



**ABORIGINAL COURTWORK PROGRAM  
FORMATIVE EVALUATION  
Final Report**

**August 2007**

**Evaluation Division**



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## **EXECUTIVE SUMMARY**

### **1. Introduction**

The purpose of this formative evaluation of the Aboriginal Courtwork (ACW) Program was to determine if the program is being implemented as intended and whether the performance information required for the summative evaluation is being collected. The primary audiences for this study are the Department of Justice (DOJ) and the Tripartite Working Group (TWG) of the ACW Program. This report is a Treasury Board requirement.

#### **1.1. Program Profile**

The ACW Program began in the early 1960s to help meet the unique justice challenges of Aboriginal people. Federal financial support began in 1969, and by 1978, the ACW Program was a permanent cost-shared program between the federal, provincial and territorial governments. ACW programs currently operate in eight provinces (all but P.E.I. and New Brunswick) and all three territories. The cost-shared arrangements are set out in multi-year Aboriginal courtwork contribution agreements in the provinces and Access to Justice Services Agreements in the territories. The Program is guided by the Tripartite Working Group, which serves as a forum to address program and operational issues.

Where the ACW program exists, all Aboriginal people (First Nation, Inuit or Métis) are eligible for courtworker services, regardless of status, age or residency. Since 1987, the program also provides services to Aboriginal youth. In most jurisdictions, ACW services are provided by Aboriginal Service Delivery Agencies (SDAs) under contract or agreement with the provincial and territorial (P/T) governments.

The ACW Program seeks to ensure that Aboriginal people charged with criminal offences receive fair, equitable and culturally sensitive treatment before the criminal justice system. To accomplish this objective, SDAs:

- provide non-legal advice and information to Aboriginal accused and their family members information at the earliest possible stage of the criminal justice process;
- refer Aboriginal accused to appropriate legal resources at key stages of the justice process (e.g., arrest, trial, sentencing);
- refer Aboriginal accused to appropriate community resources, including alcohol, drug and family counselling, and educational, employment and medical services, to ensure Aboriginal accused have help addressing the underlying problems that have contributed to their criminal behaviour or problems that have led to the laying of criminal charges. Where appropriate, advocate for services to Aboriginal accused and ensure that those services are delivered;
- provide assistance, as appropriate, to other Aboriginal persons involved in the criminal justice process;
- promote practical, community-based justice initiatives, and work with other agencies to build community capacity to address problems that could end up in the courts or in a community justice system;
- serve as a liaison between criminal justice officials and Aboriginal people and communities by advocating for Aboriginal accused and promoting communications and understanding; and
- prepare and accompany the accused to court, and in their role as a “Friend of the Court” assist Legal Aid lawyers, Crown prosecutors, other court officials and judges.

## **2. Methodology**

The evaluation issues were:

- To what extent has the ACW Program been implemented as intended?
- Has the ongoing performance measurement strategy been implemented so that the necessary data will be available for the summative evaluation to be conducted in 2007-08?

To address these issues, three evaluation methods were used: a document review, 31 in-depth interviews (with DOJ representatives, P/T representatives, SDA representatives, and community justice officials), and a survey of 130 courtworkers.

### **3. Key Findings and Conclusions**

#### **3.1. Implementation and Delivery**

- Several service delivery models are used by jurisdictions, but the common features are that delivery is Aboriginal-led and community-based.
- The P/T contribution agreements are flexible enough to meet the jurisdictions' objectives and priorities. The recent increase in federal funding helped alleviate some of the immediate pressures on the courtworker program.
- The provinces are not submitting the workplans or interim financial reports on time because of capacity challenges and competing priorities.
- The territorial representatives face challenges collecting the required statistical information due to the limited capacity of the SDAs in the North.
- The audit requirements are being implemented by the Department and are on track to be met.
- The mandate of the Tripartite Working Group (TWG) is clear and relevant, but the TWG is not fully meeting its mandate. Its annual priorities are too ambitious, and as a result some priorities are not yet complete. Although some participants value the information-sharing component of the TWG meetings, most feel that the TWG does not encourage equal participation by all members. They also suggest the annual meetings would benefit from more active P/T involvement in setting the agenda and discussing the issues.
- The TWG Steering Committee (SC) is currently not an effective mechanism for accomplishing or guiding the work of the TWG. Its mandate, role and decision-making authority are not documented or clear to the TWG or TWG SC members.
- The objectives of the ACW Program are clear to the key parties involved in the program, as are the roles and responsibilities of the courtworkers, P/Ts, SDAs, and DOJ.
- Overall, courtworkers are satisfied with the way in which the services are delivered in their jurisdictions.

- Courtworkers have successfully established relationships between community justice programs and the formal justice system.
- The national training initiatives have been useful and appreciated, but more training is needed on a range of topics, including the changing roles of the courtworker and new developments in the law.

### **3.2. Performance Measurement**

- With the exception of some definitional issues (e.g., the definition of client), meeting the requirements for core measures 1 to 6 does not appear problematic. Most courtworkers reported that they have regularly been providing this data to their SDAs.
- Most P/T officials foresee problems with core performance measures 7 to 12, which are related to the client and judiciary surveys. Pilots of the surveys are underway in B.C., Nova Scotia and Alberta but P/T officials and SDAs are concerned about the capacity of the smaller SDAs to conduct the surveys, especially without any additional resources or training. In addition, several issues need to be addressed, including the protection of clients' privacy, the appropriateness of courtworkers collecting information from their own clients, the potential negative bias towards the program from clients displeased with the outcome of their case, low literacy and response rates and the impact on courtworkers' workload in the absence of additional funding.
- There are also concerns that the performance measurement requirements are the same for all SDAs, regardless of the amount of funding they receive, their size, or their capacity.

# **1. INTRODUCTION**

## **1.1. Background**

The Aboriginal Courtworker (ACW) Program began in the early 1960s to address the unique justice challenges of Aboriginal people. Several studies had revealed the particular challenges faced by Aboriginal persons charged with criminal offences: a sense of alienation from the administration of justice in Canada, a feeling of futility, and a limited knowledge of their rights and obligations, of court procedures and of the resources available to them. Additionally, officials often failed to understand Aboriginal people and issues. Federal financial support began in 1969 and by 1978; the ACW Program was an ongoing cost-shared program between the federal and provincial/territorial governments. In 1987; the program began providing services to Aboriginal youth. ACW programs currently operate in eight provinces (all but P.E.I. and New Brunswick) and in all three territories.

## **1.2. Description of the Aboriginal Courtwork (ACW) Program**

### **1.2.1. Program Objectives**

The ACW Program seeks to ensure that Aboriginal people charged with criminal offences receive fair, equitable, and culturally sensitive treatment by the criminal justice system. This objective is achieved by:

- providing non-legal advice and information to Aboriginal accused and their family members at the earliest possible stage of the criminal justice process;
- referring Aboriginal accused to appropriate legal resources at key stages of the justice process (e.g., arrest, trial, sentencing);
- refer Aboriginal accused to appropriate community resources, including alcohol, drug and family counselling, and educational, employment and medical services to ensure they have help addressing the underlying problems that have contributed to their criminal behaviour or

problems that have led to the laying of criminal charges, and where appropriate, advocating for services to Aboriginal accused and ensuring that those services are delivered;

- providing assistance, as appropriate, to other Aboriginal persons involved in the criminal justice process;
- promoting and facilitating practical, community-based justice initiatives and helping build the capacity to identify and address problems that could end up in the courts or community justice system; and
- serving as a bridge between criminal justice officials and Aboriginal people and communities, by advocating for Aboriginal accused, providing liaison, and promoting communication and understanding.

Aboriginal courtworkers prepare and accompany the accused to court and, as “Friends of the Court,” also provide critical background information on the accused, make the court aware of alternative measures and options available in the Aboriginal community, and ensure that the accused comprehends the court process. Furthermore, courtworkers mobilize the community to become more aware of and address emerging Aboriginal justice issues.

### **1.2.2. Delivery Approach**

In the jurisdictions with ACW programs, all Aboriginal (First Nation, Inuit or Métis) people in conflict with the law are eligible for courtworker services regardless of status, age or residency.

In all but three jurisdictions, courtworker services are provided by Aboriginal Service Delivery Agencies (SDAs) under agreement or contract with the provincial/territorial government. Currently over 200 Aboriginal courtworkers are employed by 20 different SDAs across Canada. In Manitoba courtworkers are provincial employees, in NWT they are employees of the NWT Legal Services Board and the Government of Northwest Territories and in Nunavut they are currently hired by the legal aid clinics. (This arrangement may change now that Nunavut has a courtworker coordinator.)

Because Aboriginal courtworkers are uniquely placed in the justice system and in their communities, they are becoming increasingly involved in community-based approaches and in working with service partners to address the needs of their clients. The role of courtworkers increasingly involves:

- providing referrals to social, educational, housing, medical or counselling services;
- liaising with community organizations;
- providing input to the judiciary in line with the Supreme Court's *Gladue* decision;
- providing input to pre-sentencing reports;
- helping the Aboriginal accused access emerging Aboriginal community-based justice initiatives; and
- providing information on therapeutic approaches in the court system (domestic violence, drug court, etc.)

### **1.2.3. Governance**

The ACW program is delivered through the collaboration of service delivery agencies (SDAs), provinces/territories (P/Ts), the Department of Justice and a Tripartite Working Group.

Service delivery agencies provide direct services to the Aboriginal accused through annual contracts with provincial and territorial governments, and funds are based on a schedule of eligible costs. In all but three jurisdictions, SDAs are Aboriginal organizations that are accountable to their communities and, where applicable, to their boards of directors and Aboriginal government organizations.

Canada and the P/T governments enter into multi-year contribution agreements to support the ACW Program. Under these agreements each P/T ministry establishes the overall framework for the ACW program within its jurisdiction. Generally, the court services divisions within the P/T justice ministries administer the program, and some jurisdictions include the ministry responsible for Aboriginal affairs to ensure there is a consistent approach to services available to Aboriginal people.

The P/T governments are responsible for:

- ensuring that sufficient financial assistance is available to support the ACW Program;
- making contractual arrangements with SDAs to provide ACW services on their behalf (where appropriate);
- overseeing the delivery of services; and

- participating in the FPT and Tripartite Working Group (TWG) as required.

The territorial Access to Justice Services Agreements that integrate federal funding in support of Aboriginal Courtwork as well as Legal Aid and Public Legal Education and information services, give the territories the flexibility to allocate federal funds among the eligible services as they see fit. In return, the territories agree to maintain certain minimum levels of service in providing services to eligible persons. Each territorial government agrees to provide the Department with annual program reports, policies, and procedures that show its programs are consistent with the agreement. Aboriginal courtworkers in the territories also handle civil and family matters, although the nature of that work varies by jurisdiction.

The Department of Justice Programs Branch administers the ACW Program by entering into contribution agreements that include how much will be contributed to each province or territory and the timing of the payments.

The ACW Program is guided by the Tripartite Working Group (TWG), which serves as a forum to address program and operational issues. The TWG reports as needed to the committee of Federal/Provincial/Territorial (F/P/T) Deputy Ministers responsible for Justice. The TWG, co-chaired by one federal and one provincial/territorial representative, comprises up to three federal representatives and one provincial/territorial official and one SDA representative from each jurisdiction. Each year the TWG meets in person at least once and holds at least three national teleconferences. The mandate of the TWG is presented in Annex B.

#### **1.2.4. Resources**

The program is cost-shared with provincial governments through contribution agreements. In 2005-06, federal funding totaled \$5.5 million. In 2006-07, the total federal funding will also be \$5.5 million.

#### **1.2.5. Program Logic**

The program activities and outcomes are delineated below. Annex A contains two logic models developed for the ACW Program. The first, from the Results-Based Management and Accountability Framework (RMAF), is for the federal and P/T governments. It encompasses the TWG activities, outputs and outcomes. The second, from the Performance Measurement and Reporting Strategy Guide, is used by the SDAs and courtworkers and includes the details of their

activities. It is a national logic model that was created in collaboration with all program stakeholder groups.

## Activities

- ***Negotiate and monitor contribution agreements with provinces and territories:*** The federal government enters into multi-year contribution agreements with provincial/territorial governments, which in turn enter into contractual arrangements with third-party delivery agents that provide ACW services across the country. Departmental activities include contributing funding to the provinces and territories to support ACW services, monitoring the ACW Program and negotiating and implementing the contribution agreements

**Output: Funded contribution agreements with provincial/territorial governments**

- ***Create tripartite forum:*** The ACW Program is guided by the Tripartite Working Group (TWG), (federal/provincial/territorial/Aboriginal Delivery Agency) which serves as a forum to address program and operational issues.

**Output: Tripartite Working Group established**

## Immediate Outcomes

- ***Provide support and advice to Aboriginal Accused:*** Courtworkers first identify the needs of the Aboriginal accused, and the resources available to address those needs. This approach helps address the root causes of the offending behaviour.
- ***Provide information and advice to formal justice system:*** Courtworkers work with those within the justice system (court officials, duty counsel, Legal Aid lawyers, judges, etc.) to increase the awareness and understanding of the issues faced by the Aboriginal accused.
- ***Tripartite collaboration on courtworker program.***

## Intermediate Outcomes

- ***Increased awareness of rights, obligations and resources available to accused:*** Courtworkers provide one-on-one advice and support to the Aboriginal accused to ensure that the accused fully understands his or her rights and obligations before the court and knows what resources are available.

- ***Better communication within court proceedings between accused and court personnel:*** The courtworker makes court officials aware of the complex issues faced by many Aboriginal people in the criminal justice system.
- ***More relationships with Aboriginal community, community justice system and the formal justice system:*** The courtworker builds relationships between the Aboriginal community and the justice system, which are expected to lessen the alienation that Aboriginal communities feel towards the justice system and improve the connections with evolving community justice programs. As justice officials become more knowledgeable of the issues it is expected they will react in a more culturally sensitive manner. This is of particular importance given recent precedent-setting court decisions (e.g., *Gladue*).
- ***Better collaboration between FPT stakeholders:*** The ACW Program and the TWG provide a collaborative environment that can enhance service delivery and program development through the exchange of ideas and best practices across jurisdictions, the shared learning around issues of mutual concern (e.g., training, database investments) and the airing of common concerns.

### **Ultimate Outcome**

- ***Aboriginal accused receive fair, equitable and culturally sensitive treatment before the courts:*** By ensuring that the Aboriginal accused understands the process and that court officials respond appropriately, it is anticipated that the accused will receive fair, equitable and culturally sensitive treatment before the courts.

### **1.3. Evaluation Purpose and Scope**

This evaluation is a Treasury Board Secretariat requirement. The RMAF developed for the ACW program in 2003-04 noted that a comprehensive evaluation of the ACW program had not been done since 1985 and indicated that a summative evaluation would be completed in 2007-08.

The purpose of this formative evaluation was to determine if the program is being implemented as intended and whether the performance information required for the summative evaluation is being collected. The primary audiences for this study are the Department of Justice and the TWG.

The findings of this national formative evaluation will be useful not only for the DOJ managers of the ACW program, but also for all the program partners, including the provinces, territories, Service Delivery Agencies and courtworkers.

#### **1.4. Evaluation Issues**

The key evaluation issues were:

- To what extent has the ACW Program been implemented as intended?
- Has the ongoing performance measurement strategy been implemented so that the necessary data will be available for the summative evaluation to be conducted in 2007-08?

The evaluation issues and questions are shown in Annex C.

#### **1.5. Evaluation Methodology**

The evaluation methods included a document review, in-depth interviews with DOJ representatives, representatives of P/T governments, SDA representatives, community justice officials with a stake in the ACW program and a survey of courtworkers. Table 1 summarizes the evaluation methodology. Although a data file review was initially planned, data was not available from the P/Ts within the timeframe of the evaluation.

The timeframe for this evaluation was as follows:

- review documents available as of October 2006;
- interview people involved with the program as of September 2006; and
- survey courtworkers involved with the program as of September 2006.

An Evaluation Advisory Committee was created to provide advice on the evaluation process and data collection. The committee consisted of federal, provincial/territorial and SDA representatives.

**Table 1 – Evaluation Methodology**

Method	Description	Sampling
Document Review	<p>Thorough review of documents from the DOJ, the P/T governments, the SDAs, the Aboriginal courtworkers and others as appropriate. Included were background documents, decision records, agreements, progress reports, meeting minutes, and all other relevant documents. The document review served three key purposes:</p> <ul style="list-style-type: none"> <li>• helped develop a better understanding of the program and its environment;</li> <li>• provided background information on issues; and</li> <li>• provided direct evidence to decide on some issues</li> </ul>	
In-depth Interviews	<p>Telephone interviews were completed with 31 individuals. Interview guides were sent in advance of the scheduled interviews. The interviews were between 30 minutes and three hours in length, and each was completed in the respondent’s choice of official language.</p>	<p>Because of the small number of potential interviews, limited sampling was required. The specific sample sizes for each line of evidence were:</p> <ul style="list-style-type: none"> <li>• 3 DOJ representatives (total universe of 4; purposive sampling of most knowledgeable / experienced)<sup>1</sup></li> <li>• 10 P/T representatives (total universe of 11; 1 refusal.</li> <li>• 13 SDAs (total universe of 15)</li> <li>• 5 community justice officials (total universe unknown, sampling frame of 25; sampling methodology, stratified – maximum of 1 per P/T, random)</li> </ul>

<sup>1</sup> The responses of all three DOJ representatives interviewed are aggregated and reported as DOJ to prevent attribution to particular DOJ officials.

Method	Description	Sampling
Survey of Courtworkers	A total of 130 courtworkers who are currently involved in the ACW program were surveyed. Two completed the survey by mail or fax; all other interviews were completed by telephone in the official language of respondent's choice. The interview was approximately 15 minutes in length. The survey was voluntary, and all questions were optional. The survey questionnaire was pre-tested with 8 courtworkers prior to the actual survey, and was changed as a result of the test; therefore, these responses were excluded from the analysis.	<p>An attempt was made to interview all 184 courtworkers identified. Responses were as follows:</p> <ul style="list-style-type: none"> <li>• 133 completed interviews (72.3%)</li> <li>• 8 used in pre-test (4.3%)</li> <li>• 42 could not be reached during the survey period (22.9%)</li> <li>• 1 no time (refusal) (0.5%)</li> </ul> <p>Response rates were high thereby reducing the risk of non-response bias. Additionally, the sample size provides results that are statistically reliable (to within +/- 4.7%, 19 times out of 20).</p>

The approaches and sample sizes provided sufficient evidence to reach a conclusion on most issues. However, the evaluation methodology had some limitations. For example, data was not available for analysis because P/T performance reports were not required until December 31, 2006. This meant that a number of the evaluation questions could not be addressed. These included questions on client satisfaction and the intermediate outcomes of the program. Additionally, some courtworkers surveyed had been involved with the program for a very limited time, and only a very small number of community justice officials were interviewed.

## 2. FINDINGS – IMPLEMENTATION AND DELIVERY

This chapter presents the findings on the implementation and delivery of the program, including how the program has been implemented, the effectiveness of the federal contribution agreements, the Tripartite Working Group (TWG) and the TWG Steering Committee, some of the more immediate outcomes of the program, and strengths and weaknesses of the program.

### 2.1. Program Delivery

This section presents the different models used to deliver the ACW program to provide contextual information for this evaluation. As each P/T government is responsible for determining the most appropriate service delivery model, there are several distinct service delivery models:

- **Government Only** (Manitoba): Under this model, courtworkers are government employees;
- **Legal Services Boards** (NWT, Nunavut): Courtworkers are employees of these government boards and are considered government employees;
- **Single SDA Model** (B.C., Labrador, Quebec, and Nova Scotia): The courtworkers are employees of a single not-for-profit Aboriginal SDA that delivers the program for the entire jurisdiction;
- **Multiple SDA Model** (Alberta, Yukon): Courtworkers are employees of several SDAs, which deliver the program in each jurisdiction;
- **Lead Organization with Multiple SDAs** (Saskatchewan): Courtworkers are employees of 16 SDAs, whose work is coordinated by a lead organization created by the provincial government; and
- **Hybrid** (Ontario): Courtworkers are employees of individual SDAs. Outside Toronto, a lead organization coordinates the work of 37 SDAs, while in Toronto, one SDA delivers the services.

Several jurisdictions have additional oversight mechanisms, such as an advisory or steering committee.

There are several features common to courtworkers, according to the survey results. Most courtworkers are experienced Aboriginal persons employed full-time working out of an office and travelling regularly as part of the job. Specific courtworker characteristics include:

- More than half (53%) had more than five years' experience. The courtworkers have an average of eight years' experience; work experience ranged from one month to 30 years;
- Most (85%) were employed full-time, 13 percent worked part-time, and two percent were contract employees;
- Most (77%) work between 30 and 40 hours per week; work weeks ranged from two hours to 80 hours;
- Most (89%) worked primarily out of an office; five percent worked primarily from home, and six percent from both an office and home; and
- Most (88%) indicated that they travelled for work. About one in three (32%) travelled more than once a week; 13 percent about once a week; 18 percent about every two to three weeks; 19 percent about once a month; and 18 percent less frequently than once a month.

## **2.2. Federal ACW Contribution Agreements**

The latest federal contribution agreements with the provinces are in effect April 1, 2004 to March 31, 2008 and reflect the changes in Treasury Board's *Policy on Transfer Payments*. The agreements outline:

- the program's coverage, eligibility and service delivery;
- the federal reporting requirements (including a workplan, interim financial reports, financial claim statements and performance reports, audits, and performance measurement and evaluation);
- support for the TWG;
- Canada's financial contribution; and,
- general provisions.

The most recent Access to Justice Services Agreements between Canada and the territories extended the provisions of the 2003-2006 agreements for one year, ending March 31, 2007 and new agreements are being negotiated. The Agreements integrate federal funding for Aboriginal Courtwork as well as Legal Aid and Public Legal Education services under one contribution agreement with each territory. In return for this funding, the territories agree to maintain certain minimum levels of service in providing these justice-related services to eligible persons. The Agreements accommodate an integrated service delivery model by giving the territories the flexibility to allocate the federal funds among the eligible services as they see fit.

The agreements define the minimum levels of service for each component and the territories undertake to maintain a service delivery system that meets or exceeds these levels. Each territorial government agrees to provide the federal Department of Justice with information such as:

- a financial claims statement that includes expenditures for Aboriginal Courtwork services; and
- reports on Aboriginal Courtwork services that contain detailed particulars of service delivery, including a number of statistics on courtwork services.

DOJ interviewees stated that the requirements were adequate and necessary to meet Treasury Board's accountability requirements, but had concerns with the P/T capacity to meet the accountability requirements.

Almost all P/T officials felt that the P/T contribution agreements would help them meet their objectives; two indicated the impacts were neutral to negative. Half the P/T officials expressed concern that meeting accountability requirements could take resources away from services.

**Conclusions:** The contribution agreements with the provinces and the AJAs with the territories are flexible enough to meet the jurisdictions' objectives and priorities. Half of the P/T officials are concerned that meeting accountability requirements may take away from the resources available for services.

### **2.3. Timeliness of Federal Payments**

The contribution agreements with the provinces state that federal payments are made to the provinces twice yearly, on September 30 and March 31. The first interim payment to the

provinces, due on September 30, is for up to 50 percent of the maximum federal allocation. The second interim DOJ payment is due on March 31, and is for up to 90 percent of the federal total contribution based on: i) the budget component of the workplan referred to in section 7 of the contribution agreement or ii) the interim financial report referred to in section 8 of the contribution agreement or iii) the amended budget submitted under section 9, whichever is the lesser and the first interim payment. As per section 27 of the contribution agreements, a 10 percent holdback is released once the financial claim statement for the previous year and any necessary financial adjustments have been made. In the territories, the Department provides quarterly progress payments.

DOJ interviewees felt that federal resources were flowing reasonably well to the P/Ts and that delays result from not receiving specific claim information from the P/Ts. However, they acknowledged that new staff and new reporting requirements may have contributed to delays. P/T officials had mixed views. Although four P/T officials felt the federal resources were timely, three said they were not timely but acknowledged the P/T was at least partly responsible. One province felt that resources were not timely and that the federal government was the cause of the delays.

At least one province waits until it has received the federal contribution before funding the SDAs, meaning a potentially significant impact on that province's SDAs if federal resources are delayed. At least two provinces provide cash advances to their SDAs so that the SDAs are not affected by delays in the federal funds.

**Conclusions:** There were mixed views on whether federal resources flow to the P/Ts in a reasonably timely fashion. Changes to the reporting requirements and the arrival of new DOJ staff may have contributed to delays. Further delays may be the result of the Department holding back 10 percent of the final payment until after a final review of the claim, as per section 27 of the federal contribution agreements with the provinces.

## **2.4. Federal Contribution Agreements Reporting Requirements**

### **2.4.1. Federal, Provincial Contribution Agreements**

Under the Federal, Provincial Contribution Agreements, the provinces must file a number of reports, including a workplan, interim financial reports, financial claims statement and performance report.

The workplan, a new requirement of the contribution agreements, is due every July 1, and must include:

- anticipated total program budget for the coming year;
- program objectives for the coming year;
- SDAs' planned services/activities to meet program objectives; and
- how program performance information will be measured and reported.

In accordance with the provincial contribution agreements, each SDA submits a workplan to the province. The province submits a provincial workplan to the Department of Justice. SDAs in Alberta provide five separate workplans to the province who in turn submit them to the Department of Justice.

As of the July 1, 2006 deadline, three of the eight provincial workplans had been received. Six of the seven provincial officials indicated problems meeting the July 1 deadline, citing lack of capacity and conflicting priorities in the SDAs. Another province noted that the July 1 deadline does not allow enough time for the reflection and analysis that is needed for effective planning. Although DOJ program officials recognize that the July 1 deadline is not ideal for smaller organizations, it says it needs this information to be able to release the first payment by September 30.

The interim financial report, due by December 31 of each year, provides the total eligible expenditures to September 30, and forecasts expenditures to March 31. The Department must receive the interim financial report to release the second interim payment by March 31. The document review indicated that the interim financial reports are often not completed on time. Of the two provinces that indicated problems with the deadline, one cited limited capacity in the SDAs and the other that accurate forecasting could not be done until February.

Both the financial claim statement and the performance report cover the preceding fiscal year. The claim statement enables the Department to verify the full amount of eligible expenditures claimed and verify that the province complies with all provisions of the contribution agreements. The annual performance report provides information against the workplan and includes:

- general information on Aboriginal courtwork services, including the organization/structure of the SDAs;
- assessment of results achieved against the planned objectives, including factors that affected expected performance;
- core performance information, as agreed to by Canada and the province;
- any other information deemed relevant and agreed to by Canada and the province in consultation with the SDAs; and
- the SDAs' report for the fiscal year, where appropriate.

The Department phased in performance reporting requirements for the provinces. The provinces were required to implement core performance measures 1 to 6 and 10 to 12 in 2005-06 and submit the information by December 31, 2006, and to implement 7 to 9 starting in 2006-07.<sup>2</sup>

DOJ interviewees indicated that it is unusual for the provinces to submit all required financial information and that the financial claim statements are sometimes late -- sometimes up to a year late.

On the performance report requirements, DOJ program officials indicated that it was too early to tell whether P/Ts would be able to meet the December 31 requirement for core performance measures. This was consistent with the views expressed by provincial respondents. In some provinces, SDAs were either in the process of conducting pilots or awaiting the results of pilots. Some jurisdictions were awaiting the outcome of discussions on outstanding performance measurement issues that were to take place at the November 7, 2006 meeting of the TWG. Most provinces foresee problems reporting on core performance measures 7 to 12, which are related to the client and judiciary surveys.<sup>3</sup> More detailed findings relating to the performance measurement strategy are presented in the following chapter.

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<sup>2</sup> *Performance Measurement and Reporting Strategy Guide* (September 2005)

<sup>3</sup> At the November 7, 2006 meeting of the TWG, it was decided that the information for performance measures 7 to 12 would be collected as part of the summative evaluation.

**Conclusions:** Provinces' capacity challenges and other priorities delay completing their workplans, which in turn delay the first federal payments (up to 50 percent of the total) that would normally flow on September 30. Although most provinces indicated no problems submitting interim financial reports and financial claims statements by December 31, the document review indicated that most interim financial reports are late.

#### **2.4.2. Territorial Access to Justice Services Agreements**

Under the Access to Justice Services Agreements, several reports must be filed by October 31 each year, including financial claims statements, Program Reports including certain statistics and a narrative on activities. In addition, in 2006-07, DOJ program officials asked the territories to start collecting data on core performance measures 1 to 6.

Financial claims statements detail how quarterly progress payments were used the preceding fiscal year. A document review revealed that only one territory met the deadline, the other one provided partial information and the third one was delayed.

The Program Report provides detail on the number of Aboriginal adults or young persons served, the types of services provided, the courtwork areas, the names of SDAs, and the number of courtworkers in each area or clinic. Two territories indicated that providing this information has been challenging because of the limited capacity of the SDAs.

The Program Report also discusses the activities undertaken and provides SDA statistics on services related to federal contributions.

Two territorial officials are comfortable with the narrative but did not know whether there would be problems collecting the required performance information. The third territory is not providing the narrative information or the detailed data for the Delivery of Services Report .

Federal program officials are aware of the capacity limitations that affect the territories' ability to meet the reporting requirements and therefore try to be as flexible as possible. At the same time, they believe that performance information is necessary to demonstrate the value of the program.

**Conclusions:** The territories have experienced problems meeting the reporting requirements, particularly the deadline for the financial claims statement, and the requirement to provide statistical information. The limited capacity of SDAs in the North makes it challenging to collect the required statistical information.

### **2.4.3. Audit Requirements**

The Risk Based Audit Framework (RBAF) requires that a federal audit be completed with each province at least once between 2003 and 2008 and with at least one territory during the term of the Access to Justice Services Agreements, which is 2003 to 2007.

DOJ program officials indicated that the Department is on track to meet the federal audit requirement. Since 2003, audits have been completed in Manitoba, Quebec, Newfoundland and Labrador, Nova Scotia and NWT. The remaining provinces will be audited by March 31, 2008.

**Conclusion:** The audit requirements are being implemented by the Department and are on track.

### **2.5. Effectiveness of the Tripartite Working Group (TWG)**

The Tripartite Working Group (TWG) was established by Federal-Provincial-Territorial (FPT) Deputy Ministers (DMs) Responsible for Justice on October 14, 1999, as a forum to address program and operational issues. The TWG reports to FPT DMs on an as-needed basis. The role of the TWG is specified in Annex B.

By 2005-06, the TWG had expanded to 31 members: three from the Department, 11 from the provinces/territories, and 15 members from SDAs (of whom six members are from Alberta). The TWG is co-chaired by one federal and one P/T official; the federal co-chair is the Director of the Policy Planning Directorate, Programs Branch at DOJ. There is no documented process on the selection and term of the P/T co-chair. The Department provides secretariat support to the TWG, organizing and documenting its meetings. During the evaluation period, the TWG met face to face four times, and met by conference call another 12 times. The Department does not use the TWG for negotiating funding agreements but rather convenes a separate Federal-Provincial-Territorial working group for this purpose. This working group met twice to negotiate new agreements.

When asked how effective the TWG had been in meeting each of its specific roles, responses were as follows:

- Although DOJ program officials and three P/T officials felt that the TWG was effective and a valuable forum to address issues concerning the ACW Program, most P/T officials and SDAs felt it was not effective. Several P/T officials pointed out that two longstanding TWG priorities, the national core curriculum and the database review report, have not yet been

addressed. Some SDAs questioned whether the TWG should be involved in issues relating to program evaluation and whether it was effective in addressing cross-jurisdictional issues

- Some P/T officials and SDAs felt the TWG was effective in developing innovative approaches to service delivery, developing solutions to various problems, and in particular, exploring ways to share resources and expertise on issues such as training and data collection. However, most P/Ts and SDAs felt that more sharing of resources and expertise was needed for the TWG to be truly effective in this regard.
- P/T officials, SDAs and DOJ program officials all indicated that the TWG was not effective in undertaking research. DOJ program officials indicated that there are few financial resources to carry out research and that as a result, only a few minor research projects have been completed (e.g., research conducted to develop an information guide on crystal meth).
- Almost all P/T officials and SDAs felt that the TWG had not been effective in investigating the need for services that are not currently covered under the cost-sharing agreement. DOJ program officials did note that research was being done for the TWG on handling family law through the ACW Program.
- Most P/T officials and SDAs felt that the TWG has not established effective working relationships within the TWG.
- Most P/T officials and SDAs felt that the TWG did not serve as a resource on ACW services or other issues affecting Aboriginal people in the justice system. DOJ program officials felt that the TWG was a valuable resource for those involved in the ACW program.
- Most P/T officials and SDAs did not feel the TWG was effective in reporting to FPT Deputy Ministers (DMs) of Justice or providing advice to them on how new legislative or policy changes would affect the program. Most could not recall the TWG ever reporting to FPT DMs. DOJ program officials noted that there have not been any courtworker issues that would have merited elevation to the senior level. Several P/T officials mentioned that the TWG should examine how it could provide input to DMs on legislative changes, building on members' knowledge and front-line experience. DOJ program officials are currently examining how the TWG could fulfil this role.

Most P/T officials, SDAs and DOJ interviewees felt that the mandate, role and responsibilities of the TWG are clear and do not need to be changed, but that the TWG needs to focus on carrying them out. DOJ program officials said the role and responsibilities of the TWG need to be better operationalized and that the focus should be on addressing a few priorities well.

Two P/T officials felt the TWG should focus on strategic rather than operational issues. One P/T official mentioned the need for more sustained engagement. Another P/T official would like to see a more strategic policy lens, while another would like the TWG to take on a greater program advocacy role. SDAs felt that the TWG should be used as a policy sounding board for the Department and should regularly meet with the Deputy Minister. In addition, SDAs felt that the TWG had focused on data collection and reporting requirements at the expense of other issues of concern.

All P/T officials and DOJ program officials felt that one annual two-day face-to-face meeting was sufficient. However, most SDAs would like the TWG to meet at least twice a year or to hold longer meetings, to help ensure TWG members are informed and to strengthen the connections among SDAs. SDAs also expressed a desire to have SDA members of the TWG meet before the entire TWG to discuss issues relevant to the frontline or hold post-TWG debriefings and have regular regional meetings.

With respect to TWG conference calls, half of the P/T officials interviewed suggested that the TWG schedule three or four teleconference calls per year, one P/T official suggested monthly calls, and another wanted conference calls only when needed.

Most TWG members expressed dissatisfaction with the TWG meetings. Recommended improvements include having more focused agendas and better facilitation to ensure a more collaborative focus. Several P/T and DOJ officials recommended having an Aboriginal facilitator to help manage the agenda and any conflicts. Views were mixed on whether the Department should provide more direction to the TWG: four P/T officials expressed the desire for *more* leadership by the Department and three felt the Department should provide *less* direction. One P/T official indicated that the Department had made honest efforts to engage the TWG but that these had been derailed by new central agency reporting requirements. SDA respondents were more likely to feel the Department provided too much direction: several SDA interviewees were of the view that it makes unilateral decisions and does not seek sufficient input in preparing the TWG agenda. Several SDAs expressed a sense of being excluded from the dialogue within the TWG, and having insufficient opportunity to share promising practices about program delivery, training and a national database. Several SDA respondents said that TWG meetings should include more flexible forums in which smaller groups can break out for problem solving on specific issues and provide more opportunity for guest speakers to share useful information with the TWG.

DOJ program officials would like TWG members to spend more time setting priorities, to be better prepared for meetings and to be in a position to make decisions. They would like to see P/T officials participate in developing the agenda for TWG meetings, articulate their views more often during the meetings and be able to speak on behalf of their jurisdictions. DOJ officials believe that P/T viewpoints would benefit the TWG and would help build consensus among TWG members. They also think that SDAs in jurisdictions with more than one SDA should consult each other before the meetings so they can speak with one voice. Departmental officials acknowledged that federal priorities have driven the agenda for the past two years, partly due to a lack of national priority issues emerging from the SDAs and the P/T officials.

Overall, TWG members were satisfied with the TWG members' participation. A few P/T officials noted that some SDAs do not see the value in attending the TWG. DOJ program officials noted that when P/T officials miss TWG meetings is much more difficult to get information from the SDAs in those jurisdictions. Finally, a few members noted that fewer members participate in TWG conference calls than in face-to-face meetings.

Generally, SDAs were pleased with the timeliness, relevance and accuracy of pre-meeting material and minutes. Approximately one-third of P/T officials interviewed were satisfied with the quality and timeliness of the TWG meeting documentation. Another third felt the documentation was acceptable but did not arrive on time. Two P/T officials wanted earlier confirmation of meeting dates.

When asked how the TWG could be improved, P/T officials mentioned that the meeting should have a focused, strategic agenda with fewer priorities, and that there should be more time devoted to substantive discussion and decision making. They also mentioned that the TWG needs to be able to deal with conflicting views in a more effective manner. Other suggestions from P/T officials for improving the TWG include:

- dealing with federal priorities through a mechanism other than the TWG;
- establishing formal criteria for the provincial co-chair (term, eligibility, selection process);  
and
- providing better background documentation.

SDA suggestions for improving the TWG included regular monthly or quarterly communications, and more focus on program delivery and the evolution of the program (e.g., training, family court, Aboriginal restorative justice and residential schools). One SDA

recommended adding an SDA as a third co-chair, to give an SDA director decision-making authority for TWG agendas. Other suggestions were to improve the relationships among TWG members, expand TWG membership to include all directors or service providers and officials that have influence within the Department and to disseminate all information gathered by the TWG to the community (e.g., through online training).

DOJ program officials felt that 1.5 full-time equivalents were adequate to support the TWG, though about half of the P/T officials indicated that the TWG needed more support from the Department.

**Conclusions:** The Tripartite Working Group (TWG) mandate is clear and for the most part remains relevant. However, for a number of reasons, the TWG is not fully meeting its mandate. While the TWG has established annual priorities, the list is overly ambitious, and as a result, a few of the priorities have not been adequately addressed. In addition, over the past years, the agenda of TWG meetings has focussed to a large extent on Department of Justice's accountability requirements, leaving little time and resources for other issues. Service Delivery Agencies feel they have insufficient opportunity to discuss program delivery issues. However, provinces and territories are of the view that the focus should be on strategic issues. Participation in the annual face-to-face meetings, while generally high, would benefit from more active P/T involvement in agenda setting and issue discussion.

The eligibility criteria, selection process and length of term for the provincial co-chair are not articulated. There are differing views on whether there is adequate Secretariat support for the TWG and whether one annual face-to-face meeting is sufficient. The information-sharing component of the TWG meetings is valued by most members.

## **2.6. Effectiveness of the Tripartite Working Group (TWG) Steering Committee**

The TWG Steering Committee (TWG SC) was created in 2003 to carry out the priorities of the TWG. TWG SC membership is open to all TWG members. There is no formal documentation on the roles and responsibilities of the TWG SC, its decision-making authority relative to the TWG, or the process to select the provincial co-chair. The ten current members reflect a mix of P/Ts and SDAs. The Department provides Secretariat support to the TWG SC and funds members' travel and accommodation to attend meetings.

As the Department does not have a budget dedicated to fund SC meetings, most of the work of the SC is carried out by conference call. During the evaluation period, the TWG SC met in person twice.

There were differing views among P/T and SDA respondents on the adequacy of jurisdictional representation in the SC. Most SDAs felt the level of representation was adequate, but some P/T officials were dissatisfied with the level of members' participation, noting that staff changes and scheduling conflicts make it difficult for all members to participate fully on the TWG SC. One P/T official pointed out that the representative for the North could attend meetings only when the legislature was not in session. One P/T official also noted that consistent participation in the conference calls is particularly challenging. DOJ program officials felt that it was difficult for the TWG SC to make decisions when not all jurisdictions were represented.

Most TWG SC members did not feel that other members fully participate in furthering the SC's annual priorities, which are established by the TWG. DOJ interviewees felt that most TWG SC members fully participate in furthering the priorities established by the TWG, but that conflicting views within the committee makes the work more challenging.

Several P/T officials noted that because the TWG SC lacks sufficient support and resources, most work falls on a few overburdened SDAs. Half of the SDA respondents also believed that there are insufficient resources for the TWG SC. In the past the Department managed most TWG SC projects but the SDA and P/T members are starting to manage their own projects, a development welcomed by DOJ program officials.

All DOJ program officials, most TWG SC members and some SDAs feel the SC's mandate, roles and responsibilities need to be clarified, clearly documented and distinguished from those of the TWG.

Several suggestions for improvement were made:

- develop terms of reference to clarify TWG SC representation, and the roles, responsibilities, and decision-making authority of the TWG SC relative to the TWG;
- develop orientation package for new members;
- have more consistent and influential DOJ representation;
- hold more regular and longer meetings with clear agendas, and obtain the commitment of SC members to participate regularly;

- provide greater DOJ Secretariat support to the TWG;
- ensure there is adequate representation and consistent participation from all jurisdictions;
- have P/Ts and SDAs more involved in establishing the agenda for the SC; and
- find ways to allow members to participate equally within the SC, perhaps through the use of a rotating chair and team-building exercises.

**Conclusions:** The TWG SC is currently not an effective mechanism for accomplishing the work of the TWG. Its mandate, role and decision-making authority are not documented, nor are these always clear to the TWG and SC members. The Department does not have a budget dedicated to funding SC meetings. As a result, the SC has met infrequently and relies on conference calls to conduct its work.

## 2.7. Clarity of Program Objectives

The objectives of the ACW Program are outlined in the contribution agreements with the provinces and territories. Specifically, the ACW Program:

seeks to facilitate and enhance access to justice by assisting Aboriginal people involved in the criminal justice system to obtain fair, just, equitable and culturally sensitive treatment. This overall objective of the Aboriginal Courtwork Program will be achieved by:

1. Providing Aboriginal persons charged with an offence (“Aboriginal accused”) and their family members with timely and accurate information at the earliest possible stage of the criminal justice process. This includes referring Aboriginal accused to appropriate legal resources as well as to appropriate social, education, employment, health, Aboriginal community and other resources to ensure that underlying problems which contribute to their charges are addressed; and
2. Having Aboriginal courtworkers serving as a “bridge” between criminal justice officials and Aboriginal people and communities, by providing

liaison and promoting communications and understanding between the two entities.<sup>4</sup>

Most respondents felt that the objectives of the ACW Program were clear. A small number of P/T officials and SDA respondents felt that the objectives were removed from the day-to-day work of the courtworker. One P/T official noted that the courts are only one part of the objective, and that the program needs to be viewed in the larger context of community justice.

**Conclusions:** The objectives of the ACW Program are generally clear to the key parties involved.

## **2.8. Clarity of Roles and Responsibilities**

The formal roles and responsibilities of the federal government and the P/Ts are outlined in the agreements with the provinces and territories. Courtworker services eligible for DOJ funding are outlined in the contribution agreements.

P/T and DOJ officials feel the roles and responsibilities of the P/Ts, SDAs and the Department are clearly understood by the key parties involved in the deliver of the program, but that in some jurisdictions, the role of courtworker is not clearly understood by the justice system, the Aboriginal communities or the public.

Most SDAs did not believe that the roles and responsibilities of stakeholders were clear to all. Almost all SDA respondents identified conflicts in the roles and responsibilities of key players and half believed there is overlap in the roles.

The courtworkers surveyed felt they understood their roles and responsibilities. On a scale of one to ten, where one meant not all understood and ten mean fully understood, the average rating was 9.2; 56 percent felt that they fully understood their roles and responsibilities. The results for each jurisdiction are summarized in Table 2.

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<sup>4</sup> Department of Justice (2004). Agreement respecting the Aboriginal Courtwork Program.

Table 2 – Courtworker Understanding of their Roles and Responsibilities, by Jurisdiction

Jurisdiction	Average Rating	Number of Respondents
Newfoundland and Labrador	9.3	3
Nova Scotia	10.0	3
Quebec	9.6	14
Ontario	9.3	29
Manitoba	9.0	10
Saskatchewan	9.2	19
Alberta	8.9	15
British Columbia	9.4	18
Northwest Territories	9.1	8
Nunavut	8.4	8
Yukon	7.0	3
<b>Total</b>	<b>9.2</b>	<b>130</b>

The courtworkers also felt that lawyers understand courtworker roles and responsibilities the best, whereas judges (other than presiding or circuit) understand them the least.

**Conclusions:** The roles and responsibilities of the P/Ts, SDAs and the Department appear to be clear and clearly understood by most parties involved in the program. The courtworkers themselves understand their roles and responsibilities, but they as well as a few P/T officials believe that the roles and responsibilities of the courtworker could be better communicated to the judiciary.

## 2.9. Perceived Impact of Increase in Federal Funding

From 1993 to 2000, the federal government funding for the ACW Program was fixed at \$4.5 million annually. In the December 2001 budget an ongoing funding increase of \$1 million was approved, starting in fiscal year 2002-03, allocated as follows:

- \$925,000 (vote 5) was allocated for provincial and territorial funding of programs, of which \$900,000 was allocated among the seven provinces and the three territories, using Aboriginal population data and \$25,000 was allocated for the territories, in recognition of the higher cost of providing ACW services in the North including an additional notional amount

was allocated to the territories for P.E.I. and New Brunswick, which do not currently have courtworker programs; and

- \$75,000 was allocated for O&M for TWG projects.

According to DOJ documents, the additional funding was to help jurisdictions address:

- the expanded program, which did not receive increased federal funding when youth clients were added in 1987 ( 23 percent of program clients are youths);
- under-served and un-served courts, especially in remote areas;
- the need for enhanced training and a need to provide competitive compensation to courtworkers, some of whom currently earn only slightly above minimum wage in certain jurisdictions; and
- increasing demand for the courtworker services resulting from rapid Aboriginal population growth.

The additional funding to the P/Ts was available on the condition that:

- All provisions of the existing contribution agreement would apply;
- The additional federal funds would be invested only in eligible courtworker services and would be reported as increases in program expenditures over the amount claimed for 2000-01 as eligible expenses; and
- The total federal payment to a province would not exceed its maximum allocation.

The funds therefore needed to be matched by the provinces and used for eligible services. The previous notional allocations were \$3,997,500 to the provinces and \$502,500 to the territories, for a total of \$4.5 million. With the new funding, the notional allocations increased to \$4,836,363 to the provinces and \$588,637 to the territories, for a total of \$5,425,000.

According to P/T officials, although the increased federal funding has been of some benefit, it has not been sufficient to meet the increased program costs. Most P/Ts and SDAs used the additional funds for existing salaries and benefits or for training. One SDA has not benefited from the increased federal funding as its jurisdiction has not matched the federal increase.

**Conclusions:** The recent increase in federal funding helped alleviate some of the immediate pressures on the Courtworker Program, but according to P/T officials, the additional funding has not fully met increases in program costs.

## 2.10. Strengths and Weaknesses in the Delivery of the Program

The strengths and weaknesses of ACW Program delivery are summarized in Table 3.

Table 3 – Strengths and Weaknesses of Program Delivery

Respondents	Strengths	Weaknesses
SDAs	<ul style="list-style-type: none"> <li>Aboriginal driven</li> <li>Flexible enough to meet needs</li> <li>Community connection, sensitivity and integration</li> <li>Integration of service with other justice programs and/or community-based programs</li> <li>Available network of problem solvers</li> <li>Enhanced accountability (Legal Services Board)</li> </ul>	<ul style="list-style-type: none"> <li>Not enough courtworkers to cover the geographic area</li> <li>The federal and P/T reporting requirements are burdensome and take away from service delivery capacity</li> <li>Where there are several SDAs or sub-contracted organizations, there is varying capacity</li> </ul>
P/Ts	<ul style="list-style-type: none"> <li>Aboriginal delivered</li> <li>Community based and integrated with other justice programs and/or community-based programs</li> <li>Good standardization, particularly in centralized delivery</li> <li>Consensus among multiple SDAs, when reached, is strong</li> </ul>	<ul style="list-style-type: none"> <li>Where there are multiple SDAs or sub-contracted organizations, there is varying capacity and it takes longer to get consensus and the required information</li> </ul>
DOJ	<ul style="list-style-type: none"> <li>Aboriginal delivered</li> <li>Community based</li> </ul>	<ul style="list-style-type: none"> <li>Where there are multiple SDAs within a jurisdiction, there is the potential for duplication of administration and varying capacities to deliver the program (training, costs). One DOJ role is to identify potential areas of increased efficiency in meeting the federal requirements.</li> </ul>

Table 4 on the next page shows courtworker satisfaction with various aspects of service delivery. Courtworkers were asked to rate various delivery elements on a scale of one to ten, where ten means that the courtworkers were fully satisfied. As can be seen, the mean ratings range from 6.7 to 8.1.

**Conclusions:** All respondents agreed that program's strengths are that it is Aboriginal-delivered and community based. One challenge associated with multiple SDAs is the varying capacity of these SDAs to deliver services and to respond to the accountability requirements. Overall, the courtworkers are satisfied with the way in which the services are delivered in their jurisdictions.

**Table 4 – Satisfaction of Courtworkers with Program Delivery Elements by Jurisdiction**

<b>Delivery Element</b>	<b>NL</b>	<b>NS</b>	<b>QC</b>	<b>ON</b>	<b>MN</b>	<b>SK</b>	<b>AB</b>	<b>BC</b>	<b>NWT</b>	<b>NU</b>	<b>YK</b>	<b>Mean</b>
Management structure	8.7	8.0	7.9	8.5	8.4	6.6	8.5	6.9	7.3	8.3	6.3	7.8
Delivery approach	9.3	5.7	7.9	8.5	8.5	6.9	8.5	8.2	7.8	7.6	6.8	8.0
That you travel enough	7.0	8.0	8.4	7.4	7.3	7.9	7.2	7.9	5.8	7.0	7.8	7.5
That you don't travel too much.	9.0	5.5	7.3	7.1	5.8	5.2	7.5	6.1	7.1	7.5	6.7	6.7
Supervision/support	8.3	6.7	8.6	8.7	8.3	6.8	8.5	6.9	6.4	9.1	6.0	7.9
Facilities/interview/office space	8.3	8.0	8.3	6.8	6.7	6.5	8.1	8.2	6.8	6.9	7.0	7.3
Employment conditions	9.3	9.7	7.9	8.1	8.6	6.7	9.0	7.7	8.0	7.5	5.7	7.9
Recognition of the program in your area by court officials and the judiciary	6.3	7.7	7.2	8.4	7.3	7.8	8.8	8.8	8.4	7.6	8.0	8.1

## 2.11. Extent to which Aboriginal Courtworkers have Reached their Client Groups

The client groups of the ACW Program are as follows:

- 1) Aboriginal accused and in the territories, where courtworkers are active in both civil and criminal matters, Aboriginal people involved in civil matters; and
- 2) Others: Families of Aboriginal accused, co-accused, Aboriginal victims, Aboriginal witnesses, “Sureties,” court officials (legal aid, defence counsel, Crown counsel, clerks/judicial assistants), judiciary (judges and Justices of the Peace), law enforcement (police/RCMP/tribal police, sheriffs, fisheries and conservation peace officers), agencies responsible for transport and/or custody of Aboriginal Accused, parole/probation officers), Aboriginal community, including Aboriginal agencies and community justice initiatives, other non-Aboriginal agencies, including children and family services, treatment programs, law enforcement and judicial complaint agencies, criminal injuries compensation funds.

P/T officials and SDA respondents say reaching clients involves overcoming human resource challenges, including a lack of courtworkers and high turnover, and other challenges such as the need to travel to small, scattered communities and competing demands for services between communities. SDA respondents also mentioned language barriers, cultural differences, a need that exceeded capacity, and overlap in court circuits.

DOJ program officials noted the demand for services exceeds capacity in the criminal court system, which is aggravated by the fact that courtworkers are often asked to perform duties beyond the norm. It was also noted that in some jurisdictions, demand has led to an expanded program, such as in Ontario and Alberta, which also have family law courtworkers.

At the time of this evaluation, the data on the number of clients served had not yet been collected or aggregated from all jurisdictions.

**Conclusion:** There was no accurate data on the number of clients reached by the program. There are a number of challenges reaching clients including the lack of courtworkers and the need to travel to reach clients.

## **2.12. Extent to which Aboriginal Courtworkers have Facilitated Linkages between the Formal and Community Justice Systems and the Aboriginal community**

Almost all interviewees felt that courtworkers have successfully facilitated links on behalf of the accused between established and evolving community justice programs and the formal justice system.

Almost all P/T officials felt there are good relationships between the courtworkers and community justice officials, and were able to provide specific examples. Overall, P/T officials are positive about these links. One territorial official noted, however, that there are fewer opportunities for relationships as the community justice program in the territory had been significantly reduced. Several P/Ts have combined the courtworker and community justice officials' positions, and a few others have joint or cross training for courtworkers and CJO workers. Several P/T officials and SDAs are also responsible for restorative justice initiatives. P/T officials believe that the relationships between the ACW and restorative justice initiatives lead to better services, better access to services, and greater community involvement in decision making.

P/T officials identified a few negative impacts arising from the increased linkages:

- added workload, especially when there is no CJO in the community;
- potential conflict of interest for the courtworker, whose job is to represent/advocate in the client's best interest;
- potential or actual blurring of roles and responsibilities; and
- in a few jurisdictions, a need for greater awareness of the distinct roles of courtworkers and CJOs.

A few P/T officials mentioned the need to explore a more integrated approach or better linkages with the Aboriginal Justice Strategy nationally and locally.<sup>5</sup>

SDAs and CJOs have established relationships in a number of different ways. Courtworkers or CJOs have held joint forums to nurture their relationship, facilitate local communication, and

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<sup>5</sup> It should be noted that the Aboriginal Justice Strategy became part of the Programs Branch in June 2006, which could provide more opportunities to combine the groups to share information about roles, responsibilities and training.

conduct community tours of correctional facilities. In other cases, courtworker credibility with the courts (over such issues as *Gladue*) promotes relationships and creates an effective lobby within the court and with policy makers. Some courtworkers are involved in peacemaking, youth and restorative justice programs and others participate in monthly alternative sentencing or sit on interagency committees where community justice officials are members. Courtworkers and CJOs also share training resources, exchange referrals and coordinate services. In fact, in one community, if there is no CJO or the CJO lacks the training, experience or confidence to perform well in their role, then the courtworker either does the work or helps to train the CJO.

One community-based justice program credited the ACW program for its creation. Other benefits of the relationships identified by SDAs included:

- a greater sense of collective, community-based accountability;
- opportunity for offenders to heal more effectively in the community;
- more fluid knowledge and cultural exchange between the criminal justice system and the community;
- more ability within the community to deal with the root causes of crime and restore harmony;
- unified service delivery with clear and shared vision or understanding;
- community-based provisions that eliminate the victim's escape burden;
- better access to training and experience for the courtworkers;
- community credibility within the community justice systems; and,
- more familiarity with client histories that can be shared with the judge or used to better meet client needs and make appropriate referrals.

Nearly half of the SDAs were unable to identify drawbacks to these established links. In fact, the only drawback seemed to be the time that must be invested to establish and maintain relationships.

Half of the courtworkers indicated that they were on a committee, council, task force, commission, or formal network that was outside the ACW program *per se* and believed that this helped them better serve their clients. In addition, 98 percent of surveyed courtworkers indicated that they were aware of other programs and services available to their clients in their community.

**Conclusion:** Courtworkers have been successfully facilitating links between established and evolving community justice programs and the formal justice system. The linkages are strongest in SDAs that also deliver community justice programs, share courtworker or community justice positions, or conduct cross-training.

### **2.13. Adequacy of Training Provided to Courtworkers**

Evaluations or reviews conducted since 2000 on the Alberta, Saskatchewan, NWT, Yukon and Nunavut courtwork programs all viewed training as critical to the performance of courtworkers, and all recommended more training, both introductory and on specific topics such as changes to the *Youth Criminal Justice Act* and *Gladue* reports. In the three territories, under-representation as a result of lack of training is expected to increase as the role of the Justice of the Peace courts increases.

P/T officials noted that training is offered to existing and new courtworkers on many subjects, including performance measurement, legal training, and *Gladue* reports. Some P/Ts noted that new courtworkers use the national training curriculum. The national training curriculum was developed by the TWG. It combines training material from a number of jurisdictions and is being used by some jurisdictions as a resource in their overall Courtworker training program. Training methods include formal training, mentoring, self-teaching, on-the-job training, and job shadowing. While a few officials say the training is good or at least adequate, some noted that more funding for training or more training is needed, with one P/T official noting that regional training may be more cost effective than national training and allow courtworkers from smaller SDAs to attend. Slightly more than half the SDAs noted that the training was adequate; however, two noted that the amount of training was limited. A number of subjects for future training were identified by P/T officials including the changing roles of the courtworker and new developments in the law. SDAs suggested future training in areas such as contemporary trends in law, conflict resolution or mediation, and mental health issues, and also suggested providing training to courtworkers before placing them in their roles, providing longer and more intensive training, providing accreditation, and providing an online interactive training module.

According to DOJ respondents, all courtworkers receive training but the degree and intensity varies. DOJ program officials indicated that it held two national training exercises, both funded outside of the ACW Program. The first was held in March 2000 to provide preliminary information on changes in the youth justice system, and the second was held in March 2003 to provide information on the *Youth Criminal Justice Act*. Each training session cost over

\$200,000, which was made available through the Department's Youth Justice Renewal Initiative. In addition, the TWG has funded training projects (e.g., on *Gladue*) and seeks opportunities for courtworkers to participate in related training (e.g., Homeless Secretariat initiative to train front-line service providers on Fetal Alcohol Spectrum Disorder).

DOJ program officials noted that training is an eligible expenditure under the contribution agreements, and that the jurisdictions and the SDAs can decide what proportion of the total federal allocation to dedicate to training. They acknowledge that competing priorities prevent jurisdictions from spending as much as they feel is required on training activities.

Three-quarters of surveyed courtworkers indicated that they had received some training in the past year, in one or more of the following areas:

- basic courtworker training ;
- technical training (computers, software, etc.);
- *Gladue*;
- legislation;
- court processes, legal terms, etc.;
- performance measurement; and
- social and health issues (e.g., drug rehabilitation, fetal alcohol spectrum disorder, etc.).

Courtworkers were highly satisfied with their training, and asked for more training in similar areas.

**Conclusion:** Studies of the ACW program indicate that courtworkers require additional training. Approximately half of the P/T officials and SDA representatives interviewed stated that more training is needed. A number of subjects for future training were identified by P/T officials and SDAs including the changing roles of the courtworker and new developments in the law. The national training exercises on youth justice issues were useful and appreciated. However, there are differing expectations on the intended use and completeness of the national training curriculum.

Given the high cost of a national training event for all courtworkers, other more cost-effective mechanisms may be appropriate, including regional and web-based training. However, in-person training is important for networking and for reducing the isolation of courtworkers.

## 2.14. Suggestions to Improve the Program

Many suggestions for improvements have been made in recent evaluations and reviews of the ACW Program. The Saskatchewan evaluation<sup>6</sup> found that 95 percent of courtworkers felt pressure to perform services outside their specific duties, and that most Legal Aid lawyers, Crown prosecutors, courtworkers, and Advisory Board representatives believed courtworkers should be more involved in alternative justice services.

The MLA Review of the Alberta program<sup>7</sup> documented the wide range of in-court and out-of-court services provided by criminal and family courtworkers and recommended that:

[t]he responsibilities and the nature of services appropriate for Aboriginal courtworkers to perform should be clearly defined and articulated at all levels of the program. Defining and articulating services not appropriately provided by courtworkers, such as providing legal advice or advocacy on behalf of the client may also be useful.<sup>8</sup>

A 2002-03 research study on the North<sup>9</sup> identified several constraints, other than training:

lack of space for interviewing clients when they are on circuit, the part-time nature of some of the positions (in the NWT and Nunavut), and disparities in compensation (among regions in Nunavut). Respondents from all three jurisdictions felt that under-representation as a result of lack of training will likely increase as the role of Justice of the Peace courts increases. The practical constraints identified above were also felt to lead to under-representation in the NWT and Nunavut.<sup>10</sup>

In the research project entitled *Legal Aid, Courtworker and Public Legal Education and Information Needs in Yukon Territory*,<sup>11</sup> defence counsel say they have positive relationships with courtworkers, and vice versa, but most legal professionals wanted more formal coordination between the courtworkers and Yukon Legal Services Society. It was generally agreed that increased collaboration should focus on courtworker training initiatives.

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<sup>6</sup> Justice Saskatchewan (August 2000). *Saskatchewan Aboriginal Courtworker Program: Evaluation Report*.

<sup>7</sup> Government of Alberta (February 2006). *MLA Review of the Aboriginal Court Worker Program*.

<sup>8</sup> *Ibid.*, p. 5.

<sup>9</sup> Department of Justice (January 2003). *Legal Service Provision in Northern Canada: Summary of Research in the Northwest Territories, Nunavut, and the Yukon*.

<sup>10</sup> *Ibid.*, p. vii.

<sup>11</sup> Department of Justice (October 2002). *Legal Aid, Courtworker and Public Legal Education and Information Needs in the Yukon Territory*.

Some changes have been made since these studies were conducted. Notably, in 2006-07, the Nunavut Legal Services Board established a courtworker coordinator position to centralize and improve management and oversight of Nunavut's ACW Program.

P/T officials suggested several improvements, including:

- expanding courtworker services to family court, drug treatment, and domestic violence courts, and to unrepresented Aboriginal persons in civil matters;
- more resources/more courtworkers; and
- increasing awareness of the program's existence and recognition of the courtworker's role from by the criminal justice system.

DOJ program officials agreed that there is a pressure to expand courtworker services. They also identified the need for more recognition of the ACW Program and of the courtworkers by others in the court system, and better communication on what services courtworkers can provide. DOJ program officials reiterated the need for strong links with other Aboriginal justice programs. Finally, they would like to see the ACW Program become more proactive in identifying and examining emerging issues that may affect the courtworker program (e.g., the courtworker's role in preparing *Gladue* reports).

SDAs and CJOs also suggested several improvements to ACW services:

- supplementing training with mentoring and print or web-based resources;
- increasing community awareness and understanding of the program, particularly with lawyers, and improving relations with legal aid;
- expansion that addresses crime prevention while retaining the program's focus on first- and second-time offenders (versus repeat offenders) – i.e., investing in strategies that ensure that first-time offenders do not become repeat offenders.

SDAs and CJOs called for more courtworkers and for more administrative support for the current courtworker team, salary parity, appropriate professional designation and basics such as office space and telephones. Those in the North urged the Department to recognize the geographical and cultural complexities of the North (e.g., geographical dispersion and need for salaries competitive with those of the territorial government). Two SDAs called for the expansion of the ACW program to family court.

The courtworkers surveyed suggested many improvements, including:

- more training;
- national standards (training, tools, etc.);
- better funding;
- increased promotion of the program in the Aboriginal community and in the justice system;
- more courtworkers and other support staff;
- better facilities;
- more opportunities for interaction with other courtworkers (local, provincial and national);  
and
- better and more equipment.

**Conclusions:** This evaluation and other recent evaluations and reviews suggested several possible program improvements. Although many recommendations are jurisdiction-specific, common themes include more and better training, more resources and the need to address increased demand for courtworker services.

Other suggestions for improving the ACW Program not discussed elsewhere in this report included:

- providing more P/T and federal money to ensure adequate geographic coverage, staff capacity, and client service; implementing a proactive approach to identifying and examining emerging issues that may impact the courtworkers' role; and
- expanding program services to family court, drug treatment, and domestic violence courts, and to unrepresented Aboriginal persons in civil matters.

### **3. FINDINGS – PERFORMANCE MEASUREMENT**

One of the purposes of this evaluation was to assess the implementation of the ACW performance measurement strategy and determine whether the performance information required for the summative evaluation would be available. This chapter presents the findings relating to the performance measurement strategy. Annex D provides an overview of the actual performance measurement requirements outlined in the program's RMAF. The performance measurement information is necessary to meet the federal accountability requirements and demonstrate the value of the program when the Terms and Conditions are renewed (by March 31, 2008).

#### **3.1. Extent of Implementation**

The document review indicates that the key decisions and deadlines around the implementation of the performance reporting requirements were as follows:

- At the November 29–30, 2004 meeting of the TWG, a recommendation was made to implement core performance measures 1 to 6 by the provinces and to conduct selected pilots for measures 7 to 9 (the judiciary survey) and measures 10 to 12 (the client survey);
- At the April 2005 TWG Steering Committee meeting, the Department asked the provincial jurisdictions to collect performance information on measures 1 to 6, and to attempt to complete the judiciary survey in 2005-06;
- In the September 2005 version of the Performance Measurement and Reporting Strategy Guide, the provinces were required to implement measures 1 to 6, and to implement measures 10 to 12 in 2005-06, and 7 to 9 starting in 2006-07; and

- The Department subsequently agreed that the judicial and client surveys would be piloted in a few jurisdictions in 2006-07, but that all jurisdictions would be asked to submit performance information on measures 1 to 6 for 2005-06 by December 31, 2006.<sup>12</sup>

Pilots of the judiciary and client surveys are under way in British Columbia, Nova Scotia and Alberta.

P/T officials primarily had concerns with performance measures 7 to 12. Specific P/T concerns were as follows:

- protecting clients' privacy and confidentiality;
- protecting courtworkers from the potential negative response bias from clients dissatisfied with the outcome of their case;
- protecting courtworkers from the negative reaction to the program from respondents who question the fundamental rationale for the program;
- increasing courtworkers' workload; and
- varying capacity among SDAs to collect the required information.

In the North, territorial officials expressed specific concerns about:

- oral and written literacy challenges for the client survey;
- locating clients;
- low rates of return for both the client and judicial surveys;
- the excessive requirement for the small amount of money; and
- the lack of an integrated approach to performance reporting for the AJAs.

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<sup>12</sup> At the November 7, 2006 meeting of the TWG, it was decided that core performance measures 7 to 12 would be collected as part of the summative evaluation.

In this regard, it should be noted that recent DOJ reviews of access to justice to services in the North<sup>13</sup> call for an integrated approach to collecting performance measurement information and, in some cases, suggest what these measures should be. The reviews also identify the capacity constraints of the Legal Services Boards, which could affect data collection in the North.

According to the SDAs, several factors help in preparing the performance measurement information reports, including the pilots under way, established reporting procedures, and SDAs' motivation to ensure accountability. Challenges were related to achieving compliance and consistency among a large and geographically dispersed ACW team, the inflexibility of the federal reporting template, and lack of a dedicated information technology expert to troubleshoot problems. Some SDAs reported inconsistency between their information management systems and DOJ reporting requirements.

SDAs insisted that key operational terms (e.g., service delivery and client) must be defined and standardized before reliable statements can be made. They also questioned the practicality of long-term follow up and of obtaining the collaboration of criminal justice system officials (e.g., judges, lawyers) in the collection of performance information. They were also concerned that a lack of capacity might inhibit their ability to meet reporting requirements and that the reporting requirements did not capture all courtworker activity.

The SDAs made several recommendations:

- report more regularly (e.g., daily logs);
- ensure that all respondents from the criminal justice system are familiar with the program;
- move from a performance measurement system in which courtworkers are asked to collect information about their own performance to a more objective third-party data collection relying on standard research practices (e.g., ethics review, testing and piloting questions/tools and more regular reporting).
- collaborate more meaningfully with SDAs in designing a system that better meets the needs of SDAs in manipulating and extracting data;
- provide clearer communication on how the information will be used; and

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<sup>13</sup> See DOJ's Legal Aid Provision in Northern Canada; Summary of Research in the Northwest Territories, Nunavut and Yukon (January 2003), Legal Aid, Courtworker and Public Legal Education and Information Needs in the Yukon Territory (October 2002), Legal Aid, Courtworker and Public Legal Education and Information Needs in the Northwest Territories (October 2002), and Operational Review of the Nunavut Legal Services Board (February 2005).

- offer technical support (training, online FAQs, access to IT support).

To date, the performance information received by the Department has been of varying quality. In addition, the Department has held workshops in each jurisdiction to refine the logic model to reflect courtworker activities. The Department is aware of the P/T and SDA challenges and concerns, but views the performance measurement information as necessary to meet the federal accountability requirements and demonstrate the value of the program when the Terms and Conditions are renewed (by March 31, 2008).

Courtworkers were asked about performance measurement information they were required to provide to their SDAs. Almost all courtworkers (90%) indicated that they had been providing their SDAs with statistical information on their clients.<sup>14</sup> Of these, 81 percent provided information monthly; 24 percent reported weekly or daily.

**Conclusions:** In anticipation of the December 31, 2006 reporting deadline for the first performance report, there are varying degrees of implementation within the SDAs. The requirements for core measures 1 to 6 do not appear problematic, although definitions are still needed for the terms client and service delivery.

Pilot judiciary and client surveys are under way in B.C., Nova Scotia and Alberta. P/T officials are concerned about the capacity of smaller SDAs to conduct the judiciary and client surveys, especially without any additional resources and training. Several data utility and quality issues need to be addressed, and an information management system should be developed that allows for community-based analyses. There are also concerns about confidentiality and privacy, literacy and response rate challenges for the surveys, and the lack of training and resources in SDAs.

### **3.2. Adequacy of Tools and Resources to Assist in Meeting Performance Reporting Requirements**

To help identify and develop the performance measurement reporting requirements, the TWG SC, through the Department, contracted with a consulting firm to conduct performance measurement consultations with provincial officials and SDA staff in all provinces and use those findings to develop a performance measurement and reporting guide for the P/Ts and SDAs. The consultants held workshops with provincial officials and SDA staff in 2004-05 to develop an

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<sup>14</sup> This would be the aggregate data previously required and now part of core performance measure 2.

ACW logic model specific to each jurisdiction, to identify and refine the core performance measures, and to identify means of addressing data collection challenges. The Department subsequently conducted similar workshops with Ontario and two territories in 2005 and one territory in 2006.

The Performance Measurement and Reporting Guide for the provinces was finalized in September 2005, the guide for NWT was completed in October 2005, and that for Yukon in May 2006. The guide for Nunavut had not been finalized at the time of this evaluation. The Performance Measurement and Reporting Guide contains reporting templates for use by SDAs, and a sample year-end performance report developed by DOJ.

Although P/T officials and SDAs found the consultation workshop, the guide and templates useful, additional clarity, training, resources and time are needed to successfully implement the performance measurement requirements.

Specifically, P/Ts identified the following additional support needed:

- more survey training and financial resources to implement the requirements in SDAs;
- more training on the client survey to address procedural challenges with accessing the clients; and
- a national database/electronic template.

All SDAs had received tools (such as templates, guides, forms, samples or notes) to help them meet the performance measurement requirements. Most SDAs expressed concern that the tools were adequate only from a funder's perspective and were not useful for the SDAs, though others felt that the logic models and performance measurement guide provided were helpful tools, in part because they provided good real-life examples. Some of the SDAs felt more standardization was required or at least agreement regarding what data would be most useful. A few SDAs stressed the need to make the tools simpler and more understandable.

Some SDAs said they needed more human resources to collect, manage and report the data, and others suggested training, updates, communication or opportunities for SDAs to share information or experiences. Two SDAs suggested establishing a database that would match the performance measurement requirements.

Almost all courtworkers surveyed (94%) indicated that they had been given tools to collect the required performance information. The most frequently mentioned tools were:

- forms/intake forms (44%);
- databases/spreadsheets (31%);
- computers/laptops (26%);
- templates (16%); and
- computer programs/software (10%).

About three quarters of the courtworkers indicated they had the tools they needed. Many of those who required more tools said they needed a computer, a better computer, or a laptop.

**Conclusions:** Although the various resources have been useful, more tools and resources are required, including survey training, a hands-on operational guide, a clear definition of clients, and more funding to support the added burden on SDAs to carry out the surveys. Some jurisdictions suggested a national database would be beneficial. SDAs in particular would like to see the performance measurement requirements better reflect their management information needs.

### 3.3. Factors Facilitating or Impeding the Collection and Reporting of Performance Information

Table 5 includes a summary of the factors affecting the data collection, which were cited by P/T officials and SDAs.

**Table 5 – Facilitating and impeding factors to measurement**

Respondents	Facilitating Factors	Impeding Factors
SDAs	Many are collecting similar information People are motivated Well-established working relationships Infrastructure already in place	Need more involvement Needs to be more SDA driven (information or the collection process) Need better understanding of how the information will be used Need to ensure there is a balance between service delivery and reporting requirements (the burden is high)

<b>Respondents</b>	<b>Facilitating Factors</b>	<b>Impeding Factors</b>
P/Ts	Will help with accountability and demonstrate the value of the program Training and tools have helped	SDAs not well equipped to deal with confidentiality and privacy issues A lot of accountability for a little bit of money, particularly compared to other DOJ programming e.g., AJS Need a national database Lack of integrated approach to performance measurement in the territories under the Access to Justice Services Agreements Lack of capacity in most SDAs (mostly for survey measures) Survey training needed Potential response bias Fear of what will happen if performance information is negative
DOJ	Logic model and performance measurement workshops Performance Measurement Guide and reporting templates	Inconsistent terminology Capacity issues Implementation was delayed by the differences in dates agreements were signed with the P/Ts
Courtworkers	The tools provided are helpful Ability to follow up with clients Equipment available (computers, telephones, fax machines) Access to the Internet Access to people (supervisor, other courtworkers, etc.)	The time it takes/lack of resources to do it Inability to access tools off site Problems with and lack of equipment (no laptop, network problems, internet problems, phone service problems, etc.)

Nearly half of SDAs believed that their jobs had been made easier by having the infrastructure in place and being reasonably familiar with reporting requirements. One SDA believed well-established working relationships with key stakeholders had also helped. Nearly half of SDAs indicated the challenges resulted because of the requirements had not been accompanied by adequate resources. At least two SDAs were hindered by inconsistency between the Department and SDAs over how data would be used. Others identified the following challenges: securing information in a timely manner, team turnover in the field or within the Department, lack of information about roles and responsibilities, and changing expectations. At least one SDA questioned how information could be obtained from those with no obligation to respond, such as criminal justice system officials.

One SDA indicated that a well-designed national database would help to illustrate the big picture provincially and nationally, and would help promote understanding of program priorities. In fact, just over half the SDAs recommended creating a standardized national electronic database that would be relevant for SDAs and would meet the federal reporting requirements. The rest of the SDAs, however, and especially those who are struggling with data collection, want to meet to review accuracy, answer questions and exchange information. Other recommendations included a more streamlined information system with more human resources to populate the database and a policy analyst to analyse the data. Two SDAs believed that more time was needed to discuss system development at the TWG.

The Department was aware that SDAs had capacity concerns about core performance measures 7 to 12 but tried to address these concerns by the extensive consultation on the performance reporting and the development of the Performance Measurement and Reporting Guide. Departmental officials also acknowledged that the North has more severe SDA capacity constraints.<sup>15</sup>

Courtworkers named several factors that facilitated performance reporting: the tools provided, the contacts with clients, the equipment available (including telephones and fax machines), access to the Internet and to people (supervisor, other courtworkers, etc.). Impeding factors included the lack of ability to follow up with clients (i.e., if the information is not collected in the first visit, it may be impossible to get), the time it takes to follow-up and the lack of resources with which to do it, lack of off-site access to the tools, and equipment problems.

**Conclusion:** Several factors facilitate or impede data collection and reporting. Facilitating factors include:

- the logic model workshops and consultations conducted by DOJ;
- the performance measurement guide and templates provided by DOJ; and
- the pilot surveys under way in B.C., Alberta, and Nova Scotia.

Impeding factors include:

- limited performance measurement capacity in the North;

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<sup>15</sup> As noted elsewhere, the Department has subsequently decided that it will collect information on core performance measures 7 to 12 as part of the Summative evaluation.

- the limited capacity of smaller SDAs to conduct the judiciary and client surveys, especially without any additional resources or training;
- data quality issues (e.g., literacy and response rate challenges, potential for bias from clients unhappy with the outcome of their case or court officials who question the fundamental rationale of the program); and
- concerns about survey data confidentiality and privacy.

## **4. RECOMMENDATIONS AND MANAGEMENT RESPONSE**

### **4.1. Effectiveness of the Tripartite Working Group (TWG):**

#### **TWG priorities**

The Tripartite Working Group (TWG) mandate is clear and for the most part remains relevant. However, for a number of reasons, the TWG is not fully meeting its mandate.

While the TWG has established annual priorities, the list is overly ambitious, and as a result, a few of the priorities have not been adequately addressed. In addition, over the past few years, the agenda of TWG meetings has focussed to a large extent on the Department of Justice's accountability requirements, leaving little time and resources for other issues. Service Delivery Agencies feel they have insufficient opportunity to discuss program delivery issues. On the other hand, provinces and territories are of the view that the TWG focus should be on strategic issues.

**Recommendation 1:** It is recommended that the TWG rank its annual priorities in terms of importance and develop a work plan for addressing them.

#### **Management Response:**

**We agree with the conclusion and recommendation. However, the ability to achieve consensus is highly dependent upon collaboration by other members of the TWG.**

**Recommendation 2:** It is recommended that the Department of Justice develop a strategy for obtaining input on the federal accountability requirements from the TWG members without encumbering the TWG agenda.

#### **Management Response:**

**We agree with the conclusion and recommendation.**

**Recommendation 3:** It is recommended that the TWG consider a third chair selected from among the SDA directors to ensure that issues of concern to SDAs are included on the agenda.

**Management Response:**

**We agree that consideration be given to including a third co-chair representing the Service Delivery Agencies. The idea was discussed at the May 1, 2007 TWG meeting and a number of provinces and territories supported it.**

**Operation of the TWG**

There are concerns with the operation of the TWG, notably that there is unequal participation among working group members, that the working group requires an inordinate amount of time to address issues, that the decisions of the working group are not always clear, and that secretariat support is insufficient.

**Recommendation 4:** It is recommended that the TWG contract a facilitator for meetings to assist the TWG in addressing issues more efficiently and in making timely decisions.

**Management Response:**

**We agree that in some cases, facilitation by an outside resource person would help build consensus on complex or long standing TWG issues. In conjunction with the 2006 annual meeting of the TWG (November) a facilitator was used to facilitate a discussion on performance measurement. The TWG provided positive feedback and evaluated the experience as being useful.**

**Recommendation 5:** It is recommended that the Department of Justice provide more secretariat support to the TWG.

**Management Response:**

**We agree that additional secretariat support for the TWG would be beneficial. DOJ's ability to do so is highly dependent on securing additional resources for the ACW program.**

**Provincial co-chair**

The eligibility criteria, selection process and length of term for the provincial co-chair need to be articulated.

**Recommendation 6:** It is recommended that the TWG articulate the eligibility criteria, selection process and length of term for the provincial co-chair.

**Management Response:**

**We agree with the conclusion and recommendation. At the May 1, 2007 annual meeting of the TWG a draft revised mandate was submitted to the TWG for review. It included detailed information on the eligibility, selection process and length of term for the provincial Co-Chair.**

**Steering Committee**

The TWG Steering Committee is not currently an effective mechanism for accomplishing or guiding the work of the TWG. Its role, mandate and decision-making authority are not documented, nor are they clear to the TWG or indeed to the Steering Committee itself.

**Recommendation 7:** It is recommended that the TWG review the role, mandate and decision-making authority of the TWG Steering Committee.

**Management Response:**

**We agree with the conclusion and recommendation. At the May 1, 2007 annual meeting of the TWG a draft revised mandate was submitted to the TWG for review. TWG members agreed that the Steering Committee should be eliminated but that wording that allows the TWG to form sub-committees as required to work on TWG priority areas be added to the new mandate statement. When established, each new sub-committee will be given a clear mandate and a decision making process established by the TWG.**

**4.2. Funding of the Aboriginal Courtwork (ACW) Program**

The 2002-03 increase in federal funding (\$1 million) has helped to alleviate some of the immediate pressures on the Courtwork program but according to provincial/territorial officials and/or SDAs it was not sufficient to meet the costs associated with the evolving role of courtworkers.

**Recommendation 8:** It is recommended that the Department of Justice obtain and analyse information on program costs in order to determine whether enhanced funding is warranted.

**Management Response:**

**We agree with the conclusion and recommendation. Preliminary discussions with provincial/territorial partners have resulted in the TWG submitting a consent item at the June 2007, FPT Deputies meeting seeking and receiving approval to proceed with a renewal strategy for the Aboriginal Courtwork Program.**

**Performance Measurement**

Most provincial and territorial officials are experiencing problems with the definition of client in core performance measure 3. The information is critical to obtaining to understanding whether the program is meeting its objectives.

Although the various resources provided by the Department of Justice to support performance measurement have been useful, the SDAs have not implemented the survey of clients and court officials/judges due to a number of concerns including the protection of clients' privacy, the appropriateness of courtworkers collecting information from their own clients, and the impact on courtworkers workload in the absence of additional funding.

**Recommendation 9:** It is recommended that the Department of Justice work with the provinces, territories and Service Delivery Agencies to clarify the definition of client in core performance measure #3.

**Management Response:**

**We agree with the recommendation. The Department will continue to work with the provinces and territories and Service Delivery Agencies to obtain consensus on a standardized definition of "client". Without additional resources to develop a national database, there has been and will continue to be difficulty in achieving consensus with the provinces and territories on standardized fields and definitions.**

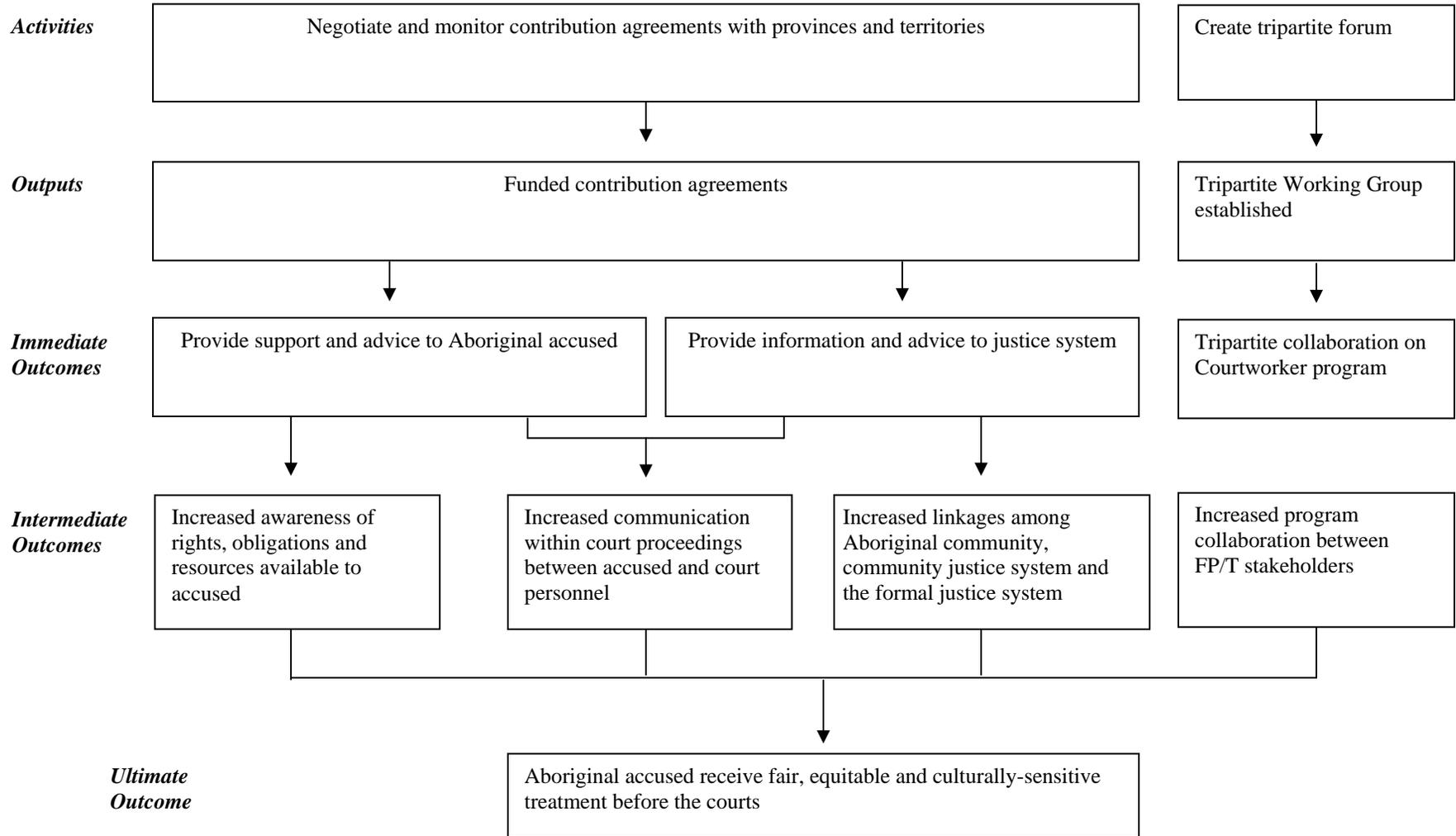
**Recommendation 10:** It is recommended that the Department of Justice work with the provinces and territories to develop a revised strategy for the implementation of the client and court officials/judiciary survey, and determine whether additional resources would be required to support the strategy (i.e., training, development of national database, build capacity to support SDAs to fulfill the federal accountability requirements.)

**Management Response:**

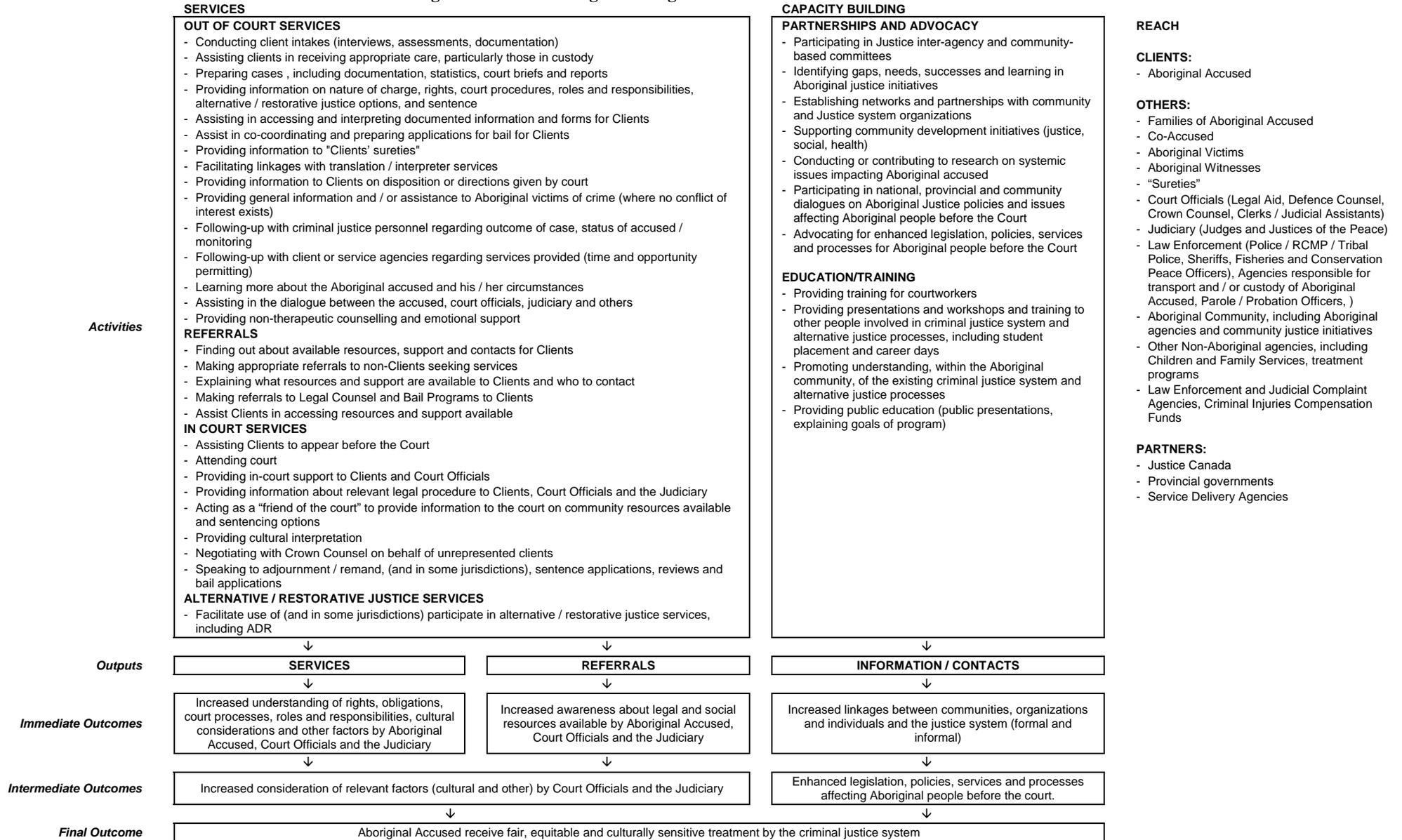
**We agree with the recommendation to revise the survey strategy to take into consideration the challenges faced by the jurisdictions in administering client and court official/judiciary surveys. The client and court official/judiciary information will be collected during 2007-2008 through the summative evaluation of the Aboriginal Courtwork Program.**

**Appendix A:**  
**ACW Program Logic Models**

### Aboriginal Courtwork Program – Logic Model in RMAF



### Aboriginal Courtwork Program – Logic Model in Performance Measurement Guide



**REACH**

**CLIENTS:**

- Aboriginal Accused

**OTHERS:**

- Families of Aboriginal Accused
- Co-Accused
- Aboriginal Victims
- Aboriginal Witnesses
- "Sureties"
- Court Officials (Legal Aid, Defence Counsel, Crown Counsel, Clerks / Judicial Assistants)
- Judiciary (Judges and Justices of the Peace)
- Law Enforcement (Police / RCMP / Tribal Police, Sheriffs, Fisheries and Conservation Peace Officers), Agencies responsible for transport and / or custody of Aboriginal Accused, Parole / Probation Officers, )
- Aboriginal Community, including Aboriginal agencies and community justice initiatives
- Other Non-Aboriginal agencies, including Children and Family Services, treatment programs
- Law Enforcement and Judicial Complaint Agencies, Criminal Injuries Compensation Funds

**PARTNERS:**

- Justice Canada
- Provincial governments
- Service Delivery Agencies

**Appendix B:**  
**Role of the TWG**

### **Role of the TWG**

- Serve as a tripartite forum to address issues concerning the Aboriginal Courtwork Program. These issues may include, but are not limited to, funding, eligibility, program delivery, program evaluation, promotion / communications matters, training, cross-jurisdictional issues, and data collection / national database. For the initial years covered by this Agreement, the priorities to be addressed included the national training curriculum for criminal courtworkers, a national program evaluation, and a national Aboriginal Courtwork database.
- Develop innovative approaches to service delivery and solutions to various problems that affect the Program. In particular, explore ways to share resources and expertise on issues such as training and data collection.
- Undertake research, resources permitting.
- Investigate the need for, and implications of, services which are not currently covered under the cost-sharing Agreement, which would include, but are not limited to:
  - Assistance to non-Aboriginal accused persons in remote areas;
  - Court-directed services (e.g., interpretation and bail supervision);
  - Assistance in family and civil law matters.
- Establish effective working relationships both within the TWG and with other organizations as needed.
- Serve as a resource on Aboriginal Courtwork services and on issues related to Aboriginal people in the justice system.
- Provide advice to Deputy Ministers on the potential impact that new legislative or policy changes can have on the Program and its clients.
- The TWG shall report as the need arises to Federal/Provincial/Territorial Deputy Ministers Responsible for Justice.

**Appendix C:**  
**Evaluation Issues and Questions**

## Evaluation Issues

### **Implementation and Delivery – To what extent has the ACW Program been implemented as intended?**

1. How is the ACW program being delivered in each jurisdiction? What are the differences/commonalities between jurisdictions?
2. Are the federal contribution agreements flexible enough to meet the jurisdictions' objectives and priorities? If not, why not?
3. Do federal resources flow in a timely fashion to the provinces / territories? If not, why? What are the challenges?
4. Are the reporting requirements defined in the federal contribution agreements completed on time? If not, why? What are the challenges?
5. Did the TWG meet its mandate? How effective is the TWG in meeting its mandate? What could its role be in the future? How could it be improved?
6. Did the TWG Steering Committee meet its mandate? How effective is the TWG Steering Committee in meeting its mandate? What could its role be in the future? How could be improved?
7. Are the objectives of the ACW program clear among key parties involved in the program? (TWG, Steering Committee, SDAs, DOJ, provinces / territories, courtworkers)
8. Are the roles and responsibilities clear to all parties involved in the program? (TWG, Steering Committee, SDAs, DOJ, provinces / territories, courtworkers)
9. Has the recent increase in federal funding helped alleviate immediate pressures on Courtwork Program? If so, how? If not, why not?
10. What are the strengths and weaknesses of the way in which ACW program is delivered? What aspects of the ACW program delivery should be improved?

**Data Collection – How effective is the ongoing performance measurement strategy?**

1. To what extent have the performance reporting requirements outlined in the program's RMAF been implemented?
2. Are the right tools and resources available to meet the program's performance reporting requirements? If not, what additional tools or resources are required?
3. What factors have facilitated or impeded the data collection and reporting of the performance measurement guide? What are the solutions to these barriers? What improvements can be made?

**Support / Advice / Linkages**

1. To what extent have Aboriginal courtworkers reached their client groups?
2. Was the Aboriginal courtworker successful in facilitating links between established and evolving community justice programs and the formal justice system on behalf of the accused?
3. To what extent have courtworkers developed linkages between the formal and community justice systems and the Aboriginal community?
4. To what extent have the courtworkers been provided with the training they require to do their job? What could be improved?
5. Were accused aware of their rights, obligations as a result of their interaction with the courtworker?
6. How satisfied are Aboriginal Clients with the quality of services provided?
7. How could the ACW service be improved?
8. Were those within the formal justice system (court officials, duty counsel, legal aid lawyers, judges, etc.) advised of relevant issues relating to the circumstances of the accused?
9. How satisfied are Court Officials and the Judiciary with the quality of services provided?

**Appendix D:**  
**Core Performance Measures**

## Core Performance Measures

The Performance Measurement and Reporting Strategy Guide, which was developed based on consultations with P/T officials and SDAs in each jurisdiction, identified the following 12 core performance measures for the ACW program:

1. Number of ACW staff by position (courtworkers, manager / coordinator, director / ED, other support) by employment status (F/T or P/T) in the SDA as of March 31 of the reporting period
2. Total ACW annual program budget expenditures for the SDA as of March 31 of the reporting period
3. Total number of clients, with charges around one incident who receive ACW services during the reporting period, including:
  - charge information
  - gender
  - age
  - previous conviction
  - ACW services provided
4. Names and purpose of partnerships, external committees, councils, task forces, commissions, and formal networks on which ACW staff sat during the reporting period
5. Description of common training provided to courtworkers during the reporting period, including the average annual training costs per staff for each SDA during the reporting period
6. Level of satisfaction by courtworkers with common training they received during the reporting period, including.
  - change in the level of (capacity) knowledge, skills and ability of participants before and after the training
  - extent training will allow the courtworkers to do their job better
  - overall level of satisfaction with the training

7. Extent Aboriginal clients view the courtworkers as providing information that helped them to better understand:
  - their rights and obligations
  - court processes
  - roles and responsibilities
  - legal and social resources available in the community
  - cultural considerations and other relevant factors
8. Level of satisfaction by Aboriginal clients with the quality of service provided in that the courtworker:
  - was able to communicate effectively with the client
  - was respectful and courteous to the Client
  - treated the Client fairly
  - could be relied upon to help the Client
9. Ways in which ACW services could be improved that are identified by Aboriginal clients
10. Extent court officials and the judiciary view the courtworkers as providing information that allowed court officials and the judiciary to better:
  - understand the circumstances of the accused
  - understand the accuracy of relevant information
  - understand legal and social resources available in the community
  - understand the extent to which alternative / restorative justice initiatives (where applicable) might assist
  - understand the cultural context
11. Level of satisfaction by court officials and the judiciary with the quality of service provided by the courtworker in that the courtworker was:
  - respectful and courteous to court officials and the judiciary

- available when needed by the court
- helped move the court process along
- provided a valuable service to the court

12. Ways in which ACW services could be improved that are identified by court officials and the judiciary for the Aboriginal Accused