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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, and was renewed in August 2001 for a second five-year term (to March 2007). The goals of the AJS are:

- to help Aboriginal people 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, together with other justice programs, to 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.

As part of its commitment to Treasury Board, and as outlined in the AJS Results-Based Management and Accountability Framework (RMAF), the AJD is to report annually on its activities. This report highlights key activities during the 2005-06 fiscal year.

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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EXECUTIVE SUMMARY

With a 2005-06 budget of approximately \$9.9 million, including \$7.4 million in Grants and Contributions, the AJS funded: 110 community-based justice programs serving 433 communities across the country; 27 training and development activities for communities and program staff; and 3 self-government capacity building initiatives.

During 2005-06, the AJD was an active participant on a number of working groups and committees that brought stakeholders together to share information and expertise, and to discuss emerging issues. A mid-term evaluation of the AJS completed in June of 2005 identified that the AJD and the AJS have had a positive impact on the level of cooperation among various Aboriginal justice stakeholders.

Research and evaluation activities in 2005-06 were directed at evaluating the effectiveness of the AJS in delivering on its mandate. Activities included a restorative justice literature review, the creation of an inventory of recent third-party evaluations of AJS-funded programs, a formal mid-term evaluation of the AJS and work has begun on a recidivism study and ten case studies.

In 2005-06, the AJD revitalized its outreach and partnership activities to build awareness of the AJS internally and externally. The AJD attended and participated at a number of national and international conferences and workshops to promote the AJS and to share and receive information about Aboriginal justice initiatives. The AJS web site was enhanced and a new visual identity was created for the Strategy. The AJD also began work to address the under-representation of Aboriginal people in justice professions.

In 2006-07, the final year of the current AJS mandate, the AJD will continue its work to make meaningful progress on Aboriginal justice issues by:

- supporting community-based justice programs, training and development initiatives, and self-government capacity-building projects;
- participating in self-government negotiations;
- enhancing outreach and partnership; and
- engaging in evaluation activities to demonstrate results.

1. BACKGROUND: ABORIGINAL JUSTICE STRATEGY

Origin and Rationale

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*,¹ and to other Aboriginal justice inquiries across the country that had concluded that Canada's justice system was failing Aboriginal people.² Aboriginal people have long experienced disproportionately high rates of arrest, conviction and incarceration relative to their representation in the population.³ That disproportionate contact with the justice system has been attributed to a multitude of complex and interconnected factors including disadvantaged socio-economic conditions, culturally insensitive approaches to justice, and systemic racism.⁴

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 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.

The AJS was developed in cooperation with Indian and Northern Affairs Canada (INAC), the Privy Council Office (PCO), and the former Office of the Solicitor General (now

¹ 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).

² See e.g. Nova Scotia, *Royal Commission on the Donald Marshall, Jr., Prosecution* (Halifax: Royal Commission, 1989); Alberta, *Justice on Trial: Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta* (Edmonton: The Task Force, 1991); Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba* (Winnipeg: Queen's Printer, 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); Ontario, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer, 1995); 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) [SJRC, *Legacy of Hope*]. 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.)

³ Relevant statistics are reported in Appendix 1.

⁴ *Supra* note 2.

Public Safety and Emergency Preparedness Canada - PSEPC) including the Royal Canadian Mounted Police (RCMP). The AJS is managed by the Aboriginal Justice Directorate (AJD) within the Department of Justice (DOJ).⁵

Objectives

The objectives of the AJS are:

- to help Aboriginal people 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, together with other justice programs, to contribute to a reduction in rates of crime, victimization and incarceration among Aboriginal people in communities operating AJS programs.

Design and Delivery

During the 2005-06 reporting period, the AJD pursued the goals of the AJS through five component activities:

- Policy Development and Support
- Community-based Justice Program Funding
- Training and Development (T&D) Fund
- Self-Government Capacity-Building Fund, and
- Outreach and Partnership

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

⁵ For more information on the AJS’s origin, evolution and activities in earlier years, see Department of Justice Canada, Evaluation Division, *Final Evaluation: Aboriginal Justice Strategy* (2000), Department of Justice Canada, Evaluation Division, *Aboriginal Justice Strategy: Formative Evaluation* (2005), and Department of Justice Canada, Aboriginal Justice Directorate, *The Aboriginal Justice Strategy: Annual Activities Report 2002-2003, 2003-2004, and 2004-2005* (2005).

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 Training and Development (T&D) Fund focuses on providing sustainable training to justice stakeholders, as well as community capacity building and program development for the community-based justice programs. The fund has supported training activities tailored to program needs, attendance at seminars and conferences, and strategy planning sessions.

The Self-Government Capacity Building Fund is administered by the AJD in consultation with INAC. The fund supports the development of pilot projects and resource material designed to build self-government capacity within Aboriginal communities. Projects include the development of communication tools and the delivery of training on the administration, adjudication and enforcement of local laws.

The objectives of Outreach and Partnership are to promote the AJS to Aboriginal communities, foster information-sharing among practitioners about alternative justice processes consistent with Aboriginal values and traditions, identify and disseminate best practices and creative solutions to Aboriginal justice issues, promote justice career options to Aboriginal people, and solicit and foster partnerships that advance the objectives of the AJS.

Resources

The AJD has an organizational structure that reflects the wide variety of activities in which it engages. The AJD is comprised of policy advisors, program analysts, communications/liason 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 shares salary and operating expenses with PSEPC to deliver both the AJS and the National Crime Prevention Strategy (NCPS) in the Yukon, Northwest Territories, Nunavut and Alberta. The AJD also has service agreements with the Evaluation Division of DOJ to conduct formal evaluations of the AJS.

In 2005-06, the AJD's budget was approximately \$9.9 million, of which \$7.4 million was Grants and Contributions.

2. AJS ACTIVITIES 2005-06

As part of its commitment to Treasury Board, and as outlined in the AJS Results-based Management Accountability Framework (RMAF), the AJD undertook to produce annual reports on its activities. This report highlights key activities during the 2005-06 fiscal year.

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; and
- 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 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, integrated, complementary and, as much as possible, collaborative.

Coordination and Collaboration

Because the success of the Policy Development and Support component of the AJS depends on the strength of its internal and external networks, the development of strategic partnerships at departmental, interdepartmental and intergovernmental levels is a key activity. During 2005-06, the AJD was an active participant on a number of working groups and committees. Bringing stakeholders together regularly to share information and expertise, and to discuss emerging issues, advances the twin goals of improving coordination and collaboration, and creating sustainable linkages with communities, and among government policies and programs that impact on Aboriginal justice.

A mid-term evaluation of the AJS completed in June of 2005, and discussed in more detail in Part 3 of this report, identified that, since the last formal evaluation in 2002, the AJD and the AJS have had a positive impact on the level of cooperation among various Aboriginal justice stakeholders. In particular, the evaluation found improvement in relationships between various DOJ offices, between the DOJ and provincial/territorial ministries, and between Aboriginal communities and the local mainstream justice system.⁶

In 2005-06, the AJD participated as a member of the following committees and working groups:

Departmental

- Working Group on Youth Justice
- Working Group on Fetal Alcohol Spectrum Disorder

Interdepartmental

- Aboriginal Community Stability and Wellness Working Group
- Urban Aboriginal Strategy Committee
- Interdepartmental Committee on Sisters in Spirit
- Treasury Board Secretariat Horizontal Review
- Sustainable Development Implementation Team
- Northern Youth Strategy
- Aboriginal Canada Portal & Connectivity Working Group

Inter-jurisdictional

- Federal-Provincial-Territorial Working Group on Aboriginal Justice Issues: Youth Justice Sub-committee; Family and Interpersonal Violence Sub-committee
- Federal-Provincial-Territorial Working Group on Restorative Justice
- Federal-Provincial-Territorial Working Group on Victims of Crime; Aboriginal Sub-committee
- Residential School Networking Group
- Deputy Ministers' Federal-Provincial-Territorial Working Group on Aboriginal Justice Issues⁷

⁶ Department of Justice Canada, Evaluation Division, *Aboriginal Justice Strategy: Formative Evaluation* (2005) at 15.

⁷ The AJD co-chaired and provided administrative support to this FPT group.

- Saskatchewan Justice Reform: Implementation Steering Committees (Métis & First Nations) and Regional Working Group (Assessment and Implementation)

Research and Evaluation

The AJD's Results-Based Management and Accountability Framework (RMAF), requires it to define anticipated program outcomes, focus on achieving results, measure performance regularly, and use that information to improve efficiency and effectiveness. Research and evaluation activities in 2005-06 were directed at evaluating the effectiveness of the AJS in delivering on its mandate. More generally, the activities were intended to contribute to the growing body of knowledge about best practices in, policies and programs directed at, and resources available to Aboriginal justice initiatives.

In 2005-06, the AJD engaged in the following research and evaluation activities:

- completed 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;
- participated in the formal mid-term evaluation of the AJS conducted by the DOJ's Evaluation Division (more details are provided in Part 3 of this report);
- collected and synthesized the results of recent third-party evaluations of AJS-funded community-based justice programs to identify lessons learned, best practices and potential improvements to the management and delivery of both the AJS and the programs funded by it;
- collaborated with the DOJ's Evaluation Division to launch a study of twelve AJS-funded community-based justice programs 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. Work included developing a communication strategy, identifying key stakeholders for in-person interviews, creating interview guides, and conducting the studies. Findings are expected to be reported in 2006-07;
- collaborated with Evaluation Division on a recidivism study of nine AJS-funded community-based justice programs to assess the extent to which the programs have reduced re-offending among Aboriginal participants referred to them. The study is also expected to offer insight into what processes work best to reduce recidivism and

what factors – including community characteristics – contribute to or hinder success. Findings are expected to be reported in 2006-07.

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, workshops and other such events 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 for such events to support the exchange of ideas and the generation of new knowledge and skills.

In 2005-06, the AJD attended the following conferences and workshops:

- International Conference on Special Needs Offenders (“Beyond the Horizon – Partnership in Action”): the conference included workshops on Aboriginal offenders and their unique needs in the justice system;
- Aboriginal Policy Research Conference: the event brought together Aboriginal and non-Aboriginal policy-makers, leaders and academics from around the world to share research, and to discuss ideas in pursuit of better evidence-based policy and policy outcome assessment methods;
- Northern Justice Symposium (“Restoring Balance in our Community – Crime Prevention Initiative”): the symposium focused on justice initiatives aimed at preventing youth crime, especially through education;
- Policy Forum on Aboriginal Women and Violence (“Building Safe and Healthy Families and Communities”): the national forum focused on raising awareness of the complex problem of sexualized/racialized violence against Aboriginal women, identifying access-to-services issues, and sharing best practices and policies;
- Indigenous Bar Association Annual Fall Conference (“Exercising Indigenous Jurisdiction over Collective Rights”): workshops and plenary sessions focused on the challenges and successes arising from recent Aboriginal rights law and policy initiatives. During the well-attended pre-conference Student Day, an AJD counsel met with Aboriginal law students to share his perspectives as an Aboriginal lawyer;

- Restorative Justice Week/Symposium (“Wisdom Gained Through Experience”): the symposium offered an opportunity to learn about and celebrate successes in restorative justice initiatives across the country. An AJD staff member spoke at the symposium about the AJS and its accomplishments;
- National Aboriginal Connectivity and E-Services Forum (“Sustainable Connectivity as an Engine for Social and Economic Growth”): the forum brought together government officials, national Aboriginal organizations, and Aboriginal connectivity and e-service experts from across Canada in a collective effort to promote the importance of the Internet and broadband connectivity, to encourage the development and awareness of on-line Aboriginal content, and to examine ways to reduce the digital divide within urban, rural and remote Aboriginal communities;
- Canadian Aboriginal Law 2005 (“The Shifting Paradigm”): the conference reviewed significant recent changes in Aboriginal rights law, with a focus on new causes of action and remedies, and rights to litigation funding;
- The Supreme Court of Canada Decisions in *Bernard* and *Marshall*: the one-day seminar addressed the key issues and implications arising from the landmark Supreme Court decision in *R. v. Bernard*; *R. v. Marshall*,⁸
- The Pacific Business and Law Institute “New Duties for the Crown and Aboriginal Peoples”: the two-day seminar focused on the Supreme Court decisions in *Haida Nation*⁹ and *Taku River*¹⁰ which shed new light on the duties of the Crown, and of Aboriginal peoples, when dealing with potential and affirmed Aboriginal and treaty rights;
- National Aboriginal Achievement Awards: the annual ceremony celebrates career achievements by Aboriginal individuals in a variety of professions;
- Pacific Business and Law Institute Aboriginal Justice Forum (“Forging a Common Path”): the forum focused on practical ways to build healthy partnerships among justice representatives, police, corrections officials, the communities they serve and other relevant agencies.

Moreover, the AJD sponsored these events in 2005-06:

⁸ [2005] 2 S.C.R. 220, 255 D.L.R. (4th) 1.

⁹ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 245 D.L.R. (4th) 33.

¹⁰ *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 550, 245 D.L.R. (4th) 193.

- Pacific Business and Law Institute Aboriginal Justice Forum;
- National Aboriginal Achievement Awards;
- Policy Forum on Aboriginal Women and Violence; and
- Aboriginal Policy Research Conference.

Participation on conference planning committees has also enhanced the profile of the AJS, and has provided the opportunity to influence conference agendas. In 2005-06, the AJD sat on the planning committees for the 2005 International Conference on Special Needs Offenders, and for the 2006 Aboriginal Policy Research Conference.

Community-based Justice Programs

Community-based justice program funding supports Aboriginal communities in developing and operating culturally relevant justice 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*¹¹ or *Youth Criminal Justice Act*.¹² 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 Elders'

¹¹ R.S.C. 1985, c. C-46.

¹² S.C. 2002, c. 1.

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;¹³
- *other justice activities* aimed at strengthening relations between community justice workers/projects and the mainstream system are also eligible for AJS funding.

Although the focus of this report is on activities undertaken in fiscal year 2005-06, the tables below include figures for the two earlier fiscal years for comparative purposes.

As Table 2-1 indicates, the number of community-based justice program agreements entered into by the AJD increased by almost 8% in 2005-06. Most of the new agreements were about evaluating existing programs; as a result, the number of programs delivered under AJS agreements remained relatively stable. Investment in programs increased by 3.6% in 2005-06. In 2005-06, all AJS funds available to communities for program delivery, training and development, and self-government capacity-building were distributed.

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

	2003-04	2004-05	2005-06
Number of AJS Agreements	83	89	88
Number of Programs Operated	105	108	110
Number of Communities Served	457	453	433 ¹⁴
Total AJS Program Funding	\$6,469,344	\$6,636,259	\$6,873,400

Source: AJD Files

In 2003-04, the AJS established a national presence, funding community-based justice programs in every province and territory in Canada. That national presence has continued since then. Table 2-2 identifies the number of programs by jurisdiction by fiscal year. Table 2-3 reports AJS funding by jurisdiction by fiscal year.

¹³ 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.

¹⁴ The decrease in number of communities served in 2005-06 is a product of a one-time only initiative in 2004-05 delivered to more than 60 communities to build capacity to develop and implement justice programs.

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

JURISDICTION	2003-04	2004-05	2005-06
Saskatchewan	24	24	24
British Columbia	20	19	19
Nunavut	13	14	14
Quebec	9	12	11
Ontario	10	10	10
Yukon	8	9	9
Manitoba	7	6	6
Northwest Territories	5	5	6
Alberta	5	5	5
New Brunswick	1	2	2
Nfld. & Labrador	1	1	2
Nova Scotia	1	1	1
P.E.I.	1	1	1
Total Programs	105	109	110

Source: AJD Files

Table 2-3: AJS Funding of Community-based Justice Programs by Jurisdiction and Fiscal Year¹⁵

JURISDICTION	2003-04 (\$)	2004-05 (\$)	2005-06 (\$)
Saskatchewan	1,616,418	1,630,545	1,629,920
British Columbia	1,070,600	1,073,548	1,090,588
Manitoba	845,000	832,136	885,500
Ontario	710,932	740,813	771,535
Alberta	563,622	676,900	677,700
Quebec	504,787	465,557	473,097
Yukon	403,792	423,560	436,060
Nunavut	255,400	262,400	237,400
Nova Scotia	142,300	142,300	193,100
Nfld. & Labrador	75,000	75,000	150,000
NWT	145,000	145,000	145,000
New Brunswick	96,500	118,500	133,500
P.E.I.	39,993	50,000	50,000
Total Funding	\$6,469,344	\$6,636,259	\$6,873,400

Source: AJD Files

¹⁵ Financial information reported in the predecessor Activities Report (2002-03, 2003-04, 2004-05) represented funding commitments. Financial information reported in this document represents actual expenditures at each year-end.

The number of programs delivered by location type has remained relatively stable in recent years. 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: Number of Programs by Location Type and Fiscal Year

PROGRAM LOCATION	2003-04	2004-05	2005-06
North (Yukon,* NWT, Nunavut)	26	28	28
On-Reserve	52	54	53
Off-Reserve - Rural	3	3	3
Off-Reserve - Urban	15	15	17
Mix of On-Reserve & Off (Rural & Urban)	9	9	9
Total Programs	105	109	110

Source: AJD Files

* In each year, two Yukon programs served an urban population.

Communities may deliver one or more program models under a single contribution agreement and organizational structure. In 2005-06, 78% of funding recipients delivered diversion/alternative measures programs; 16% offered community sentencing advice to courts; 10% undertook other justice activities including Band by-law administration, community corrections, victim assistance, and policy development; and 7% engaged in family/civil mediation.

Training and Development (T&D) Fund

The T&D Fund supports training activities designed to build community capacity to develop and deliver justice programs. 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 budget of existing AJS-funded programs where program funds do not meet the training needs of the community;
- 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.

Since introduction of the T&D Fund in 2002-03, the AJD has entered into more than 100 Training and Development agreements in support of programs that serve or will serve hundreds of communities across Canada. The agreements have funded initiatives in every province and territory, and have included such activities as conferences, regional workshops, seminars, strategic planning sessions, and a variety of other training opportunities tailored to needs identified by individual program providers.

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

	2003-04	2004-05	2005-06
# of AJS T&D Agreements	17	32	27
Total AJS T&D Funding	\$361,713	\$442,555	\$351,600

Source: AJD Files

Self-Government

Negotiations

AJD counsel provides legal and policy advice to federal negotiators on the “administration of justice” component of self-government negotiations and agreements. At the end of 2005-06, AJD legal counsel was active at 6 self-government tables: Deline and Tulita in the Northwest Territories, Conne River in Newfoundland, James Bay Cree in Quebec, Teslin Tlingit in Yukon, and Akwasasne in Ontario.¹⁶

AJD counsel also participated in drafting guidelines for federal negotiators with respect to the enforcement, adjudication and administration of First Nation laws. A working draft was produced during 2005-06.

Self-Government 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,

¹⁶ The AJS does not provide funding support to self-government negotiations.

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. 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 2005-06, three self-government capacity building projects were funded:

The Federation of Saskatchewan of Indian Nations (FSIN) Project: the initiative, which assists in the dissemination of information about effective approaches to the administration and enforcement of laws, is in its second year of funding. In 2005-06, the focus was on developing a Work Plan to address implementation issues associated with the recommendations of the Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform.¹⁷ Consultation results, captured in a March 2005 report, *Recommendations of the Justice Reform Commission and Review of First Nations Community Focus Sessions*, informed development of the Work Plan.

The Union of Ontario Indians Project (UOI): the project, in its second year of funding, 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.

Teslin Tlingit Council (Yukon): funding allowed the Council to complete a community assessment to address the enforcement requirements of its Administration of Justice Agreement.

¹⁷ SJRC, *Legacy of Hope*, supra note 2. 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 considered all components of the justice system including police, courts, prosecution, legal aid, corrections, community justice, youth justice and victim services. Its 2004 *Legacy of Hope* report contained 122 recommendations.

In 2005-06, AJD counsel took the opportunity presented by several self-government negotiation sessions to promote and explain the relatively new Self-Government Capacity Building Fund. As a result of that awareness-building activity, a new proposal was submitted by the Deline First Nation and was approved for funding in 2006-07. The project will enable the Deline First Nation to inform its members about the functions and authorities of the Justice Council, a body that will come into existence on enactment of the legislation implementing the Self-Government Final Agreement.

Outreach and Partnership

The Outreach and Partnership (O&P) component of the AJS was launched in 2005-06. It replaces the former Aboriginal Justice Learning Network (AJLN).¹⁸

The objectives of O&P are:

- to promote the AJS to Aboriginal communities;
- to foster information-sharing among practitioners about alternative justice processes consistent with Aboriginal values and traditions;
- to identify and disseminate best practices and creative solutions to Aboriginal justice issues;
- to encourage the participation of Aboriginal people in justice professions; and
- to solicit and foster partnerships that advance the objectives of the AJS.

In 2005-06, the new O&P component of the AJS worked to develop a coordinated action plan that would advance its objectives. It began by hosting a strategic planning session with key stakeholders to conclude the activities of the AJLN, to introduce O&P, and to solicit input on, and partner commitments to, a revitalized outreach plan. From that session, the AJD took away and began work on a number of ideas, including:

- a new visual identity for the AJS;
- a redesigned and updated web site to be positioned as a key dissemination point for Aboriginal justice information;

¹⁸ In 2004-05, AJLN activities were realigned with outreach and partnership activities to focus on program promotion, information sharing and strengthening partnerships.

- revitalized communications and events strategies, designed to build awareness and knowledge of the AJS internally and externally; and
- the identification and solicitation of partners who would champion the AJS within their professional networks.

O&P also began work to address the under-representation of Aboriginal people in justice professions:

- it identified and attended events suited to the promotion of justice professions as career options for Aboriginal people, including annual meetings of the Indigenous and Canadian Bar Associations, the 2005 Kawaskimhon Aboriginal Law Moot,¹⁹ Aboriginal Day (June 21, 2005) and Aboriginal Awareness Week (May 23-27, 2005);
- it co-ordinated DOJ’s participation in, and it attended at, two “Blueprint for the Future” career fairs designed to encourage Aboriginal youth to stay in school and to expose them to employment opportunities and associated training requirements in diverse sectors of the Canadian workforce; and
- it participated in the classroom launch of “The Circle of Justice”—an education video, work kit and high school curriculum module designed to increase the presence of Aboriginal people in justice careers. “The Circle of Justice” is part of the National Aboriginal Achievement Foundation’s (NAAF) “Industry in the Classroom” series, an initiative intended to increase educational opportunities for and workforce participation of Aboriginal people, and funded in part by the AJS.

3. EVALUATION

Formal Evaluations of the AJS

The AJS 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, now complete, and an end-of-mandate summative evaluation.

Formative Evaluation

¹⁹ The annual Kawaskimhon (“speaking with knowledge”) Aboriginal Law Moot began at the University of Toronto in 1994, and is hosted by a different Canadian law school each year. The moot offers law students an opportunity to engage in a dispute resolution exercise based on Aboriginal values and concepts.

In June of 2005, the final report of the mid-term evaluation conducted by the Evaluation Division of the DOJ was presented to the AJD. Evaluation findings included these:

- the objectives of the AJS continue to be relevant, and will be increasingly so as the Aboriginal population, particularly youth, increases;
- the administration of justice continues to be an important element of Aboriginal self-government;
- Aboriginal justice stakeholders, including communities and government officials, report improved cooperation and coordination between and among them since the last formal evaluation of the AJS in 2002;
- communities with AJS programs have assumed substantial responsibility for addressing the commission of minor offences under the *Criminal Code*;
- some AJS programs are also handling drug offences, civil and family disputes, band by-law offences, and a small number of serious *Criminal Code* offences (e.g. assault);
- the success of the AJS has moved beyond its enumerated objectives to include:
 - healing in communities
 - improvements to individual lives
 - young people feeling more connected to their communities
 - increased awareness of victims' issues, and
 - in the mainstream justice system, increased awareness of and recognition given to Aboriginal culture and alternative community programs.

Nine recommendations arose from the mid-term evaluation. They focused on the need for:

- better coordination of Aboriginal justice issues with partners, and early identification of priorities for the next AJS mandate;
- enhanced local and mainstream justice system support for community-based justice programs; and
- increased awareness of specific AJS components including Outreach and Partnership, and the Training and Development and Self-Government Capacity Building Funds.

The mid-term evaluation provided 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.

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 more formal third-party evaluations. 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 useful.

Two programs were evaluated by third parties in 2005-06 with AJS participation or funding support. Evaluation results are summarized in Appendix 2.

Other Evaluations

2005 Report by United Nations Special Rapporteur

At the federal government’s invitation, 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 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 report on the Canadian mission, presented to the UN Commission on Human Rights in April of 2005, 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.²⁰

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 2005-06, the AJD made the largest funding commitment to community-based programs in its history, and it worked to ensure that all AJS funds available to communities were distributed. Also, a strong start was made on improving outreach and partnership activities. The AJD continued to promote Aboriginal justice as a key policy priority and to provide legal advice to self-government negotiation tables.

The mid-term evaluation identified that the success of the AJS has moved beyond its stated objectives to include: healing in communities; improvements to individual lives; reconnection of young people with their communities; better understanding of victim issues; and increased recognition in the mainstream justice system of Aboriginal culture and alternative community programs. The case studies and recidivism projects, initiated in 2005 and expected to be completed in 2006, will help assess whether the AJS has contributed to reduced rates of crime, victimization and incarceration among Canada's Aboriginal peoples.

In the final year of the current AJS mandate, the AJD will continue to engage in a broad range of activities to achieve the goals of the Strategy and the Directorate. As the second mandate of the AJS comes to an end, it will be important to measure and demonstrate the merits of the Strategy and the progress that has been made towards goals. In 2006-07, the AJD will:

- continue to develop and support community-based justice programs, training and development initiatives and self-government capacity-building projects;

²⁰Rodolfo Stavenhagen, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Mission to Canada*, UN OHCHR, 61st sess., UN Doc. E/CN.4/2005/88/Add.3.

- provide legal advice on the administration of justice related to self-government negotiations and agreements;
- strengthen existing partnership agreements and pursue new opportunities;
- engage in evaluation activities to demonstrate results; and
- identify ways to make meaningful progress on Aboriginal justice issues.

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 2004:

- 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 (13% compared to 7%), as witnesses to a crime (11% compared to 6%), or by virtue of being arrested (5% compared to 1%)²¹

Crime Rate

The on-reserve crime rate is higher than the crime rate in the rest of Canada.

In 2004:

- the on-reserve crime rate was almost three times higher than the rate in the rest of Canada (28,900 per 100,000 on reserve compared to 8,500 per 100,00 population in the rest of the country)²²
- the on-reserve violent crime rate was eight times the violent crime rate in the rest of Canada (7,108 compared to 953 per 100,000 population)²³

²¹ Statistics Canada, "Victimization and offending among the Aboriginal population in Canada" by Jodi-Anne Brzozowski, Andrea Taylor-Butts & Sara Johnson (2006) 26:3 Juristat 1 at 12 (based on the *General Social Survey on Victimization 2004*) [Juristat 2006].

²² *Ibid.* at 10.

²³ *Ibid.* at 1.

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 2004:

- 40% of the Aboriginal population reported having been the victim of at least one crime in the last year, compared to 28% of the non-Aboriginal population²⁴
- 21% of the Aboriginal population reported having been victimized more than once in the last year, compared to 11% of the non-Aboriginal population²⁵
- Aboriginal people reported having experienced violent crime at a rate that was nearly three times that of non-Aboriginal people (319 versus 101 incidents per 1,000 population)²⁶
- 21% of the Aboriginal population reported having been assaulted by their spouse in the last five years, compared to 6% of the non-Aboriginal population²⁷

Incarceration

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

In 2003-04, Aboriginal adults were:

- 2.6% 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)²⁸

²⁴ *Ibid.* at 5.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.* at 6.

²⁸ *Ibid.* at 12; Statistics Canada, *The Daily*, October 27, 2004 at 5; 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 in annual admission counts, or not at all, depending on when or how often in one year he/she has been admitted.

In 2003, Aboriginal youths²⁹ were:

- 5% of the Canadian youth population
- 33% of youths in custody on snapshot day (June 4, 2003)³⁰
- almost eight times more likely to be in custody than non-Aboriginal youths³¹

In 2003-04, Aboriginal youths were:

- 5% of the Canadian youth population
- 21% of admissions to open custody, 20% of admissions to secure custody, 19% of admissions to deferred custody, and 12% of admissions to probation³²

Characteristics of Adult Aboriginal Inmates

In 2003-04, 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 considered higher risk to re-offend and had higher needs than non-Aboriginal inmates³³

²⁹ Ages 12 to 17. Persons in custody over age 17 were counted if they were 12 to 17 at the time of the offence.

³⁰ A snapshot is a count of individuals in custody on data collection day.

³¹ Jeff Latimer & Laura Casey Foss, *A One-Day Snapshot of Aboriginal Youth in Custody Across Canada: Phase II* (Ottawa: Department of Justice, 2004). Quebec did not participate in the survey.

³² Juristat 2006, *supra* note 20 at 14.

³³ *Ibid.* at 13, 15.

Third-Party Evaluations of AJS-Funded Programs

The effectiveness of the AJS is measured, in part, by how well community-based justice programs are working, and by what impact they are having on the justice system. In 2005-06, two programs were formally evaluated by third parties with AJS participation or funding support. Results are summarized below.

Ontario Federation of Indian Friendship Centres

The Ontario Federation of Indian Friendship Centres (OFIFC) represents the collective interests of 28 member Friendship Centres throughout the province. The OFIFC Community Justice Program administers funds for 5 Aboriginal community-based justice projects in participating Friendship Centres (Thunderbird in Geraldton, Three Fires in Niagara, N' Amerind in London, Aamjiwnaang First Nation in Sarnia and Wikwemikong in Sudbury). The community projects offer culturally appropriate pre- and post-charge diversion for Aboriginal youths and adults in conflict with the law.

The program was evaluated in 2005 to identify ways to improve service delivery to clients, and to evolve and expand services offered.³⁴ Information was collected by way of document/literature review, project site visits, and structured interviews with clients, Crown, program directors and co-ordinators, funders and OFIFC staff.

Key Findings

- All stakeholder groups consider the program worthwhile. The Aboriginal cultural content in particular was identified as an important element and a strength.
- The volume of cases referred varies significantly among programs, from no diversions in one program to over 150 in another. Low diversion rates mean strained cost-effectiveness, and minimal positive impact on the communities intended to be served.
- The absence of a Crown policy/signed protocols on diversion, resulting in a reluctance to divert, has been a significant barrier to success. A recent decision of the Ministry of the Attorney General to advise Crowns to develop local diversion protocols rather than wait for a province-wide policy is expected to remove that obstacle.

³⁴ Devlin and Associates, *Ontario Federation of Indian Friendship Centres' Community Justice Projects: Community Justice Evaluation* (2005) [on file with AJD].

- The majority of client/offenders valued the program as a meaningful alternative to mainstream processing and sanctions, could not identify any other assistance that the diversion program might have offered them, and would recommend it to others in conflict with the law.
- Crowns generally reported that the program met their expectations but that they could not assess its effects: the program has not been operating long enough; the community is not yet sufficiently aware of it; or diverted cases are still open. Measures of success for Crowns would be an increase in cases diverted and lower recidivism.
- Program directors/coordinators identified early community involvement and the contributions of the OFIFC (needs assessments, proposal writing, training and advisory services) as important to the program's success. Common problems encountered during development and implementation were: limited understanding on the part of Crowns of processes and protocols, and a reluctance to divert; significant staff turnover; and a lack of funding for comfortable offices. Some of those problems continue for some programs.
- Financial reporting and accountability are professional and sophisticated. Training and orientation tools produced by the OFIFC are excellent documents for communities wishing to establish programs.

Key Recommendations

- The establishment of a diversion protocol with local Crown Attorneys should be a priority for existing programs, and a pre-requisite for new programs.
- A diversion training program should be developed for Aboriginal Courtworkers, and for local duty counsel in communities with no Aboriginal Courtworkers, to identify appropriate cases for diversion.
- Program budgets should have funding dedicated to community outreach, volunteer training, and annual audits that involve client/offenders and victims.
- It would benefit all programs to have better communication among Friendship Centres, including sharing best practices, trouble-shooting difficulties and offering mutual support.

Prince Albert Grand Council (PAGC) Justice Initiative

The PAGC Justice Planning Commission co-ordinates and supports 12 community justice committees that offer pre- and post-charge alternative/extrajudicial measures programs for adults and youth (Alternative Measures Program), as well as mediation, family group conferencing, healing circles and sentencing circles. The Justice Initiative is also involved in victim services, crime prevention, offender reintegration and rehabilitation, and victim/offender healing.

An evaluation of the PAGC Alternative Measures Program was completed in 2005.³⁵ The evaluation was to determine whether the program was meeting its stated objectives and to identify service delivery improvements. Information was derived from document review, written questionnaires, observation, and interviews (telephone and in-person).

Key Findings

- *Program Administration & Delivery*: stakeholders are generally satisfied with administration and service delivery; the referral process works well. Follow-up with offenders and victims does not meet their needs. Processes for sharing information with Crown, police and the courts need to be reviewed. The role of the Co-management Committee is not well-defined and understood.
- *Training*: caseworkers require training in specific areas that present in referred cases, including sexual and spousal abuse, Fetal Alcohol Spectrum Disorder and anger management. There are no standards by which to measure an effective intervention.
- *Policy Development*: half of the respondents believe that the provincial alternative measures protocol needs to be reviewed (largely to expand eligible offences to include, with discretion, some sex trade, drug and domestic violence cases). Program performance measures are lacking.
- *Funding*: adequate financial support is critical to maintaining and expanding an effective program.
- *Client Satisfaction*: offenders were generally satisfied with the process, and reported having a better understanding of how victims feel. Almost half of the victims reported that they were not told that their case was closed; some reported that they were not

³⁵ Saskatchewan Justice, Policy, Planning and Evaluation Branch, *Prince Albert Urban Alternative Measures Program: Program Evaluation Report*, February 2006 (external evaluator: Carol Connelly) [on file with AJD].

invited to attend the intervention. Businesses (as shoplifting victims) have little or no knowledge of the program.

Key Recommendations

- The Co-management Committee (comprised of the Alternative Measures Program Coordinator and one representative from each of Saskatchewan Justice, Saskatchewan Corrections & Public Safety, and the AJD) should operate in a collaborative manner, meeting regularly and more often.
- The Co-management Committee should develop and implement plans to increase the involvement of victims, improve awareness of the program among businesses, and build relationships with other criminal justice system personnel.
- Program caseworkers should: ensure that offender agreements are tailored to the situation, and that service or payment to the victim are part of all agreements; provide adequate follow-up with both offender and victim; be provided with general and specialized training that meets program needs.
- Saskatchewan Justice and Saskatchewan Corrections & Public Safety should conduct a formal review of the provincial guidelines for diversion to alternative measures programs.
- A further evaluation should be conducted to identify and report on program outcomes.