people in Canada.

²⁷ In With Forward. Justice Journeys: An ethnographic dive into what life is like for Indigenous people journeying through the criminal justice system in Peterborough & Toronto, Ontario.

Furthermore, consistent with findings of the last evaluation, just over half of clients surveyed indicated they would have preferred contact with a Courtworker sooner, as it would have been helpful to talk to a Courtworker as soon as they were arrested and charged, rather than have the first contact with a Courtworker during a court appearance.

4.2.7 Contribution to Indigenous cultural values being reflected in justice administration

The ICW Program is contributing to an increase in Indigenous cultural values being reflected in the administration of the Canadian justice system by providing information on client circumstances, needs, and cultural values, elements which impact sentencing.

Courtworker services have made a positive contribution towards increasing relevant Indigenous cultural values being reflected in the Canadian justice administration. Courtworkers contribute by providing information on client circumstances, needs, and cultural values, elements which, in turn, impact sentencing. For example, Courtworkers have brought Elders to court to provide information about clients' backgrounds and cultural traditions. Often, cultural and client information is conveyed in Gladue reports, which impact sentencing and court decisions. In terms of integrating Indigenous cultural values in court itself, Courtworkers have integrated the use of smudging, of eagle feathers for swearing in and of other Indigenous symbols (e.g., an oil lamp symbol for Inuit people).

A majority (58%) of judicial and court officials surveyed consider Courtworkers as essential to the court's understanding of the Indigenous experience with the justice system, and in connecting Indigenous persons with relevant Indigenous-led community-based programs and services. They noted that Courtworkers provide information on alternative measures that take into consideration clients' Indigenous cultural values. In addition, they liaise with the Crown about sentencing options and provide information about community programs based on their needs. One half of judicial and court officials perceived that Courtworkers are embedded in the court processes in terms of their role being recognized as essential to the court's understanding of the Indigenous experience within the criminal justice system.

Some key informants, Courtworkers, and judicial and court officials reported that the ICW Program has not made a big difference in increasing relevant Indigenous cultural values being reflected in the Canadian justice administration. The reasons provided included:

- the court system is slow to change;
- variable skills and abilities of Courtworkers (e.g. some have more experience and training than others);
- limited programs available for referrals;
- lack of buy-in and education among some judicial and court officials regarding the role of Courtworkers (e.g., some defence counsel may not request Gladue reports and some judges and Crowns are not open to receiving advice from Courtworkers); and,
- the limited capacity of Courtworkers (e.g., Courtworkers are not present in every court room).

A research project on Canadian judiciary's experiences with Gladue found several reasons why judges may not order a full Gladue report, including the length of time it takes to obtain a report, whether there is a Gladue writer in the jurisdiction, the quality of previously ordered Gladue reports, concerns over the competence of Gladue writers, and whether the Gladue information is helpful. This research noted

that Indigenous offenders also may not request a full Gladue report because they do not want to discuss their past trauma, or they do not have access to information on their family history.²⁸

A few key informants and Courtworkers indicated a continued need for education of judicial and court officials with respect to ensuring Indigenous cultural values are reflected in justice administration. Education topics suggested by respondents include colonialism, intergenerational trauma, residential schools, missing and murdered Indigenous women and girls (MMIWG), the 60's scoop, land issues, reserves, treaty rights, and racism. These respondents also indicated a need to continue to educate judicial and court officials about the circumstances of clients and communities and of the community-based programming that may be available.

4.3 Program Design and Delivery

4.3.1 GBA+ considerations in planning and delivery of the ICW Program

GBA+ was considered in the planning and delivery of the ICW Program. There is a need for more Courtworker training on meeting the needs of diverse groups.

Different groups of Indigenous clients require additional types of support from Courtworkers due to their unique needs and the barriers they face in accessing the justice system. A majority of Courtworkers indicated that they tailored the services for diverse groups of Indigenous peoples involved in the justice system to help them obtain equitable treatment. The groups most commonly identified across all lines of evidence as needing additional support from Courtworkers include:

- **Individuals experiencing homelessness.** Indigenous peoples are overrepresented among those who live in over-crowded housing and experience homelessness. According to Statistics Canada, Indigenous peoples were almost twice as likely to live in crowded housing compared to the non-Indigenous population (17% versus 9%) in 2021.²⁹ Another study found that a higher proportion of Indigenous peoples compared to non-Indigenous people had experienced unsheltered homelessness in the past (12% of off-reserve First Nations peoples, 10% of Inuit and 6% of Métis versus 2% of non-Indigenous people in 2018).³⁰ Indigenous individuals experiencing homelessness face additional barriers in accessing justice services since they sometimes have no fixed address or phone, have difficulty recalling court dates, cannot receive mail communications regarding their case or share mailboxes with other individuals, resulting in lost mail. In addition, some lack adequate transportation to the court for appearances. These factors can lead to breaches of their conditions of parole and additional charges.
- **Women.** Though most Indigenous peoples interacting with the justice system continue to be men, there has been an increase in women offenders. According to a report by the Office of the Correctional Investigator, the proportion of Indigenous women comprising all federally sentenced women has increased from 33% in 2013 to almost 50% in 2021.³¹ This factor increases the

²⁸ Dickson, J., & Smith, K. 2021. Exploring the Canadian judiciary's experiences with and perceptions of Gladue.

²⁹ Statistics Canada. 2022. Housing conditions among First Nations people, Métis and Inuit in Canada from the 2021 Census. <https://www12.statcan.gc.ca/census-recensement/2021/as-sa/98-200-X/2021007/98-200-X2021007-eng.cfm>.

³⁰ Statistics Canada. 2022. Study: A portrait of Canadians who have been homeless. <https://www150.statcan.gc.ca/n1/daily-quotidien/220314/dq220314b-eng.htm>.

³¹ Office of the Correctional Investigator. 2021. Proportion of Indigenous Women in Federal Custody Nears 50%. Correctional Investigator Issues Statement. <https://www.oci-bec.gc.ca/cnt/comm/press/press20211217-eng.aspx>.

demand for ICW services that are tailored to women such as childcare services and assistance dealing with domestic violence.

- **Youth.** According to Statistics Canada, Indigenous youth represented 43% of youth admissions to correctional services, even though Indigenous youth represented 9% of the youth population (12-17 years) in Canada in 2018.³² Key informants and Courtworker survey respondents stated that some contributing factors to this overrepresentation are that some Indigenous youth lack a parent or stable home where they can receive mail and/or they lack a computer or phone causing loss of contact with lawyers. Respondents also indicated that youth require more holistic assistance from Courtworkers in navigating the justice system, including the involvement of family members in supporting referrals to community services and the provision of wraparound supports.
- **2SLGBTQI+.** Within many Indigenous communities and cultures, there has been a long-held acceptance of gender diversity, now commonly reflected within the term "Two-Spirit." According to the 2021 Census, Indigenous peoples aged 15 and older were twice as likely to be transgender or non-binary as non-Indigenous people (0.6% versus 0.3%).³³ A 2021 Justice Canada study found that Indigenous 2SLGBTQI+ individuals can face barriers in the justice system since racism and colonial violence can be further intensified by intersecting homophobia. Also, many processes and structures presume individuals are cisgender and heterosexual, rendering 2SLGBTQI+ individuals invisible in legal processes.³⁴

Courtworkers surveyed reported the estimated percentage of clients they served annually by GBA+ group. As indicated in Table 3, the most frequently reported groups were women and people experiencing homelessness. Individuals under the age of 30 and those with health or medical conditions were also frequently mentioned.

Table 3: Estimated Annual Average Number of Clients Served by the ICW Program by GBA+ Group, FY 2016-17 to FY 2018-19

In the past year, approximately what number or percentage of clients (whichever is easier to estimate) did you serve from the following groups? (Select all that apply)	Estimated Average % of Clients Served From Courtworker Survey	Number of Courtworkers Reporting in Survey (n=)	Average Number of Clients Served by ICW Program	Estimated Number of Clients Served
Persons experiencing homelessness	40%	43	67,145	26,858
Women	36%	42	67,145	24,172
Young persons (30 years or less)	34%	42	67,145	22,829
Persons with health or medical conditions	27%	36	67,145	18,129
Persons with disabilities	17%	34	67,145	11,415
2SLGBTQI+	7%	30	67,145	4,700
Other groups (please specify)	26%	13	67,145	17,458

Note: "Other groups" included immigrants (non-Indigenous people) (5), male clients (5), people needing translation (2), people struggling with addictions, and victims of crime.

³² Statistics Canada. 2020. Adult and youth correctional statistics in Canada, 2018/2019. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00016-eng.htm>.

³³ Statistics Canada. 2022. Indigenous population continues to grow and is much younger than the non-Indigenous population, although the pace of growth has slowed. <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm?indid=32990-1&indgeo=0>.

³⁴ Justice Canada. 2021. Serious Legal Problems faced by Lesbian, Gay, Bisexual, and Other Sexual-Minority People in Western Canada: A Qualitative Study. <https://www.justice.gc.ca/eng/rp-pr/jr/lgbtq/toc-tdm.html>.

Almost all interviewees reported that the ICW Program is flexible in meeting the needs of diverse groups as it provides a safe space for clients regardless of how they identify. They also noted that Courtworkers provided customized support to clients based on their needs such as bus tickets for clients with mobility issues to attend court, cell phones to be able to remind homeless individuals of court dates, and translation services for clients with language barriers. Courtworkers also made referrals to services (e.g., mental health supports, women's shelters, and youth programs) and partnered with relevant service providers (e.g., agencies working with 2SLGBTQI+ individuals). Finally, Courtworkers supported diverse groups of clients by informing judicial and court officials of their specific needs, such as those related to persons with disabilities.

Courtworkers have received training on equity, diversity and inclusion, particularly related to working with families affected by MMIWG and clients with substance use and fetal alcohol spectrum disorders (FASDs) issues. At the 2019 ICW Program National Gathering, a breakout session was offered that focused on the National MMIWG Inquiry and Systemic Racism. Among the 27 respondents who completed the evaluation for the breakout session, the majority of participants found the session to be helpful and wanted more information on the topic. One of the challenges identified with respect to ICW Program delivery for the diverse groups of clients was a lack of training among Courtworkers on the specific needs of these groups (e.g., legal rights and services available in the courts and in the communities).

4.3.2 Challenges Affecting ICW Program Service Delivery

Key challenges to ICW Program service delivery include an insufficient number of Courtworkers, and high turnover. There is also a need for enhanced training and mental health supports for Courtworkers.

The evaluation found three key challenges affecting Program delivery that were most frequently identified across various lines of evidence. They are:

Insufficient number and high turnover of Courtworkers. Several key informants noted that the ability of Courtworkers to perform their primary activity of supporting Indigenous peoples to navigate the justice system is constrained due to a lack of capacity. Courtworkers are not serving all Indigenous communities in some provincial and territorial jurisdictions, particularly in rural and remote areas. The low pay of Courtworkers relative to other justice professionals such as probation officers makes it difficult to recruit and retain Courtworkers with the required skillset (e.g., familiarity with the law and justice process). It also results in a high level of turnover and an ongoing need for training new Courtworkers. Other factors affecting recruitment and retention noted by key informants include labour shortages across various industries, increasing rates of retirement amongst longstanding Courtworkers, and Courtworker burnout from high caseloads and frequent contact with high-need clients. The increased cost of living, particularly related to travel costs, is also impacting Courtworkers' ability to meet client needs, especially those traveling to circuit courts.

Lack of ongoing and enhanced Courtworker training. Since 2018, the ICW Program has provided funding for various training activities in different jurisdictions. These training activities included a two-day National Courtwork Gathering in 2019, training related to the expansion of Family Courtwork services, FASDs training, and training for Gladue report writing. Justice Canada has developed an

updated ICW curriculum³⁵ in 2022. However, there is a need for ongoing and enhanced training that facilitates skills upgrading and peer-to-peer support.

Courtworkers surveyed as part of the evaluation most frequently mentioned the following areas in which training would be beneficial:

- Working with clients who have mental health and substance use issues;
- The needs and rights of 2SLGBTQI+ individuals;
- The effects of intergenerational trauma;
- Family violence;
- Changes to the laws (e.g., *Criminal Code* and *Divorce Act*);
- Gladue Principles,
- MMIWG and systemic racism,
- Peacemaking and sentencing circles;
- Working with parents in family court; and,
- Changes to reporting.

The 2021 Native Courtworker and Counselling Association of British Columbia (NCCABC) report also identified a need for training Courtworkers on how to employ Indigenous-based ceremony and protocol in virtual meetings that are client-specific and locally-relevant; training Courtworkers on technology skills required for virtual Courtwork; and developing local and national protocols to enhance access to and safety of client information and court documents in virtual service procedures.³⁶ This research also recommended training for Courtworkers regarding mental health and wellbeing support (e.g., self-care, life promotion, and mental wellness/wellbeing).

Lack of sufficient mental health training and supports for Courtworkers. The COVID-19 pandemic and the expanded role of the ICW Program has resulted in an increased workload and greater demand on Courtworkers due to the increased complexity of client needs and increased involvement in addressing the holistic needs of clients (e.g., emotional support, food, and clothing). Courtworkers' responsibilities have also increased due to an expanded role in advocacy for restorative justice programs and increased involvement in specialized courts. Along with managing a higher client service intensity (i.e., the annual average ratio of ICW services per client increased from 1.9 to 2.3 services per client comparing 2014-15 to 2015-16 with 2016-17 to 2019-20), this has contributed to a high level of burnout among Courtworkers. There is a need for wellness and mental health supports to help mitigate these stressors and retain Courtworkers.

The 2021 NCCABC also suggested implementing increased mental health supports as Courtworkers transition back into regular systems as there are long term impacts on mental health due to the COVID-19 pandemic. The report also stated that both Courtworkers and their clients were in greater need of

³⁵ The ICW Program Basic Curriculum is a manual that provides Courtworkers with information about critical components of their work such as the justice and court system in Canada, the Charter of Rights and Freedoms, the *Criminal Code*, client's legal rights, courtroom personnel, Courtworker responsibilities in court, the criminal justice system and Indigenous communities, working with victims of crime, counselling clients, and integrated case management.

³⁶ Native Courtworker and Counselling Association of British Columbia, Indigenous Courtworker Co-Researchers of Alberta, British Columbia, Northwest Territories, Ontario, Quebec, the Yukon, and Nanaimo Centre for Justice, Education and Research. 2022. Towards Indigenous-Informed and Client-Centred 'Virtual' Service Provision: Putting Indigenous Courtworkers Learnings from COVID to Work. Recommendations and Final Report.

mental health support due to the changes in services delivery, and the global stressors that arose due to the pandemic.³⁷

Other challenges to ICW Program service delivery include the limited number and capacity of community justice programs, mental health and substance use services, and culturally relevant legal representation to which Courtworkers can refer their clients.

To maximize the potential impact of Courtworkers, it is critical that they are able to refer their clients to culturally relevant community justice programs, legal representation and mental health and substance abuse services. The following challenges were identified in this regard:

Lack of sufficient restorative, alternative, community-based justice programs for Courtworker referrals. Courtworkers provide referrals to programs that enable the resolution of conflicts outside the justice system such as pre- or post-charge diversion programs, Indigenous-specific intimate-partner violence programs, dispute resolution programs (e.g., mediation), extrajudicial sanction programs, bail supervision or verification programs, residential programming, youth prevention programs, and survivor and victim services. However, key informants and Courtworker survey respondents indicated the lack of such alternative community-based justice programs in many communities. This in turn can lead to judicial and court officials being left with limited non-custodial options for Indigenous peoples involved in the justice system. According to a study by Public Safety Canada, in FY 2017-18, there were 240 restorative justice programs delivered across Canada, which reported receiving a total of 22,576 referrals (16,155 offenders and 10,107 victims).³⁸ The number of referrals represents only one third of the average number of ICW clients served annually (67,145 from FY 2016-17 to FY 2018-19).

Insufficient culturally safe legal representation for Courtworker referrals. Key informants and Courtworker survey respondents indicated a lack of culturally safe legal aid representation to which clients can be referred. Courtworkers also indicated a reluctance among some legal aid representatives to take on Indigenous clients, particularly those with mental health or substance use issues or those living in rural and remote communities. Justice Canada's 2021 Evaluation of the Legal Aid Program found that despite efforts of legal aid plans to adapt and expand services to reach vulnerable populations, there are some unmet needs for those living in rural and remote areas and Indigenous populations.³⁹

Insufficient culturally relevant mental health and substance use services for Courtworker referrals. Courtworkers facilitate referrals to therapeutic or healing programs that provide wraparound supports, particularly for those with mental health and substance use issues. Key informants and survey respondents indicated that lack of referrals to mental health and substance use programming leads to more failures to comply with court orders and increased incarceration for Indigenous peoples. A study on Indigenous administration of Justice Offences in Alberta stated that substance use was the greatest issue for Indigenous offenders.⁴⁰ Key informants and survey respondents also indicated that

³⁷ NCCABC. 2021. Indigenous Resilience and Adaptability: The National Indigenous Courtwork Program Response to COVID-19.

³⁸ Public Safety Canada. 2020. Increasing the Use of Restorative Justice in Criminal Matters in Canada - Baseline Report. <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2020-resjus-jusrep/index-en.aspx>.

³⁹ Justice Canada. 2021. Evaluation of the Legal Aid Program. <https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2021/aid-aide/docs/legal-aid-rpt-final-eng2.pdf>.

⁴⁰ Aboriginal Administration of Justice Offences Research Project: A study of Aboriginal Administration of Justice Offences as they relate to community supervision provided by probation officers in Alberta. N.d.

many Indigenous people in the justice system are dealing with substance use issues, intergenerational trauma, trauma from systemic racism, mental health conditions, and a history of abuse and violence. These factors compound to make it even more difficult for individuals to adequately access, understand, and navigate the justice system. A key challenge is the limited availability of these services and some exclusion criteria that may limit their access to some programs (e.g., if there is a sexual offence, assault charge, prolonged detainment and lost welfare privileges, they may not be able to access all supports).

4.3.3 Impact of COVID-19 on the ICW Program

The COVID-19 pandemic resulted in additional demands on Courtworkers due to a reduction in client access to services, an increase in complexity and severity of client needs, and an expanded role to meet the urgent needs of Indigenous communities dealing with the pandemic.

The COVID-19 pandemic had a significant impact on the delivery of the ICW Program by making it difficult to access clients and increasing the workload of Courtworkers. The key impacts of the pandemic on the delivery of the Program were:

Reduced access to services. The pandemic resulted in a reduction in access to services as many services such as legal aid, shelters, domestic violence supports, and treatment facilities ceased operating or moved to a virtual delivery model. The 2021 NCCABC study found that the pandemic resulted in increased waitlists and closures of services typically used for client referrals.⁴¹ Key informants and survey respondents reported that it was challenging for Courtworkers to even reach clients due to lockdowns of correctional facilities and closures of public places where clients would typically access the internet (e.g., public libraries). Some circuit courts ceased operating completely due to travel restrictions and the high rates of COVID-19 in some communities. New barriers to access were inevitably created as services moved to a virtual delivery model since clients often lacked the technology to attend virtual court and faced Internet connectivity barriers particularly in northern, rural, and remote communities. Virtual services also made it difficult to establish relationships with Indigenous clients, and further distanced Indigenous peoples from the justice system process. There was an increased number of warrants issued for Indigenous-accused individuals because clients missed virtual court appearances.⁴²

Expanded role of ICW Program. The role of Courtworkers was expanded during the pandemic to meet the urgent needs of communities, such as supporting Canada Emergency Response Benefit applications, providing meal kits, and conducting wellness checks with clients, which increased the workload of Courtworkers and contributed to a high level of burnout.⁴³

Switch to virtual mode of delivery. ICW project funding was provided in response to the COVID-19 pandemic to support the purchase of phones, laptops, internet access, and headphones so Courtworkers could expand their service delivery to include a virtual mode. Courtworkers connected with clients using social media and vehicle-to-vehicle meetings and provided clients with access to cellphones, computers, and internet in their offices. There was an increase in the use of technology during the COVID-19 pandemic (e.g., phone and FaceTime meetings, requests for client to appear on

⁴¹ NCCABC. 2021. Indigenous Resilience and Adaptability: The National Indigenous Courtwork Program Response to COVID-19.

⁴² NCCABC. 2021. Indigenous Resilience and Adaptability: The National Indigenous Courtwork Program Response to COVID-19.

⁴³ Ibid.

CCTV from prison, one-on-one private spaces for persons attending court to access the court via Zoom using a laptop, and digital filing).

Some Courtworkers used a hybrid method, maintaining some in-person contact with clients, while connecting with courts virtually. According to the NCCABC report, innovative practices that emerged as a result of COVID-19 include communicating with clients and Crown via email to resolve charges, sending paperwork over text, revising forms to allow for clients to provide verbal consent, conducting sentencing, intakes and pleas by phone, conducting video bails, creating culturally sensitive signage for clients, and making technology accessible for both clients and Elders.⁴⁴

The NCCABC report found that ICW Program services needed more technological, operational, and training support during the pandemic. The report also indicated a requirement to develop protocols for how Courtworkers enter First Nations communities to deliver services in a virtual model.⁴⁵

Increased complexity and severity of client needs. Key informants and survey respondents stated that the isolation resulting from the COVID-19 pandemic led to increased tensions, stress, and anxiety within families and communities, which contributed to greater alcohol, opioid, and other drug use. This trend resulted in more complex client needs due to higher rates of overdoses, poverty, housing insecurity, child neglect, domestic violence issues, and other violent crimes (e.g., major assaults, homicides, and sexual assaults). Homelessness and poverty also increased as a result of the pandemic due to limited employment options and inflation, particularly in northern communities. According to a study by the First Nations Health Authority, there was a 119% increase in toxic drug deaths among First Nations people in British Columbia from 2019 to 2020 (from 116 to 254 deaths).⁴⁶ Statistics Canada reported that in 2020, there were 201 Indigenous victims of homicide, an increase of 12% from 179 in 2019 and the rate of homicide for Indigenous peoples was seven times higher than for non-Indigenous peoples.⁴⁷ Violent crimes can cause significant traumas for Indigenous communities that last decades and also impact Courtworkers who are from those communities.

4.3.4 Other Changes to ICW Program Delivery

There has been an increase in Courtworker services provided to Indigenous persons involved in family related justice systems and a greater role in advocacy for restorative justice programs.

The role and workload of Courtworkers has expanded in the last four years due to changes in ICW Program delivery. The following examples describe the changes in the delivery of the ICW Program that have occurred in the last four years in addition to those described previously as a result of the COVID-19 pandemic.

Increased services to Indigenous persons involved in family and/or child protection justice systems. The ICW Program was expanded in 2021 to support the provision of culturally competent services to Indigenous persons involved in the family and/or child protection justice systems. An

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ First Nations Health Authority. 2020. First Nations in BC and the Toxic Drug Crisis. <https://www.fnha.ca/AboutSite/NewsAndEventsSite/NewsSite/Documents/FNHA-First-Nations-in-BC-and-the-Toxic-Drug-Crisis-January-December-2020-Infographic.pdf>.

⁴⁷ Statistics Canada. 2021. Police-reported crime statistics in Canada, 2020. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00013-eng.htm>.

additional \$6.7 million spread over three years was allocated to the ICW Program for these services. As of October 2022, ICW Program funding agreements are in place with five provincial and territorial jurisdictions to deliver Family Courtwork services.⁴⁸ Prior to this expansion, several jurisdictions were involved in piloting and delivering Family Courtwork services. Family Courtwork has been provided in Alberta for over 50 years and in Ontario for over 20 years. Both provinces have Family Courtworkers who also provide services in Criminal Court and other courts. In 2018, a pilot project on an Indigenous Family Healing Court was initiated in British Columbia. In FY 2020-21, the Saskatchewan Aboriginal Courtworker Gathering pilot project was launched to meet the increasing demand for family, youth and criminal Courtworkers.

The majority (67%) of Courtworkers surveyed provided services in Family Court. Family Courtworkers assist a range of individuals such as youth, couples who are separating or divorcing, and families involved in child welfare matters. The Family Courtwork case study identified some examples of information, services, and programming that Family Courtworkers have provided to judicial and court officials. This includes reports about supervised visits, program completion letters, and clients' success rates. The main differences in the roles of Family Courtworkers compared to Criminal Courtworkers are the higher level of complexity and longer involvement in cases, particularly those involving the custody of children, and the increased emotional support required. There are also increased challenges in Family Court due to Courtworkers working with families in a crisis situation and the emotionally charged nature of these cases. This can lead to an increase in the time spent on a file and burnout among Family Courtworkers.

"Family Courtworkers are more hands on. When we open a file, we are with it until it closes with children services and the children are returned home. We have a lot more involvement with that. We have service team meetings. We meet with other community members included in those files. With criminal, I think they just do that. I think the difference is that with regular Criminal Court to Family Court is we're a little bit more involved."
– Family Courtworker

Adoption of innovative and promising practices in delivering Courtwork services. Several innovative and promising practices that have been implemented in some jurisdictions were identified through the key informant interviews, Courtworker survey, and document and data review. This included:

- Creating a management table to discuss client circumstances. It was noted that management tables facilitated Courtworkers in connecting clients to appropriate services (e.g., housing first, and language programs).
- Creating a catalogue of resources from each province and territory to determine the promising practices that are being utilized.⁴⁹
- Implementing electronic *data management systems*. Some Courtworkers developed Google documents to track and manage client court dates and appearances, which assisted with data tracking. Others used electronic documents to record Courtworker activities and network with other service providers.
- Developing innovative approaches in Indigenous Courts such as healing plans and peacemaking which help prevent clients from having a criminal record.

⁴⁸ The provinces and territories that delivered family courtwork services were Alberta, Saskatchewan, Ontario, Quebec, and Northwest Territories.

⁴⁹ National Indigenous Courtworker Program Gathering. 2019-2020. Indigenous Courtworker Directors National Strategic and Implementation Plan FY 2019-2020.

4.4 Efficiency

4.4.1 Justice System Cost Savings Attributable to the ICW Program

The estimated cost savings to the criminal justice system from Courtworker activities that prevent clients from avoidable arrests and unnecessary time in custody are estimated to be about \$73 million per year, which demonstrates the value of the ICW Program.

Cost saving estimates were developed for the evaluation based on Courtworker survey data, external research on the costs to the justice system (e.g., cost per arrest), as well as Program data on the total number of Courtworkers in Canada supported through the ICW Program. It should be cautioned that there are limitations to the analysis of estimated justice system cost savings, as the analysis relies heavily on Courtworker recollections and opinions about the number and nature of interactions with clients. The analysis also does not include a control group or counterfactual assessment (e.g., of costs that would have occurred without Courtworker involvement).

The Courtworkers surveyed indicated that they contributed to justice system cost savings by preventing clients from avoidable arrests. The two main ways that Courtworkers prevent clients from unnecessary arrests are:

- **Helping prevent clients from arrests by ensuring that they appear in court.** Courtworkers help prevent clients from failing to appear in court by reminding them of court dates and ensuring clients show up for court. They also provide transportation to the court and basic needs (e.g., emergency clothing and food) to ensure clients, such as those who may be experiencing homelessness, are more prepared and focused on the court appearance. If the Courtworker did not provide this service, it could have resulted in the client failing to appear in court and an arrest warrant being issued.
- **Helping prevent arrests by ensuring that clients do not break their conditions of parole.** To prevent clients from breaking conditions of parole, Courtworkers help court personnel contact clients, clarify conditions of parole with clients, remind clients of court dates, and review release plans to ensure they are tailored to the individual and reflective of their needs and level of participation with probation and/or parole. If the Courtworker did not provide this service, it could have resulted in the client breaching conditions of parole and an arrest warrant being issued.

The Courtworkers surveyed estimate that, on average, they each helped approximately 20 clients per month avoid unnecessary arrests by undertaking activities such as ensuring that they do not fail to appear in court or break conditions of their parole. A 2016 Public Safety Canada study estimated the cost of an arrest in Canada at \$1,149.⁵⁰ By extrapolating the number of arrests prevented to the estimated total of 230 Courtworkers in the ICW Program, this results in estimated cost savings to the justice system of \$63.4 million (Table 4).

The Courtworkers surveyed also stated that they contributed to justice system cost savings by preventing clients from going into custody by advocating for alternative, non-custodial, restorative justice options at sentencing. Courtworkers provided background information on clients and

⁵⁰ Public Safety Canada. 2016. Tyler's Troubled Life: The story of one young man's troubled path towards a life of crime. (<https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/2016-r005/index-en.aspx>).

information about programs available in the community to judicial and court officials which led to non-custodial sentencing decisions. If the Courtworker did not provide this service, it could have resulted in more clients going into custody. The Courtworkers surveyed estimated that, on average, they each helped prevent 15 clients per month from going into custody unnecessarily. According to a 2015 Public Safety Canada study on the costs of crime, the cost of adult custody was estimated at about \$224 per inmate per day.⁵¹ By extrapolating the estimated number of custodial stays prevented by the 230 Courtworkers in the ICW Program and assuming that the average length of custody is one day, this results in estimated cost savings to the justice system of \$9.3 million per year (Table 4).

The combined cost savings to the justice system by preventing clients from unnecessary arrests and going into custody are estimated to be up to \$72.7 million per year (Table 4). This amounts to an estimated cost savings to the justice system of up to \$316,000 per Courtworker per year.

Table 4: Annual Estimated Cost Savings to the Justice System by the ICW Program

A	B	C	D	E	F	G
Type of Cost Saving	Reported Prevalence Per Month (average)	Number of Courtworkers Reporting Prevalence (N=)	Estimated Average Prevalence Per Year Per Courtworker	Cost Saving Per Instance	Number of Courtworkers Across Canada	Total Perceived Cost Savings Per Year (\$ millions)
Helped prevent a client from arrest	20	55	240	\$1,149 (per arrest)	230	\$63.4
Helped prevent a client from going into custody	15	55	180	\$224 (per day in custody)	230	\$9.3
Total						\$72.7

⁵¹ Gabor, T. Public Safety Canada. 2015. Cost of Crime and Criminal Justice Responses. (<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2015-r022/2015-r022-en.pdf>).

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

5.1.1 Relevance

The continued overrepresentation of Indigenous peoples in the justice system contributes to the continued need for the ICW Program. Factors contributing to this overrepresentation are multifaceted and systemic, such as higher rates of poverty, poor living environments, unemployment and disproportionate disadvantages in education and health care. The ICW Program is seen as responsive to the needs of clients through providing assistance in navigating the court system and accessing in-court and out-of-court services. The Program is also clearly aligned with several federal commitments, including efforts to advance reconciliation, and to work in consultation and cooperation with Indigenous peoples.

5.1.2 Performance

Effectiveness

The ICW Program continues to help increase clients' awareness of their rights, obligations, and resources available. Most ICW clients surveyed felt the information they received from their Courtworker assisted them in understanding the meaning of their plea, obtaining a lawyer, diverting their case to restorative and alternative justice programs, and receiving referrals to mental health and addiction treatment programs. Courtworkers support clients through moments of crisis in their lives by establishing relationships, helping them navigate justice system processes, and connecting them with culturally relevant programming in their community. Almost all clients surveyed as part of the evaluation were satisfied with the information provided to them by Courtworkers.

Consistent with findings of previous evaluations, Courtworkers continue to play an important role in efforts to increase the use of non-custodial options and rehabilitative programming amongst judicial and court officials. Courtworkers provide information about legal and community resources available, information on alternative and restorative justice options available, and information about cultural traditions and social needs pertaining to clients. They also support the client's family, help detail the historical trauma experienced, and help illustrate how these factors relate to involvement in the court system. Judicial and court officials are satisfied with the information being provided to them by Courtworkers and use the information to inform their decision-making and court processes such as crafting sentences, determining court conditions, developing decisions on release, and making referrals to culturally relevant and alternative/restorative programs. This has contributed to clients receiving fair, equitable, and culturally sensitive treatment before the Court and an increase in relevant Indigenous cultural values being reflected in the Canadian justice administration.

However, while there is general agreement on the positive impact of Courtworkers within the justice system, the evaluation identified some factors that may limit the impact the ICW Program can have on Indigenous peoples' experience in the court and in accessing culturally relevant services. These include:

- varied skill levels of Courtworkers;
- limited/insufficient availability of Courtworkers in some communities; and,

- gaps and availability issues in non-custodial and rehabilitative programming options for referrals.

Program Design and Delivery

Demand for ICW services has increased over the last five years, and the role of the Courtworker has continued to expand and evolve. While the number of ICW Program clients served has been stable, the number of services per client has increased since the last evaluation. This increase is due to several factors, including an expanded role to meet the urgent needs of Indigenous communities dealing with the pandemic, an increase in services to Indigenous persons involved in family and/or child protection justice systems, and greater involvement in advocacy for restorative programs and more holistic supports. Key challenges that have had an impact on program service delivery include the insufficient number and high turnover of Courtworkers, a lack of ongoing and enhanced Courtworker training, and insufficient mental health and peer to peer supports for Courtworkers.

The COVID-19 pandemic resulted in reduced access to program services. New barriers to access were created as services moved to a virtual delivery model and clients and Courtworkers faced technological barriers particularly in northern, rural, and remote communities. Virtual services also made it difficult to establish relationships with Indigenous clients. To respond to the urgent needs of communities, Courtworkers provided increased services, such as conducting wellness checks and providing meal kits, which in turn increased the workloads of Courtworkers.

GBA+ was considered in the planning and delivery of the ICW Program. Due to their unique needs, some groups of Indigenous clients require additional types of support from Courtworkers. They tailor services for diverse groups in order to help them obtain equitable treatment in the justice system. The groups most commonly identified across all lines of evidence as needing additional support from Courtworkers include those experiencing homelessness, women, youth, and 2SLGBTQI+.

Efficiency

Courtworker activities can prevent clients from avoidable arrests and unnecessary time in custody. The cost savings to the justice system from these activities are estimated to be about \$73 million per year. The two main ways in which Courtworkers can prevent clients from unnecessary arrests, and subsequent costs to the justice system are through helping ensure clients appear in court, and helping ensure that they do not break conditions of their parole. This in turn helps prevent subsequent administration of justice type offences (i.e. breach of conditions) and further arrest warrants being issued. It should be cautioned that there are limitations to the analysis of estimated justice system cost savings, as the analysis relies heavily on Courtworker recollections and opinions about the number and nature of interactions with clients

5.2 Recommendations

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

Recommendation #1: The Policy Implementation Directorate, in collaboration with the Tripartite Working Group, should examine ways to improve access and availability of training for Courtworkers.

The evaluation found that there is a need for ongoing and enhanced Courtworker training. This will help address issues related to high turnover, variable skills and abilities and the advent of more

complex client needs. This training could leverage ongoing efforts by provincial and territorial governments and Justice Canada to further strengthen and support the role of Courtworkers as professionals within the Canadian justice system. The training could take various forms such as a virtual or in-person training program, a peer-to-peer mentorship network of Courtworkers, or training delivered at annual in-person Courtworker gatherings. Training topics could include core competencies as well as upgrading on new areas such as how to work with diverse groups of clients (e.g., individuals with mental health and substance use issues, and underrepresented groups such as individuals experiencing homelessness, women, youth and 2SLGBTQI+), virtual delivery of Courtwork services, changes to reporting, and changes to laws such as the *Criminal Code*.

Recommendation #2: The Policy Implementation Directorate, in collaboration with the provinces, territories and service delivery agencies, should identify ways to increase judicial and court official awareness of the role of Courtworkers and the value of the services they provide.

The evaluation identified a need to continue informing and increasing judicial and court officials' knowledge regarding the services provided by the ICW Program and the value in accessing those services. More specifically, a need was identified with respect to increasing Indigenous cultural understanding, the significance of clients' circumstances of that of their communities into consideration in decisions, and the value community-based programming.

Recommendation #3: The Policy Implementation Directorate, in collaboration with the Tripartite Working Group, should explore ways to increase the wellness and mental health supports available to Courtworkers.

The COVID-19 pandemic and other changes in ICW Program delivery have resulted in increased workload and demands on Courtworkers. The changes are largely due to the increased complexity of client needs, an increase in services to Indigenous persons involved in family and/or child protection justice systems and greater involvement in addressing the holistic needs of clients (e.g., emotional support, food, and clothing). Courtworkers also have increased responsibilities in the areas of advocacy for restorative justice programs and increased involvement in specialized courts. This has contributed to burnout and turnover among Courtworkers. Some options to be considered to address these issues include Courtworker wellness and mental health supports and facilitating peer-to-peer support and sharing of best practices in addressing the mental health needs of Courtworkers.

APPENDIX A: EVALUATION ISSUES AND QUESTIONS

Issue #1: Relevance

- 1.1 What are the major needs with respect to helping Indigenous peoples involved in the criminal justice system to obtain fair, just, equitable, and culturally relevant treatment? How have the needs changed in the past 5 years?
- 1.2 To what extent are the ICW Program activities and objectives consistent with the Government of Canada's efforts to renew its relationship with Indigenous peoples, work in consultation and cooperation with Indigenous peoples, advance reconciliation, and improve access to justice?

Issue #2: Effectiveness

- 2.1 To what extent are clients provided culturally relevant information, services and programming?
- 2.2 To what extent are clients aware of their rights and obligations and resources available as a result of their interaction with Courtworkers?
- 2.3 To what extent are judicial and court officials provided with information and advice from the Courtworkers relating to the circumstances of the clients; legal and community/social resources available to the clients in their community; alternative/restorative justice programs and services available to the clients in their community; and cultural traditions and social needs pertaining to the clients?
- 2.4 To what extent do judicial and court officials adapt approaches to better respond to the needs of Indigenous peoples, including by diverting to community-based options?
- 2.5 To what extent have the Courtworkers contributed to partnerships between the Indigenous communities they serve, community justice systems, and the criminal justice system?
- 2.6 To what extent did ICW Program contribute to clients receiving fair, equitable, and culturally sensitive treatment before the Court?
- 2.7 To what extent did the ICW Program contribute to an increase in relevant Indigenous cultural values being reflected in the Canadian justice administration?
- 2.8 To what was GBA+ considered in the planning and delivery of the ICW Program to ensure Indigenous peoples involved in the justice system obtain fair, just, equitable, and culturally relevant treatment for different GBA+ groups of clients (e.g., women, 2SLGBTQI+, youth, persons with disabilities, persons with health or medical conditions, persons experiencing homelessness, repeat offenders, etc.), particularly in response to the National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG)?

Issue #3: Efficiency

- 3.1 How has the role of Courtworkers changed in the last five years? What innovative and promising practices have been identified? What are areas for further improvement?
- 3.2 What value does the ICW Program bring in terms of efficiencies and cost-savings to the justice system and related public institutions and in terms of its impact on clients' lives?

The above evaluation issues were developed at the onset of the evaluation. However, the analysis of evaluation findings indicated the need to highlight issues specifically related to program design and delivery. Consequently, this report provides a separate section on the evaluation findings related to the issue of program design and delivery.

APPENDIX B: EVALUATION METHODOLOGY

The following section describes the evaluation methodology employed.

1. Document, Data and Literature Review

A variety of documents, data, and literature were reviewed as part of the ICW Program evaluation including program data and documents such as the ICW Program's Performance Information Profile, budget-related documents, performance measurement data, and annual reports; data from ICW gatherings such as survey results and evaluations; COVID-19 research data such as *Indigenous Resilience and Adaptability: The National Indigenous Courtwork Program Response to COVID-19* (2021) prepared by the Native Courtworker and Counselling Association of British Columbia and Reciprocal Consulting; background documents and briefings; and research, statistics, and literature on the needs and context with respect to the ICW Program. Approximately 140 documents, data and literature were reviewed between February and August 2022.

2. Key Informant Interviews

Interviews were conducted with 33 key informants between August and October 2022 including 16 provincial and territorial representatives, 13 SDA representatives, and 4 Justice Canada departmental representatives. Interviews were conducted via videoconference in a semi-structured format that followed an interview guide. Key informants were provided with the interview guide in advance and given the option to participate in the interview in the official language of their choice. Table 4 presents the breakdown of key informants by jurisdiction and type.

All quotes presented in the report were reviewed and validated by the individuals who provided them as part of the evaluation.

Table 5: Key Informant Respondents by Jurisdiction and Type

Province/ Territory	Provincial/ Territorial	SDA	Justice Canada	Total number of Interviewees
Ontario	3	4	-	7
Alberta	1	3	-	4
Saskatchewan	4		-	4
Quebec	1	2	-	3
Northwest Territories	1	2	-	3
Yukon	2	-	-	2
Prince Edward Island	1	-	-	1
New Brunswick	1	-	-	1
Nunavut	-	1	-	1
Manitoba	1	-	-	1
British Columbia	1	-	-	1
Nova Scotia	-	1	-	1
National	-	-	4	4
Total	16	13	4	33

3. Surveys of Judicial and Court Officials and Courtworkers

Surveys were conducted with 82 Courtworkers and 94 judicial and court officials between September and November 2022 (Table 6). Contacts for potential survey respondents were provided by provincial and territorial representatives. A separate survey questionnaire was developed for each respondent group and focused on the effectiveness and efficiency of the ICW Program. Respondents were contacted by email in both official languages to complete a voluntary online survey (20-30 minutes to complete). Some contacts were invited directly, while others were asked to forward an open survey link to other individuals involved in the ICW Program to invite them to complete the survey.

Table 6: Description of Survey Respondents

Survey Group	Description	Number of Surveys Completed
Courtworkers	Representatives included Courtworkers employed by SDAs that deliver ICW Program services. Almost all respondents provided services in Criminal Court (96%) and a majority provided services in Family Court (67%). Other courts served included Traffic Court (29%), Youth Court (29%), Provincial Offences Act Court (21%), Civil Court (14%), and Administration Duties (14%). Respondents most frequently indicated they had been a Courtworker for less than five years (47%), followed by 6-10 years (25%), 11-20 years (14%), and 20+ years (14%).	82
Judicial and Court Officials	Representatives included criminal justice system actors including, Crown counsel (58%), judges (14%), probation officers (13%), defense counsel (10%), and court clerks (3%). A majority of respondents (63%) were somewhat to very familiar with the ICW Program. Respondents indicated they had been involved with the Program by working collaboratively with Courtworkers in providing advice to Indigenous peoples in the court system (31%), had contact with Courtworkers in court settings (27%), referred clients to the ICW Program (16%), and worked with Courtworkers for sentenced clients and clients diverted to alternative measures (11%).	94
Total		176

Table 7 provides a breakdown of survey respondents by jurisdiction and type. Surveys were conducted with individuals covering most provincial and territorial jurisdictions that had an ICW Program at the time of the evaluation.

Table 7: Survey Respondents by Jurisdiction and Type

Province/Territory	Courtworkers	Judicial and Court Officials	Total Number of Respondents	% of Respondents
Ontario	24	50	74	42%
Alberta	23	9	32	18%
Saskatchewan	8	11	19	11%
Quebec*	14	-	14	8%
Northwest Territories	3	7	10	6%
Nova Scotia	3	5	8	5%
Nunavut	4	3	7	4%
British Columbia*	-	5	5	3%
Yukon	2	1	3	2%
Manitoba	-	2	2	<1%
Prince Edward Island*	1	-	1	<1%
Unknown	-	1	1	<1%
Total	82	94	176	100%

*Contacts were not provided for Courtworkers in BC, and Judicial and Court Officials in Quebec and PEI at the time of the evaluation.

Prospective survey respondents were followed up by email and telephone to solicit participation and obtain referrals for other individuals who may be better suited to complete the survey. A total of 176 individuals completed the surveys among the 285 invited, resulting in a response rate of 62% (Table 8).

Table 8: Survey Response Rate

Target Group	Invited	Completed	Response Rate
Courtworkers	184*	82	45%
Judicial and Court Officials	101*	94	93%
Total	285	176	62%

*Does not include the number of individuals who forwarded the survey.

4. Survey of ICW Program Clients

Surveys were conducted with 482 ICW clients between August and December 2022. The survey of ICW Program clients was administered by SDAs implementing the ICW Program across Canada. Justice Canada Evaluation Branch staff delivered training sessions to those administering the survey in August and September 2022. Each SDA was then provided with a web link to the survey as well as a Word document in case internet connectivity was an issue. The survey web link remained open from August and October 2022 in most jurisdictions. However, survey administration continued into November and December 2022 for some jurisdictions.

A total of 525 surveys were distributed and 482 surveys were completed, resulting in a completion rate of 92%. The survey was administered primarily by telephone (69%), in court (16%), in remand/jail

(3%), and in other locations such as in person/in the community, in the Courtworker office, in a residential home, and in a Friendship Centre.

Among the 482 clients who provided information:

- 59% identified as a man, 41% identified as a woman, and 1% identified as another gender;
- 13% were 18-24 years old, 33% were 25-34 years old, 39% were 35-50 years old, and 16% were 51+ years old; and
- 86% received services in English, 15% received services in French, and 5% received services in another language (mostly Innu) (note that some clients received services in multiple languages).

Table 9: Client Survey Respondents by Jurisdiction

Province/Territory	Clients	% of Respondents
Quebec	155	32%
British Columbia	147	30%
Alberta	124	26%
Ontario	32	7%
Nunavut	20	4%
Northwest Territories	4	1%
Total	482	100%

In terms of their involvement in the justice system, 85% of clients were involved in Criminal Court, while 15% were involved in Family Court matters. The most frequent types of charges they faced included assault (28%), other *Criminal Code* offences (15%), provincial offences (12%), administration of justice (8%), weapons and explosives (7%), property damage/mischief (7%), and public order offences (7%). For a majority of clients, it was their first time receiving ICW services (61%), while 39% had received ICW services before.

5. Case Studies

Three (3) case studies were conducted, which addressed different themes: 1) economic value of Courtworkers; 2) client impact stories; 3) role of Courtworkers in family justice matters. Data collection for each case study included interviews, a review of survey and key informant interview data, and a review of program documents and files and publicly available information (e.g., websites). Case studies were summarized in individual case study reports. In cases where a case study included a specific quote, we validated the information and obtained consent from the individual who provided the information. Table 10 provides details about the approach employed for each case study.

Table 10: Description of Case Studies

Case Study #1: Economic Value of Courtworkers	
Case Study Topic	Economic Value of Courtworkers
Description	The purpose of this case study was to estimate the economic value of Courtworkers to the court and justice system in terms of cost savings (e.g., preventing clients from unnecessary arrest or going into custody). The case study also examined how cost savings of Courtworkers differ in urban and rural and remote communities, which have additional travel-related court costs. The case study developed an economic model with assumptions to estimate savings to the justice system, drawing from interview and survey data and existing research on typical costs to courts. In addition to developing a financial estimate, the case study includes contextual examples of how Courtworkers have contributed to cost savings through the relationships they have built with communities, courts, and clients.

Case Study #2: Client Impact Stories	
Case Study Topic	Client Impact Stories
Description	The purpose of this case study was to examine the impact of Courtworkers on clients in terms of the support they received through the Indigenous Courtwork (ICW) Program, the impact of the Courtworker on decisions made, and other broader impacts (e.g., on client's lives and trust built within the justice system and communities). The overall goal of the case study was to show the human side of Courtworkers and the impact they have on the lives of clients.

Case Study #3: Role of Courtworkers in Family Justice Matters	
Case Study Topic	Role of Courtworkers in Family Justice Matters
Description	The purpose of this case study was to examine the role of Courtworkers in Family Court, focusing on two jurisdictions that have historically provided these services: Alberta and Ontario. The case study aimed to better understand the role of Courtworkers and how they have evolved, as well as best practices and lessons learned related to providing Courtworker services in Family Court. A secondary objective of the case study was to explore early impacts and implications of the increased ICW Program funding for Family Courtwork services of \$6.7 million allocated in 2021, being provided over three years.