



# **ABORIGINAL JUSTICE STRATEGY ANNUAL ACTIVITIES REPORT 2002-2005**

**December 2005**

**Aboriginal Justice Directorate**



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## INTRODUCTION

The Aboriginal Justice Strategy (AJS) is part of the federal response to the recommendations of the 1996 *Report of the Royal Commission on Aboriginal Peoples*, and to other inquiries across the country that identified a deep alienation from the justice system, and disproportionate rates of crime, victimization and incarceration, among Aboriginal peoples.

The AJS was established in 1996 with a five-year mandate to:

- help Aboriginal people assume greater responsibility for the administration of justice in their communities;
- promote the inclusion of Aboriginal values within the Canadian justice system; and
- contribute to a reduction in rates of crime, victimization and incarceration among Aboriginal people.

The AJS is managed by the Department of Justice Canada's (DOJ) Aboriginal Justice Directorate (AJD). In collaboration with provincial and territorial counterparts, the AJD pursues the goals of the AJS through policy development and support, community-based justice program funding, training and development funding, self-government negotiations and capacity-building support, and outreach and partnership (through the Aboriginal Justice Learning Network: AJLN).

After a promising beginning, the AJS was renewed in August 2001 for a second five-year term (2002-03 to 2006-07). This report highlights key activities undertaken in the first three fiscal years of the AJS's second mandate to meet its objectives.

The DOJ is committed to being transparent and responsive to the needs of Canadians. It is hoped that this document helps explain the role, purpose and activities of the AJS as it relates to Aboriginal peoples' involvement in Canada's justice system.

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## 1. BACKGROUND: ABORIGINAL JUSTICE STRATEGY

### Origin and Rationale

The relationship between Canada's Aboriginal people and the Canadian justice system has been an enduring and comprehensively documented problem, the complex product of disadvantaged socio-economic conditions, culturally insensitive approaches to justice, and systemic racism.<sup>1</sup> Over the years, numerous public inquiries, task forces and commissions have concluded that Canada's justice system has failed Aboriginal people at every stage.<sup>2</sup> Aboriginal people have expressed a deep alienation from a system of justice that appears to them foreign and inaccessible. The results are reflected in a growing body of statistics indicating that Aboriginal people experience disproportionately high rates of arrest, conviction and incarceration.<sup>3</sup> The human and economic costs to aboriginal communities and to Canada are immeasurable.

To address the over-representation of Aboriginal people in the Canadian justice system, the federal government has responded with a continuum of policies, programs and initiatives. Examples include the Aboriginal Justice Strategy (AJS), the First Nations Policing Policy, the Youth Justice Renewal Fund<sup>4</sup> and the Aboriginal Community Corrections Initiative. Although each program operates separately, with a distinct mandate and authorities, they all have a common purpose: to contribute to improving the circumstances of Aboriginal people within Canadian society.

In its place on the continuum, the AJS focuses on increasing opportunities for, and building the capacity of, Aboriginal communities to participate meaningfully in the administration of justice. It is expected that increased involvement and strengthened capacity will contribute to the development of more appropriate responses to justice

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<sup>1</sup> See e.g. Michael Jackson, *Locking Up Natives in Canada* (Ottawa: Canadian Bar Association, 1989); Nova Scotia, *Royal Commission on the Donald Marshall, Jr., Prosecution* (Halifax: Royal Commission, 1989); Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba* (Winnipeg: Queen's Printer, 1991); Government of Canada, *Aboriginal People and Justice Administration: A Discussion Paper* (Ottawa: Department of Justice Canada, 1991); Law Reform Commission of Canada, *Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice* (Ottawa: Law Reform Commission of Canada, 1991); Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Supply and Services Canada, 1996); Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform, *Legacy of Hope: An Agenda For Change* (Saskatoon: Commission on First Nations and Métis Peoples and Justice Reform, 2004). See also *R. v. Williams*, [1998] 1 S.C.R. 1128, where the Supreme Court took judicial notice of widespread bias against aboriginal people within Canada, and noted that "[t]here is evidence that this widespread racism has translated into systemic discrimination in the criminal justice system." (*Ibid.* at para. 58.)

<sup>2</sup> *Ibid.*

<sup>3</sup> Relevant statistics are reported in Appendix 1.

<sup>4</sup> Funding is available to help Aboriginal communities develop capacity to participate in and/or deliver community-based youth justice options under the *Youth Criminal Justice Act*, S.C. 2002, c. 1.



issues faced by Aboriginal people and, over time, will help reduce the percentage of Aboriginal people coming in contact with the justice system. Moreover, as more Aboriginal people engage in the administration of justice, a better understanding of Aboriginal values, needs and aspirations will evolve, contributing to the conditions necessary for sustainable change within the mainstream justice system.

### **Original Mandate: 1996-2000**

In April 1996, the Minister of Justice announced the AJS as part of the federal government's response to the *Report of the Royal Commission on Aboriginal Peoples*,<sup>5</sup> and to other Aboriginal justice inquiries across the country. The AJS was to build partnerships within the Canadian justice system to support the development of sustainable justice policies and programs that better met the needs of Aboriginal people and that addressed their over-representation in the justice system. The Strategy was developed in cooperation with Indian and Northern Affairs Canada (INAC), the Privy Council Office, and the former Office of the Solicitor General (now Public Safety and Emergency Preparedness Canada) including the Royal Canadian Mounted Police (RCMP). The AJS is managed by the Aboriginal Justice Directorate (AJD) within the Department of Justice (DOJ).

### Objectives

The objectives of the AJS are:

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

### Design and Delivery

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<sup>5</sup> Ottawa: Supply and Services Canada, 1996. The federal government's response, of which the AJS is a part, was published as *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Public Works and Government Services Canada, 1997).



During the first five-year term, the AJD pursued the goals of the AJS through three component activities:

- policy development and support;
- community-based justice program funding; and
- the Aboriginal Justice Learning Network (AJLN).

**Policy Development and Support** promotes and supports Aboriginal community justice as a key policy issue in Canada through strategic partnerships at the departmental, interdepartmental and intergovernmental levels; provides multi-disciplinary advice on Aboriginal justice issues to the DOJ and to other federal departments; and provides advice and input to self-government negotiators on the “administration of justice” component of self-government negotiations and agreements.

**Community-based Justice Program Funding** supports the development and delivery by Aboriginal communities of culturally relevant community-based justice programs through cost-sharing agreements with provincial and territorial governments. Programs that offer diversion/alternative measures, community sentencing, mediation in non-criminal disputes, and other alternative justice initiatives aimed at building closer relationships between community justice and the mainstream system are eligible for funding. Community-based justice programs give Aboriginal people a significant role in resolving civil and criminal matters in their own communities.

The **Aboriginal Justice Learning Network (AJLN)** provides a forum for Aboriginal communities to exchange best practices and creative solutions to Aboriginal justice issues, and supports training and information-sharing on alternative justice processes consistent with Aboriginal values and traditions. The AJLN also supports the participation of Aboriginal women as full partners in the development and implementation of the community-based programs.

### Achievements and Shortfalls

During its initial mandate, the AJD worked to develop relationships with key community and provincial/territorial stakeholders, establishing strong information and cost-sharing partnerships in a relatively short period of time. By the end of its first mandate, the AJS:

- was funding more than 60 community-based justice programs serving in excess of 260 aboriginal communities across Canada;





- had produced self-evaluation material for the community-based programs, and had supported related training of provincial/territorial partners, and community justice workers; and
- had funded information-sharing conferences, workshops and seminars, had developed videos and educational material, and had launched a web site.

In addition, the AJD had participated at 27 self-government negotiation tables, offering advice on the “administration of justice” component of self-government agreements.

Despite its early accomplishments, much work remained to enhance and sustain the contributions of the AJS to Aboriginal justice initiatives:

- late receipt of funding was a problem for community-based justice programs across the country;
- there were common gaps and problems in reporting of information by funded programs, particularly with respect to performance reporting and evaluation;
- the AJLN, which had experienced high staff turn-over and budget reductions and uncertainties, had not been as successful in achieving its objectives as had been anticipated.

### Evaluation

In 2000, the DOJ formally evaluated the AJS in contemplation of seeking its renewal. The evaluation recommended the following actions within a renewed mandate:

- develop a process to ensure more effective intra- and interdepartmental coordination of Aboriginal justice issues within the federal government;
- adopt a comprehensive national approach to evaluation for community-based justice programs to facilitate performance reporting;
- assign one federal Regional Coordinator for community-based justice programs, together with sufficient administrative support, to each of the Territories and Western provinces, to Ontario, to Quebec, and to the Atlantic Region;
- implement an administrative process to ensure that program funds get to communities in a timely manner;



- resource the AJLN at levels originally established so it can better carry out its mandate, addressing in particular the critical need for community justice training and enhanced information collection and distribution.

### **Renewed & Expanded Mandate: 2002-2007**

In August 2001, the federal government renewed the AJS for five fiscal years (2002-03 to 2006-07) so that it could continue its work to address the over-representation of Aboriginal people in the Canadian justice system.<sup>6</sup> Under the new mandate, existing activities (policy development and support, community-based justice program funding, and the AJLN) were to continue, and two new components were to be taken on: a Training and Development (T&D) Fund, and a Self-Government Capacity Building Fund.

#### Training and Development

The 2000 AJS evaluation identified training and development of community members who deliver, or who aspire to deliver, community-based justice programs as critical to the success and sustainability of the programs. Training was identified as important not only during program development and implementation phases but also later as programs matured and as staff turned over. As a result, when the AJS was renewed for a second term, its mandate included a new Training and Development Fund, under which up to 100% of eligible expenses may be covered by grants and contributions.

With the goals of capacity building and encouraging new programs, the T&D Fund is intended to support training of Aboriginal communities that do not have AJS-funded community-based justice programs. It is also available to supplement the evolving training and development needs of existing AJS-funded programs where cost-shared funds are not sufficient to cover requirements.

#### Self-Government Capacity Building

Community-based justice programs funded by the AJS do not directly address the challenges that Aboriginal communities in self-government negotiations will face in the development, administration and enforcement of their own laws. To help address those challenges, the Self-Government Capacity Building Fund was added to the AJS mandate when it was renewed in 2001.

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<sup>6</sup> As a result of the 2001 Speech from the Throne, the federal government extended the original mandate of the AJS (1996-97 to 2000-01) for one year (2001-02) to ensure that existing commitments to cost-shared community-based justice programs would continue.



The Self-Government Capacity Building Fund is administered by the AJD in consultation with INAC. With up to 100% of eligible expenses covered by contributions, the fund supports the development of pilot projects and resource material designed to build self-government capacity within Aboriginal communities.

In sum, the 2000 evaluation concluded that, although there was still much work to be done, the AJS had made an impressive start on a promising approach to the problem of Aboriginal over-representation in and alienation from the Canadian justice system. In renewal and expansion of the Strategy for a second five-year term there was recognition that substantially reducing the percentage of Aboriginal people entering the justice system is a goal requiring sustained effort and long-term commitment.

## **2. AJS RESOURCES AND ACTIVITIES: APRIL 2002 – MARCH 2005**

### **Resources**

#### Staffing

The AJD has an organizational structure that reflects the wide variety of activities in which it engages. Led by a Director General, the AJD is comprised of policy advisors, program analysts, communications/liaison officers, legal counsel, Regional Coordinators and support staff. Most staff members are centralized at DOJ offices in Ottawa; some Regional Coordinators and their support staff are in other locations throughout the country, closer to the Aboriginal communities and community-based justice programs they support.

The AJD has service agreements with the Evaluation Division of DOJ to conduct formal evaluations of the AJS; and it shares salary and operating expenses with Public Safety and Emergency Preparedness Canada (PSEPC) to deliver both the AJS and the National Crime Prevention Strategy (NCPS) in the Yukon, Northwest Territories, Nunavut and Alberta.

#### Budget

Over its second five-year mandate (2002-03 to 2006-07), the AJD was to receive a total of \$57.26 million to pursue the goals of the AJS, representing a modest increase in funding over previous years. The increase was intended to support the expanded mandate of the AJS; it was also to be devoted, in part, to developing community-based justice programs in regions without them, and to encouraging mediation programs in family and civil matters, an under-used community justice program model.



Government-wide budget re-allocations in 2003-04, and Departmental adjustments in 2004-05, reduced the AJD budget by \$1 M. and \$400,000 respectively, requiring a restructuring of the scope and delivery of some AJS activities.<sup>7</sup> The most significant impacts were on the new Training and Development Fund, and on the AJLN. The nature of those impacts is identified in the summary of activities that follows.

Table 1-1: AJD Budget by Fiscal Year

<b>1.1. Fiscal Year</b>	<b>1.2. Budget Requested</b>	<b>1.3. Budget Approved</b>	<b>1.4. Budget After Reductions</b>
<b>2002-03</b>	18,840,000.00	10,894,757.00	10,894,757.00
<b>2003-04</b>	23,340,000.00	10,894,757.00	9,882,719.00
<b>2004-05</b>	27,840,000.00	10,894,757.00	10,481,006.00

Source: AJD Files

## Activities

### Policy Development and Support

The Policy Development and Support component of the AJS:

- monitors, analyzes and provides advice on policies, programs and practices that have or may have implications for Aboriginal justice;
- evaluates, on an on-going basis, the effectiveness of the AJS in delivering its component programs, and in achieving its objectives;
- contributes to the development of a growing body of knowledge about best practices in, policies and programs directed at, and resources available to Aboriginal justice initiatives.

The policy activities of the AJD are intended to foster a more integrated approach to addressing justice issues faced by Aboriginal people. Efforts are directed at ensuring that, in design and delivery, government initiatives – primarily federal but also provincial and territorial – support and sustain Aboriginal justice as a policy priority in Canadian society, and are coherent, complementary and, as much as possible, collaborative.

### *Coordination and Collaboration*

<sup>7</sup> Reductions in 2003-04 affected both Grants & Contributions and Operating & Maintenance budgets. In 2004-05, only Operating & Maintenance was impacted.



The success of the Policy Development and Support component of the AJS depends on the strength of its internal and external partnerships. The work of the AJD must be known and credible to other policy-makers so that its advice will be sought where appropriate and influential when given. Thus, the development of strategic partnerships at departmental, interdepartmental and intergovernmental levels is a key activity.

The 2000 AJS evaluation identified a need for improved coordination of Aboriginal justice policy and program delivery among federal departments, and between the federal government and the provincial and territorial governments. It also called for more federal presence in and better linkages with local Aboriginal communities. Through strategic partnerships, and participation on working groups and committees, the AJD has worked during the last three fiscal years to improve coordination and collaboration, and to create sustainable linkages—among government policies and programs that impact on aboriginal justice, and with communities.

#### Strategic Partnerships

The AJD has explored and implemented innovative approaches to delivering the AJS in some of its regions. The AJD negotiated and entered into a Memorandum of Understanding (MOU) with PSEPC to share salary and operating dollars to deliver both the AJS and the NCPS in the Yukon, Northwest Territories, Nunavut and Alberta. It also structured and entered into an MOU with the British Columbia Regional Office to regionalize and cost-share some AJD functions.

#### Working Groups and Committees

The AJD is committed to improving the coordination of Aboriginal justice issues among federal departments, and between the federal government and its provincial and territorial counterparts. To those ends, the AJD has become an active member of a number of working groups and committees. By bringing key jurisdictional stakeholders together on a regular basis, meetings of committees and working groups have offered an excellent opportunity for the AJD to share information and expertise, identify and discuss emerging trends, issues and priorities, discover gaps and overlap in policy and program delivery, promote collaboration and coordination, and strengthen inter-jurisdictional relations and linkages.





The AJD participates as a member of departmental committees and working groups including the:

- Working Group on Youth Justice
- Working Group on Fetal Alcohol Spectrum Disorder
- Advisory Committee on Aboriginal Peoples

The AJD is represented on interdepartmental committees, including the:

- Aboriginal Community Stability and Wellness Working Group
- Urban Aboriginal Strategy Committee
- TBS Horizontal Review Committee

In addition to federal government working groups and committees, the AJD participates in a number of Federal/Provincial/Territorial (FPT) Working Groups:

- FPT Working Group on Aboriginal Justice Issues: Youth Justice Sub-committee; Family and Interpersonal Violence Sub-committee
- FPT Working Group on Restorative Justice
- FPT Working Group on Victims of Crime: Aboriginal Sub-committee

The AJD operates by leading and collaborating with an FPT Working Group on the AJS. That Working Group was the vehicle for one of the most important collaborative efforts between federal, provincial and territorial governments during the reporting period. The question to be decided was how to distribute AJS funds to community-based justice programs during the Strategy's second mandate.

In 2002, a sub-committee of the FPT Working Group on the AJS was established and tasked to prepare, for the consideration of the Working Group, an Options Paper related to the distribution of AJS community-based justice program funding. AJD represented the federal government on the sub-committee; the governments of Alberta, British Columbia, Nova Scotia, Nunavut, Northwest Territories and the Yukon were also represented. The collaboratively produced Options Paper proposed funding distribution alternatives, and identified the most appropriate variables to be included in any new distribution formula.

With the Options Paper a starting point, funding-related deliberations culminated in a facilitated meeting of the FPT Working Group in April of 2003 at which agreement in principle was reached on how to allocate AJS program funds for the remainder of the mandate. All jurisdictions expressed the need for stability and predictability in funding to enable planning over the next 3 to 5 years. After a full discussion, it was agreed that current base funding levels would be maintained to 2007 and that new funds would be allocated:





- to address the special circumstances of the North;
- to ensure that the AJS is a national program by establishing programs in the Atlantic provinces; and
- to begin addressing inequities based on the distribution of the Aboriginal population.

The considerable effort and thoughtful input of FPT members produced consensus around many difficult funding issues, and ensured that the meeting's outcome would facilitate funding decisions for the duration of the AJS's second mandate.

In a recent survey conducted as part of an upcoming mid-term evaluation of the AJS, 63% of federal government respondents expressed the opinion that the AJS had had "a lot" or "some" positive impact on cooperation and collaboration on aboriginal justice issues within DOJ; and 80% of provincial and territorial officials expressed similar sentiments with respect to their relations with the AJD. Community justice coordinators acknowledged in their responses the cooperative relationships that have developed between federal and provincial/territorial officials, especially in relation to community-based justice program agreements.<sup>8</sup>

#### *Review and Advice*

In fulfilling its responsibility to foster an integrated and sustainable approach to Aboriginal justice issues, the Policy Development and Support component of the AJS monitors, reviews and provides advice on policies and programs that have or may have implications for Aboriginal justice. In 2002-03, 2003-04 and 2004-05, the AJD provided policy advice, and leadership, on a variety of proposals and initiatives, including those summarized below.

#### *Federal-Provincial-Territorial (FPT) Working Group on Aboriginal Justice Issues*

Despite concerns about the number of FPT committees and working groups focused on justice issues, jurisdictions agreed that the need for consistent and sustained attention to Aboriginal justice issues was not being met within existing FPT structures. In June of 2004, Deputy Ministers decided that the time was right to create a new FPT working group focused on Aboriginal justice issues.

The creation of a new FPT Working Group on Aboriginal Justice Issues consumed a considerable amount of the AJD's policy resources in 2003-04 and 2004-05. Up and

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<sup>8</sup> Rosemary Trehearne & Associates, *Draft Final Report: Mid-Term Evaluation of the Aboriginal Justice Strategy* (February 1, 2005) at 20-21 [on file with the AJD].



running, it will continue to be a major component of the policy workload for the AJD in 2005-06.

With a fixed mandate to January 2006, reviewable by the Deputy Ministers thereafter, the working group has been tasked to:

- promote coordinated work on a variety of inter-twined issues;
- undertake specific projects at the direction of Deputy Ministers responsible for justice; and
- promote the discussion of Aboriginal justice issues across other FPT working groups and committees dealing with justice issues.

The FPT Working Group is to prepare a discussion paper identifying strategic options for making meaningful progress in five areas of Aboriginal justice: community justice, youth issues, policing, interpersonal and family violence, and corrections. Each jurisdiction will produce an issues paper on every theme. Those papers will be reviewed by the Working Group and will be the foundation for a “Strategic Directions” document to be presented to Deputy Ministers in 2006.

The AJD participated on the advisory committee charged with reviewing the proposal to create a new working group. In that preparatory work, and later when the group was confirmed to proceed, the AJD worked to ensure that the mandate and work plan were in accord with federal priorities related to Aboriginal issues, including the Minister’s priority of reducing rates of victimization and incarceration among Aboriginal people. The AJD will continue to be very involved in the Working Group in 2005-06, coordinating production of the federal issues papers, co-chairing meetings and providing other input and advice.

#### Canada-Aboriginal Peoples Roundtable

One of the outcomes of Prime Minister Paul Martin’s Canada-Aboriginal Peoples Roundtable<sup>9</sup> was a government commitment to conduct a series of sector-specific policy roundtables in partnership with Aboriginal leaders and in cooperation with provincial and territorial governments. The Sectoral Tables are: Health, Life Long Learning, Housing,

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<sup>9</sup> Held in April of 2004, the Canada-Aboriginal Peoples Roundtable brought more than 40 federal Parliamentarians together with 70 Aboriginal leaders from across the country to renew the federal government’s relationship with Aboriginal people, and to discuss ways of making meaningful progress on improving the health and well-being of Aboriginal people and communities.



Economic Opportunities, Negotiations, and Accountability for Results. The Roundtable process considers Justice to be a component of each of the Sectoral Tables.

The AJD kept up-to-date with respect to the Roundtable process, and provided input both in support of the Minister's position that Justice should be its own Sectoral Table, and to ensure that Aboriginal justice issues were linked into and part of the Roundtable process.

*Report of the Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform*

The Commission on First Nations and Métis Peoples and Justice Reform was established by the Saskatchewan government in 2001. It was charged with proposing practical reforms to the justice system that would reduce crime and victimization among First Nations and Métis people, and that would lead to safer communities and a reduction in the number of Aboriginal people coming in contact with the criminal justice system. The Commission was to consider all components of the justice system including police, courts, prosecution, legal aid, corrections, community justice, youth justice and victim services. The Commission's final report, containing 122 recommendations, was released in June of 2004.<sup>10</sup>

The DOJ was tasked to coordinate the federal review of the Commission's report and to make recommendations regarding a Government response. An active contributor to those efforts, the AJD:

- initiated and led the work of both the national steering committee and the provincial working group that, together, conducted the review and developed an action-oriented, community-focused response;
- chaired (and continues to chair) an interdepartmental national working group, brought together to share information and to identify opportunities to work collaboratively on initiatives that address the Commission's recommendations;
- represented the federal government at a number of report-related meetings with provincial Deputy Ministers, First Nations representatives and Métis organizations;
- developed an action plan relating to the justice-specific recommendations of the report;
- kept the Minister, the Clerk of the Privy Council and others apprised of progress via briefing notes and other material; and

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<sup>10</sup> Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform, *supra* note 1.



- provided AJS funds to support Aboriginal participation on the Implementation Steering Committee.

Action on the recommendations, which implicate a number of federal departments and all levels of government, will continue into the foreseeable future. The AJD will continue to be an active participant in that process.

### Other Policy-Related Initiatives

By way of watching briefs, review, analysis, comment, co-ordination or representation, the Policy Development and Support component of the AJS has also contributed its expertise to these significant initiatives during the reporting period:

- Health Canada's Major Policy Initiative on Fetal Alcohol Spectrum Disorder;
- Policy Centre for Victim Issues' Intra-Departmental Consultation on Issues, Needs and Services for Victims of Crime in the Northern Territories;
- Policy Centre for Victim Issues' Literature Review on Restorative Justice & Domestic Violence/Sexual Assault;
- "Sisters in Spirit", a request and proposal from the Native Women's Association of Canada (NWAC) for \$5 M. in federal funding over five years to support the NWAC's work in addressing the high rates of racialized and sexualized violence against Aboriginal women in Canada;
- Report of the Standing Senate Committee on Aboriginal Peoples, *Urban Aboriginal Youth: An Action Plan for Change* (2003); and
- Government of Canada's *Urban Aboriginal Strategy*.

### *Research and Evaluation*

It is part of the work of the Policy Development and Support component of the AJS to evaluate the effectiveness of the Strategy in delivering on its mandate, and to provide information and advice to AJD management intended to enhance the Directorate's ability to achieve AJS goals. Policy analysts and advisors fulfill those responsibilities by identifying information needs, conducting or commissioning research projects, encouraging and facilitating evaluations of the AJS (or its components) by stakeholders, analyzing results, and making recommendations. More generally, the policy function is expected to contribute to a growing body of knowledge about best practices in, policies and programs directed at, and resources available to Aboriginal justice initiatives.

During the three-year period that is the focus of this report, policy-related research and evaluation activities of the AJD included:



- the creation of a Results-Based Management and Accountability Framework (RMAF), a document that sets out the objectives of the AJS, the expected outcomes, and a framework for monitoring, reviewing and reporting on progress and activities during the 2002-2007 mandate;
- the production of an annotated bibliography on recent Canadian and international restorative justice literature, identifying developments in the field, best practices and evaluations;
- substantial completion of a literature review directed at determining whether the AJS continues to be relevant, and whether there are more cost-effective or efficient program design and delivery approaches (the final literature review, to be delivered in 2005-06, will inform an upcoming summative evaluation of the AJS);
- coordination of and participation in the formal mid-term evaluation of the AJS conducted by DOJ's Evaluation Division (the final report will be delivered in 2005-06; more details are provided in the Evaluation section of this report);
- a review of the AJS in British Columbia based on the perceptions and experiences of community-based justice program providers in that province, intended to identify potential improvements to AJS management and delivery;
- an assessment of the AJS-funded Community Justice Program in Nunavut to determine whether it was achieving its mandate and objectives, whether its mandate and structure suited current and future needs, and whether it offered effective alternatives to the formal justice system; and
- an evaluation of the AJLN, including restructuring recommendations intended to improve the ability of the AJD to deliver the AJLN mandate.

### *Conferences and Workshops*

The AJD is committed to supporting the generation and dissemination of information through a wide variety of vehicles. Like research and evaluation activities, conferences and workshops contribute in important ways to the creation and distribution of knowledge about Aboriginal justice initiatives. The AJD attends and participates at conferences and workshops to promote the AJS and to share and receive information about Aboriginal justice initiatives. It also provides funding to conferences and workshops to support the exchange of ideas and the generation of new knowledge and skills. Some of the conferences and workshops attended by the AJD during 2002-03, 2003-04 and 2004-05



are listed in Appendix 2. Conferences and workshops funded by the AJS are discussed under the AJLN section of this report.

Participation on conference planning committees has enhanced the profile of the AJS, and has provided the opportunity to influence conference agendas. The AJS is a member of the planning committees for the 2005 International Conference on Special Needs Offenders (September 2005), and for the Aboriginal Policy Research Conference (March 2006). The International Conference will offer a number of workshops on aboriginal offenders and their special needs in the criminal justice system. The Policy Research Conference will bring together influential Aboriginal and non-Aboriginal researchers, policy-makers, leaders and academics from around the world to share recent research, and to discuss ideas in pursuit of better research, evidence-based policy and policy outcome assessment.

### Community-based Justice Programs

Community-based justice program funding supports Aboriginal communities in developing and operating culturally relevant programs that give communities significant responsibility for working with offenders, and for resolving civil and criminal disputes, at the local level. Successful programs increase the community's understanding of and participation in the justice system, build community capacity to address justice issues in culturally appropriate ways, and strengthen relations with mainstream justice stakeholders by creating mutual trust.

Programs that are eligible for AJS funding capture a wide range of activities at the community level:

- *diversion/alternative measures programs* divert offenders from the formal court system into alternative community processes. Diversion is usually an informal process; alternative measures programs are typically authorized by and established under provisions of the *Criminal Code*<sup>11</sup> or *Youth Criminal Justice Act*.<sup>12</sup> Properly designed, diversion/alternative measures programs are less intrusive, more culturally appropriate, and more expeditious than a formal court-based response;
- *community sentencing programs* provide for the participation of the community in the preparation and provision of advice to sentencing judges about the appropriate sanction to impose on a person found guilty of an offence, and about the community resources that could be made available to the offender as part of a restorative response. Vehicles through which the advice is developed and delivered include

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<sup>11</sup> R.S.C. 1985, c. C-46.

<sup>12</sup> *Supra* note 4.



Elders' advisory panels and circle sentencing initiatives (with or without the participation of the judge);

- *mediation* provides for the participation in non-criminal disputes (such as family or civil matters) of a neutral third party who assists the parties in conflict to come to a resolution. The role of the mediator is to facilitate discussion and resolution between the parties; he or she has no decision-making authority or power to impose an outcome;<sup>13</sup>
- *other justice activities* aimed at strengthening relations between community justice workers/projects and the mainstream system are also eligible for AJS funding.<sup>14</sup>

Once a community-based justice program proposal has been approved, the community program provider works with its provincial/territorial ministry and with the AJD to develop and operate the program in close consultation with mainstream justice providers including crown prosecutors, police and courts. The program provider has responsibility for the day-to-day operation of the program. The federal and provincial/territorial governments provide funds and expert advice, and facilitate linkages with mainstream justice and social service providers.

The AJD identified the following objectives as the 2002-2007 priorities of the Community-based Justice Program component of the AJS:

- increase the number of community programs operating and communities served;
- encourage and invest in program development in every province and territory;
- encourage the development and delivery of mediation programs for family and civil matters;
- expand services to Métis, to urban and to off-reserve Aboriginal populations;
- support the participation of women and victims' groups in program design and delivery.

As Table 2-1 indicates, the AJD has been successful year over year in increasing the number of programs operating and communities served. The number of community-

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<sup>13</sup> Mediation as a program model funded by the AJS differs from mediation as a process used in other program models to arrive at outcomes: offender-victim mediation, for example, is often a feature of diversion/alternative measures programs.

<sup>14</sup> Appendix 3 contains a small but illustrative sample of AJS-funded community-based justice programs that operated during the reporting period.



based justice program agreements entered into by the AJD increased by 13% over the three fiscal years; the number of programs delivered under those agreements increased by 24%; and the number of communities served increased by 9%. AJS investment in programs increased by 8.3% over the three fiscal years.

Table 2-1: Overview of AJS-Funded Community-based Justice Programs by Fiscal Year

	2002-03	2003-04	2004-05
<b>Number of AJS Agreements</b>	79	83	89
<b>Number of Programs Operated</b>	88	105	109
<b>Number of Communities Served</b>	415	457	453
<b>Total AJS Program Funding Committed</b>	\$6,112,092	\$6,506,336	\$6,622,639

Source: AJD Files

By the end of 2003-04, the AJS had established a national presence, funding community-based justice programs in every province and territory in Canada. That national presence continued in 2004-05. Table 2-2 identifies the number of programs by jurisdiction by fiscal year. Table 2-3 reports AJS funding by jurisdiction by fiscal year.

Table 2-2: Number of Programs by Jurisdiction by Fiscal Year

JURISDICTION	2002-03	2003-04	2004-05
<b>Saskatchewan</b>	24	24	24
<b>British Columbia</b>	18	20	19
<b>Nunavut</b>	1	13	14
<b>Quebec</b>	7	9	12
<b>Ontario</b>	10	10	10
<b>Yukon</b>	8	8	9
<b>Manitoba</b>	7	7	6
<b>Alberta</b>	5	5	5
<b>Northwest Territories</b>	5	5	5
<b>New Brunswick</b>	1	1	2
<b>Nova Scotia</b>	1	1	1
<b>P.E.I.</b>	1	1	1
<b>Newfoundland</b>	0	1	1
<b>Total Programs</b>	88	105	109

Source: AJD Files

Table 2-3: Total Committed AJS Funding of Community-based Justice Programs  
by Jurisdiction by Fiscal Year

JURISDICTION	2002-03 (\$)	2003-04 (\$)	2004-05 (\$)	CUMULATIVE COMMITTED FUNDING
<b>Saskatchewan</b>	1,611,545	1,616,418	1,630,545	4,858,508
<b>British Columbia</b>	980,668	1,070,600	1,068,548	3,119,816
<b>Manitoba</b>	756,713	896,962	832,136	2,485,811
<b>Ontario</b>	709,590	710,932	740,813	2,161,335
<b>Alberta</b>	632,717	563,672	674,900	1,871,289
<b>Quebec</b>	559,679	489,767	465,557	1,515,003
<b>Yukon</b>	404,440	403,792	416,940	1,225,172
<b>Nunavut</b>	25,000	255,400	262,400	542,800
<b>NWT</b>	145,000	145,000	145,000	435,000
<b>Nova Scotia</b>	142,300	142,300	142,300	426,900
<b>New Brunswick</b>	94,440	96,500	118,500	309,440
<b>Newfoundland</b>	0	75,000	75,000	150,000
<b>P.E.I.</b>	50,000	39,993	50,000	139,993
<b>Total Funding</b>	6,112,092	6,506,336	6,622,639	19,241,067

Source: AJD Files

Despite a notable increase in the total number of programs delivered, the number of programs for off-reserve Aboriginal populations – rural and urban – has remained stable. There are rural programs in Alberta, British Columbia, Saskatchewan, Quebec and P.E.I.; urban programs are offered in British Columbia, Manitoba, Ontario and Saskatchewan. Table 2-4 identifies that the growth in number of programs has occurred in the North most significantly (87%), and on-reserve (20%).

Table 2-4: Number of Programs by Location Type by Fiscal Year

PROGRAM LOCATION	2002-03	2003-04	2004-05
<b>North (Yukon,* NWT, Nunavut)</b>	15	26	28
<b>On-Reserve</b>	45	52	54
<b>Off-Reserve - Rural</b>	3	3	3
<b>Off-Reserve - Urban</b>	17	15	15
<b>Mix of On-Reserve &amp; Off (Rural &amp; Urban)</b>	8	9	9
<b>Total Programs</b>	88	105	109

Source: AJD Files

\* In each fiscal year, two Yukon programs are identified as serving an urban population.

A program may serve one community or more. Table 2-5 reports the number of communities served by AJS-funded programs. The number of communities in the North



that are served by AJS-funded programs has almost doubled over the three fiscal years, from 15 to 29. The number of programs exclusively serving on-reserve communities has increased by 15%, from 172 to 197. Overall, the number of programs serving on- and off-reserve communities (urban, rural and both) has remained stable.

Table 2-5: Number of Communities Served by Location Type by Fiscal Year

PROGRAM LOCATION	NUMBER OF COMMUNITIES SERVED		
	2002-03	2003-04	2004-05
North (Yukon*, NWT, Nunavut)	15	27	29
On-Reserve	172	203	197
Off-Reserve - Rural	11	11	11
Off-Reserve - Urban	37	30	30
Mix of On-Reserve & Off (Rural & Urban)	180	186	186
<b>Total Number of Communities Served</b>	<b>415</b>	<b>457</b>	<b>453</b>

Source: AJD Files

The increase in the number of communities served is directly related to the increase in the number of programs offered. The North, for example, has experienced the largest increase in number of programs operating and, correspondingly, in the number of communities served. The average number of communities served per program has remained stable over the years.

Table 2-6: Average Number of Communities Served per Program by Location Type by Fiscal Year

PROGRAM LOCATION	AVERAGE NUMBER OF COMMUNITIES SERVED PER PROGRAM		
	2002-03	2003-04	2004-05
North (Yukon*, NWT, Nunavut)	1.0	1.04	1.08
On-Reserve	3.8	3.9	3.6
Off-Reserve - Rural	3.7	3.7	3.7
Off-Reserve - Urban	2.2	2.0	2.0
Mix of On-Reserve & Off (Rural & Urban)	22.5	21.7	21.7

Source: AJD Files

Diversion/alternative measures has consistently been the program model most often delivered, representing from 78% to 80% of total programs offered in a given fiscal year. Ten percent of funded programs deliver both diversion and community sentencing. Non-criminal mediation continues to be an under-used program model.





Table 2-7: Number of Programs by Program Model by Fiscal Year

<b>PROGRAM MODEL</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>
<b>Diversion/Alternative Measures</b>	65	81	83
<b>Community Sentencing</b>	3	3	4
<b>Non-Criminal Mediation</b>	3	3	4
<b>Other Activities*</b>	5	4	5
<b>Mix of Models</b>	9	11	10
<b>Total Programs**</b>	85	102	106

Source: AJD Files

\*\*Other activities\*\* include Band by-law administration, community corrections, victim assistance programs, training/policy development and public awareness.

\*\* In each fiscal year, the nature of 3 programs is not identified.

With respect to the goals of expanding services to Métis, and encouraging the participation of women and victims in program delivery and design, existing reporting mechanisms do not capture that kind of information. However, all urban programs are status-blind, and offer services to Métis individuals. In relation to most programs, the involvement of the victim is both encouraged and very important. Many of the programs are developed and delivered by women.

### Training and Development

The 2000 AJS evaluation identified that training and development of community-based justice program providers are critical to the growth, success and sustainability of the programs. Training is required during program development and implementation, and is also important later as programs evolve and as staff turns over. As a result, when the AJS was renewed for a second term, its mandate included a new Training and Development (T&D) Fund.

The T&D Fund supports training activities designed to build capacity in the community to develop and deliver justice programs, especially in communities that do not have AJS-funded programs in place. More specifically, the objectives of the fund are to:

- address the training and/or developmental needs of Aboriginal communities that do not have AJS-funded community-based programs;
- supplement the training needs of existing AJS-funded programs where cost-shared program funds do not adequately meet requirements;



- support the development of new programs, with attention to geographic/regional imbalances in programming and to the commitment to develop programs in the under-used program models such as family mediation;
- support the role of women and victims in restorative justice initiatives;
- support one-time or annual events and initiatives that build bridges, trust and partnerships between the mainstream justice system and Aboriginal communities; and
- support evaluation activities.

In 2002-03, the first fiscal year of the T&D fund, 25 training and development initiatives were funded. Job training for community justice workers was funded, including training in conflict resolution, mediation and substance abuse screening. Funding was also provided to develop program evaluation frameworks and tools.

In 2003-04, government-wide budget reallocations reduced the T&D Fund by 50%. Limited training dollars in that fiscal year were targeted at existing AJS-funded programs. Generally, the reduced budget provided for the funding of one workshop in each Province, Territory or Region (*e.g.* Atlantic Provinces) to which representatives of funded programs were invited. The workshops offered training on such diverse topics as program management, forming justice committees, recruiting/retaining volunteers, and dealing with special-needs clients. The workshops also created opportunities for attendees to network with and learn from other program providers.

Full funding was restored to the T&D Fund in late 2004-05. By that time, jurisdiction-wide workshops, similar to those sponsored during the previous fiscal year, had already been arranged or conducted. Still, the return of funding allowed for training initiatives in that fiscal year that could not have been supported the year before.

As Table 3-1 identifies, although budget reductions and uncertainties constrained implementation of the T&D Fund as originally envisioned, much was accomplished within the limits of resources. Since introduction of the Fund in 2002-03, the AJS has entered into 75 Training and Development agreements in support of programs that serve or will serve hundreds of communities across Canada. The agreements have funded such activities as conferences, workshops, seminars, strategic planning sessions, and a variety of other training initiatives tailored to needs identified by individual program providers.

Table 3-1: AJS-Funded Training & Development (T&D) Activities by Fiscal Year



	2002-03	2003-04	2004-05	TOTAL
<b># of AJS T&amp;D Agreements</b>	26	17	32	75
<b># Agreements Directed at Training for New Programs*</b>	5	4	6	15
<b># Communities Served by Training</b>	193	191	245	629
<b>Total AJS T&amp;D Funding</b>	\$652,175	\$358,663	\$490,055	\$1,500,893

Source: AJS Files

\* Other training agreements/activities were directed at existing programs.

## Self-Government

### *Negotiations*

AJD lawyers provide legal and policy advice to federal negotiators on the “administration of justice” component of self-government negotiations and agreements. At the end of 2004-05, AJD legal counsel was active at 13 self-government tables across Canada. The AJS does not provide funding support to self-government negotiations.

### *Capacity Building*

The Self-Government Capacity Building Fund was created when the AJS mandate was renewed in 2001. The fund, administered by the AJD in consultation with INAC, supports the development of pilot projects and resource material designed to build self-government capacity and to develop models for the administration and enforcement of Aboriginal laws.

More specifically, the objectives of the fund are:

- to develop and disseminate information to Aboriginal communities about effective approaches to the administration and enforcement of laws;
- to assist Aboriginal governments to build capacity to develop, administer and enforce their own laws;
- to assist Aboriginal communities to understand the civil and regulatory aspects of the Canadian justice system.

In 2004-05, the AJS approved the first two projects under the Self-Government Capacity Building Fund:



**The Federation of Saskatchewan of Indian Nations (FSIN) Project:** the project involved consultation with First Nations and Aboriginal communities province-wide to make them aware of, and to have them identify priorities among, the recommendations of the Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform.<sup>15</sup> Consultation results were captured in a March 2005 report, *Recommendations of the Justice Reform Commission and Review of First Nations Community Focus Sessions*, and will inform an FSIN Work Plan that addresses implementation issues in collaboration with the federal and Saskatchewan governments. The FSIN project assisted in the dissemination of information about effective approaches to the administration and enforcement of laws;

**The Union of Ontario Indians Project (UOI):** the project is designed to enhance the capacity of the UOI to adjudicate matters arising under its regulatory and civil laws, especially in relation to appeal and redress mechanisms. The project will help the UOI to be ready when its Self-Government Agreement comes into force.

There are a number of reasons why there have been so few projects supported by the Self-Government Capacity Building Fund since its establishment in 2002-03:

- at both negotiation and implementation stages, the progress of self-government initiatives has been impeded by complex policy issues regarding fiscal sustainability. Given the elemental nature of those macro issues, and the uncertainty surrounding their resolution, interest in capacity-building activities has not been as strong as expected or as it may become later;
- two First Nations that were encouraged to submit proposals in 2003 and 2004 lacked the resources necessary to prepare submissions sufficient in detail to be capable of assessment against and approval under funding criteria;
- although the “administration of justice” component of self-government agreements remains an essential element of governance under the Inherent Right Policy, many negotiations have focused on other programs and services such as land management, education, language and culture. Thus, capacity building in relation to the administration and enforcement of laws has not presented as a priority.

### Aboriginal Justice Learning Network

#### *Mandate and Organizational Design*

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<sup>15</sup> *Supra* note 1.



Established in 1996 as part of the AJS, the AJLN was to be a broad-based volunteer network of Aboriginal community representatives, community justice workers, justice professionals, and federal/provincial/territorial government officials who would support the AJS by developing and sharing information about and best practices in alternative restorative justice processes consistent with Aboriginal values and traditions. Through education and awareness-building, the efforts of the AJLN were intended to induce sustainable, culturally relevant change in justice services for Aboriginal peoples.

The mandate of the AJLN has been to:

- act as a vehicle of communication between the justice system and Aboriginal communities;
- help ensure that Aboriginal women participate as full partners during negotiation and implementation of community justice programs;
- train enforcement officers, prosecutors, judges and members of Aboriginal communities in the objectives, values and mechanics of the community justice programs delivered under AJS-funded agreements; and
- help participating communities and the justice system implement community-based justice programs, with a focus on ensuring that the new approaches are fully integrated into the day-to-day operation of the mainstream justice system.

To date, the AJLN has endeavoured to fulfill its mandate in three ways:

- by connecting stakeholders across Canada with each other and with information – about best practices, lessons learned and developments in the field – through the AJLN web site and its on-line newsletter, LINK;
- by amassing and making available on request free resources, including print material and videos, on a variety of Aboriginal justice issues with an emphasis on community-based justice programs and similar initiatives; and
- by funding innovative short-term projects that encourage development of community-based justice programs, and that enhance knowledge of and access to the justice system among Aboriginal people.

Organizationally, three bodies have worked together to help the AJLN fulfill its mandate:

- a 14-member **AJLN Advisory Committee** was intended to provide advice to the Deputy Minister of Justice and to the AJLN on proposed activities, the





communications strategy, and the use of financial and human resources. Advisory Committee members include Aboriginal and non-Aboriginal Canadians from a variety of backgrounds, including community workers, judges, lawyers, police officers and youth;

- an **Elders' Panel** offers wisdom, experience, knowledge and spiritual guidance to the Advisory Committee and to the AJLN;
- the **National Coordinator's Office**, in the AJD in Ottawa, has been the information dissemination centre, and liaison among the Advisory Committee, the broader AJLN and the AJD.

*AJLN Activities: April 2002 – March 2005*

#### Outreach and Partnership

A major activity undertaken by the AJS during the reporting period was its financial contribution to the National Aboriginal Achievement Foundation's (NAAF) *Taking Pulse* "Industry in the Classroom" series. In May 2001, the NAAF launched *Taking Pulse*, an initiative designed to increase educational opportunities for and workforce participation of Aboriginal people. In 2003, together with corporate Chief Executive Officers, Aboriginal leaders, government officials, educators and youth from across Canada, the AJD participated in a *Taking Pulse* conference, the purpose of which was to develop specific programs designed to help Aboriginal people enter the economic mainstream. From that conference came the AJD's partnership with the NAAF and others to develop an education video, work kit and high school curriculum module – "The Circle of Justice" – designed to increase the presence of Aboriginal people in justice careers. The material is expected to be delivered for the first time in 30-50 Aboriginal high schools in the winter of 2005-06.

The 2000 AJS evaluation identified the need to improve the AJLN information distribution function. At that time, the AJD indicated that it would enhance the AJLN website by broadening the scope of the on-line newsletter LINK, creating a web-based tool for information exchange among community justice program providers, and posting lessons learned from workshops and conferences sponsored by the AJLN. Because of staff turn-over and budget reductions, those enhancements to the website have not occurred.

#### Funding Learning Events



In 2002-03, the AJLN funded 29 activities, including conferences and training sessions on restorative justice programs and processes, AJS awareness-building and promotion, youth career fairs (designed to encourage Aboriginal youth to stay in school and to make wise career choices), and a police-led sweat lodge program for young offenders.

Because of government-wide and departmental budget reallocations, the number of activities supported by the AJLN dropped to 9 in 2003-04 and to 5 in 2004-05. In 2003-04, funding support continued for the youth fairs, and the sweat lodge program. Funding assistance was also provided in that fiscal year to The National Aboriginal Achievement Awards (celebrating career achievements by Aboriginal individuals in a variety of professions) and to several conferences and workshops on, variously, cross-cultural awareness, conflict resolution, restorative justice processes, family violence, and the implications of the Supreme Court decision in *R. v. Gladue*.<sup>16</sup>

In 2004-05, funding was renewed to support the achievement awards, the youth fairs, the sweat lodge program, and cross-cultural awareness training.

Table 4-1: Overview of AJLN-Funded Projects by Fiscal Year

	2002-03	2003-04	2004-05
<b>Number of Initiatives</b>	29	9	5
<b>Total Committed Funding</b>	\$330,236	\$102,960	\$37,807

Source: AJD Files

### *Evaluation and Evolution*

From its inception, the AJLN has struggled to fulfill its responsibilities in the face of a number of difficulties, including:

- an unclear mandate, and no consensus among stakeholders on goals and priorities;
- frequent turn-over of leadership;
- an increasingly diminished budget;

<sup>16</sup> [1999] 1 S.C.R. 688. *Gladue* is the leading Supreme Court of Canada decision on the principles that govern application of section 718.2(e) of the *Criminal Code*, *supra* note 11. The section states that “all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders” [emphasis added].”



- disengagement of network volunteers (many individuals who volunteered to be part of the network lost interest in or became alienated from it when the AJLN could not readily create a place for them, or could not articulate its overall direction); and
- resistance from provincial and territorial government officials who did not feel sufficiently consulted about and involved in the development of the AJLN or in the composition of the Advisory Committee.

In the result, although those who have benefited from the initiatives sponsored by the AJLN consider it an important component of the AJS, many communities intended to be served by it have had no contact with it, and in fact know little or nothing about it.<sup>17</sup>

Recognizing that in its existing form the AJLN has not been able to satisfactorily achieve expected results, the AJD undertook an internal review of that component of the AJS in 2004. A report identifying a number of restructuring options, and recommending a clarified mandate, was produced. The AJD has identified as part of its 2005-06 business plan the building of a new AJLN, as part of a new Outreach and Partnership component of the AJS, with the goal of becoming a communications centre for Aboriginal justice.

### 3. EVALUATION

#### Formal Evaluations of the AJS

The AJD has committed to formal evaluations of the AJS, as outlined in the AJS RMAF. Over the course of its second five-year mandate, two key evaluations of the AJS have been planned—a mid-term formative evaluation and an end-of-mandate summative evaluation.

#### Formative Evaluation

The formative evaluation was substantially completed in 2004-05 by the Evaluation Division of DOJ. The final report, identifying findings and recommendations, is expected to be presented to the AJD early in 2005-06.

Evaluators assessed the extent to which the AJS has been successful in moving toward its objectives, with special attention to the implementation of the new components—Training and Development, and Self-Government Capacity Building. They also considered, more broadly, the continued relevance of the AJS, and whether other delivery and design options would improve its efficacy.





Having worked closely with Evaluation staff, the AJD anticipates that the final report will confirm that the AJS remains a relevant part of the federal response to the disproportionate representation of Aboriginal people in the criminal justice system, and that, in particular, community-based justice program funding has been meaningfully implemented and enjoys the support of communities and other justice system stakeholders. It is expected that the AJLN and the Training and Development Fund will be identified as not having been as successfully implemented as might have occurred had there been no budget reductions. It is also expected that the lack of consistent and meaningful performance data on community-based justice programs will be identified as an impediment to a more scrupulous assessment of the impact of the AJS.

The forthcoming report from the Evaluation Division will provide the AJD with information and recommendations to enhance its ability to meet its goals during the balance of the AJS mandate.

### Summative Evaluation

A summative evaluation will be undertaken in 2006-07 in contemplation of renewal of the AJS beyond March 2007. The summative evaluation will focus on the continued relevance of the AJS, its success in meeting objectives, and the impact it has had on stakeholders.

### **Sub-Study: The AJS in British Columbia**

In 2003, an assessment of the AJS as it had been received and implemented in British Columbia was carried out.<sup>17</sup> Interviews were conducted with all community-based justice program providers in that province to capture their perceptions of and experiences with the AJS. Generally, the conversations covered: how the community found out about the Strategy; what prompted it to apply for justice program funding; the process by which the community-based justice program was designed; how the program was working; and the quality of relations between the program and the mainstream justice system, including the AJD. The goal of the review was to identify meaningful and practical improvements that could be made to AJS management and delivery.

Overall, the communities expressed support for the AJS and agreed that it is an extremely worthwhile initiative. However, program coordinators also identified problems and suggested improvements. Recommendations included these:

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<sup>17</sup> Trehearne, *supra* note 8 at 22, 33-34.

<sup>18</sup> Institute for Dispute Resolution, University of Victoria, *The Aboriginal Justice Strategy: A Review and Recommendations* by Maureen Maloney (August 2003) [on file with the AJD].



- promote the AJS to Aboriginal communities, rural and urban, more vigorously;
- streamline the application process, develop clearer guidelines for applicants, and offer assistance with the application process;
- extend more time, information and resources to communities to let them design their own culturally appropriate programs;
- improve networking and information-sharing, including for example creating a list serve and chat room, and hosting an annual workshop for all program coordinators;
- offer more training and development for program board members, coordinators, frontline staff and volunteers;
- implement a simplified, consolidated reporting system that meets the minimal requirements of all funders and that requires reporting on an annual or semi-annual basis;
- provide multi-year funding with annual audits, and expedite procedures for getting approved funding to programs and for releasing holdbacks; and
- develop evaluation criteria, in collaboration with communities, that recognize different conceptions of success (healing and wellness in addition to savings and statistics, for example).

Many of the recommendations of the report were implemented by the AJD's Regional Office in British Columbia. Of particular note is the new electronic reporting system developed by the Regional Office in collaboration with the community-based justice programs operating in B.C. The system is comprehensive, capturing a great deal of data useful to the analysis and evaluation of programs. Fine-tuning of the reporting system is on-going, with community-based justice programs continuing to devote much time and effort to it.

More generally, the findings and recommendations of the B.C. report will be considered during AJS evaluations, and will inform the AJD's work plans in 2005-06 and 2006-07.

### **Evaluations of Community-based Justice Programs**

The effectiveness of the AJS may be measured, in part, by how well community-based justice programs are working, and by what impact they are having on the justice system. To get at that information, community-based justice programs conduct self-evaluations





(using tools and booklets developed by the AJD) and undergo third-party evaluations (assessments by a party that is neither the program nor a funder of it). During the reporting period, a number of third-party evaluations were completed with AJS funding support. Several of those evaluations are summarized below.

In addition to producing information with which to measure the impact and value of the AJS itself, program evaluations make an important contribution to the developing discourse on what constitutes “success” in community-based justice programming, and what performance indicators, outcome measures and study time frames are appropriate. Those insights are helpful to the AJD as it works to develop a standard evaluation framework for AJS-funded programs.

#### Tsuu T’ina First Nation Court and Peacemaking Services (Alberta)

The Tsuu T’ina Nation, with a population of 1,982 in 2001, borders on Calgary. The Tsuu T’ina Court is an on-reserve provincial court with an aboriginal judge, Crown prosecutor and court clerks. The court, which began sitting in October 2000, deals with criminal matters (adults and youth), as well as with violations of federal and provincial statutes and First Nations by-laws. It has jurisdiction for child welfare, family and civil matters but has not expanded into those areas yet. The associated Office of the Peacemaker operates a peacemaking program that engages offenders, victims, family and community members in resolving conflicts, dealing with the underlying causes of offender behaviour, and promoting a more peaceful community. AJS funding supports the peacemaking component of the program.

A third-party evaluation was completed in 2004.<sup>19</sup> Qualitative data was collected by way of focus groups, and in-person and telephone interviews with members of the judiciary, Crown, defence, Tsuu T’ina Nation police, RCMP, Victim Services, probation officers, community organizations, victims and Tsuu T’ina Nation members. Quantitative data included police and peacemaker statistics.

Qualitatively, respondents considered the program a positive addition to the community. There was pride of community ownership, and a more positive attitude towards the criminal justice system. By victims and offenders alike, the court was considered accessible, respectful and fair, although some respondents considered it too lenient in granting adjournments and in sentencing. Aboriginal workers in the court system were praised as important role models. Peacemaking was generally considered a positive

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<sup>19</sup> Human Resources Consulting Group, *Tsuu T’ina First Nation Court and Peacemaker Justice System: An Evaluation* by Allen Consulting & Training & BIM Larsson & Associates (April 2004) [on file with the AJD].



experience although some respondents thought it “an easy way out”<sup>20</sup> for the offender and a painful revisiting of the offence for the victim. Elders in particular approved of peacemaking, both because it reintroduced traditional ways of resolving conflict and because it kept offenders “out of the destructive experience of going to prison.”<sup>21</sup>

Quantitatively, over the evaluation period (October 2000 to March 2003), 90 persons were referred to peacemaking, with 66 accepted into the program. Of those, 50% successfully completed the program, fulfilling all the conditions of the peacemaking resolution; the unsuccessful 50% were returned to court. Generally, the 15 to 19 year old age group was found not to be accessing peacemaking services. Recidivism among offenders who accessed peacemaking was lower than recidivism among offenders who were the subject of formal court dispositions.<sup>22</sup> Police reported a rise in “incidents” over the years, from 600 in 1999 to 1,000 in 2002, attributing it in part to an improved attitude towards the justice system, one consequence of which is an increased willingness to report offences.

The evaluation recommended a number of actions aimed at strengthening the program:

- undertake public awareness activities to educate the community about the Court and peacemaking services;
- encourage youth ages 15 to 19 to access peacemaking;
- improve data collection, including tracking offenders post-disposition for at least five years;
- review and clarify job descriptions and reporting structures;
- conduct a needs assessment related to the peacemaker job function, hire more peacemakers, and improve their training;
- provide separate, secure and private facilities for the Office of the Peacemaker;
- produce written criteria and procedures for the peacemaking process; and
- develop a long-term evaluation framework.

The report has been forwarded to the Tsuu T’ina Nation Advisory Committee for consideration.

### Nunavut Community Justice Program

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<sup>20</sup> *Ibid.* at 7.

<sup>21</sup> *Ibid.*

<sup>22</sup> The study tracked 174 Tsuu T’ina offenders who had committed one offence or more between October 2000 and October 2001. By October 2003, 50% of the 44 offenders who had accessed peacemaking had re-offended; 61% of the 130 offenders who were the subject of court dispositions had re-offended.



Launched under the Government of the Northwest Territories in 1993, the Community Justice Program (CJP) continues under the Government of Nunavut. The aim of the program is to support communities in taking greater responsibility for offenders and victims, replacing reliance on the mainstream justice system with community-based justice processes and outcomes that make use of and are consistent with *Inuit Qaujimaqatuqangit* (Inuit traditional knowledge).

The key component of the Nunavut CJP are the Community Justice Committees (CJC), composed of community members who offer adult and youth diversion, victim support services and crime prevention activities. AJS funds are provided to the Government of Nunavut to support CJs in Arviat, Baker Lake, Cambridge Bay, Cape Dorset, Clyde River, Coral Harbour, Iqaluit, Igloolik, Kimmirut, Naujaat (Repulse Bay), Pangnirtung, Rankin Inlet and Sanikiluaq.

A third-party evaluation of the Nunavut CJP was completed in 2004.<sup>23</sup> The evaluator was to consider whether the program was meeting its mandate and objectives, whether the current mandate and program structure were sufficient to meet current and future needs, and whether the program offered effective alternatives to the mainstream justice system. Research was conducted in four communities (Arviat, Iqaluit, Pangnirtung and Rankin Inlet) by way of semi-structured one-on-one interviews and group consultations with key community members and criminal justice professionals. The Nunavut-wide perspective of the report was based on community consultee interviews and documentation from federal and territorial governments.

The evaluation concluded that the CJP was meeting its mandate and objectives, that generally the program's mandate and structure met current and would meet future needs, and that it was performing a valuable function in the community with potential for greater positive impacts over time. Significant progress was found to have been made by CJs in their management of adult and youth diversions since 1999. The CJs had the respect of their communities, Hamlet Councils and other professionals in the system. There was evidence that the most effective CJs were reducing recidivism in their communities.

Problems identified in the evaluation included insufficient funding, inadequate infrastructure (no dedicated, private and secure space to conduct CJC business), difficulty in attracting and retaining qualified coordinators (non-competitive salary and part-time work), and a CJC membership selection process that did not always lead to the most appropriate appointments.

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<sup>23</sup> Scott Clark Consulting Inc., *Review of the Nunavut Community Justice Program: Final Report* (Ottawa: Department of Justice Research and Statistics Division, 2004).



Identified as one of the most significant threats to the ultimate success of the CJP was the tension between the mandate of the CJsCs and the policy directives of the RCMP: the RCMP defines restorative justice as involving the victim in every case; CJsCs have a mandate to engage in community-based justice according to Inuit ways which, traditionally, did not always involve the victim.<sup>24</sup> While noting that the issue was a complex one requiring more research, the evaluator suggested that in some communities RCMP may not be diverting cases to CJsCs where there is doubt about the victim's participation, and that "[i]f Divisional headquarters decides to force the issue, it may mean that detachment commanders will be required to stop pre-charge diversion."<sup>25</sup>

The evaluation resulted in 19 recommendations, among them these:

- reassess the per capita funding formula (thought not to serve the CJsCs well);
- develop territory-wide program outcome measures for CJsCs, and conduct annual assessments;
- improve the content of records;
- enhance efforts to directly involve the victim in the community justice process;
- resolve the issue of victim involvement with the RCMP (in favour of referral/ acceptance even where the victim, though consenting, chooses not to participate);
- develop a standard job description and qualifications for coordinators, pay them competitively and enhance their training;
- provide dedicated space to CJsCs to conduct their counselling and mediation activities, and to coordinators to perform their administrative duties and keep files securely;
- where CJsCs lack community support, engage in outreach and awareness-building;
- revise and standardize the process of appointments to CJsCs, ensuring that it is fair and equitable, and that it results in the appointment of the best candidates; and
- provide funding to the Rankin Inlet Victim Support Program to enable it to prepare victims for the family group conference sessions run by the CJsCs.

The evaluation was presented to the Government of Nunavut in May of 2004, and was referred to the Nunavut Department of Justice. That Department has included in its 2005-06 business plan a strategic planning session to consider the report's recommendations.

#### Hollow Water Community Holistic Circle Healing Program (Manitoba)

The Hollow Water Community Holistic Circle Healing Program (CHCHP), in operation since 1987, was designed to prevent, intervene in and heal the inter-generational effects of sexual abuse and domestic violence. The program offers counselling of parties and their

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<sup>24</sup> Currently, CJsCs will accept offenders without the victim having to be directly involved although the victim must consent to diversion from the mainstream system.



extended families, circles and support groups, investigation of new disclosures, oversight of court-ordered assessments, and traditional healing therapy.

A third-party evaluation of the program was completed in 2003.<sup>26</sup> The assessment included interviews with program participants, analyses of in-house documents, and a restorative justice literature review. The evaluation was characterized by its author as “only a snapshot of the Community Holistic Circle Healing program as it compares to the Aboriginal Justice Directorate mandate dated March-April 2003”. The report is largely qualitative in content.

The evaluation found no evidence that the program has contributed to a decrease in crime; in fact, the opposite was true because of increased disclosure to the program. The program was however thought to have had a significant impact on the rates of incarceration. For Aboriginal stakeholders, the program represented an important step in the restoration of traditional justice systems, and offered a vital service to the community. The program was considered to suffer from inadequate financial support.

Recommendations were not the focus of the evaluation although these two were made: the eighteen-year old draft protocol with Manitoba Justice should be formalized; and governments should provide adequate core funding to maintain the program.

The 2003 evaluation of the CHCHP follows on a cost-benefit analysis of the same program undertaken in 2001.<sup>27</sup> The earlier study found that, during the first 10 years of operation, the CHCHP was more cost-efficient than the mainstream justice process. Researchers estimated that for every \$1 the provincial government spent on the CHCHP, it saved \$2.75 on pre-incarceration, prison and probation costs; and that for every \$1 the federal government spent on the program, it saved between \$1 and \$11 on incarceration and parole costs. The study identified a number of value-added benefits that could not be easily assigned a dollar value, including improved health, better parenting skills, an increased sense of safety, and a reconnection to culture and tradition.

### **2004 Visit by United Nations Special Rapporteur**

At the invitation of the federal government, Rodolfo Stavenhagen, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, visited Canada in the spring of 2004. He travelled to various parts of the country, including Ontario, Nova Scotia, Québec, Manitoba and Nunavut, where he met with

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<sup>25</sup> *Ibid.* at 3.

<sup>26</sup> Crystal Rokosh, Tim Poitras & Bev Poitras, *2003 Comparison of Aboriginal Justice Strategy Mandate to the Hollow Water Community Holistic Circle of Healing* (June 15, 2003) [on file with the AJD].

<sup>27</sup> Native Counselling Services of Alberta, *A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process* by Joe Couture *et al.* (Ottawa: Aboriginal Peoples Collections, 2001).



government officials, Aboriginal communities and non-governmental organizations to discuss Canada's approach to Aboriginal issues. AJD staff made a presentation on the AJS to Mr. Stavenhagen during his time in Ottawa.

In his December 2004 report on the Canadian mission, the Special Rapporteur highlighted the AJS as one of the key programs the federal government has implemented in response to the issues faced by Aboriginal people in the justice system. He urged that efforts increase to reduce and eliminate the over-representation of Aboriginal people in detention, and that Aboriginal justice institutions and mechanisms be officially recognized and fostered with the full participation of Aboriginal communities.<sup>28</sup>

The Special Rapporteur's report is expected to be presented to the UN Commission on Human Rights in April of 2005.

#### **4. FUTURE DIRECTION AND PRIORITIES**

The AJD will continue to actively implement the components of the AJS over the final two fiscal years of its current mandate. Four priorities will guide the work of the AJD during the next fiscal year (2005-06):

- deliver community-based programs, self-government negotiations and funding arrangements, and manage the AJD (including human resources management);
- build better outreach and partnerships;
- demonstrate results, and;
- develop a new mandate for the AJS beyond March 2007.

#### **Deliver AJS and Manage AJD**

In collaboration with provincial and territorial partners, the AJD will negotiate funding arrangements for existing community-based justice programs and will meet with Aboriginal communities and organizations regarding new proposals. It will engage its federal, provincial and territorial partners in the development of joint pilot projects related to the delivery of the AJS. With partners, it will explore innovative and cost-efficient ways to meet community needs, facilitate information exchange, and address operational

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<sup>28</sup>Rodolfo Stavenhagen, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, UN OHCHR, 61<sup>st</sup> sess., UN Doc. E/CN.4/2005/88/Add.3 (Advance Edited Version: 2 Dec. 2004).



issues. There will be a focus on building the capacity of community-based programs by ensuring better trained staff in funded programs.

The AJD will work with provincial and territorial counterparts to put in place a standard framework for the evaluation of community-based programs. It will create a process that allows Regional Coordinators and Program Analysts to feed into evaluations, and from the performance reports it will produce statistics and identify best practices.

The Self-Government Capacity Building Fund will be evaluated to ensure that it is being delivered optimally. The AJD will participate in the development of guidelines for federal negotiators in relation to the enforcement, adjudication and administration of First Nations laws.

Internally, the AJD will enhance its human resources strategy to ensure full use and development of existing talents and resources.

### **Build Outreach and Partnerships**

The AJD has recognized that, in its existing form, the AJLN has not been able to satisfactorily achieve expected results. In 2005-06, the AJD will work to build a new Outreach and Partnership component with the goal of creating a communications centre for Aboriginal justice.

The AJD will begin by hosting a strategic planning session with key stakeholders to help it develop a new, coordinated action plan to implement outreach and partnership objectives. The action plan might include for example: creating a new visual identity and logo for the AJS; redesigning and updating the web site to position it as a key dissemination point for Aboriginal justice information; developing and implementing a communications strategy that builds awareness and knowledge of the AJS internally and externally; developing an events strategy that identifies and plans for the attendance of AJS staff at events suited to the promotion of the Strategy; and building partnerships with other stakeholders who can champion the AJS within their professional networks.

The Outreach and Partnership component will also work to address the under-representation of Aboriginal people in justice professions. It will seek and support opportunities to increase awareness among Aboriginal people of justice professions as career options, it will engage AJD legal counsel in the strategy, and it will identify opportunities for communications and marketing.

### **Demonstrate Results**



As the second mandate of the AJS comes to an end, it will be important to measure and demonstrate the progress that has been made towards goals. The final report associated with the formative evaluation will be delivered early in 2005-06. The AJD will make use of the information in and recommendations of the report to enhance its ability to meet its goals during the balance of the AJS mandate.

A recidivism study will be completed in 2005-06 that will assess the extent to which AJS community-based justice programs reduce re-offending among Aboriginal participants referred to them. Results will be used to determine the degree to which the AJS has contributed to a reduction in rates of victimization, crime and incarceration among Aboriginal people in communities with AJS-funded programs. The study may also offer insight into what kinds of programs work best to reduce re-offending, and what factors – including community characteristics – contribute to or hinder success.

The AJD will undertake a trends analysis of victimization, crime and incarceration rates among Aboriginal people between 1995 and 2005. Results will be used to assess the continued relevance of the AJS's objectives (and, in particular, the objective of contributing, in the long-term, to a reduction in those rates). The trends analysis will also be used to evaluate whether the Strategy has contributed to reductions in victimization, crime and incarceration rates in communities operating AJS-funded programs.

Case studies of twelve AJS-funded community-based justice programs are planned. The studies are expected to determine whether the programs have had an impact on rates of victimization and crime in the communities in which they operate, and to identify lessons learned and best practices. The case-study communities will be matched to similar communities that do not operate justice programs to assess pre- and post-implementation impact of the programs on victimization and crime rates. The case study process will include developing a communication strategy, identifying key stakeholders for in-person interviews, creating interview guides that address the evaluation questions in the AJS RMAF, conducting the studies, and reporting findings.

### **Develop New Mandate**

The AJD will begin to contemplate and develop a new mandate for the AJS beyond March 2007. Analysis of the results of the evaluation activities – of the AJS itself and of programs funded by it – will be an important part of the development process. The AJD will consult with federal, provincial and territorial partners to assess the contributions of the AJS to date, to forecast key Aboriginal justice issues over the next decade or so, and to discuss how, if at all, the AJS must be transformed to remain relevant and effective into the future. Aboriginal communities will also be consulted to gauge the level of support



for renewal of the AJS, and to seek advice on what changes in mandate, design or delivery would make the AJS more effective during a third mandate.

## CONCLUSION

The AJS is part of the federal government's response to justice inquiries across the country that have called for the development of sustainable justice policies and programs that better meet the needs of Aboriginal people and that address their over-representation in the justice system. In collaboration with provincial and territorial partners, the AJS focuses on increasing opportunities for, and building the capacity of, Aboriginal communities to participate meaningfully in the administration of justice.

In implementing and managing the AJS, the AJD engages in a broad range of activities to achieve the goals to which the Strategy and the Directorate are dedicated. It promotes Aboriginal justice as a key policy priority, funds community-based justice programs and related capacity-building, provides legal advice to self-government negotiation tables, and is committed to supporting the creation and distribution of knowledge about Aboriginal justice initiatives.

This report highlights the work undertaken by the AJD in the first three fiscal years of the AJS's second five-year mandate. Mid-term is an ideal time to take stock of past activities, accomplishments and shortcomings, all of which offer practical information to guide future plans.

The success of the AJS may take many forms: meaningful participation of Aboriginal communities and individuals in the administration of justice; enhanced community capacity to respond to justice issues faced by Aboriginal people; integration of culturally sensitive approaches to justice into the mainstream system; strengthened relations and partnerships between the federal government and provincial and territorial governments in the development and delivery of Aboriginal justice policy and programs; better networking, information exchange and resource sharing among stakeholders; savings to the mainstream justice system in money or work; individual, family and community healing and wellness; and, finally, less crime, safer communities, and fewer Aboriginal people in the court and correctional systems of Canada.

Ultimately, the success of the AJS will be determined by how well its component activities are managed, by the strength of the partnerships it creates and fosters, and by the extent to which it remains forward-looking and relevant. The AJD is moving forward to fulfill the current mandate of the AJS, mindful of the experiences of the past and anticipating the opportunities and challenges ahead.

## Appendix 1



## Aboriginal People in the Canadian Justice System: Statistics

The AJS was established as part of the federal government response to the over-representation of Aboriginal people in the Canadian justice system.

### Contact with Police

*Compared to the non-Aboriginal population, Aboriginal people are more likely to have some forms of contact with police.*

In 1999:

- there were virtually no differences between Aboriginal and non-Aboriginal people in their contact with police for such interactions as public information sessions or traffic violations
- Aboriginal people were more likely than non-Aboriginal people to have come into contact with police as victims of crime (17% compared to 13%), as witnesses to a crime (11% compared to 6%), or by virtue of being arrested (4% compared to 1%)<sup>29</sup>

### Victimization

*Compared to the non-Aboriginal population, Aboriginal people are more likely to be victims of crime, victims of violent crime, and victims of spousal violence.*

In 1999:

- 35% of the Aboriginal population reported having been the victim of at least one crime in the last year, compared to 26% of the non-Aboriginal population
- 19% of the Aboriginal population reported having been victimized more than once in the last year, compared to 10% of the non-Aboriginal population
- Aboriginal people reported having experienced violent crime at a rate that was nearly three times that of non-Aboriginal people (307 versus 110 incidents per 1,000 population)
- 20% of the Aboriginal population reported having been assaulted by their spouse, compared to 7% of the non-Aboriginal population<sup>30</sup>

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<sup>29</sup> Statistics Canada, *General Social Survey on Victimization 1999*, reported in *Aboriginal Peoples in Canada* (Ottawa: Canadian Centre for Justice Statistics, 2001) at 8.

<sup>30</sup> *Ibid.* at 6-7. Another *General Social Survey* was conducted in 2004. Statistics Canada expects to publish information on the victimization component of the survey, including differences in victimization rates



## Incarceration

*Aboriginal people are over-represented in custody relative to their proportional representation in the total Canadian population.*

In 1996, Aboriginal adults (18 and over) were:

- 2% of the Canadian adult population
- 17% of the country's adult inmate population (18% in provincial/territorial facilities; 14% in federal custody) on snapshot day (October 5, 1996)
- almost nine times more likely to be in custody than non-aboriginal adults<sup>31</sup>

In 2002-03, Aboriginal adults were:

- 2% of the Canadian adult population
- 20.7% of the country's adult inmate admissions (21% in provincial/territorial facilities, up from 14% in 2001-02; 18% in federal custody, up from 15% in 2001-02)<sup>32</sup>

In 2003, Aboriginal youths<sup>33</sup> were:

- 5% of the Canadian youth population
- 33% of youths in custody on snapshot day (June 4, 2003)
- almost eight times more likely to be in custody than non-aboriginal youths<sup>34</sup>

## Characteristics of Adult Aboriginal Inmates

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between Aboriginal and non-Aboriginal populations, in November of 2005. A second publication, devoted to crime and victimization in the Aboriginal population, is scheduled for release in the spring of 2006.

<sup>31</sup> David Robinson *et al.*, "A One-Day Snapshot of Inmates in Canada's Adult Correctional Facilities" (1998) 18:8 *Juristat* 1 at 5-6, online: Depository Services Program <http://dsp-psd.pwgsc.gc.ca/Collection-R/Statcan/85-002-XIE/0089885-002-XIE.pdf>. A snapshot is a count of individuals in custody on data collection day.

<sup>32</sup> Statistics Canada, *The Daily*, October 27, 2004, online: Statistics Canada <http://www.statcan.ca/Daily/English/041027/d041027.pdf> at 5; Canada, "Aboriginal Issues: Facts and Figures: Aboriginal Offender Statistics: 2001", online: Library and Archives Canada [http://epe.lac-bac.gc.ca/100/200/301/csc-scc/aboriginal\\_offender\\_stats-e/4\\_e.shtml.html](http://epe.lac-bac.gc.ca/100/200/301/csc-scc/aboriginal_offender_stats-e/4_e.shtml.html); Anne Finn *et al.*, "Female Inmates, Aboriginal Inmates, and Inmates Serving Life Sentences: A One Day Snapshot" (1999) 19:5 *Juristat* 1 at 9. Admission data, collected when offenders enter an institution, measure changes in caseload over time but do not identify the number of individuals in custody at a particular time. A person may be included several times, or not at all, in annual admission counts, depending on when or how often in one year he/she has been admitted.

<sup>33</sup> Ages 12 to 17. Persons in custody older than 17 were counted if they were 12 to 17 at the time of the offence.

<sup>34</sup> Jeff Latimer & Laura Casey Foss, *A One-Day Snapshot of Aboriginal Youth in Custody Across Canada: Phase II* (Ottawa: Department of Justice, 2004) online: Justice Canada <http://canada.justice.gc.ca/en/ps/rs/rep/2004/snap2/snapshot2.pdf>. Quebec did not participate in the survey.



In 1996, Aboriginal adults in custody:

- were younger on average, had less education and were more likely to have been unemployed prior to the offending than non-Aboriginal inmates
- were more likely than non-Aboriginal inmates to have had prior convictions, incarcerations, and escapes or escape attempts
- were considered higher risk to re-offend and had higher needs than non-Aboriginal inmates<sup>35</sup>

## Appendix 2

### Sample of Conferences Attended by the AJD: 2002-03, 2003-04, 2004-05

Attendance at and participation in conferences enhance the profile of the AJS, and offer an important opportunity for AJD staff to share information and expertise, stay informed about emerging issues, trends and priorities, and enhance inter-professional networks.

#### *Annual Aboriginal Justice Conference*

Each fiscal year, the AJD partners with the British Columbia government to support and attend an Aboriginal Justice conference in British Columbia. With a national focus, the conference offers a variety of workshops and presentations that address current and pressing issues including, recently, such topics as cultural challenges, mental wellness, socio-economic issues, social justice and success stories. Academics, practitioners and Aboriginal leaders, among others, are speakers and workshop facilitators.

#### *Annual Federal Self-Government & Claims Negotiators Conference*

Organized by INAC, this annual conference for federal negotiators and other participants in the negotiations process is considered to be an excellent mechanism for sharing best practices, and for identifying issues that need policy development. The AJD's participation at the conference ensures that its counsel – who provide legal and policy advice and support to federal negotiators on “administration of justice” issues – are up-to-date on developments in the field, and are known to negotiators as a resource.

#### *Aboriginal Family Mediators Conference (2004)*

##### 1.4.1.

Presented in tandem with the annual conference of Family Mediation Canada – a nationwide association and resource for family mediation practitioners – the Aboriginal

<sup>35</sup> Finn *et al.*, *supra* note 32 at 10-11.



Family Mediators conference offered information exchange and skills development to aboriginal mediators providing services under AJS-funded community-based family mediation programs. Holding the conferences jointly created opportunities for cross-training: mainstream practitioners were exposed to restorative justice methods practiced by First Nations, and Aboriginal mediators learned about best practices in the mainstream justice system. AJS attendance offered the opportunity to promote the AJS generally, and to encourage the development of AJS-supported mediation programs, an under-used community justice program model.

*Expert Seminar on Indigenous People and the Administration of Justice (2003)*

Through its Director General, the AJS was an active participant in the Expert Seminar on Indigenous Peoples and the Administration of Justice held in Madrid in November of 2003. The seminar was organized by the Office of the United Nations High Commissioner for Human Rights, and was attended by more than 100 experts from government, non-governmental organizations and academia. As a training and development initiative, the AJS funded the attendance at the seminar of a community-based justice program provider.

On the theme of “Discrimination Against Indigenous Peoples in the Justice System—Examples, Experiences, and Governmental, Administrative and Judicial Measures to Ensure Equitable Justice Systems”, the AJS’s Director General made a presentation to attendees on federal government programs aimed at improving the administration of justice for Aboriginal people in Canada, including the AJS. Recommendations arising from the seminar were directed to governments, to United Nations bodies, to human rights agencies and to indigenous peoples.

*National Aboriginal Achievement Foundation (NAAF) Taking Pulse Conference (2003)*

In May 2001, the NAAF launched *Taking Pulse*, an initiative designed to increase educational opportunities for and workforce participation of Aboriginal people. *Taking Pulse* has the support and participation of corporate Chief Executive Officers, Aboriginal leaders, government officials, educators and youth from across Canada. The 2003 conference in which the AJS participated focused on the formal development of specific programs designed to help Aboriginal people enter the economic mainstream. From that conference came the AJS’s partnership with the NAAF and others to develop – as part of the *Taking Pulse* “Industry in the Classroom” series – an education video, work kit and high school curriculum module – “The Circle of Justice” – designed to increase the presence of Aboriginal people in justice careers. The material is expected to be delivered for the first time in 30-50 Aboriginal high schools in the winter of 2005-06.



### *Aboriginal Law Conference (2002)*

With a focus on aboriginal rights and title, the conference covered: the constitutional commitment to reconciliation; judicial extinguishment; contact versus sovereignty, and the appropriate threshold date for determining aboriginal rights and title; fiduciary relationships and the duty to consult; proving aboriginal rights; and uses, research on and documentation of aboriginal oral history. The conference provided informative and thought-provoking material for AJD counsel who provide legal and policy advice at self-government negotiation tables.

### *Canadian Evaluation Conference (2002)*

Hosted by the Canadian Evaluation Society, the conference – entitled “Evidence for Better Decision-Making” – explored best practices and recent developments in performance measurement and evaluation, logic modeling, survey construction, public performance reporting, and benchmarking in the public service. Conference information was useful to the AJD in constructing an evaluation framework for the AJS, and in developing tools to assist community programs in their self-evaluation activities.

The AJD also participated in conferences of a more local nature, including:

- Punky Lake Crime Prevention Symposia
- Saskatchewan Indian Council Conferences
- Nishnawbe-Aski Nation Restorative Justice Conferences



## Appendix 3

### Sample of AJS-Funded Community-based Justice Programs

In 2004-05, the AJS funded 109 community-based justice programs serving over 450 communities. The sample of programs described in this appendix reflects the wide variety of initiatives that may be delivered by the community with AJS support.

#### *Yellowhead Tribal Community Corrections Society (YTCCS) First Nations Custom Advisor Panels (Alberta)*

The YTCCS community-based justice program provides for the establishment and operation of First Nations Custom Advisor Panels in the communities of the five First Nations represented by the Yellowhead Tribal Council: Alexander, Alexis, Enoch, O'Chiese and Sunchild. The Custom Advisor Panels operate alternative measures programs, employing traditional, culturally relevant methods to address conflicts in an open and transparent forum. The Panels are especially important to the Yellowhead communities because there are no other institutional settings for the orderly airing and just resolution of individual conflicts, political disagreements or community discord.

In the 1400-member community of Alexis, located outside of Edmonton, there is a more fulsome restorative justice model at work. The provincial court is located on the Alexis Reserve, where it works closely with a Justice Committee, comprised of volunteer Aboriginal Elders, in delivering a blend of mainstream and Aboriginal justice in the community. The justice model is treatment-based, not punishment-oriented, and makes use of restorative justice strategies wherever appropriate. Dispositions seek to address the underlying causes of crime, and include both deterrent and rehabilitative components.

#### *Gitxsan Unlocking Aboriginal Justice Program (British Columbia)*

The Gitxsan Unlocking Aboriginal Justice Program (GUAJP) operates diversion and community sentencing programs for six bands in northern British Columbia with a total population of about 8000. The program is based on beliefs that under-gird the House system: the actions and behaviour of one individual reflect on the whole of the House; the entire House is affected by the offences of an individual.

Referrals to the GUAJP come from individuals, the RCMP, the Crown and other community agencies. The acceptance of a referral depends on House support of the offender and the victim, as well as on the offender's willingness to participate and the victim's consent. The program uses a variety of processes and dispositions including feasts, visiting with Elders and researching genealogy. For youths, dispositions most





often imposed are curfews, mandatory school attendance and relationship-building with family and siblings.

The GUAJP also offers victim assistance, and supervision of offenders sentenced to serve their time in the community with conditions.

*Meenoostahtan Minisiwin First Nations Family Justice Program (Manitoba)*

The Awasis Agency of Northern Manitoba operates the Meenoostahtan Minisiwin program, an alternative model for family justice aimed at resolving child protection concerns (abandonment, neglect and “out of control” children) through a combination of mediation, and traditional peacemaking services and circles. The program serves a community of about 2000 near Thompson.

The program brings family and community together with properly trained *Okweskimowews* (family mediators) to resolve child welfare issues. Depending on the needs of the case, the RCMP, health services, schools, probation, alcohol and drug programs, court services, magistrates and churches may be involved in the mediation process. If a resolution is reached, the mediator ensures that the conditions of the resolution are met and that harmony is restored. If a resolution cannot be reached, the case may be referred to outside support services, or to the formal court system.

*Elsipogtog Restorative Justice Program (New Brunswick)*

Big Cove/Elsipogtog is the most populous reserve in New Brunswick. It has an exceptionally high crime rate (especially violent crime) and very serious mental health issues, including high suicide/attempt suicide rates, among its population of 2500. The Elsipogtog Band Council operates a diversion and community sentencing program for youths and adults in conflict with the criminal law. The program engages offenders, victims, Elders and other community members in pre-charge healing circles, and in post-conviction sentencing circles. The program is delivered by a Community Justice Committee, its 15 members drawn from the community (Elders, youth and women) and from a full range of community services and programs.

In 2004-05, with AJS funding, the Elsipogtog Band Council added a Victims’ Assistance Program to its community-based justice programs. Victims’ Assistance provides support and pre-trial preparation services to victims and their families. It also works to raise awareness about and support for the needs of victims in the broader community.

*Aboriginal Legal Services of Toronto (ALST) Community Council Project (Ontario)*



ALST's Community Council Project (CCP) is an urban post-charge diversion program that serves an Aboriginal population of about 60,000 in Toronto. Aboriginal adults and youths charged under the *Criminal Code*<sup>36</sup> or the *Controlled Drugs and Substances Act*<sup>37</sup> who admit to having committed the offence charged and who consent to participation in the CCP are diverted from the formal court system to an Aboriginal Community Council for disposition. Charges are stayed or withdrawn. The selection of candidates is made by court workers based on a eligibility protocol developed by the Crown.

To arrive at a disposition in a diverted case, a Community Council (a four-member panel of Aboriginal volunteers) conducts a hearing during which the offender and the Council engage in a restorative discussion of the offence, the harm caused, and the responsibility of the offender. Dispositions arising out of hearings, formalized in Council agreements, are many, including apologies, restitution, referrals to Aboriginal agencies, counselling, employment and education. The CPP is responsible for providing the support the client needs to meet the conditions of the Council agreement, and for monitoring compliance and completion.

At current resource levels, ALST's CCP manages about 100 diversions a year.

#### *Haines Junction Community Justice Program (Yukon)*

The Champagne and Aishihik First Nations operate diversion and community sentencing programs for the residents of the Village of Haines Junction in southwestern Yukon. The village has a population of 770; the broader community includes 1140 registered First Nations members. A 6-member justice committee operates talking, healing and sentencing circles: talking circles attempt to resolve disputes before they escalate into serious conflicts or criminal offences; healing circles address the harms caused by a crime that has been committed; sentencing circles facilitate community participation in the development of sentencing recommendations to the court after an offender has been convicted. The aim of the program is to prevent crime, to address its harms restoratively when it occurs, and to encourage the community to play an active role in justice administration.

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<sup>36</sup> *Supra* note 11.

<sup>37</sup> S.C. 1996, c. 19.