



Department of Justice
Canada

Ministère de la Justice
Canada

**ABORIGINAL COURTWORK PROGRAM
SUMMATIVE EVALUATION
Final Report**

March 2008

**Evaluation Division
Office of Strategic Planning and Performance Management**

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ACRONYMS USED IN THE TEXT AND CHARTS

Acronyms	Description
ACWs	Aboriginal Courtworkers
ACW Program	Aboriginal Courtwork Program
AJIs	Aboriginal Justice Initiatives
DoJ	Department of Justice
JO	Justice Officials
FPT Partners	Federal Provincial and Territorial Partners
PTP	Provincial and Territorial Partners
RMAF	Results-based Management and Accountability Framework
SDAs	Service Delivery Agencies
TWG	Tripartite Working Group

Provinces and Territories

AB	Alberta
BC	British Columbia
SK	Saskatchewan
MB	Manitoba
ON	Ontario
NS	Nova Scotia
NL	Newfoundland and Labrador
YT	Yukon Territory
NT	Northwest Territory
NU	Nunavut

EXECUTIVE SUMMARY

1. The Aboriginal Courtwork Program

The Aboriginal Courtwork (ACW) Program was developed to address the unique challenges faced by Aboriginal people dealing with the justice system. The objectives of the ACW Program are:

- To assist Aboriginal people to understand their right to speak on their own behalf or to request legal counsel, and to better understand the nature of the charges against them and the philosophy and functioning of the criminal justice system;
- To assist in enhancing the awareness and appreciation of the values, customs, languages and socio-economic conditions of Aboriginal people on the part of those involved in the administration of the criminal justice system; and
- To respond to problems and special needs caused by communication barriers which exist between Aboriginal people and those who are involved in the administration of the criminal justice system.

Federal funding for the ACW Program is provided through contribution agreements with participating provinces and territories. In turn, most jurisdictions have entered into contractual arrangements with Aboriginal Service Delivery Agencies (SDAs) which provide services on their behalf. Nearly 200 Aboriginal courtworkers are employed by 20 SDAs across Canada to deliver services. The ACW Program is guided by a Tripartite Working Group (TWG) which serves as a forum for addressing a range of program policy and operational issues.

2. Purpose of the Evaluation

The purpose of this project is to conduct a summative evaluation of the ACW Program. A formative evaluation, completed in 2007, focused on management, process and data collection as

well as reporting issues. This summative evaluation addresses the ongoing relevance, success and cost effectiveness of the ACW Program.

3. Methodology

The evaluation was undertaken in two phases. The purpose of the first phase was to complete a detailed work plan which was then implemented in the second phase of the project. Key components of the research included:

- A detailed document review and review of program reports.
- Field visits to eight communities located in seven provinces and territories to undertake job shadowing of Aboriginal courtworkers and to meet with various stakeholders.
- Interviews and an online survey of 99 Aboriginal courtworkers.
- Interviews with 93 judicial and court officials including 21 judges, 11 judicial assistants, 22 crown lawyers, 24 defense/Legal Aid lawyers, and 15 others.
- Interviews with 28 representatives from the delivery partner organizations including Justice Canada, provincial and territorial government partners, and SDAs.
- Interviews with 34 stakeholder representatives, including representatives from 18 Aboriginal justice initiatives (AJIs) and 16 other community stakeholders.
- Review of the results of a survey of 901 adult Aboriginal accused.

4. Summary of Key Findings and Conclusions

The following summarizes the major conclusions of this evaluation.

There is a strong and continuing need for the ACW Program.

Key factors that contribute to the need for the Program include:

- Over-representation of Aboriginal people in the criminal justice system.
- A history of inequitable treatment of Aboriginal people by the justice system.

- A high incidence of issues that can constrain the ability of Aboriginal persons to gain access to justice such as language barriers, lower education levels, substance abuse issues, health issues, including mental health issues, and high rates of poverty.
- Limited access to legal and other services, particularly in rural and northern communities.
- Increasing demand for services.

The Program is well positioned to bridge the gap that has traditionally existed between Aboriginal people and the justice system. The ACW Program contributes to fair, equitable and culturally sensitive treatment of the Aboriginal accused before the courts, by enabling them to understand the justice system including their rights, obligations, charges and sentencing; to have access to available resources and programs; and to be able to communicate with justice officials who understand socio-economic issues, cultural traditions, and court decisions that affect the circumstances of the accused.

There are significant differences in how the ACW Program is delivered across jurisdictions and even across courtworkers within jurisdictions.

One of the strengths of the ACW Program is its ability to be tailored to meet regional priorities, the needs and characteristics of the communities in which it operates, the availability of other programming, and the capabilities of the individual courtworkers.

The ACW Program has been successful in achieving its intended outcomes.

The results of the evaluation indicate that courtworkers:

- Play an important role in enhancing communication within court proceedings by facilitating client access to legal representation, assisting accused in speaking with justice officials, providing justice officials with important information regarding the accused, enabling the Aboriginal accused to feel more at ease in a highly stressful situation, and confirming that the accused understands the process, charges, potential outcomes and instructions.
- Provide support and information to Aboriginal accused which enables them to make better informed decisions regarding their case and about pursuing alternatives. The services result in more informed pleas (e.g., fewer clients pleading guilty), reductions in the failures to appear and breaches in the conditions for release, and more referrals to a wide range of support programs, including alternative measures.

- Enable justice officials to become more aware of cultural traditions and, to a lesser extent, take relevant court decisions into account and consider alternative measures. Justice officials view courtworkers favourably, noting that they are respectful and courteous, help to move the process along, and provide valuable services to the court. Justice officials are generally satisfied with the information provided by the Aboriginal courtworkers and believe that information to be important.
- Strengthen the relationship between the Aboriginal community and the formal justice system. In addition to working with clients, most courtworkers interact directly with local communities by serving on various committees and promoting the Program through presentations, brochures and promotional materials, meetings, forums, workshops, and other media. Through these efforts, progress has been made in improving understanding of the justice system and raising the profile of the ACW Program within the Aboriginal community. In addition, the presence of the courtworker in the formal justice system helps to improve its credibility, build greater trust in the system, and reduce the sense of alienation.
- Complement community-justice initiatives by identifying suitable clients and providing referrals, increasing awareness of these programs among justice officials and potential clients, working with program representatives to share information and best practices, sitting on Aboriginal justice committees or committees established to oversee specific initiatives and, in some cases, taking a lead role in the development of community-based initiatives.

The Program is considered somewhat less successful with respect to attracting, training and particularly retaining Aboriginal courtworkers, fully meeting the demand for services given resource constraints, and being able to provide referrals to alternative measures (the availability of community justice programs and other resources varies widely across communities). Overall, while significant progress has been made, more work needs to be done to ensure that Aboriginal accused receive fair, equitable and culturally sensitive treatment. Furthermore, the expectation is that much of the significant progress that has been achieved to date would dissipate should the services of courtworkers no longer be available.

The cost of the ACW Program, expressed on a per client or per courtworker basis, is very low.

The Program served nearly 70,000 adults and youth clients with charges around one incident in 2005-06. The funding provided by the federal government representatives is equal to an average of about \$79 per client served or about \$25,600 per courtworker. The effectiveness of the Program is largely determined by the capabilities and experience of the courtworkers, which is

itself determined in part by the rate of attrition and access to training. Attrition has a negative impact on the success of the Program. The effectiveness of a courtworker is largely a function of their visibility, credibility, connections, skills and experience – all of which take time to develop. When a courtworker leaves, services are disrupted and it often takes an extended length of time to fill positions (particularly in smaller communities and in regions where the economy is strong).

Other factors that impact on the relative cost effectiveness of the Program include the geographic territory that is served (and related travel costs and times), the services provided, competitive remuneration rates for the region, access to supporting infrastructure, level of awareness of the Program among justice officials and within communities, and the extent to which the justice system itself is overburdened in the region.

Opportunities to further expand the impact of the ACW Program are constrained by resource issues.

Federal government funding for the Program has remained fixed at \$5.5 million per year since 2001. Resource constraints affect the ability of the Program to fully meet the demand for services, address gaps where communities may be underserved or not served at all, increase courtworker compensation to reduce the rate of attrition, and ease heavy workloads. Budget constraints also limit the Program's ability to: broaden services to provide assistance in areas such as family law; provide greater assistance in enabling Aboriginal accused to appear; promote the Program; further strengthen relationships with justice officials and other programs; and increase access to training and other needed infrastructure such as fax machines and computers.

1. INTRODUCTION

1.1. Purpose of the Evaluation

The Aboriginal Courtwork (ACW) Program was developed to address the unique challenges faced by Aboriginal people dealing with the justice system. The main purpose of the Program is to ensure that Aboriginal people charged with criminal offences receive fair, equitable and culturally sensitive treatment by the criminal justice system. To achieve this objective, Aboriginal courtworkers assist Aboriginal people to understand their rights, responsibilities and obligations and help them to better understand the nature of the charges against them and the philosophy and functioning of the criminal justice system. Furthermore, they work with justice officials on enhancing the awareness and appreciation of the values, customs, languages and socio-economic conditions of Aboriginal people. They also respond to problems and special needs caused by communication barriers which exist between Aboriginal people and those who are involved in the administration of the criminal justice system. And lastly, they work closely with programs, agencies and leaders in the community.

The ACW Program began in the early 1960s. Several studies had revealed particular challenges faced by Aboriginal persons charged with criminal offences such as a sense of alienation from the administration of justice, a feeling of futility, and a limited knowledge of their rights and obligations as well as court procedures and the resources available to them. In addition, justice officials often failed to understand Aboriginal people and issues. Federal financial support for the Program began in 1969. 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.

A formative evaluation, completed in 2007, focused on management, process and data collection as well as reporting issues. This summative evaluation addresses the ongoing relevance, success and cost effectiveness of the ACW Program. The specific evaluation issues that were defined for the summative evaluation are listed below.

Table 1: Listing of Evaluation Issues and Questions

Relevance	Does the ACW Program continue to be consistent with departmental and government-wide priorities, and does it realistically address an actual need?
Success	To what extent has the ACW Program been successful in achieving its immediate and intermediate outcomes?
	To what extent has the ACW Program been successful in achieving the final outcome?
	To what extent does the attrition rate for Aboriginal courtworkers impact on the success of the Program?
Cost effectiveness and Alternatives	Are the most appropriate and efficient means being used to achieve the ACW Program objectives, relative to alternative design and delivery approaches?

1.2. Method of Evaluation

This evaluation was undertaken in two phases. The purpose of the first phase was to complete a detailed work plan which was then implemented in the second phase of the evaluation. In the second phase of the evaluation, an extensive field research program was undertaken which included:

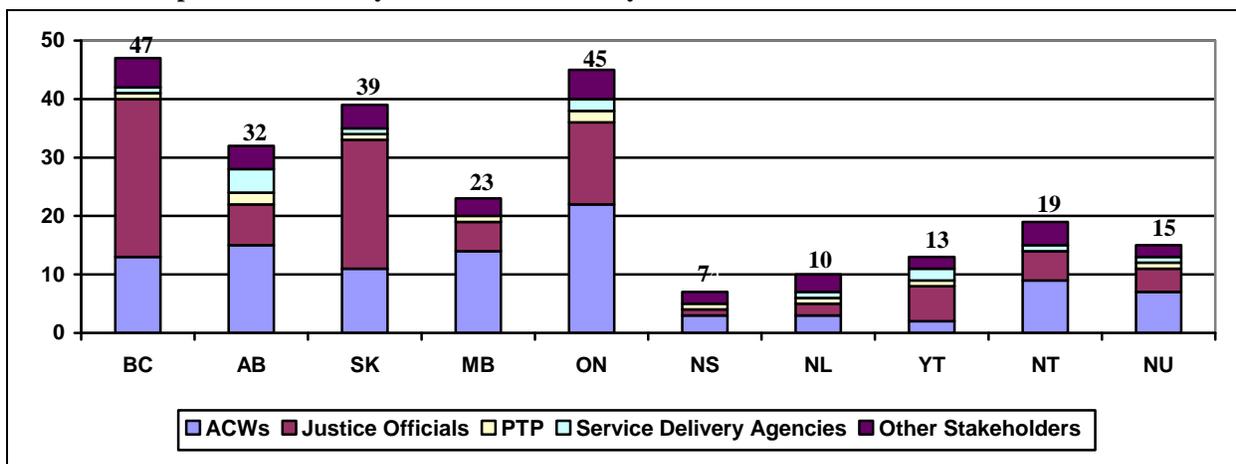
- **A detailed document review of program reports.** This involved a review of the results of a recent literature review conducted for the Program¹, other documents that relate to the ongoing need for the ACW Program, budget and expenditure information, and annual provincial plans and performance reports where available. The information was summarized to prepare a profile of the ACW Program.
- **Field visits to eight communities located in seven provinces and territories** including Eskasoni Reserve, Nova Scotia; Goose Bay, Labrador; Toronto and London, Ontario; Whitehorse, Yukon; Kugluktuk, Nunavut; Lac La Biche, Alberta; and Duncan, British Columbia. The communities selected for field visits included a cross section of rural, urban, northern and Atlantic communities. The primary objective of the visits was to undertake job shadowing of Aboriginal courtworkers to observe and describe the services delivered as well as learn of specific examples where Aboriginal accused are able to make better informed decisions regarding their cases before the courts. In addition, the field trips provided opportunities to meet with various stakeholders.

¹ Scott Clark Consulting Inc., Literature Review for the Aboriginal Courtwork Program, 2007. Department of Justice Canada.

- **A survey of 99 Aboriginal courtworkers.** A project Website was established through which 30 Aboriginal courtworkers completed and submitted a questionnaire online. In addition, personal and telephone interviews were conducted with a sample of 69 courtworkers.
- **Personal and telephone interviews with 93 judicial and court officials.** This sample included 21 judges, 11 judicial assistants, 22 crown lawyers, 24 defense/Legal Aid lawyers, and 15 others including court clerks and parole officers.
- **Interviews with 28 representatives from the delivery partner organizations.** These key informants included 4 representatives of Justice Canada, 11 provincial and territorial government partners and 13 representatives of SDAs.
- **Personal and telephone interviews with 34 stakeholder representatives.** These stakeholders included representatives from 18 AJIs and 16 other community stakeholders. The list of stakeholders was developed based on suggestions from Justice Canada, provincial/territorial partners, and other stakeholders.
- **A review of the results of the adult Aboriginal accused survey which was conducted and analyzed separately.** A total of 901 adult Aboriginal accused responded to the survey. The results of the client survey were integrated into the other evaluation findings. Of the 901 clients, 57% are from an urban area and 43% are from a remote area; 74% of the clients are male, 25% are female, 1% were not identified; 68% of the clients had previous convictions and 24% had no previous convictions while the status of 8% of the clients is unknown; 39% of the clients were receiving services from the courtworkers for the first time and 52% of the clients had received services more than once while it is unknown whether the remaining 9% had previously received services.

In total, interviews were conducted with over 250 representatives. A summary of the number of stakeholders interviewed by province or territory (excluding federal representatives) is provided below:

Number of People Interviewed by Province or Territory



Some of the factors that contributed to differences in the number of people interviewed per region included the size of the Program (e.g., the number of courtworkers), the number of names available, provincial/territorial partners and other stakeholders, and the willingness of local representatives to participate. Quebec did not participate in the summative evaluation but did participate in the Aboriginal accused survey.

1.3. Structure of the Report

This document is divided into four chapters. Chapter 2 provides a brief overview of the ACW Program. Chapter 3 provides the findings of this evaluation regarding relevance of the Program, the services provided by courtworkers, resulting impacts and effects, factors affecting the success of the Program, and opportunities for improvement. Chapter 4 provides the conclusions arising from the evaluation of the ACW Program.

2. OVERVIEW OF THE ABORIGINAL COURTWORK PROGRAM

This chapter provides a brief overview of the ACW Program.

Table 2: Overview of the Aboriginal Courtwork (ACW) Program

Characteristics	Description
History	<p>Due to increasing numbers of Aboriginal people appearing before criminal courts, Native Friendship Centres in different parts of Canada began to become involved in providing assistance to the accused, starting in the early 1960's. In the late 1960's, the Federal Government recognized the value of this assistance and began to provide financial support to the Native Friendship Centres in 1969. In 1972, the Department of Justice undertook a number of pilot projects supporting guidance and information to Aboriginal people involved in the criminal justice system. In 1978, the pilot projects were expanded and became the Native Courtwork Program (now known as the Aboriginal Courtwork Program). In 1987, the mandate of the Program was revised to include services to Aboriginal youth, following the adoption of the <i>Young Offenders Act</i>.</p>
Purpose and Objectives	<p>The purpose of the ACW Program is to help Aboriginal people who are in conflict with the criminal justice system to obtain fair, just, equitable, and culturally sensitive treatment. The objectives of the Program are to:</p> <ul style="list-style-type: none"> • Assist Aboriginal people to understand their right to speak on their own behalf or to request legal counsel, and to better understand the nature of the charges against them and the philosophy and functioning of the criminal justice system; • Assist in enhancing the awareness and appreciation of the values, customs, languages and socio-economic conditions of Aboriginal people on the part of those involved in the administration of the criminal justice system; and • Respond to problems and special needs caused by communication barriers which exist between Aboriginal people and those who are involved in the administration of the criminal justice system.
Delivery of the Program	<ul style="list-style-type: none"> • <i>The Department of Justice</i> administers the ACW Program from a national perspective by entering into contribution agreements with the participating provinces and territories. • <i>The Provincial/Territorial Ministries</i> are responsible for establishing the overall framework for the ACW Program within their jurisdiction. This includes ensuring that sufficient financial assistance is available; entering into contractual arrangements with SDAs to provide ACW services on their behalf (where appropriate); overseeing delivery of services; and participating in the TWG as required. • Over 200 <i>Aboriginal courtworkers</i> employed by 20 different SDAs across Canada

Characteristics	Description
	<p>deliver services.</p> <ul style="list-style-type: none"> On a policy level, the ACW is guided by a <i>Tripartite Working Group</i> consisting of two federal representatives, one provincial/territorial official and one SDA Director from each jurisdiction. The TWG has a mandate to serve as a forum for addressing a range of policy and program issues related to the ACW Program.
Delivery Models	<p>There are six different delivery models operating across the country, varying in terms of the number of SDAs operating in the region and the type of employer.</p> <ul style="list-style-type: none"> Government Only (Manitoba): Under this model, courtworkers are government employees; Legal Services Boards (LSB) (NT, Nunavut): The LSB oversees the operations of the ACW Program as part of its mandate with respect to Legal Aid. The courtworkers are government employees and their program is managed by Legal Aid and the LSB; 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; Multiple SDAs (Saskatchewan): Courtworkers are employees of 15 SDAs, whose work is coordinated by an advisory board, 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 courtworkers. In Toronto, one SDA delivers the services.
Services	<p>As "Friends of the Court", the Aboriginal courtworkers provide a broad range of services to support the Program objectives including providing in-court information, non-legal advice, and community referrals to Aboriginal persons in conflict with the law.</p>
Target Groups	<p>The ACW works with:</p> <ul style="list-style-type: none"> <i>Aboriginal accused</i> and, in the territories where courtworkers are active in both civil and criminal matters, Aboriginal people involved in civil matters. The Program is offered to all Aboriginal people regardless of age, status or residency throughout Canada; <i>Justice officials</i> including court officials (Legal Aid, defense counsel, Crown counsel, clerks/judicial assistants), judiciary (judges and Justices of the Peace), law enforcement, parole/probation officers, and agencies responsible for transport and/or custody of Aboriginal accused); <i>Other stakeholders</i> including the Aboriginal community, Aboriginal agencies and community justice initiatives, and referral agencies as well as families of Aboriginal accused, co-accused, Aboriginal victims, and Aboriginal witnesses.

Characteristics	Description
	<p>The Program served nearly 70,000 adults and youth clients with charges around one incident in the last year for which data has been reported by the participating jurisdictions.</p>
Budget	<p>The Program is cost-shared by the federal government with provincial/territorial governments through contribution agreements. From 1993 to 2002, 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 which brought the total federal funding provided to the Program to \$5.5 million per annum, beginning with the 2002-03 fiscal year.</p>

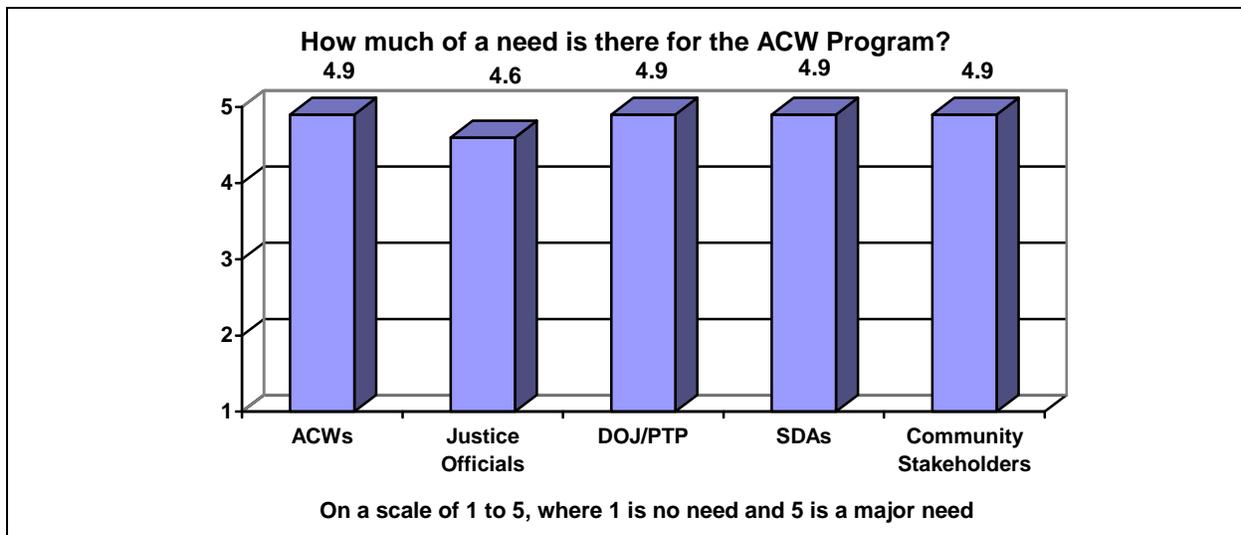
3. FINDINGS

This chapter presents the findings of the evaluation regarding the relevance of the ACW Program, the services provided by Aboriginal courtworkers, the achievement of Program objectives, the impact on Aboriginal accused and the justice system, communities and other justice initiatives, the level of tripartite collaboration, factors affecting program success, and the opportunities for improvement.

3.1. Relevance of the ACW Program

3.1.1. Need for the Program

All stakeholder groups recognize a major need for the ACW Program. When key stakeholders were asked to rate the need for the Program on a scale of 1 to 5, where 1 is no need at all and 5 is a major need, the average rating ranged from 4.6 among justice officials to 4.9 among representatives of community justice initiatives and other community stakeholders, courtworkers, representatives from SDAs, and provincial/territorial partners.



Key factors that contribute to the need for the Program include:

- *Over-representation of Aboriginal people in the criminal justice system.* The estimated incarceration rate for Aboriginal people in Canada is 1,024 per 100,000 adults as compared to 117 per 100,000 adults for non-Aboriginal persons². A one-day snapshot of the justice system carried out in 2004 established that the incarceration rate of Aboriginal youth was 64.5 per 10,000 population while the incarceration rate for non-Aboriginal youth was 8.2 per 10,000 population.³
- *A history of inequitable treatment of Aboriginal people by the justice system.* A recent study for the Department of Justice noted that Aboriginal peoples experience systemic discrimination every time they come into contact with the justice system. Systemic discrimination is the norm and affects offenders and victims indiscriminately.⁴ In the Gladue decision, the Supreme Court noted, “Not surprisingly, the excessive imprisonment of Aboriginal people is only the tip of the iceberg insofar as the estrangement of the Aboriginal peoples from the Canadian criminal justice system is concerned. As this Court recently noted (...), there is widespread bias against Aboriginal people within Canada, and “there is evidence that this widespread racism has translated into systemic discrimination in the criminal justice system.”⁵
- *The high incidence of socio-economic and cultural issues that can constrain the ability of Aboriginal persons to gain access to justice* such as language barriers, low education levels, substance abuse issues, health issues including mental health issues, and high rates of poverty. For example, characteristics of those in custody typically include: low educational attainment, being unemployed, having low income, being a member of a lone-parent family, living in crowded conditions, and having high residential mobility, factors which are more common among the Aboriginal population.⁶
- *More limited access to legal and other services, particularly in rural and northern communities.* A recent paper, “Aboriginal Courtwork Program Literature Review” noted that:

² Office of the Correctional Investigator (OCI), Annual Report of the Office of the Correctional Investigator 2005-2006, Minister of Public Works and Government Services Canada, 2006, p. 11.

³ Jeff Latimer and Laura Casey Foss, A One-Day Snapshot of Aboriginal Youth in Custody across Canada: Phase II, Department of Justice Canada, 2004, p. iii.

⁴ Larry Chartrand and Celeste McKay, A Review of Research on Criminal Victimization and First Nations, Métis and Inuit Peoples, 1990 to 2001, Department of Justice Canada, 2006, p. 43.

⁵ R. v. Gladue [1999]. 1 S.R.C. 688, par. 61.

⁶ Canadian Centre for Justice Statistics, Victimization and Offending among the Aboriginal Population in Canada, Statistics Canada Catalogue no. 85-002-XE, Vol. 26, no. 3.

(1) geographic isolation often prevents a full range of services, including Legal Aid lawyers and paralegals, from residing in the communities; (2) Aboriginal individuals are unlikely to be able to afford the alternative of legal representation from the private bar (even if it were available); and (3) people living in Aboriginal communities, especially isolated ones, are less likely to be aware of their legal rights and potentially available services than people living in the cities.⁷

- *Increasing demand for services.* Delivery partners and courtworkers reported increasing demand for services which is resulting in heavier workloads. A secondary indicator of the continuing demand is that, while the number of admissions to sentenced custody decreased for Aboriginal and non-Aboriginal adults between 1994/95 and 2003/04, the rate of decline was much less substantial for Aboriginal people among sentenced custody admissions over the same time period.⁸

The Program is specifically designed to bridge the gap that has traditionally existed between Aboriginal people and the justice system. Enabling Aboriginal accused to receive fair, equitable and culturally sensitive treatment before the courts requires that they understand the justice system including their rights, obligations, charges and sentencing, have access to available resources and programs, and are able to communicate with justice officials who are aware of cultural issues, traditions, circumstances and relevant court decisions.

3.1.2. Consistency with the Objectives and Priorities of the Federal Government

The ACW Program continues to be consistent with the objectives and priorities of the Federal Government. As highlighted in the Department of Justice's Report on Plans and Priorities 2006-07, *when Aboriginal people come into contact with the justice system as victims or accused, their needs – related to culture, economic positions and social circumstances – must be taken into account to make the system fairer, relevant and more effective for them.* The ACW Program directly contributes to the departmental priority of increasing access to justice and to broader government priorities outlined in the Throne Speech, including the commitment to improve the lives of Canada's Aboriginal people, to tackle crime and strengthen the security of Canadians, and to pursue a Safer Communities strategy.

⁷ Scott Clark Consulting, Aboriginal Courtwork Program Literature Review, Department of Justice Canada, 2007, p. 4

⁸ Aboriginal Courtwork Program 2005/06 Client Statistics

3.2. Services provided by courtworkers

3.2.1. Services provided to Aboriginal accused, justice officials and the community

The primary focus of Aboriginal courtworkers is the provision of services to assist Aboriginal accused and justice officials. However, as outlined below, courtworkers also provide services to the broader community.

Table 3: Summary of Services Provided by Courtworkers

Groups Served	Key Services Include
Aboriginal Accused	<ul style="list-style-type: none"> • Identifying clients (primarily through a review of the court docket) and making initial contact; • Explaining the reasons for their arrest and their legal rights, obligations, roles and responsibilities regarding the charges against them as well as the possible outcomes and consequences; • Providing referrals or assistance in accessing legal representation including, where needed, assistance in filling out Legal Aid forms; • Providing one-on-one emotional support and comfort where necessary (a friendly face) including non-therapeutic counseling and assistance in contacting family members and others; • Explaining the court process, proceedings, legal jargon, and bail process as well as the meaning of specific measures such as bail, detention, conditional release or probation (what it means and what is expected of them); • Assisting in coordinating and preparing applications for bail; • Informing about the options available to them with respect to alternative/restorative justice options and other programs as well as facilitating referrals to appropriate alternative measures in the Aboriginal community, as well as medical, social, education, employment and other resources that may assist in addressing the underlying problems which contributed to the charges; and • Attending court with or on behalf of a client and taking steps to ensure that he will appear (e.g., providing reminders, arranging for transportation or bringing them to court).
Justice Officials	<ul style="list-style-type: none"> • Facilitating the court process by assisting the accused to obtain legal representation, helping the defense counsel and accused prepare, contacting clients which makes it more likely that the accused and witnesses will appear, providing in-court support to clients and court officials, and appearing with or on behalf of clients who cannot come to court that day; • Facilitating dialogue between the Aboriginal accused and justice officials through participating in meetings, advocating on their behalf, and providing basic interpretation services; • Providing background information on the circumstances of the accused which are pertinent to the case including, when requested, helping to prepare pre-sentence reports to ensure that the background of the Aboriginal accused is properly presented; • Providing information on community resources available and sentencing options after researching available programs and determining client eligibility;

Groups Served	Key Services Include
	<ul style="list-style-type: none"> • Where necessary, obtaining the services of Aboriginal language interpreters and interpreters of Aboriginal culture when it has a bearing on the case; and • Making presentations, developing and disseminating cultural materials, participating in workshops and events and otherwise communicating to raise awareness of court officials of the complex issues relating to many Aboriginal accused.
Community	<ul style="list-style-type: none"> • Interacting with community-based justice initiatives and other programs by providing referrals, networking and sharing resources; • Encouraging the development of alternative justice models, programs and resources including community development, justice, education, social and health initiatives; • Participating in justice inter-agency and community-based committees; • Contributing to research on systemic issues impacting Aboriginal accused; • Participating in national, provincial, and community dialogues on Aboriginal policies and services; and • Promoting awareness of the Program and the services of courtworkers through presentations, brochures and promotional material, meetings, forums, workshops and other media.

3.2.2. Differences in services delivered across regions

In our field visits, numerous differences were noted in how the ACW Program is delivered across jurisdictions and even within jurisdictions. One of the strengths of the ACW Program is its ability to be tailored to meet regional priorities, the needs of the communities in which it operates, and the capabilities of the individual courtworkers. Examples of some of the differences that were noted across the jurisdictions and communities that were visited include:

- Delivery of services related to family and civil law;
- The level of interaction that the courtworker has with defense counsel, Crown counsel, and judges;
- The process through which clients are commonly identified;
- The extent to which individual courtworkers focus on adults versus youth;
- The involvement of courtworkers in preparing Gladue reports and pre-sentencing reports;
- The amount of time that courtworkers spend with individual clients as well as the opportunities available to follow up with them later;
- Whether the courtworkers visit clients in remand or in their homes;
- The availability of appropriate alternative measures and other programming for clients;

- The ability of courtworkers to provide (and the importance of their ability to provide) services in other languages;
- The role of courtworkers in providing or arranging for transportation;
- The level of interaction with victims or family members;
- The process through which courtworkers provide referrals for legal representation;
- The means used to create awareness of the Program and the services of courtworkers; and
- The level of interaction that is possible among courtworkers on a regular basis.

3.2.3. Factors contributing to regional differences

Key factors that contribute to differences in the nature of the services provided include regional differences such as geography, the types of courts served, and the availability of local programs. Other factors that contribute to differences include the availability of resources, needs of the clients, and skills and capabilities of the courtworkers. More specifically, some of the key factors include:

- Whether the Program is delivered in a rural or urban community;
- Geographic issues including ease of access to the community and access to transportation;
- The level of resources available including the number of courtworkers relative to the workload and travel budgets;
- The skills, abilities, visibility and experience of courtworkers and their familiarity with or connection to the community;
- When the docket is available;
- The availability of other programs, services, and institutions in the community and the relationship between those services and the ACW Program;
- The needs and characteristics of the clients served;
- The types of courts served (e.g., circuit court);
- Access to supporting infrastructure including office space at the courthouse; and
- The expectations, attitudes and perceptions of the justice officials.

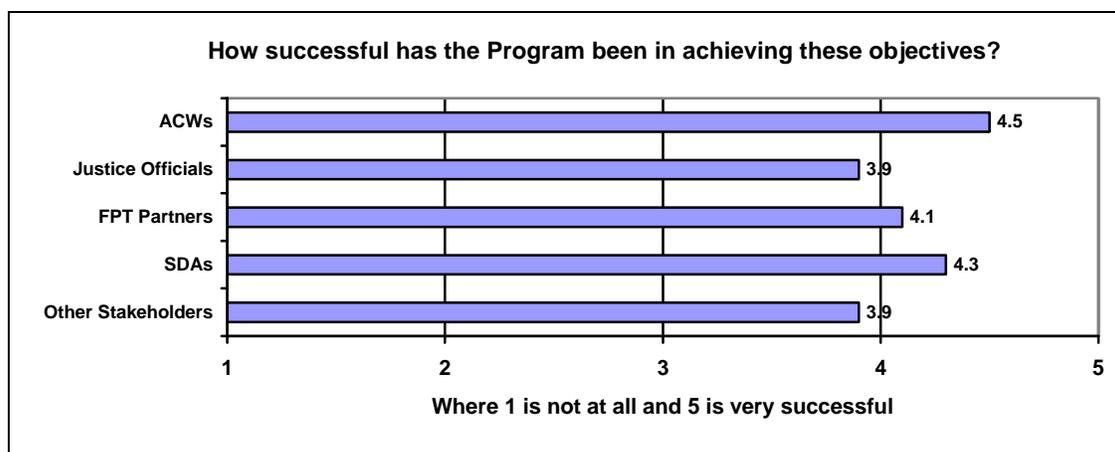
3.3. Achievement of Program objectives

3.3.1. Perceived objectives of the Program

According to stakeholders, the primary objectives of the ACW Program are to assist Aboriginal people to understand the justice process and obtain fair and equitable treatment, to improve the justice system’s awareness and appreciation of Aboriginal culture, customs, language, socio-economic conditions and spirituality, and to help link Aboriginal people (particularly Aboriginal accused) with local resources and services. In addition to these objectives, justice officials perceived the objectives of the Program and, more specifically that of the courtworkers, as being to appear for clients in court when necessary, to serve as an advocate for the Aboriginal accused, to provide essential information about the circumstances of the accused, and to facilitate and speed up the court process.

3.3.2. Success in achieving objectives

The ACW Program is broadly viewed as being successful in achieving the perceived objectives. When asked to rate how successful the ACW Program has been in achieving the perceived objectives on a scale of 1 to 5, where 1 is not at all successful and 5 is very successful, the average rating ranged from 3.9 among justice officials and other stakeholders to 4.5 among Aboriginal courtworkers.



The ACW Program is very successful in:

- Ensuring that Aboriginal accused are represented in court (e.g., by providing referrals, ensuring Legal Aid applications are filled out, assisting them personally in court, and appearing on behalf of clients who cannot come to court that day). In some areas, the courtworkers have the resources (and appropriate documentation) to handle the entire Legal Aid application, which simplifies and shortens the procedure.
- Ensuring Aboriginal accused understand the nature of the charges against them and the court procedures. The court process can be quite stressful and confusing for clients and many times the courtworker will calm down the accused and explain the court procedures and protocols (e.g., removing one's hat in court, addressing the judge only when asked, and knowing when their case will be heard). The accused may face many barriers in understanding, particularly where there are language and literacy barriers.
- Enabling Aboriginal accused to feel more at ease in a highly stressful situation. Key to the success of courtworkers is their ability to provide one-on-one service in a non-threatening manner. One area where courtworker support is often most valuable is in visiting clients in cells. While being held in remand, clients commonly experience frustration over the speed at which they are dealt with, fear, confusion over the charges against them, and a desire to know the possible consequences of the charges: they are often greatly comforted by a visit from a courtworker. These visits are times in which the courtworker may ease stress, let the client know that family members know where they are (in some cases, the courtworker will contact the client's family for them), explain the charges, and listen to any concerns about their treatment by officers.
- Connecting the accused to appropriate services in the community including but not limited to legal services, treatment facilities, educational opportunities, employment resources as well as providing suggestions and information with regards to diversion programs and community resources. Of the clients who participated in the recent survey, 62% were referred to Legal Aid, 19% were referred to community/restorative justice, 8% were referred to drug treatment court, 8% were referred to Gladue court/reports, and 25% were referred to other programs such as mental health, housing, Elders, defensive driving, Aboriginal resource centers, medical treatment, anger management, shelters, and daycare services.
- Both educating the Aboriginal community about the criminal justice system and justice officials about the Aboriginal community.

- Helping to establish effective communication between Aboriginal accused and justice officials. Courtworkers often mediate this relationship, particularly during times of frustration and misunderstanding, by keeping the lines of communication open. In fact, courtworkers' unique position allows them to facilitate understanding within a context of trust. While they may provide the accused with the same information as justice officials, it is this context of trust which enhances understanding.
- Instilling a more trusting relationship between Aboriginal people and the criminal justice system.

The Program is considered less successful with respect to:

- Attracting, training and particularly retaining Aboriginal courtworkers. The critical role of the courtworker in the process means that attrition can have a significant impact on the effectiveness of the Program.
- Being able to fully meet the demand for services. Particular gaps are noted in the provision of services to rural areas as well as in having the mandate and capabilities to provide certain services or to be able to follow up with clients (areas where respondents felt the Program should expand to included: provision of legal advice, assistance in cases related to domestic violence and family court, and translation services). Access to services in rural areas is affected by geographic considerations, the number of courtworkers available, and travel budgets.
- Being able to provide referrals to alternative measures. Access to diversion programs and other alternative measures tend to be much more restricted in certain areas, particularly in more remote communities. Goose Bay, Labrador, is an example of a place with little resources for courtworkers to utilize when serving clients. According to courtworkers there, the lack of appropriate programs has even meant that some clients will opt to do jail time (in a federal institution) to receive all of the services available at jail (e.g., counseling, drug treatment, work programs). In contrast, some urban centers such as Toronto benefit from access to a wide variety of services with supports even specialized to certain populations (e.g., prostitution, drug addicted offenders, youth).
- Creating awareness of the ACW Program. The profile of the Program is low in some communities, which can have an impact on effectiveness. Justice officials are not always aware of the Program, or the services provided by courtworkers. This lack of awareness has a negative impact because officials can also be an important source of client referrals. Awareness of the Program within Aboriginal communities can also be low; in response to

this, courtworkers try to host forums and give presentations to both Aboriginal communities and justice officials, when time permits.

3.4. Impact on Aboriginal accused

3.4.1. Intended outcomes with respect to Aboriginal accused

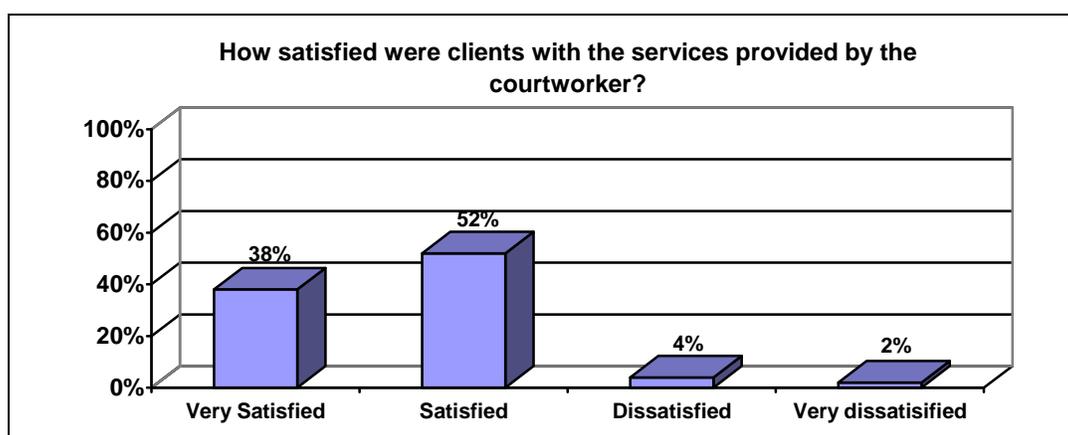
A primary function of the ACWs is to provide support and information to Aboriginal accused. It is intended that this support will increase awareness of rights, obligations and resources available to the accused and, in association with information provided to the justice system, will increase communication within court proceedings between the accused and court personnel. In turn, this increased awareness and communication will enable Aboriginal accused to make better informed decisions regarding their case and about pursuing alternatives.

3.4.2. Support and information provided to Aboriginal accused

The ACW Program has made significant progress in providing support and information to Aboriginal accused which has enabled Aboriginal accused to make better informed decisions regarding their case and about pursuing alternatives to sentencing. More specifically, the Program:

- *Serves a large client base.* According to the latest available data, the Program served nearly 70,000 clients with charges around one incident in 2005-06. Of the clients served, 71% were male and 29% were female. The most common charges were offenses related to the administration of justice (e.g., breaches, failure to appear), other criminal code offences (e.g., impaired driving), and major or common assault.
- *Provides much needed comfort and support* to the accused at various stages during the process.

- *Satisfies the information needs of the Aboriginal accused.* According to the results of the recent survey of Aboriginal accused, 90% of clients are satisfied (including 52% who are satisfied and 38% who are very satisfied) with the information that they received from the courtworkers while only 6% of the clients are dissatisfied (including 4% who are dissatisfied and 2% who are very dissatisfied). Similarly, 90% of the clients would recommend courtworker services to someone who is in a similar position compared to 6% of the clients who would not.

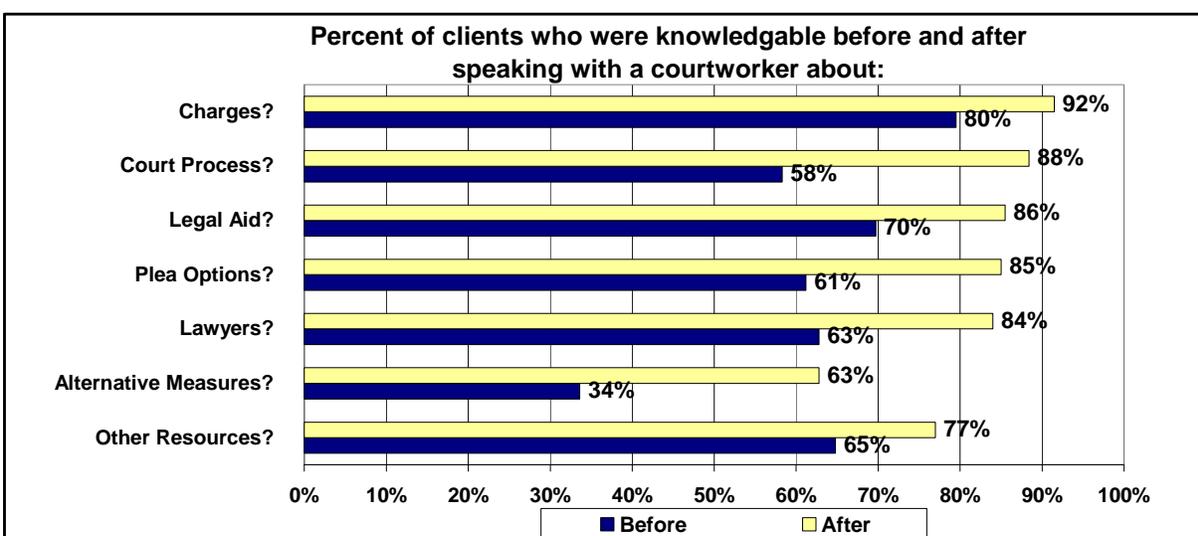


*Source: Client Survey, 2007 Department of Justice

- *Increases awareness of their rights, obligations and resources* which enables Aboriginal accused to make better informed decisions regarding their cases before the courts and about pursuing alternatives to sentencing. In particular, the courtworkers help the accused make better informed decisions regarding their cases by:
 - providing timely information about their rights, obligations, roles and responsibilities;
 - informing them about the court process and proceedings as well as the options and resources open to them;
 - ensuring that they understand the reasons for their arrest, the charges, legal terminology, and the bail process;
 - assisting them in obtaining legal representation;
 - identifying possible outcomes and consequences including the implications of different pleas;
 - discussing the meaning and implication of specific measures such as bail, detention, conditional release or probation;

- working to overcome language barriers; and
- providing other information, support and guidance as needed.

Courtworkers do not provide legal advice per se; however, they do provide detailed information about the choices before the client and facilitate access to legal representation. As indicated in the following chart, after talking to the courtworkers, Aboriginal clients reported a better understanding of the court processes, their charges, alternative justice programs in their community, the meaning of plea options, how to get a lawyer and/or apply for Legal Aid, and how to access resources available in the community.



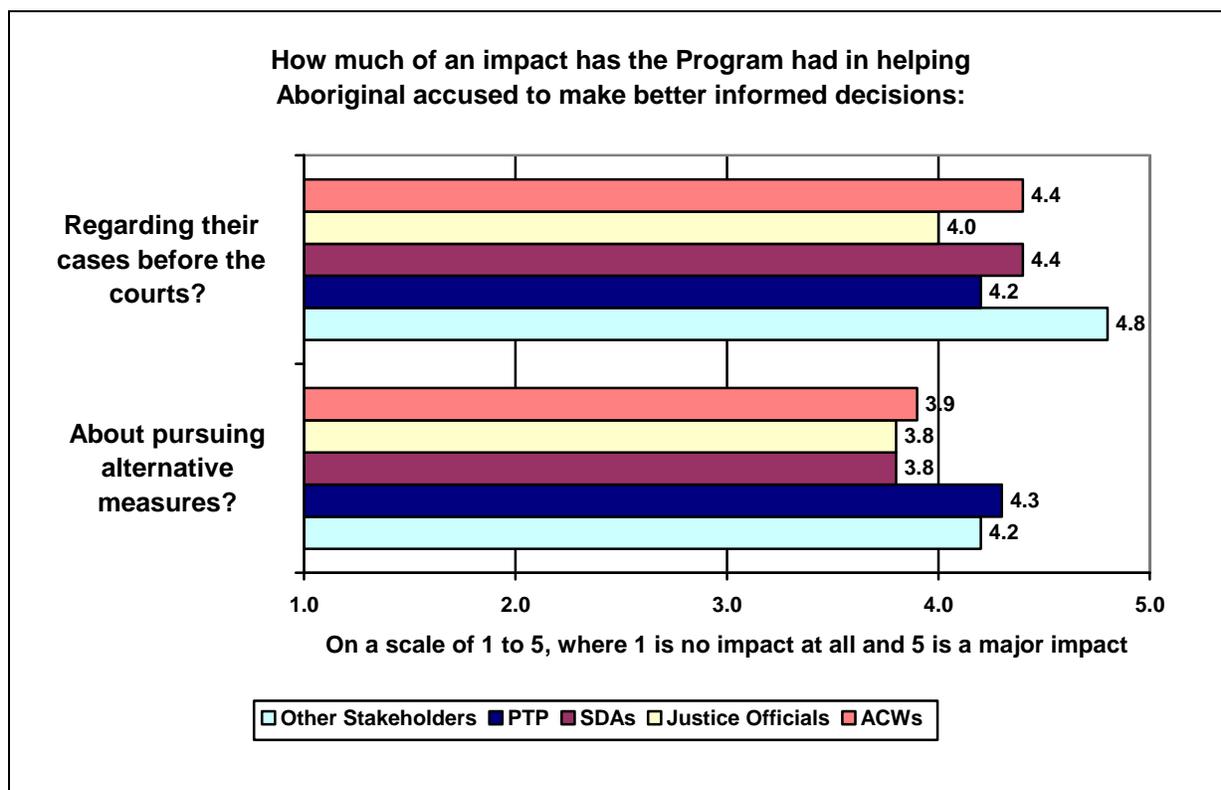
*Source: Client Survey, 2007 Department of Justice

Examples of impacts on the accused observed during our field visits and confirmed by stakeholders included: more informed pleas (e.g., fewer clients pleading guilty), reductions in the failure of Aboriginal accused to appear, and reduced likelihood of breaches of the conditions for release and probation. Offences related to the administration of justice such as failure to appear and breaches are the single most common charge of clients served under the Program – reducing the number of breaches is directly reflected in a reduction in the number of cases coming before the court. Courtworkers may provide reminders, and even facilitate transportation to encourage them to appear. Courtworkers may also attend court for clients who cannot appear to explain why the accused is not present (this helps to avoid charges related to the failure to appear). In some cases, the courtworker may even appear in court on behalf of the client to enter his plea and obtain information surrounding the judge’s decision.

Another important outcome of the information provided by courtworkers is an increase in the likelihood that Aboriginal accused understand the nature of the charges against them. This is vital given the language barriers, high rates of illiteracy in some communities, and the confusion that commonly exists at the pre-court stage of the process. Clients may not fully comprehend a document/statement they sign and, according to various stakeholders, the courtworkers have reduced the number of clients who agree to crimes they did not commit.

The information provided by courtworkers also enables the accused to make better informed decisions about pursuing alternatives. Courtworkers often aid the accused in making better informed decisions regarding alternative measures by talking to justice officials (particularly Crown counsel) to determine client eligibility for alternative measures, explaining the options to the accused, and facilitating referrals to alternative measures as well as to other resources in the community. In particular, Aboriginal courtworkers play a major role with respect to facilitating the application of Gladue principles, which require sentencing judges to consider all available sanctions other than imprisonment and to pay particular attention to the circumstances of Aboriginal offenders. Gladue-related services vary by region. Currently, the only area where Gladue court exists is in Toronto. Alternative measures vary significantly from region to region but examples of diversion often include drug and alcohol treatment programs (both in-patient and out-patient), anger management courses, courses related to the nature of the offence and programs which utilize principles of Aboriginal culture to address issues such as addiction.

As indicated below, all stakeholder groups rated the ACW Program as having a major impact in enabling Aboriginal accused to make better informed decisions regarding their cases before the courts. The average ratings ranged from 4.0 among justice officials to 4.8 among other stakeholders on a scale of 1 to 5, where 1 is no impact at all, 3 is somewhat of an impact, and 5 is a major impact. The ratings were lower but still high in terms of enabling Aboriginal accused to make better informed decisions about pursuing alternative measures. Stakeholders who provided a lower rating attributed this more to the limited availability of alternative measures in the community than to the services provided by the Aboriginal courtworkers.



3.5. Impact on the formal justice system

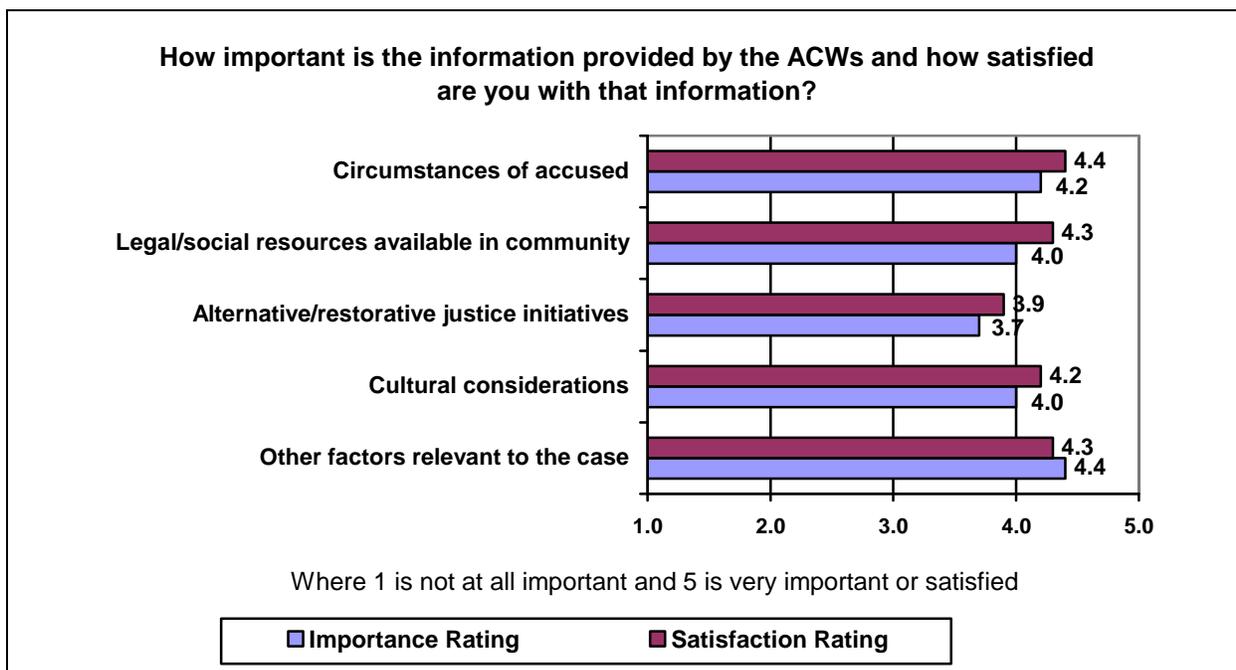
3.5.1. Intended outcomes with respect to Aboriginal accused

A core function of the ACW Program is to provide information to the formal justice system (court officials, duty counsel, Legal Aid lawyers, judges, etc.) in order to increase awareness and understanding of the Aboriginal community and issues relating to the Aboriginal accused,

increase communication within court proceedings between accused and court personnel, and increase consideration of relevant court decisions and alternative measures.

3.5.2. Satisfaction with the information provided

The justice representatives are generally satisfied with the information provided by the Aboriginal courtworkers and believe that information to be important. The members of the justice system were asked to rate the importance of the information provided by Aboriginal courtworkers as well as their satisfaction with the information provided regarding circumstances of the accused, legal resources, social resources, alternative/restorative justice initiatives, cultural considerations, and other factors relevant to the case on a scale of 1 to 5 where 1 is not at all, 3 is somewhat and 5 is very important or very satisfied. The average ratings are presented below. Overall, the justice representatives who were interviewed found the information provided by the Aboriginal courtworkers to be very important, providing an average rating of 4.1 on a scale of 1 to 5, where 1 is not at all important and 5 is very important. The average rating varied from 4.4 to 3.7.



Overall, the justice representatives who were interviewed are very satisfied with the information provided by the Aboriginal courtworkers, providing an average rating of 4.3 on a scale of 1 to 5,

where 1 is not at all satisfied and 5 is very satisfied. The average rating varied from 4.4 among the 20 judges who were interviewed to 4.2 among the other justice representatives.

Courtworkers provide a wide variety of information to justice officials. One particularly important area is with regards to the circumstances of the accused. For example, they will inform justice officials if the accused is pursuing an education, is employed and the details of the employment (e.g., goes away for two months at a time, is a hunter), any treatment that the clients are undergoing or plan to undertake, and the client's living arrangements (e.g., reside with a relative or is homeless). This information is significant when sentences are being given because the conditions of release order may have parameters such as not being able to carry/use firearms or having to see a probation officer weekly. If the client hunts for work or goes away for months at a time, those parameters would have a damaging impact on employment and would most likely result in breaches.

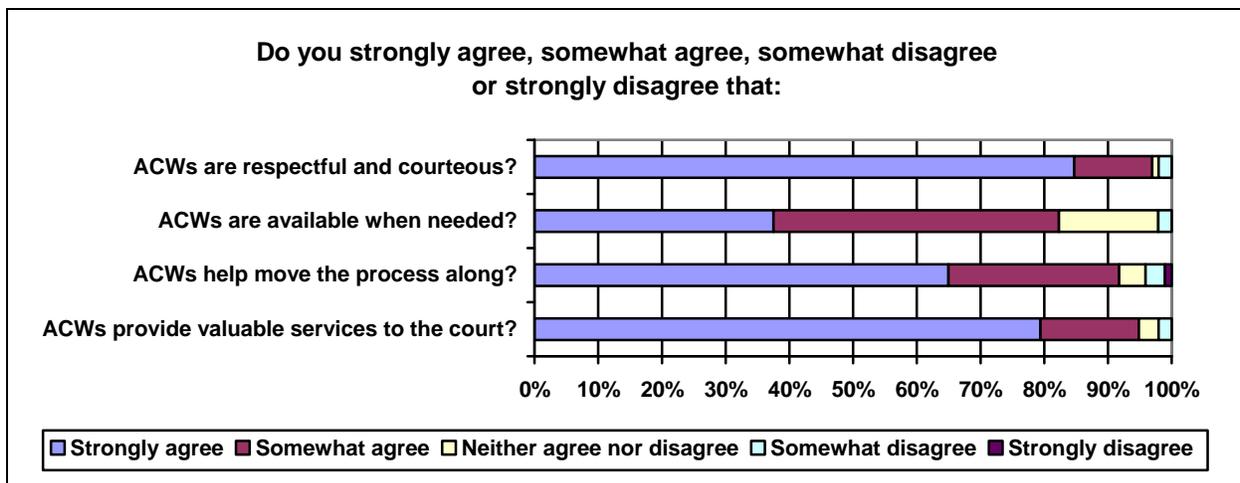
The intake process is an important source of information. During this process, courtworkers will often identify circumstances such as a history of residential schools or the recent loss of a loved one. The courtworker then conveys this pertinent information to the appropriate justice official and acts as an intermediary between the client and the justice system. Other important types of information provided by courtworkers include contact information for the client, the personal history of the accused, the current situation of the client, and the supports available in the community.

Ratings provided by justice officials regarding the provision of information related to alternative/restorative justice programs tended to be lower because of limited availability of such programs in some regions and the perception, at least, that justice officials are already aware of the available options. A frequent comment is that considerably more work needs to be done to increase access to alternative measures.

3.5.3. Perceptions of Aboriginal courtworkers held by justice officials

Justice officials viewed courtworkers favourably. When specifically questioned about their perceptions, most justice officials strongly agreed with the statements that Aboriginal courtworkers are respectful and courteous, help to move the process along, and provide valuable services to the court.

As indicated in the following chart, justice officials were less likely to strongly agree that Aboriginal courtworkers were available when needed, which largely relates to the number of courtworkers relative to the workload, their ability to provide services throughout the region given time, travel, and resource issues as well as staff turnover which can result in communities operating without a courtworker.



3.5.4. Impact on communication within court proceedings

Courtworkers play an important role in enhancing communication within the justice system by facilitating clients’ access to legal representation, assisting both the accused and counsel in preparing for court proceedings, and confirming that the accused understands the process, the charges and potential outcomes as well as, at times, providing translation services. In the absence of a courtworker, it is not unusual for the accused to say they understand the charges and the court process even when they do not or to plead guilty without understanding the entirety of the charges and the implications of pleading guilty (e.g., a criminal record, unable to travel to the USA).

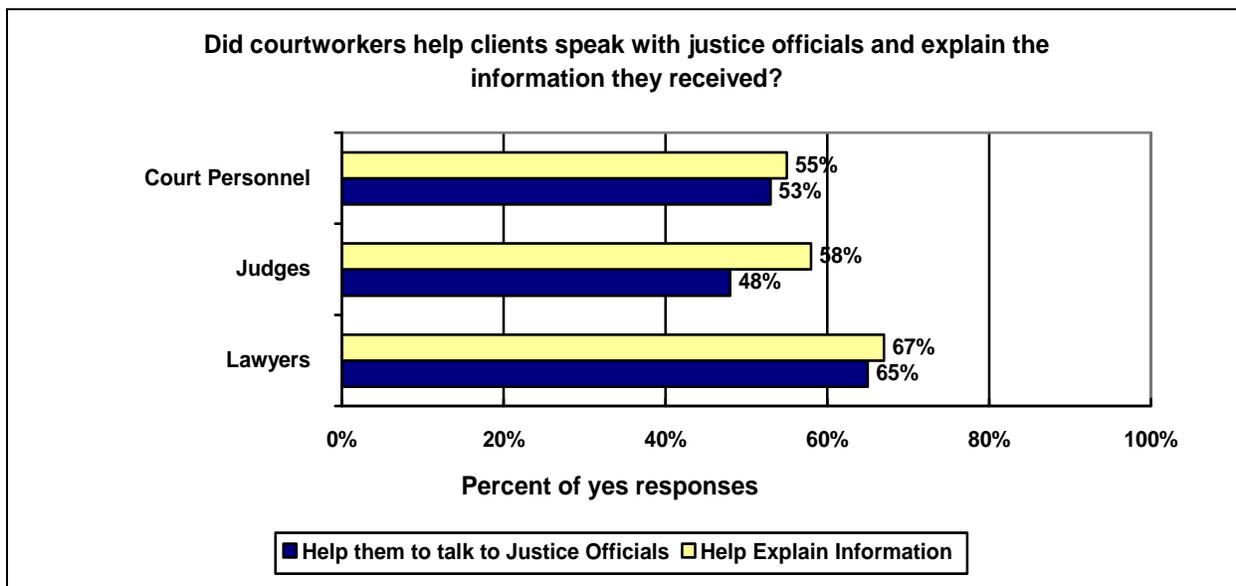
The simple presence of the courtworkers often improves communication by making clients feel more comfortable and at ease in the court. Through the site visits, several situations were observed where the intervention of the courtworker helped to calm the accused, diffuse anger, and clear up misunderstandings that were developing.

The Program also enhances communication between the accused and court personnel with respect to non-appearances. Often a courtworker will remind the client of court dates and, if the

client cannot appear, the courtworker will appear on behalf of the client to avoid a bench warrant being issued, to obtain information regarding the case, and to explain why the accused is not present. In some courts, if a client is not eligible for Legal Aid, the courtworker may appear on behalf of the client, helping to ensure that the court proceedings run smoothly. Courtworkers in some regions may also play a role in facilitating appearances by witnesses by helping to track down witnesses prior to court or providing witnesses with reminders about court dates.

Courtworkers are occasionally asked to provide information on community resources available and sentencing options or to provide background information on the circumstances of the accused which are pertinent to the case (for example in Duncan, BC, a judge requested a courtworker to compile a list of all supports available in the community). Courtworkers are also active in facilitating communication outside of the court room between accused and justice officials such as defense counsel and Crown counsel through participating in meetings, advocating on their behalf, and providing basic interpretation services.

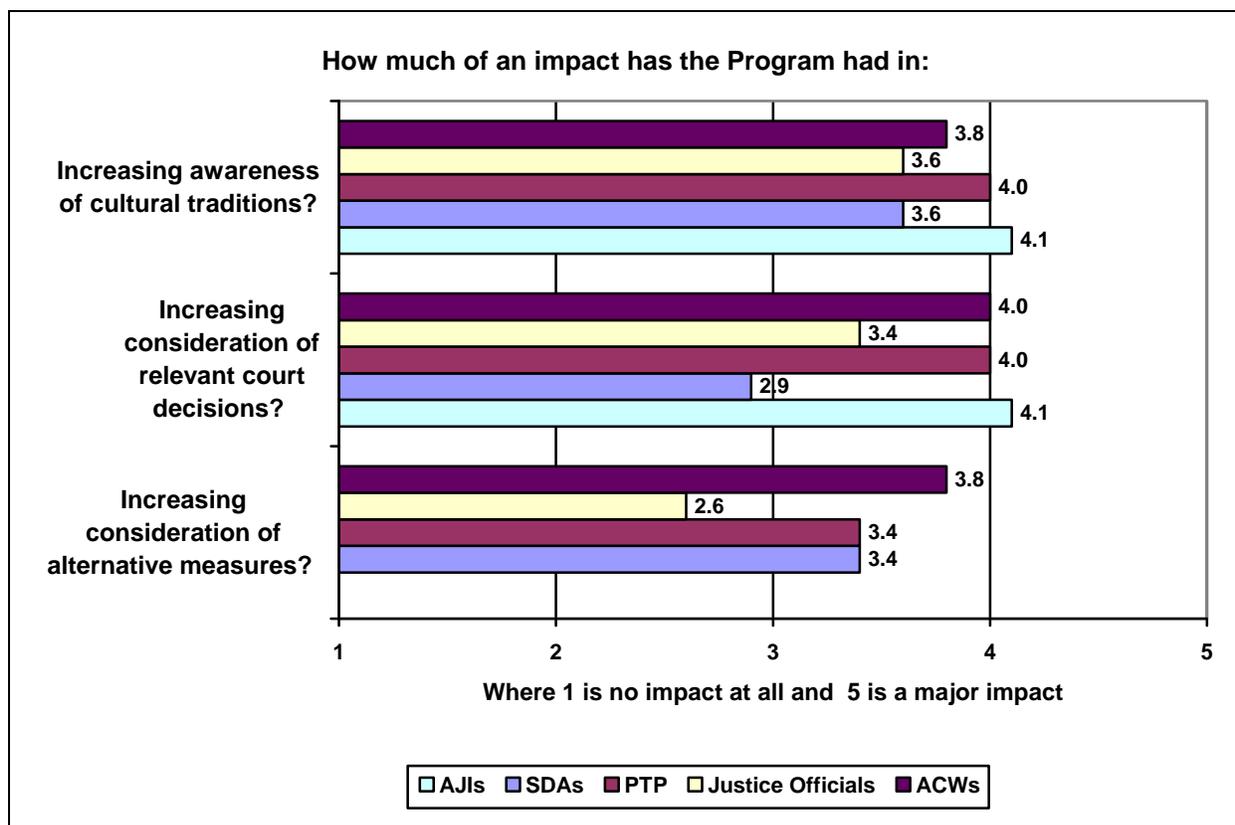
The results of the client survey confirm the important role that courtworkers play in the communication process. Sixty-five percent of the clients felt that courtworkers helped them to speak with lawyers while 48% felt courtworkers helped them to speak with a judge and 53% had courtworkers help in speaking with court personnel. Clients also reported that the Program helped them to understand the information they received from lawyers, judges and other court personnel.



* Client Survey, 2007. Department of Justice Canada

3.5.5. Impact on justice officials

The Program has had an impact in helping justice officials be more aware of cultural traditions, take relevant court decisions into account, and consider alternative measures (e.g., diversion programs, Elder panels, sentencing circles, and Aboriginal youth justice committees). When asked to rate the significance of the impact, justice officials provided an average rating ranging from 2.6 with respect to considering alternative measures to 3.6 in terms of increasing awareness of cultural traditions. Other groups tended to rate the impact somewhat higher.



More specifically, Aboriginal courtworkers have helped justice officials become more aware of cultural traditions and socio-economic issues facing Aboriginals through providing information to justice officials about clients and culturally relevant programs and resources within the community, making presentations, developing and disseminating materials on aspects of Aboriginal culture or information on what courtworkers do, and in some cases hosting Aboriginal healing circles, information forums and Elder panels. In addition, officials such as

Crown counsel and judges cited informal communications (often during travel to or from circuit courts) as an important way through which they have become knowledgeable about communities and their issues. A courtworker and a lawyer or judge may travel together by car for hours to reach the court, and during this time the courtworker may provide valuable insight into Aboriginal culture and customs.

The unique position of courtworkers allows them to act as a bridge between the Aboriginal community and the formal justice system by introducing the system to elements of Aboriginal culture and in turn, introducing Aboriginals to the justice system and protocols. More specifically, by explaining elements of Aboriginal culture and customs to justice officials, the courtworkers provide insight into the complex issues that affect the Aboriginal accused both within society and within the justice system.

Some of those who noted less of an impact indicated that justice officials are already more aware of cultural traditions than they were 10 or 15 years ago and, as a result, the Program has had less of an impact in this area than in earlier years. In areas where the population is predominantly Aboriginal, justice officials are often already quite familiar with the culture and traditions. A few others who provided lower ratings indicated that courtworkers are not themselves necessarily familiar with the cultural traditions of the region and that some justice officials are not very receptive to learning about customs, traditions and issues. For example, in one location, the courtworkers hosted an information session and presentation to justice officials in which they hoped to give them information about what they do. However, only two justice officials attended the session.

Courtworkers play an integral role in ensuring that justice officials consider relevant court decisions and alternative measures. In particular, the courtworkers often facilitate the implementation of the Gladue principles by better enabling judges to consider sanctions other than imprisonment (e.g., by providing information and recommendations regarding programs and alternatives) and to better understand the circumstances of Aboriginal offenders (e.g., by helping prepare pre-sentence reports to ensure that the background of the accused Aboriginal person is properly presented, explaining the mitigating factors which may have resulted in the offence). Those who provided lower ratings generally noted that either the justice officials already consider relevant court decisions or that further progress needs to be made in encouraging judges to consider sanctions other than imprisonment. A major constraint to the consideration of alternative measures is the lack of programs in some regions such as Goose Bay; remote communities face many barriers in accessing services such as alternative measures:

if the programs are not available locally, traveling to programs outside the community may be impossible due to geography and the high cost of travel.

3.6. Linkages with communities and other justice initiatives

3.6.1. Linkages with communities

The Program has helped to strengthen the relationship between the Aboriginal community and the formal justice system. In addition to working with clients, most courtworkers interact directly with the community by serving on various committees and promoting the Program through presentations, brochures and promotional material, meetings, forums, workshops and other means. The types of committees, associations and community boards in which courtworkers are involved range from those with a justice focus, such as justice programs and AJI, networking groups focused on justice issues, and correctional and police committees to those with a broader focus, such as youth services, regional health boards, mental health associations, drugs and substance abuse associations, cultural associations, women groups, and employment agencies.

Through courtworkers' efforts within the community, progress has been made in improving understanding of the justice system and raising the profile of the ACW Program within the Aboriginal community. In addition, the presence of the courtworker in the formal justice system helps to improve the credibility of the justice system among Aboriginals, build greater trust in the system, and reduce the sense of alienation. As an illustration, when community stakeholders were asked to rate the impact of the ACW Program in reducing the sense of alienation felt by members of the Aboriginal community regarding the justice system, members of the Aboriginal community provided an average rating of 3.9 on a scale of 1 to 5, where 1 is no impact at all and 5 is a major impact. However, while significant progress has been made, more work needs to be done.

Active involvement in community programs and initiatives also benefits the Program by increasing the familiarity of courtworkers with language, culture, background and history of the community, which in turn enables courtworkers to better understand the specific needs of the clients and to communicate these needs to justice officials.

3.6.2. Aboriginal justice initiatives

There are different federal, provincial and territorial approaches aimed at reducing the rate of Aboriginal incarceration, each attempting to make the justice system more responsive and culturally sensitive. These include expanded Aboriginal policy and program initiatives within the judicial system, cross-cultural education for those involved in the justice system, and the use of diversion and alternative measures such as sentencing circles, community justice committees and healing lodges. The implementation of these approaches reflects a growing understanding that Aboriginal offenders have unique needs and require alternative programs.

Under the Aboriginal Justice Strategy (AJS), the federal government has provided funding for various types of community-based justice initiatives including diversion/alternative measures programs, community sentencing programs and mediation, each of which is described below:

- Diversion/alternative measures programs are designed to divert Aboriginal accused from the formal court system into alternative community processes. Diversion is usually an informal process while alternative measures programs are typically authorized by and established under provisions of the Criminal Code or *Youth Criminal Justice Act*. Alternative measures provide justice officials with an array of programs including victim-offender mediation and diversion; youth programming; sentencing circles; family group conferencing; healing circles; crime prevention workshops; after-care reintegration initiatives; section 81 initiatives; probation; and other programs that focus on healing and the use of First Nations' traditions and healing models. Restorative justice programs are similar except their objective is to repair the harm caused by crime and restore the parties to a state of wellness or wholeness which was disturbed by the criminal act. These programs are similar to alternative justice programs, often offering the following three core programs: victim-offender reconciliation/mediation, family group conferencing, and circles (sentencing circles, healing circles, releasing circles, etc.). Properly designed, diversion/alternative measures programs are less intrusive, more culturally appropriate and more expeditious than a formal court-based response.
- Community sentencing programs provide for the participation of the community in the preparation and provision of advice to sentencing judges about the appropriate sanction to impose on a person found guilty of an offence, and about the community resources that could be made available to the offender as part of a restorative response.

- Mediation in non-criminal disputes (such as family or civil matters) involves a neutral third party who assists the parties in conflict to come to a resolution. Mediation does not typically deal with criminal disputes.

The AJS funds over 100 community justice initiatives (over three-quarters of the Programs are diversion/alternative measures programs) and serves about 400 communities across Canada annually. In 2004-05, these programs accepted approximately 7,400 clients⁹. No data is available regarding the percentage of these clients who were referred by courtworkers.

Some provinces such as Ontario, Alberta and British Columbia have designated justice branches or directorates to deal with Aboriginal issues and develop appropriate policies. The Aboriginal-specific policies found within the provinces and territories follow the same general principles/philosophies found at the federal level. The only significant differences between the policies implemented at the different levels would be the number of programs offered. Aboriginal-specific programs include Aboriginal Liaison Services, Traditional Spiritual Practices, Substance Abuse Treatment, Aboriginal Literacy and Educational Programs, Cultural Skill, Community Reintegration, Sweat Lodge Ceremonies, Employment Training, Anger Management, and Family Violence Programs. The programs offered depend upon the demands within specific regions of the country. Provincial and territorial governments have also recognized the importance of proactive approaches to crime and created new policy designs to meet the needs of First Nations youth. Examples of approaches include diversion programs, bush camps, and Aboriginal Youth Justice Committees.

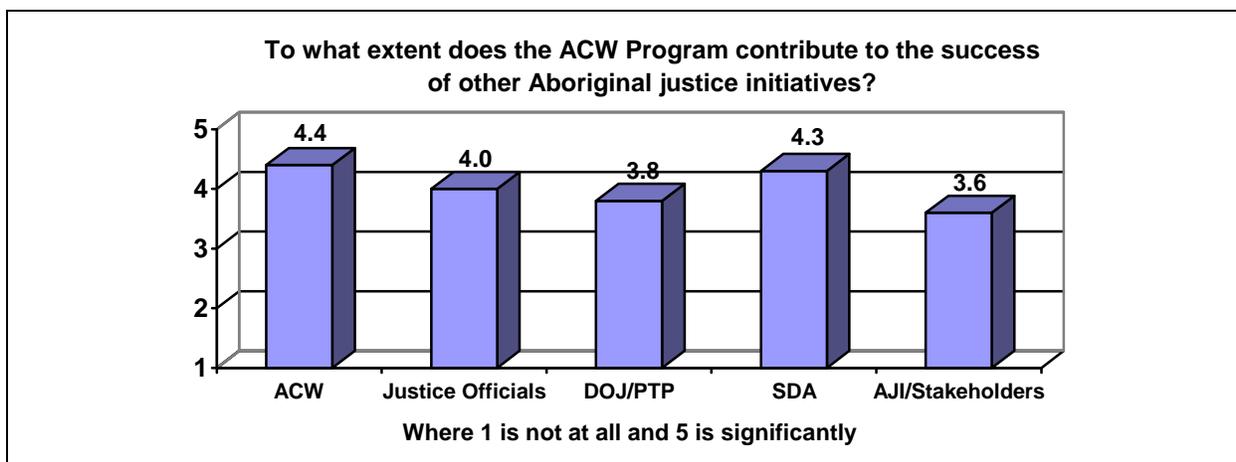
3.6.3. Impact on community-based justice initiatives

Courtworkers have developed relationships that complement community-based justice initiatives. Courtworkers commonly develop relationships with representatives of various AJIs. For example, when representatives of AJIs were asked to rate how familiar they are with the ACW Program on a scale of 1 to 5, where 1 is not at all familiar and 5 is very familiar, they provided an average response of 3.6. Many of the representatives indicated that they regularly interact with courtworkers (in some instances, almost on a daily basis).

The ACW Program is broadly viewed as supporting and complementing other AJIs. When asked to rate the extent to which the Program has contributed to the success of other community-based programs and initiatives on a scale of 1 to 5, where 1 is not at all, 3 is somewhat and 5 is

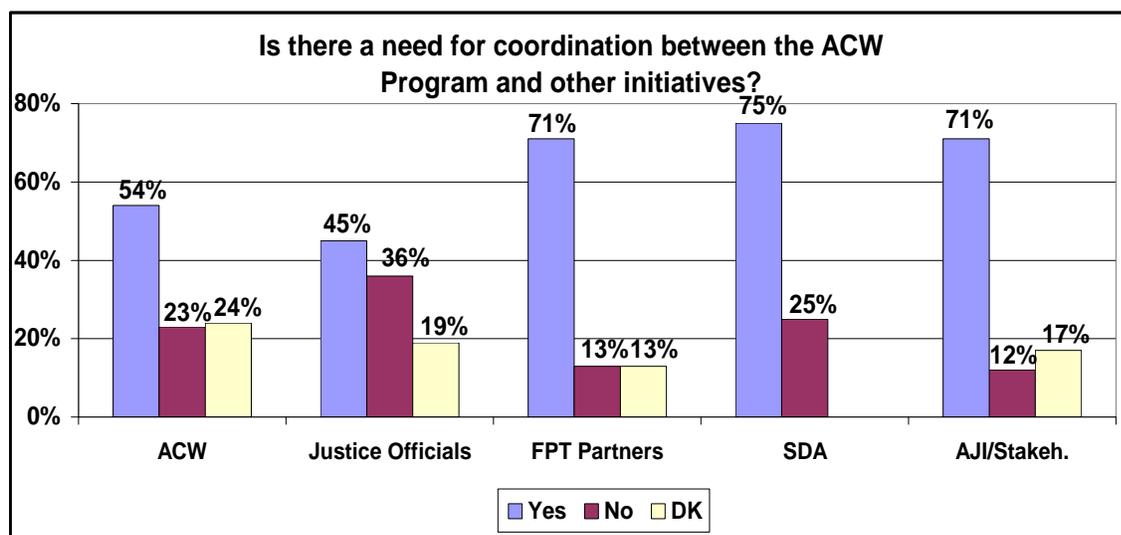
⁹ Fleming, Chris. The Aboriginal Justice Strategy. *JustResearch*, Issue 15. (2008).

significantly, the average rating varied from 3.6 among AJI representatives themselves to 4.4 among the courtworkers.



The work of Aboriginal courtworkers has been evolving beyond the traditional court-based role to meet the needs of Aboriginal people involved in the criminal justice system. As part of this evolving role in the community, courtworkers are becoming increasingly involved in helping facilitate alternative justice models, cooperating with community councils, and coordinating client participation in diversion programs. More specifically, courtworkers complement these other initiatives by serving as a vital source for referrals (in effect, courtworkers serve as the frontline for many of these initiatives by identifying suitable clients), creating awareness of the programs within the legal system and with the accused, working together with representatives from various alternative measures and diversion programs and sharing information with them with respect to particular clients as well as broader issues, sharing resources and best practices, sitting on Aboriginal justice committees or committees established to oversee specific initiatives and, in some cases, taking a lead role in the development of community-based initiatives. The Program is often seen as the frontline to Aboriginal justice with the courtworker playing an essential role in the measures that are taken after their initial meeting with the client.

Most stakeholders see opportunities to further improve coordination between the ACW Program and other Aboriginal justice initiatives.



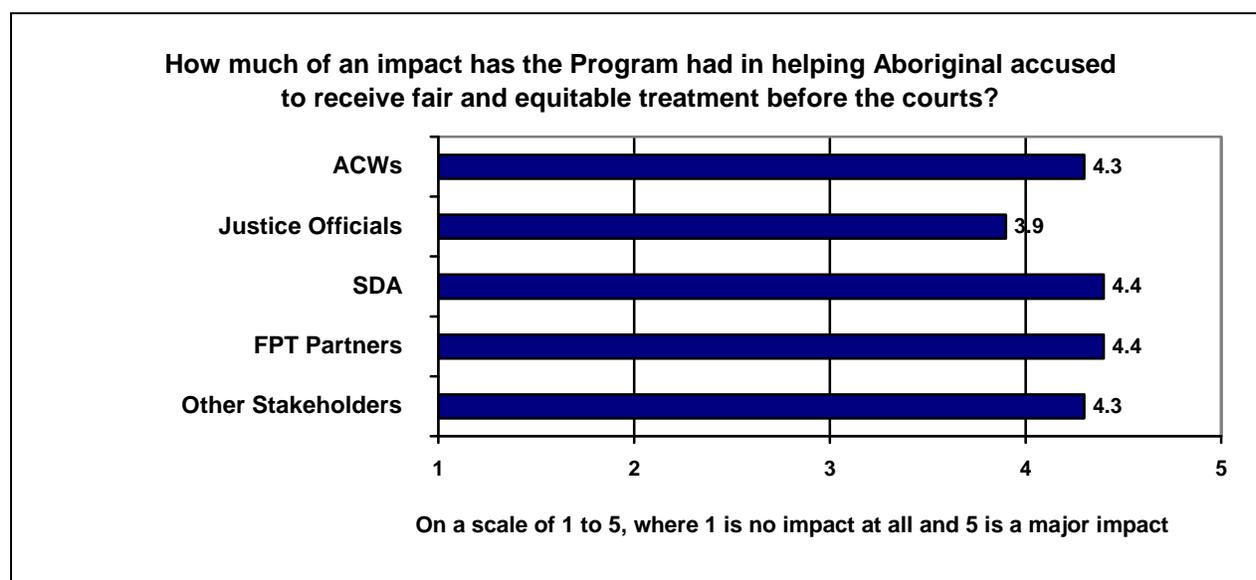
Particular areas where improvements could be made include increasing the level of information sharing and communication, further increasing awareness of the initiatives and options available to Aboriginal accused, improving the services provided to the clients and the effectiveness of the available programs, clarifying the respective roles of the courtworkers and representatives from other diversion and alternative measure programs, and improving the level of coordination to reduce possible areas of overlap or duplication. In some communities, AJIs (particularly alternative measures programs) are not available, which makes the courtworkers' job more difficult and reduces the options available to clients as well as the justice system. While increasing the level of interaction would further strengthen the Aboriginal justice programs and criminal justice system, the delivery partners and courtworkers note that resource and time constraints may make this difficult to achieve.

3.7. Impact in enabling Aboriginal accused to receive fair and equitable treatment

By ensuring that the Aboriginal accused understand the court environment and that court officials respond in a manner that best addresses the needs of the accused, it is anticipated that the accused will receive fair, equitable and culturally sensitive treatment before the courts.

The ACW Program has made significant progress towards enabling Aboriginal accused who are assisted by courtworkers to receive fair and equitable treatment before the courts.

One indicator of this is the perceptions of the key stakeholders who were interviewed. When asked to rate the impact of the Program in contributing to help Aboriginal accused to receive fair and equitable treatment before the courts on a scale of 1 to 5, where 1 is no impact at all and 5 is a major impact, the average rating ranged from 3.9 among justice officials to 4.3 among representatives of community justice initiatives and other stakeholders and courtworkers, and to 4.4 among representatives from SDAs and provincial/territorial partners.



The Aboriginal accused were generally satisfied with the outcome of the court proceedings. According to the survey of Aboriginal accused, 54% of clients were satisfied with the outcome of their case (including 21% who were very satisfied), 9% were dissatisfied, and 36% did not yet know the outcome.

The ACW Program has helped to ensure Aboriginal accused have greater access to fair, equitable and culturally sensitive treatment through a number of ways. The presence of Aboriginal courtworkers within the courts helps to ease the imbalance of non-Aboriginal justice officials working with Aboriginal accused. In areas where the Aboriginal populations predominantly speak an Aboriginal language, courtworkers explain the justice process and procedures in a culturally sensitive way (in the language of the accused) which also ensures the accused understand the nature of the charges. In addition, the simple presence of a courtworker

often encourages justice officials to be more conscious and aware of the way they treat Aboriginal accused. As described in earlier sections, the courtworkers have been successful in providing support and information to Aboriginal accused, increasing awareness of rights, obligations and resources available to the accused as well as communication within court proceedings between accused and court personnel, and providing information and advice to the formal justice system that is pertinent to the case, all of which contribute to fair, equitable and culturally sensitive treatment.

In the absence of the ACW Program, the justice process for Aboriginal accused would be delayed by issues related to communication, understanding of the process, and access to legal representation. There would be an increase in failures to appear and breaches of conditions, which in turn would further increase the number of cases coming before the courts. In some cases, witnesses would be less likely to appear when scheduled. Clients would be less able to access the Programs, resources and services that are available. The Aboriginal community would feel more fearful, less trustful and more alienated from the justice system.

While significant progress has been made, much more work needs to be done. Interviews with courtworkers and observations through field trips highlight that there are still numerous situations where Aboriginal persons are not being dealt with fairly, equitably or in a culturally sensitive manner. At times, courtworkers even express dissatisfaction with the treatment they themselves have received in the system. Furthermore, the expectation is that much of the significant progress that has been made would dissipate should the services of courtworkers no longer be available.

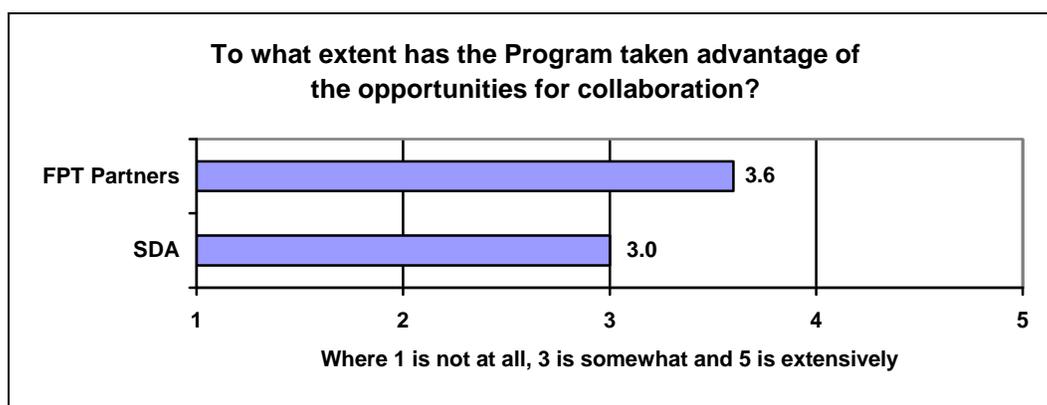
3.8. Tripartite collaboration

3.8.1. Mandate of the Tripartite Working Group

On a program policy level, the ACW Program operates in a tripartite format (includes federal representatives, provincial-territorial partners, and Aboriginal SDAs) and is guided by a Tripartite Working Group (TWG). The TWG serves as an important forum for addressing a range of policy and program issues with a focus on developing innovative approaches; sharing information, resources and best practices; undertaking research; investigating the need for services not currently covered under cost-shared agreements; and providing advice to the Deputy Ministers of Justice on the potential impact that new legislative or policy changes may have on the ACW Program.

3.8.2. Existing level of collaboration

There has been tripartite collaboration with respect to the ACW Program. When asked to rate the extent to which the Program has taken advantage of opportunities for collaboration on a scale of 1 to 5, where 1 is not at all and 5 is extensively, representatives of the FPT Partners provided an average rating of 3.6 while the SDA representatives provided an average rating of 3.0. The SDA respondents were familiar with the work of the TWG (9 of the 13 SDA respondents interviewed are members of the TWG).



Workloads, budgets and geography were identified as constraints to increasing the level of collaboration. Examples of areas of collaboration include:

- The formative and summative evaluations.
- Training activities, including the delivery of three national training events (including the recent February 2008 event which brought together courtworkers and key stakeholders from all over Canada), development of a national courtworker curriculum (including recent curriculum updates which also made all of the information available in CD format), Fetal Alcohol Spectrum Disorder (FASD) training, and Gladue training conducted in Ontario.
- Production of a crystal meth reference guide: "Remember your spirit".
- Recent upgrades which ensured that every courtworker has an email address.
- Development of and improvements to the Performance Measurement Strategy.
- Creation of a National Database Subcommittee, and

- Commissioning of various research projects such as a literature review, a feasibility study for a National Family Courtwork Program, and an assessment of the impacts of the Program¹⁰.

In addition, an extensive project is currently underway with the University of Winnipeg which is conducting research into core courtworker competencies, a national certification program, the formalization of regional courtworker roles, and the direction of future training and pay scales. The TWG holds at least three national teleconferences every year with the co-chairs and has the prerogative to call additional meetings as necessary.

These types of collaborative projects and initiatives benefit the ACW Program by increasing opportunities to share best practices and approaches to service delivery, collect valuable data and information, improve understanding of the Program and related initiatives, and perform certain tasks for which SDAs do not have the budget or which are best done on a joint basis (e.g., national training, curriculum development, guidebooks and research).

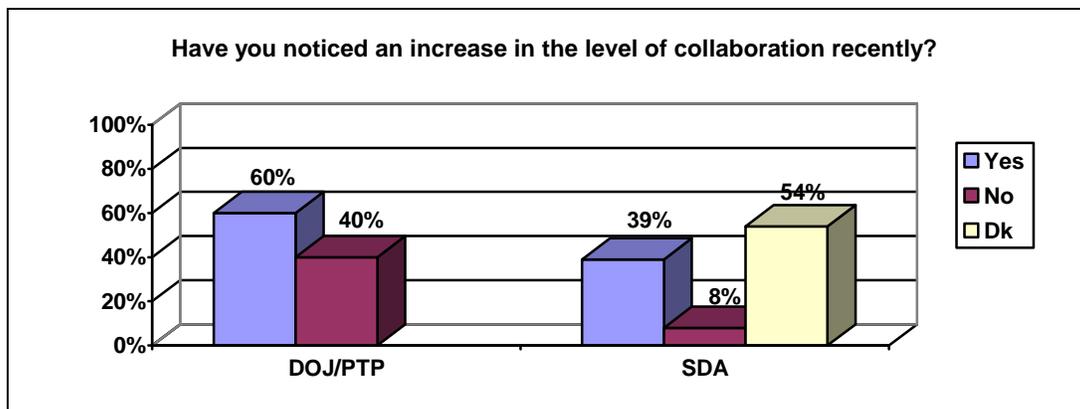
3.8.3. Areas for future focus

Areas where the partners see opportunities for further collaboration include research into family law issues, delivery of national training events and conferences, development and increase of national standards, sharing of best practices, providing data and information on changes to legislation, and facilitating greater input from SDAs to take full advantage of their expertise.

¹⁰ “Assessing the Impact of the Aboriginal Courtwork Program”, Draft Report comparing Manitoba communities with and without a courtworker (2008).

3.8.4. Progress made in addressing issues raised in the formative evaluation

Although the formative evaluation has only recently been completed, some progress has already been made in responding to the collaboration issues that were raised. A small majority of the partners and SDA representatives reported a recent increase in the level of collaboration.



In particular, progress has been made in increasing communication and understanding between different parties, better balancing of participation among members, and gaining more input from SDAs. Areas highlighted where further improvements are needed include facilitating greater input from SDAs (consideration is currently being given to creating a third chair selected from among the SDA directors), obtaining broader input into meeting agendas, adjusting travel budgets so that appropriate parties can travel, and acknowledging regional differences when considering changes to the Program.

The formative evaluation also made recommendations regarding performance measurement. Progress has been made with respect to the implementation of client and justice official surveys as well as the definition of some terms. An extensive survey of clients has now been completed (the results of which have been incorporated into this report) and the process is currently being reviewed to determine the opportunities for further improvement. Reporting of data defined under the performance measurement strategy has been mixed in the past with a few of the jurisdictions having yet to provide reports for 2006-07. It is anticipated that reporting will be improved for this fiscal year although it is too early to determine. According to the partners, working towards greater standardization and efficiency in reporting (e.g., implementing common approaches to the collection of data, ensuring that courtworkers understand the definitions and

nature of the data they are collecting, and streamlining the data collection, reporting and administrative requirements for courtworkers) is an on-going process.

3.9. Other Impacts and Effects

In addition to the impacts previously identified, the ACW Program has also generated a number of other positive impacts. Three notable impacts include:

- *Courtworkers have helped to improve the effectiveness of other programs serving Aboriginal communities.* Through the involvement of courtworkers and development of referral networks, the ACW Program has increased collaboration between community programs, increased awareness of client needs and key issues facing the community, improved opportunities for community development, created dialogue on Aboriginal issues and justice within the community, and helped to build community capacity.
- *Courtworkers have become role models in some communities* and have helped to encourage Aboriginal pride while enhancing the credibility of the justice system within the Aboriginal community.
- *The courtworker position can act as an entry position or stepping stone* through which individuals have been able to obtain experience and exposure before moving on to more senior positions in the justice system (sometimes after returning to school). As such, the Program has helped to further strengthen the Aboriginal voice from within the justice system while encouraging Aboriginal courtworkers to pursue justice-related careers.

3.10. Factors determining the effectiveness of the Program

Key factors that determine the effectiveness of the Program include:

- The capabilities and experience of the courtworkers, which is itself determined in part by the rate of attrition and access to training;
- The evolving role of courtworkers and the continued pressure on courtworkers to broaden their role;
- The capacity of the Program to meet the demand for services; and
- The access to other resources and programs in the community.

Effectiveness is less dependent upon the type of delivery model that is employed. These factors are discussed in the following paragraphs.

3.10.1. Attrition

Overall, the effectiveness of the Program is in large part a function of the skills and capabilities of the individual courtworker. Given that many of the skills and capabilities of courtworkers are developed on-the-job, there is a strong correlation between the effectiveness of the Program and the rate of attrition or turnover in the courtworker position.

According to interviews with PTPs and SDAs, the attrition rate among courtworkers has averaged about 11% over the past year. These figures are relatively consistent with the results of courtworker interviews which found that under 10% had less than one year of experience, 10% have from one year to less than two years experience, 9% have from two years to less than three years experience, 17% have from three years to less than five years experience, 22% have from five years to less than 10 years experience, 30% have 10 years or more experience, and 1% were not sure or did not provide an estimate. On average, courtworkers reported 5.2 years of experience as a courtworker.

The rate of attrition appears to vary by region. Forty-eight percent of the provincial and territorial partners and SDAs and 42% of the courtworkers indicated that attrition rates have tended to be high in their regions.

When courtworkers were asked whether they were considering leaving their job within the next year, approximately 10% of them indicated that they definitely are considering leaving, and another 11% indicated they may possibly consider leaving their jobs. The most common reasons given by courtworkers for considering leaving the job include dissatisfaction with the level of compensation, an opportunity or desire to move on to other employment or return to school, health issues, burn-out due to high workloads and stress, family reasons, work place difficulties and a lack of steady work for those working on a part-time or an ad-hoc basis. It should be noted that although courtworkers have concerns about compensation and some other elements of the job, they frequently expressed passion and enjoyment for their jobs. Part of this passion comes from working with their people and helping their community.

Attrition has a negative impact on the success of the ACW Program. The effectiveness of courtworkers is largely a function of their visibility, credibility, connections, skills and experience – all of which take time to develop. It takes time for a courtworker to become known

in the community, to develop relationships with justice officials, representatives of other programs and the broader community, to understand their role, and to learn how best to undertake their responsibilities. Training for new workers is costly and difficult to provide because of the one-to-one nature of much of the training and the decentralized location of many of the courtworkers. When a courtworker leaves, services are disrupted. It often takes an extended length of time to fill positions, particularly in smaller communities and in regions where the economy is strong. It also takes time for the courtworker to develop rapport with the Aboriginal clientele and community and to develop sufficient knowledge of the local population in order to recognize the names of the Aboriginal people on the docket.

Factors commonly identified by stakeholders as contributing to the high attrition rate are consistent with those identified by courtworkers. For example:

- Lower wages relative to competing employment opportunities;
- A booming economy in some regions (much lower rates of unemployment than in the past);
- Increasing demands on an already heavy workload leading to the burnout of courtworkers;
- Limited opportunities for growth, advancement and professional development; and
- A feeling of isolation attributed to the location of some communities as well as a lack of direct interaction with other staff, support and recognition.

Most courtworkers recommended an increase in compensation and an improved benefits package as a way to reduce attrition rates. Other suggestions include more training and professional development, more networking opportunities, reduced caseloads, reduced administrative duties, and better working conditions. Greater recognition of their efforts and appreciation of their work by the Program and justice officials would also help to increase job satisfaction. In addition, stakeholders recommended providing more competitive wages (particularly in areas requiring post-secondary education) and clear salary scales as well as increasing Program funding to allow for more training and improved working conditions. More resources for the Program are needed to increase the number of staff in some areas.

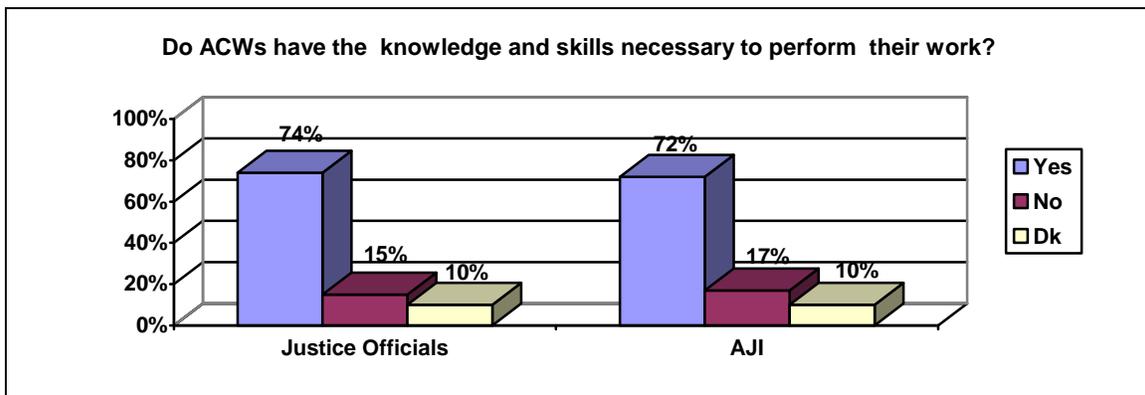
3.10.2. Training

Courtworkers obtain the bulk of their training on the job and through job shadowing other courtworkers. Other common methods include formal training programs, mentoring, self-teaching and orientation sessions. These methods can be supplemented by training materials and

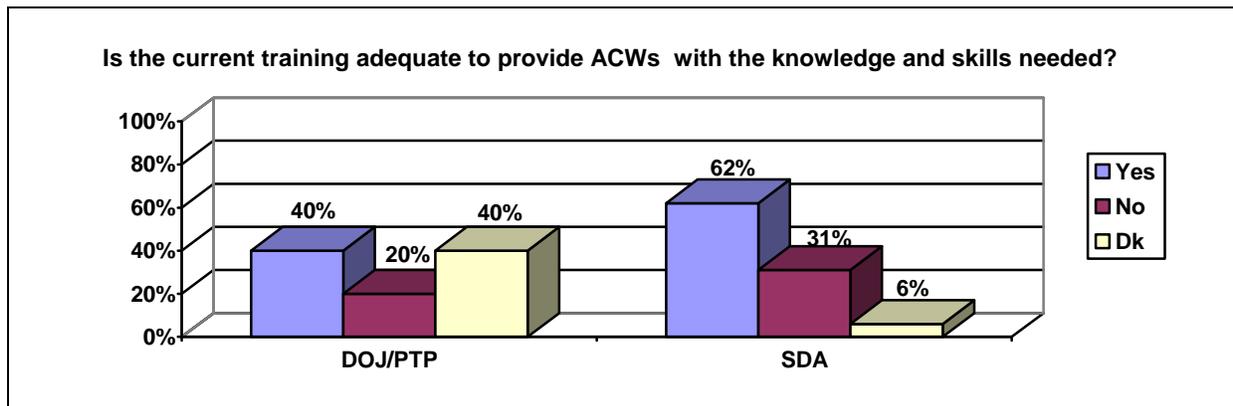
curriculum developed nationally (e.g., materials developed by the TWG) or locally (e.g., developed by the local SDA and other courtworkers).

The available budget for training varies widely, with annual plans submitted by participating provinces and territories identifying training budgets ranging from \$1,000 to nearly \$100,000 per jurisdiction. In areas where the budget permits, supplementary training may be provided covering topics as diverse as Gladue report writing, mediation, facilitation, administrative support, time management, various mental conditions and associated behavior indicators, suicide intervention, and basic first aid.

The current system is generally effective in preparing courtworkers for their positions. For example, 74% of justice officials and 72% of Aboriginal justice representatives agreed that courtworkers have the knowledge and skills needed for their work.



Approximately two-thirds of federal, provincial, territorial and SDA representatives expressing an opinion agreed that the current training provided is adequate to give courtworkers the knowledge and skills needed for their work.



Stakeholders identified a need for training in the following areas: family law (child apprehension, social services), Gladue-related services, changes to the criminal code, court proceedings, paralegal skills, conditions of release, bail hearings, how to deal with FASD or mentally ill clients, and the courtworker mandate. Other areas of importance include access to skill development training covering topics such as public speaking, client assessment skills, mediation and community outreach. Training could be improved by enhancing the national curriculum for courtworkers and facilitating knowledge sharing through mechanisms such as online learning communities, regular online forums, publications and teleconferences. Improved training would benefit the Program by shortening the learning curve for new courtworkers, reducing the rate of turnover, enhancing the quality of the services provided, and better enabling courtworkers to keep abreast of legislative changes.

3.10.3. Evolution in the role of courtworkers

The role of courtworkers has changed and evolved over time. Over three quarters of the delivery partners noted that the role of the courtworker had changed as compared to just over one-half of the courtworkers and justice officials. As would be expected, the tendency to note a change increases with the length of time that the courtworker has been involved in the ACW Program. Representatives of AJIs were least likely to notice changes in the role of courtworkers.

The roles of Aboriginal courtworkers have evolved in a number of ways according to the stakeholders interviewed:

- As awareness and visibility of the Program has increased, the courtworkers are increasingly utilized by both Aboriginal accused and justice officials.
- The range of responsibilities of courtworkers has increased as well, particularly with respect to delivery of services to the community and to the court (e.g., involvement in preparing or providing input into Gladue or pre-sentencing reports, making public presentations, being aware of the resources and programs within the community).
- In addition, courtworkers are increasingly involved in supporting and advocating for restorative and alternative justice (e.g., arranging and hosting healing circles, making referrals, arranging diversion programs).
- Expectations placed by the Program on courtworkers have also increased. For example, they are now expected to fulfill weekly reporting and administrative duties and to keep abreast of legislative changes. In some regions, courtworkers have also become more involved in family law, in providing input to the courts, and in serving youth.
- Stakeholders noted a pressing need for family courtworkers as Aboriginal families experience significant challenges. For example, Department of Indian Affairs and Northern Development data confirms that between the years 1995 and 2001, the number of registered Indian children entering into foster care rose 72% nationally. The same data indicates that Aboriginal inmates are twice as likely (in comparison to non-Aboriginal inmates) to have a history of involvement in the child welfare system¹¹. Family courtworkers work to address problems in the home in a culturally relevant way, and in doing so, may effectively reduce the number of Aboriginal children who get incarcerated later on in life. Currently, courtworkers in some areas such as Alberta and Ontario are provided with provincial funding that has allowed them to develop Family Courtwork programs.

Most stakeholders view the changes positively, noting that these have improved the services provided, increased coordination across programming, and given the Program more credibility. However, as a result of these changes, many courtworkers report increased workloads (and accompanying stress levels) which can impact on the number of clients that they can assist and on the level of service that can be provided. It should be noted that workloads can vary by region (with courtworkers in some regions being overwhelmed by the demand while courtworkers in some regions may be less pressured) and over time (many communities offer a mixture of busy days and slow days).

¹¹ Fraser, Racquel, Feasibility Study of a National Courtwork Program, 2007

The courtworkers continue to be under pressure to take on additional activities and responsibilities. In particular, courtworkers and delivery partners highlighted pressures to act as more of an advocate and/or legal representative for clients (e.g., appear on their behalf, produce Gladue reports), provide assistance related to family law and civil issues, keep up with legislative changes, get more involved with the community and fulfill new administrative duties.

To respond to these pressures, delivery partners and courtworkers recommend that the Program budget be increased where needed, more training and opportunities for professional development be provided, and steps be taken to streamline the administrative and reporting processes to reduce the accompanying burden on the courtworkers.

3.10.4. Capacity of the ACW Program to meet the demand

The overall effectiveness of the Program is determined, in part, by whether it has the capacity to meet the demand for services. In addition to heavy workloads reported by many courtworkers, a variety of indicators suggest that the demand for services exceeds the supply, including:

- In the recent survey, 70% of the clients indicated that they had a previous conviction but only 55% reported that they previously received services from a courtworker (not all of whom would have a previous conviction). Of those with a previous conviction, 69% indicated that they had previously received services from a courtworker. Of those who reported no previous conviction, 19% indicated that they had previously received services.
- Similarly, in the recent survey, 66% of clients would like to receive further help or services from the courtworker while only 31% indicated that they would not need any further assistance. Courtworkers commonly note that they typically do not have time available to provide much in the way of follow-up services to their clients. Areas where clients would like to receive further assistance included court appearances, finding a lawyer or help in attaining a better lawyer, dealing with outstanding or other charges assistance related to children and family, treatment programs, mediation, counseling and restitution.
- Delivery partners and courtworkers both note that the demand for services is increasing. The need for services has increased over time as the Aboriginal population has grown, the role of courtworkers has broadened, and the courtworkers have become firmly established as a key component of the justice system.

- Less than 40% of justice officials strongly agreed that courtworkers were available when needed, which largely relates to the number of courtworkers relative to the workload and their ability to provide services throughout the region given time, travel and resource issues.
- Access to services in rural areas tends to be more limited than in urban areas as a result of geographic considerations, the number of courtworkers available, and the costs of travel. While there is a need for the services of courtworkers in all regions, some stakeholders argue that the need is particularly acute in rural areas where clients may be less familiar with the justice system, face greater barriers to justice, and have less access to other resources including legal services, community programs and alternative measures.

3.10.5. Access to other resources in the community

The availability of other resources in the community such as diversion programs and alternative measures, treatment programs, medical services, mental health programs, and housing and shelter programs can impact on the effectiveness of the Program. Simply put, the greater the range of tools available to the courtworker, the more targeted their services can be. As highlighted earlier, rural communities tend to have much more restricted access to programs and resources.

3.10.6. Delivery models

Due to differences that exist in the way clients are counted across jurisdictions, it is not possible to accurately calculate the cost of the program per client. However, dividing the federal contribution by the best available estimate of the number of clients yields a crude estimate of about \$79 per client and \$25,600 per courtworker. The costs of the Program are low, expressed on a per-client or per-courtworker basis.

Table 4: Approximate Program costs per client served and per courtworker

Federal contribution (Budgeted)	\$5,383,098
Estimated number of clients served (2005/06)	67,921
Approximate cost per client	\$79
Number of courtworkers	210
Cost per courtworker	\$25,634

The number of clients served data is based on 2005/06 data, or the most recent year for which data is available.

Direct comparisons are not feasible across jurisdictions because of differences that may exist in how clients are counted, the level of service provided to each client, the range of services supported with the federal funding, and the presence of part-time, ad-hoc, and unfilled courtworker positions which affect the number of courtworkers reported.

As noted in Chapter 2, six different delivery models operate across the country varying in terms of the number of agencies operating in the region and the type of employer. Across the jurisdictions, courtworkers vary from being government employees to working for one or multiple non-profit Aboriginal SDAs operating in the region. There appear to be no obvious reasons why one model is inherently more cost effective than another. For example, two provinces which appear to have comparably low costs per courtworker and per client use very different delivery models. Manitoba uses a government-only model under which courtworkers are government employees, whereas Saskatchewan uses a more complex model under which courtworkers are employees of 16 SDAs whose work is coordinated by a lead organization created by the provincial government.

All models involve a relatively small network of geographically decentralized courtworkers who require some attention from management and administrative assistance. All courtworkers require some form of orientation and training at the beginning of their employment but then largely work independently to provide services and further develop their own skills and networks on-the-job. A one-deliverer model may achieve some economies in management and administration but result in less face-to-face time with managers because of geographic differences. A multi-SDA model may result in somewhat less coordination between courtworkers in the province, require a longer lead to achieve consensus on some issues, and have greater potential for duplication in administration and support activities. However, a multi-SDA model may also enable the

courtworker to interact more often with his or her manager and other SDA employees (including non-courtworkers), may be more community-driven, and may have the advantage of building close relationships with other programming in the region, particularly if that programming is also delivered by the SDA.

Factors other than the type of delivery model are likely to have a much greater impact on cost effectiveness. In addition to factors such as attrition, access to training, and access to other resources and programs which were highlighted earlier, such factors include:

- The geographic territory that is served (and related travel costs and times);
- The scope of the Program (e.g., whether courtworkers are involved in family court and youth court);
- The depth of services provided (e.g., where alternative measures exist, the time spent on aiding in the preparation of drug and alcohol related treatment plans, counseling, and other options can involve a greater time commitment from courtworkers);
- Competitive remuneration rates for the region;
- Access to supporting infrastructure (e.g., access to office space and equipment in the courthouse where courtworkers can work and meet with clients);
- The level of and the support for the awareness of the Program among justice officials; and
- The extent to which the justice system itself is overburdened in the region.

Furthermore, the results of the interviews illustrate that there are no differences across delivery models with respect to the perceived success of the Program in achieving ratings of its objectives, or its impacts on Aboriginal accused, justice officials, and other community initiatives. One notable difference relates to the impact of the Program in enabling justice officials to consider alternative measures, which is a function of the availability of alternative measures in a given jurisdiction rather than differences in effectiveness of delivery models.

3.11. Opportunities for Improvement Identified by Stakeholders

The delivery partners, courtworkers and other stakeholders provided a wide range of suggestions regarding the ways in which the ACW Program could be improved. The following table presents opportunities for improvement identified by stakeholders.

Table 5: Opportunities for improvement identified through interviews

Focus	Suggestions for Improvement
Increase awareness of the Program	<ul style="list-style-type: none"> • Promote the Program more aggressively to key target groups including potential clients, justice officials and the Aboriginal community. Common suggestions include providing national promotional materials, business cards for courtworkers and pamphlets for the courthouses. • Increase opportunities for courtworkers to network with justice officials to ensure that justice officials have a clear understanding of the nature and range of services that courtworkers provide. These opportunities could also be used to facilitate an understanding of what courtworkers do not do, so that justice officials are not making unreasonable requests of them.
Expand the scope of the Program	<ul style="list-style-type: none"> • Consider expanding the Program to focus on family law nationally. • Consider expanding the Program to include civil law as well as family law. • Broaden the services provided by courtworkers on behalf of their clients. Suggestions ranged from looking at ways for courtworkers to provide increased support for transportation of Aboriginal accused and to play more of a preventative role in the Aboriginal community, to allowing courtworkers to provide some legal advice, provide in-court translation where needed and increase their involvement in the production of Gladue reports.
Increase access to services	<ul style="list-style-type: none"> • Consider increasing the resources available to: <ul style="list-style-type: none"> – Ensure that communities, where there is a demonstrable need for a courtworker, have a courtworker (e.g., communities in Nunavut where a large concentration of Aboriginals suffer without the services of a courtworker). Gaps were most frequently identified with respect to non-urban areas. – Provide funding for client transportation (in Toronto, courtworkers have funding that pays for clients transportation to and from treatment facilities and they also have subway tokens in their offices that they can provide to clients when asked). – Enable courtworkers to follow up with clients. – Better enable courtworkers to work with youth offenders. • Where needed to serve the client group, work to attract and retain courtworkers who can speak the appropriate language so that clients will be able to understand the justice process and have someone to help them communicate with their lawyer and others.
Strengthen linkages with other programming	<ul style="list-style-type: none"> • Implement strategies to enable courtworkers to increase their familiarity and level of interaction with available programs (including alternative measures for Aboriginal accused) as well as improve the level of coordination. Potential strategies could include providing training, developing networking opportunities, scheduling regular meetings attended by representatives of the various programs, and sharing presentations and seminars.
Strengthen the supporting infrastructure	<ul style="list-style-type: none"> • Ensure that each courtworker has access to the necessary infrastructure (particularly at the courthouses) that they need to fulfill the requirements of their positions, including office space, computer equipment, fax machines, photocopiers, filing cabinets, desks, phones, and Internet connectivity.

<p>Streamline the administrative structure</p>	<ul style="list-style-type: none"> • Streamline the funding process to enhance coordination between federal and provincial funding bodies.
<p>Reduce the rate of attrition</p>	<ul style="list-style-type: none"> • Ensure that compensation and benefits are competitive. For example, some concern was expressed that community justice workers do similar work but may be paid a substantially higher wage. • Provide clear guidance regarding performance expectations, salary scales and opportunities for advancement. • Increase access to opportunities for training and professional development. • Where needed, hire more courtworkers to lessen the caseloads and reduce burnout among courtworkers. • Increase opportunities for courtworkers to network within the community and the justice system which will in turn increase their recognition within the community. • Examine ways to reduce the administrative burden associated with the current reporting system. • Review the fairness of reimbursement policies regarding costs associated with courtworkers traveling to remote communities (e.g., policies regarding time, mileage and other costs). • Work to improve job stability (reduce worries that funding cutbacks will impact their positions).
<p>Increase access to training</p>	<ul style="list-style-type: none"> • Increase access to knowledge training covering topics such as family law (child apprehension, social services), Gladue-related services, changes to the Criminal Code, court proceedings, paralegal skills, conditions of release, bail hearings and the courtworker mandate. • Increase access to skill development training covering topics such as public speaking, client assessment skills, report writing skills, mediation, counseling and outreach. • Increase access to training focused on specific issues affecting segments of the target client population such as FASD, drug and alcohol addiction and mental health problems (e.g., depression, schizophrenia, bi-polar disorder). • Examine ways to further enhance the national curriculum for courtworkers and facilitate knowledge sharing through mechanisms such as online learning communities, regular online forums, publications and teleconferences.
<p>Improve the reporting process</p>	<ul style="list-style-type: none"> • Clarify the reporting requirements for courtworkers under the performance measurement system and ensure that there is a common understanding of the definitions, requirements and process. • Find ways to streamline the reporting requirements (e.g., conduct a best practice review to identify opportunities for improvement, ensure that the system is easy to administer). • Provide more training to courtworkers with regards to the reporting system. • Ensure that the system meets both the national requirements and the needs of the regional agencies and partners.
<p>Increase Opportunities for Collaboration</p>	<ul style="list-style-type: none"> • Increase information sharing with regards to best practices, regional differences, frontline experiences, cross-jurisdictional issues and specific program policies.

	<ul style="list-style-type: none">• Facilitate greater input from SDAs as well as from provincial and territorial representatives to ensure their needs are met.• Continue effort to increase collaboration between the delivery partners and undertake joint projects focused on key issues.
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4. CONCLUSIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSE

4.1. Conclusions

The main findings and conclusions arising from the evaluation are as follows:

1. There is a strong and continuing need for the ACW Program.

Key factors that contribute to the need for the Program include:

- Over-representation of Aboriginal people in the criminal justice system.
- A history of inequitable treatment of Aboriginal people by the justice system.
- A high incidence of issues that can constrain the ability of Aboriginal persons to gain access to justice such as language barriers, lower education levels, substance abuse issues, health issues including mental health issues, and high rates of poverty.
- Limited access to legal and other services, particularly in rural and northern communities.
- Increasing demand for services as indicated by a significant number of respondents.
- The unique type of support that Aboriginal accused need to understand the system.

The Program is specifically well positioned to bridge the gap that has traditionally existed between Aboriginal people and the justice system. The ACW Program contributes to fair, equitable and culturally sensitive treatment of the Aboriginal accused before the courts, by enabling them to understand the justice system including their rights, obligations, charges and sentencing, obtain access to available resources and programs, and being able to communicate with justice officials who have been made aware of the socio-economic issues, cultural traditions, circumstances and relevant court decisions facing Aboriginals.

2. There are significant differences in how the ACW Program is delivered across jurisdictions and even across courtworkers within jurisdictions.

One of the strengths of the ACW Program is its ability to be tailored to meet regional priorities, the needs and characteristics of the communities in which it operates, the availability of other programming, and the capabilities of the individual courtworkers.

3. The ACW Program has been successful in achieving its objectives.

The ACW Program is viewed as particularly successful in ensuring that Aboriginal accused are represented in court; explaining the charges and process to the Aboriginal accused; enabling the Aboriginal accused to feel more at ease in a highly stressful situation; connecting the accused to appropriate services in the community; both educating the Aboriginal community about the criminal justice system and justice officials about the Aboriginal community; and helping to instill a more trusting relationship between Aboriginal people and the criminal justice system. The Program is considered somewhat less successful with respect to attracting, training and particularly retaining Aboriginal courtworkers, fully meeting the demand for services due to resource constraints, and being able to provide referrals to alternative measures due to the limited availability of community justice programs and other resources in some communities.

4. The ACW Program is successful in providing support and information to Aboriginal accused, which enables them to make better informed decisions regarding their case and about pursuing alternatives to sentencing.

The results of the evaluation indicate that the Program:

- serves a large client base. According to the latest available data, the Program served nearly 70,000 adults and youth clients with charges around one incident in 2005-06;
- provides much needed support and assistance to the accused at various stages during the process, particularly during the pre-court and in-court stages;
- satisfies the information needs of Aboriginal accused; and
- increases awareness of their rights, obligations and resources, which enables Aboriginal accused to make better informed decisions regarding their cases before the courts and about pursuing alternatives to sentencing.

Examples of impacts included a greater understanding of the charges, reductions in the failure of Aboriginal accused to appear, and reduced likelihood of breaches of the conditions for release. This is important because offences related to the administration of justice (such as failures to appear and breaches) are the single most common charge of clients served under the Program – courtworkers help to reduce the number of breaches that otherwise would have come before the court. Courtworkers enable Aboriginal accused to make better informed decisions about pursuing alternatives to sentencing by communicating with justice officials about the various services available in the community, determining client eligibility for alternative measures, explaining the options to the accused, and facilitating referrals to alternative measures as well as to other resources in the community.

- 5. Courtworkers play an important role in enhancing communication within court proceedings by facilitating clients access to legal representation, assisting both the accused and counsel in preparing for court proceedings, assisting accused in speaking with justice officials, and confirming that the accused understands the process, charges, potential outcomes and instructions.**

The simple presence of the courtworkers often improves communication by making the parties feel more comfortable and at ease in the court. In the absence of a courtworker, it is not unusual for accused to say they understand the charges when they do not or to simply plead guilty without understanding the entirety of the charges. Courtworkers are also active in facilitating communication outside of the court room between the accused and justice officials such as defense counsel and Crown counsel through participating in meetings, advocating on their behalf, and providing basic interpretation services. Most Aboriginal accused reported that courtworkers assisted them in speaking with justice officials and in understanding the information required.

- 6. The Program enables justice officials to become more aware of socio-economic conditions and traditions, to take relevant court decisions into account, and to consider alternative measures.**

The results of the evaluation indicate that:

- Justice officials are generally satisfied with the information provided by the Aboriginal courtworkers and believe that information to be important.
- Justice officials view courtworkers favourably, noting that they are respectful and courteous, help to move the process along, and provide valuable services to the court.

- Courtworkers enable justice officials to become more aware of the socio-economic issues and circumstances facing Aboriginals through information provided in court, presentations, disseminating materials on Aboriginal culture, and informal communication.
- Courtworkers may play an integral role in enabling judges to consider sanctions other than imprisonment (e.g., by providing information and recommendations regarding programs and alternatives) and to better understand the circumstances of Aboriginal offenders (e.g., by providing information on the background of the accused or mitigating factors related to the offence).

7. The ACW Program has strengthened the relationship between the Aboriginal community and the formal justice system.

In addition to working with clients, most courtworkers interact directly with local communities by serving on various committees and promoting the Program through presentations, brochures and promotional materials, meetings, forums, workshops and other means. Through these efforts, progress has been made in improving understanding of the justice system and raising the profile of the ACW Program within the Aboriginal community. In addition, the presence of the courtworker in the formal justice system helps to improve its credibility, builds greater trust in the system, and reduces the sense of alienation for the Aboriginal community. However, while significant progress has been made, interviews with courtworkers and observations during field trips highlight that there still are situations where Aboriginal persons are not dealt with fairly, equitably or in a culturally sensitive manner. Furthermore, the expectation is that much of the significant progress that has been made would dissipate should the services of courtworkers no longer be available.

8. The Program contributes to the success of the community justice initiatives.

The federal government as well as provincial and territorial governments support initiatives aimed at reducing the rate of incarceration and making the justice system more responsive and culturally sensitive to the needs of Aboriginal people. Courtworkers complement these initiatives, where available, by serving as a vital source for referrals (in effect, courtworkers serve as the frontline for many of these initiatives by identifying suitable clients), creating awareness of the programs among justice officials and potential clients, working with program representatives and sharing information with respect to particular clients as well as broader issues, sharing resources and best practices, sitting on Aboriginal justice committees

or committees established to oversee specific initiatives and, in some cases, taking a lead role in the development of community-based initiatives.

9. Progress has been made in addressing some of the issues raised in the formative evaluation.

In particular, progress has been made in increasing communication and understanding between different parties, better balancing of participation among members, and gaining more input from SDAs regarding topics such as best practices.

10. The effectiveness of the Program is largely determined by the capabilities and experience of the courtworkers, which are determined in part by the rate of attrition and access to training.

Attrition has a negative impact on the success of the Program. The effectiveness of courtworkers is largely a function of their visibility, credibility, connections, skills and experience – all of which take time to develop. When a courtworker leaves, services are disrupted and it often takes an extended length of time to fill positions (particularly in smaller communities and in regions where the economy is strong). The attrition rate among courtworkers averaged about 11% over the past year. Factors that contribute to staff turnover include lower wages relative to competing employment opportunities; increasing demands adding to an already heavy workload; limited opportunities for growth, advancement and professional development; and a feeling of isolation attributed to the location of some communities as well as a lack of direct interaction with other staff. However, courtworkers generally enjoy and value their positions.

Courtworkers obtain the bulk of their training on-the-job. Other common methods include formal training programs, mentoring, assistance from justice officials, self-teaching, orientation sessions and job shadowing in some communities. These methods can be supplemented by training materials and curriculum developed nationally (e.g., materials developed by the TWG) or locally (e.g., developed by the local SDA and other courtworkers). Opportunities for improvement include providing additional training for new and existing courtworkers as well as more opportunities to share information and best practices, developing and maintaining a comprehensive online curriculum, staging more national training events and annual seminars, and increasing the focus on particular topics. Improved training would benefit the Program by shortening the learning curve for new

courtworkers, reducing the rate of turnover, enhancing the quality of the services provided, and better enabling courtworkers to keep abreast of changes in the law.

11. The cost of the Program, expressed on a per-client or per-courtworker basis, is very low.

Due to differences that exist in the way clients are counted across jurisdictions, it is not possible to accurately calculate the cost of the program per client. However, dividing the federal contribution by the best available estimate of the number of clients yields a federal cost of about \$79 per client and \$25,000 per courtworker. According to data obtained from a variety of sources, the funding provided by the federal government is equal to an average of about \$79 per client or about \$25,600 per courtworker. Six different delivery models operate across the country, varying in terms of the number of SDAs operating in the region and the type of employer. Across the participating jurisdictions, courtworkers vary from being government employees to working for one or multiple non-profit Aboriginal SDAs. While there might be certain advantages or disadvantages associated with a given model, no model is inherently more cost effective than others.

Factors other than the type of delivery model tend to have a greater impact on cost effectiveness. In addition to factors such as attrition, access to training, and local access to other resources and programs, such factors include:

- The geographic territory that is served (and related travel costs and times);
- The scope of the Program (e.g., whether courtworkers are involved in family court and youth court);
- The depth of services provided;
- Competitive remuneration rates for the region;
- Access to supporting infrastructure (e.g., access to office space and equipment in the courthouse where courtworkers can work and meet with clients);
- The level of the awareness of the Program among justice officials and within communities; and
- The extent to which the justice system itself is overburdened in the region.

12. Opportunities to further expand the impact of the ACW Program are constrained by resource issues.

Federal government funding for the Program has remained fixed at \$5.5 million per annum since 2002-03. Resource constraints affect the ability of the Program to fully meet the demand for services, address gaps where communities may be underserved or not served at all, increase courtworker compensation to reduce the rate of attrition, ease heavy workloads, broaden services to provide assistance in areas such as family law, provide greater assistance in helping Aboriginal accused to appear, promote the Program more aggressively to key target groups, further strengthen relationships with justice officials and other programs, increase access to training, and increase access to the infrastructure required by courtworkers.

4.2. Recommendations and Management Response

4.2.1. Achievement of ACW Program objectives:

The Program has been successful in achieving its objectives. However, it is considered less successful with respect to:

- Fully meeting the demand for services -- most notably, the evaluation concluded there are gaps in the provision of services in remote areas and for family law matters;
- Attracting and retaining Aboriginal courtworkers due primarily to low rates of pay;
- Training existing courtworkers and new recruits; and
- Creating awareness of the Program. The profile of the Program is low in some communities and justice officials are not always aware of the Program or the services provided by courtworkers.

Recommendation 1: It is recommended that the Department of Justice develop a renewal strategy for the ACW program that would enable the SDAs to:

- improve service to remote areas, provide services in family court, alleviate heavy workloads and provide follow-up services to clients;
- improve salaries and benefits for courtworkers; and
- provide access to more training for existing courtworkers as well as new recruits.

Management Response:

We agree with the conclusion and recommendation. Currently, in collaboration with provinces and territories, we are developing policy options to increase the capacity of the ACW Program to meet this recommendation.

Recommendation 2: It is recommended that the TWG and the SDAs develop a strategy to promote awareness of the ACW Program and enhance justice officials' understanding of courtworkers' roles and responsibilities.

Management Response:

We agree with the conclusion and recommendation. The Department of Justice will encourage further discussion in the TWG forum on this subject.

4.2.2. Coordination between ACW Program and other AJIs:

Most stakeholders see opportunities to further improve information sharing and coordination between the ACW Program and other AJIs. Particular areas for coordination include communications regarding the range of options available to Aboriginal accused through the ACW Program and other justice initiatives and clarification and communication of the respective roles of staff involved in the delivery of these programs.

Recommendation 3:

It is recommended that the Department of Justice work with the provinces and territories to enhance awareness, communication and collaboration among the different programs that serve Aboriginal clients within the justice system.

Management Response:

We agree with the conclusion and recommendation and will continue to work with other Aboriginal justice programs and services to increase collaboration and information sharing.

4.2.3. Performance measurement and reporting requirements:

There are continued challenges with the performance measurement strategy. For example, due to jurisdictional differences in the definition of client, and the approaches used to count the number of courtworkers and measure the level and type of services, it was not possible to conduct a rigorous analysis of the cost effectiveness of the Program of the sort that would include comparisons across jurisdictions and delivery models.

Recommendation 4: It is recommended that the Department of Justice continue to work with the TWG to develop consistent and clear definitions for national data elements within the performance measurement strategy and create templates for the reports that jurisdictions are to provide in order to fulfill their reporting requirements.

Management Response:

We agree with the conclusion and recommendation. The Department will continue to work with the provinces and territories and SDAs through the TWG to finalize the work being done on national data requirements and develop templates that all jurisdictions can use for reporting.

Recommendation 5: It is recommended that the Department of Justice provide access to training for courtworkers on the specific performance reporting requirements.

Management Response:

We agree with the recommendation and have responded by developing an ACW Program project fund with specific priorities that include supporting the establishment or improvement of performance reporting systems and providing funding for training activities.