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Research Report

Inuit Women and the Nunavut Justice System
2000-8e

Mary Crnkovich and Lisa Addario
with Linda Archibald

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Division de la recherche et de la statistique/
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Table of Contents

LIST OF APPENDICES

EXECUTIVE SUMMARY

Background

In 1993, Inuit of Nunavut and the Government of Canada reached a comprehensive land claims agreement. As part of this agreement, the Government of Canada agreed to establish the Nunavut Territory, with its own Legislative Assembly and public government, separate from the government of the remainder of the Northwest Territories. The Nunavut Territory was established on April 1, 1999.

The administration of justice in Nunavut could best be described as a "work in progress." Parts of the justice system operating in the NWT prior to April 1, 1999 have been adopted by the Nunavut Government while other parts have been discarded. Amendments to the *Nunavut Act* passed in March 1999 did away with the two-tier trial court system, modified the appellate court operations and, implicitly, encouraged an expanded role for justices of the peace.

Purpose of the Report

This report focuses on three specific components of the criminal justice system in Nunavut—the unified court structure, justices of the peace and community-based justice committees. It presents a snapshot of complex and multi-layered issues in relation to these three components of the justice system and their impact on Inuit women. Inuit women of Nunavut strongly supported the creation of the new territory and, like other Inuit, look to the new government as a means of securing greater control over their lives. There is, however, some uneasiness that the pace of change may inhibit the full involvement of Inuit women and the incorporation of their issues.

Summary of Conclusions

The systemic racial-cultural discrimination faced by Aboriginal peoples in the existing justice system has been well-documented. Prior to April 1, 1999, the justice reforms undertaken within the Northwest Territories were at the initiative of government or justice system players (e.g., judges, police) and remained within the context of the existing justice system.

The Nunavut Social Development Council's (NSDC) 1998 Justice Conference resulted in recommendations that offer a significant departure from the existing system of justice. They promote a community-based justice system that does not simply relocate the responsibility of dispensing justice from officials based outside of the community to those based within it. Rather, NSDC promotes establishing pivotal roles for Justices of the Peace and community justice committees and equipping these alternative dispensers of justice with greater independence from officials within the existing justice system. These expanded roles suggest a broadening view of justice that embraces Inuit values and culture. The unified court structure similarly helps to bridge the distance between justice in the existing system and justice in Inuit culture.

The strengths of the Nunavut administration of justice and of the proposed recommendations of the NSDC are not without their challenges. For example, reforms addressing the need for cultural sensitivity

can result in the exclusion of gender sensitivity. A fundamental lesson learned is that reforms must be undertaken with due regard to the need for a process of community involvement that is accountable and community-based, representative and sensitive to gender as well as culture.

Following is a summary of recommendations in five discrete but inter-related areas: education and training; public education; increasing public confidence; support services; and monitoring and evaluation.

Training and Education

Education for all justice personnel, including JPs, community justice committees and court workers will ensure that all have a thorough understanding of the criminal justice system rules, procedures and practices. Integral components of education and training include Inuit traditions and practices as well as the dynamics of abuse, in particular sexual violence against women and children.

Public Education

Training for community justice committee members and JPs could also include information about broader legal concepts that would enable them to function as resource people in the community. The use of the justice committees and JPs as public educators would increase the level understanding among Inuit of the judicial system, particularly around such broad concepts as criminal procedure, the administration of justice, substantive and procedural law, the history of the justice system and the roles of justice personnel.

There is also a need to increase the level of community support for the work and decisions of justice committees and JPs. If community members, in their capacity as justice personnel, are making decisions involving cases of violence against women, more community education is required about these crimes. Public service announcements could be developed for radio and television (in Inuktitut and English) with simple messages, such as violence is a crime; sexual assault is a crime; child abuse is a crime, etc. With this campaign, JPs and community justice committee members (and the judiciary) dealing with such crimes will be better understood by the community at large.

Increasing Public Confidence and Judicial Accountability

The effort to enhance the public's knowledge of the system and its players is an important step in increasing public confidence in both. In particular, an increased awareness of the work of the courts, JPs and committees will equip community members to evaluate the performances of these players.

The need continues for an improved mechanism to screen candidates for all judicial positions – community justice committees, JPs and the courts – regarding their awareness of gender, racial and cultural bias. Inuit women and men must be involved in selecting and appointing justice personnel. The discipline process for justice personnel must be transparent, with Inuit women involved in developing this process.

Support Services for All Community Members

Victims of violence who have the choice of participating in community-based initiatives require support to make an independent decision regarding their involvement. Anything less than a fully supported right to decide, has the potential to make the community based initiative as coercive as, and therefore no better for them than, the Euro-Canadian justice system.

Monitoring and Evaluation

Many of the challenges identified in this report highlight the need for some mechanism to assess beforehand and monitor and evaluate the impacts of the system and its alternatives. Moreover, since the potential for JP courts and community-based justice committees to further victimize women is no less than that of the existing system, it is important that mechanisms be in place to respond to complaints about the committees or JPs and their determinations.

The prerogative writ remains in place for JPs, however there seems to be little, if any, discussion regarding how to deal with complaints involving community justice committees or how participants can seek redress.

There is a need to establish a system of evaluation and monitoring of the impact of these reforms. The burden should not remain with Inuit women to continually speak out after the justice system has harmed them.

Evaluation and monitoring of the administration of justice, including such matters as the use of jury trials, community-based justice committees, JP decisions, are effective means of keeping officials and the public informed on how the system is operating.

1. A NEW TERRITORY AND A NEW APPROACH

In 1993, Inuit of Nunavut and the Government of Canada reached a comprehensive land claims agreement. As part of this agreement, the Government of Canada was obligated to introduce legislation to establish the Nunavut Territory, with its own Legislative Assembly and public government, separate from the government of the remainder of the Northwest Territories. Pursuant to this commitment, the *Nunavut Act* was passed in 1993 requiring the Nunavut Territory and government be established on April 1, 1999.

The Nunavut Implementation Commission (NIC) was established to advise its founders—the Government of Canada, Nunavut Tunngavik Incorporated and the Territorial Government—"on a variety of topics central to the smooth inauguration of the new Nunavut government."[1]

The administration of justice in Nunavut, like the government and territory, is new and evolving. The NIC noted that improvements would result where there is a sustained commitment to cooperation on the part of justice personnel and anyone who works with people who come into contact with the justice system. Any successful reform to the administration of justice will require a "cross-organizational effort " to fully think through the impact of proposed reforms and to identify measures which can be built into the infrastructure of a newly established justice system. [2]

The justice system plays a significant role in the lives of Inuit women and their families in Nunavut. One only has to consider the nature of judicial dockets in Nunavut to understand its significance.

While there is no Nunavut-specific study addressing crime, a recent study[3] completed on crime in the Northwest Territories did include the area now identified as the Nunavut Territory. In this study completed for the Government of the Northwest Territories (GNWT), it notes that in 1996/97, "the Territory's prisons were operating at 43% over capacity"[4] with crime rates still greater than those in the rest of Canada. The nature of the crimes for which offenders were serving time were primarily crimes of violence against women and children:

The NWT has the highest rate of reported crime of all the provinces and territories in Canada. ...Specifically,

- the violent crime rate in the NWT is over five times that for Canada. The NWT has the highest violent crime rate of all provinces and territories. While the rate of robbery in the Territory is one half that for Canada, the assault rate is over five times (560%) the rate for

[1]Nunavut Implementation Commission, *Footprints in New Snow* (Ottawa: NIC, 1995) p. 3.

[2] Nunavut Implementation Commission, *Footprints II*, (Ottawa: NIC, 1996)p. 279.

[3]John Evans, Robert Hann and Joan Nuffield, *Crime and Corrections in the Northwest Territories*, August 31, 1998. This report was prepared for the territorial government Ministers of Justice and Health and Social Services.

[4]John Evans et al., p. ES: 1 .

the country as a whole, and the sexual assault rate is over seven times (730%) the general rate.

- property crime is also higher in the NWT than for Canada but by only 43%.[5]

Those crimes noted to have increased in reported numbers over the twelve year period from 1986 to 1997 included,

> ...sexual assault, common assault, public order offences (including disturbing the peace), "other *Criminal Code* offences" and "offences against the administration of justice" (broad categories which encompass breaches of a probation order, failure to appear in court, failure to comply with certain court orders, criminal negligence, and uttering threats), mischief trafficking in and importing drugs and impaired driving.[6]

The impact of such statistics has not gone unnoticed by Inuit women over the years. Violence against women and children in Inuit families continues to be a core issue at the annual meetings of the national Inuit women's Association, Pauktuutit. Through these annual meetings, Inuit women in Nunavut--like their counterparts in other parts of the Inuit homeland--have called for meaningful reform to the justice system to adequately respond to this ongoing violence. Inuit women of Nunavut strongly supported the creation of the new territory and government through their land claims agreement, and like other Inuit, look to the new government as a means of securing greater control over their own lives. Despite this enthusiasm, Inuit women are especially cautious about the changes to the administration of justice—as noted by an Inuk delegate at a national Aboriginal women's consultation on justice:

> I would like to suggest that the process of transferring administration of justice is slowed down until Inuit women are consulted, feel safe and fully involved. I would like to go at the speed of the women, and wait for Inuit women to do their own research and assessment. I do, however, recognize that may not be possible and we must take advantage of the current initiatives. ...the long term solution is that the transfer of the administration of justice must be accountable to Inuit women and their children. There must be participation of women, not just as "victims" but because these policies and initiatives directly impact on all women's lives and further entrench the inequality of women. Many of these policies and initiatives victimize women. Justice can't be blind when it comes to gender.[7]

In these early days of the Nunavut government, parts of the justice system operating in this territory prior to April 1, 1999 have been adopted while other parts of the system have been discarded. *Bill C-57 - An Act to Amend the Nunavut Act* was passed on March 11, 1999. These amendments dealt almost exclusively with changes required to the *Nunavut Act* that would accommodate the newly proposed court structure for Nunavut. The *Nunavut Act* passed in 1993 had adopted the two-level trial court system that was operating in the existing Northwest Territories. Under *Bill C- 57,* a single-

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[5]John Evans et al., p A1: 31.

[6]John Evans et al., p. 5.

[7]Inuit delegate's comments made at the Aboriginal Women and Justice Consultation, April 1994, see the *Record of Proceedings, April 6-7, 1994*, pages 32- 35. This is included in Appendix #2 of this report.

level trial court system will now be operating in Nunavut. In regards to other components of the administration of justice, such as community-based justice and the role of the justices of the peace, what is being changed and what remains the same is not so clear.

This report focuses on three specific components of the criminal justice system in Nunavut—the unified court structure, justices of the peace and community-based justice committees.[8] It presents a snapshot of complex and multi-layered issues in relation to these three components of the justice system and their impact on Inuit women. Real and potential reforms are examined along with their respective strengths and challenges. Again, this examination is undertaken within the context of how these changes impact on Inuit women and their families.[9] Other components of the justice system—most notably, policing and corrections— are not addressed. Civil law, while important, has not been addressed and the discussion on family law is brief.

At this point in time, the administration of justice in Nunavut could best be described as a "work in progress". Accordingly, it is assumed the two components discussed in this report and not addressed explicitly in *Bill C-57*—justices of the peace (JPs) and community-based justice initiatives—may also be reformed to reflect the recommendations made at the Nunavut Social Development Council's (NSDC) justice conference. While the NSDC has no decision-making authority, many Inuit participating in this conference are influential leaders as elected members of the Nunavut Legislative Assembly.[10]

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[8] The report is further limited to examining the role of the courts, justices of the peace and community justice committees in criminal and family law. Civil law, while important, has not been addressed in this paper. The component on family law is also far less detailed than materials on the criminal law component.

[9] A large portion of the information relied upon in preparing this report has been extracted from the documents listed in Appendix #1 of this report. Many of the publications document Inuit women's concerns and recommendations regarding the administration of justice. In addition to these reports, a select group of other documents are relied upon to identify the concerns raised by or about Inuit women and the justice system. The list is not exhaustive; rather, it is a selection of materials identified by the project funder and researchers for the purposes of this particular project. Details in these documents pertaining to the three justice components and Inuit women are provided in Appendix #2 of this report. In addition to a document review, the researchers relied on their own experiences with justice issues in Nunavut and with Inuit women as a source of insight and knowledge in identifying the strengths and limitations of the proposed system in Nunavut.

[10]The NSDC held its justice conference in Rankin Inlet, NT, from September 1-3, 1998. It was the direct result of the Nunavut Implementation Commission's recommendations in *Footprints II*. Both officials of what is now the Nunavut government Department of Justice were in attendance along with individuals who successful ran and won positions in the Nunavut Legislative Assembly, including the Executive.

2. UNIFIED COURT STRUCTURE

2.1 The Courts

2.1.1 Court of Justice

The *Bill C-57* amendments did away with the two-tier trial court system, modified the appellate court operations and, implicitly, encouraged an expanded role for justices of the peace.

The Nunavut Court of Justice, as a superior court, is responsible for all criminal, civil and family law matters. It is also the youth court for Nunavut and it is responsible for applications for prerogative writs against decisions of justices of the peace and other subordinate decision-makers.

It is composed of three superior court judges resident in Iqaluit. Two of three judges have been appointed.[11] In addition, twenty-one deputy judges have been appointed to the Nunavut Court for a transitional period. The deputy judges are intended to " help ensure a smooth transition for the justice system of the new territory. "[12] They have all of the powers of a superior court judge in the Nunavut Court of Justice.

2.1.2 Appeal Courts

The Nunavut Court of Appeal assumes the responsibilities for Nunavut which were previously held by the NWT Court of Appeal. Unlike its predecessor, the Nunavut Court of Appeal hears summary conviction appeals. A judge of this court will hear the first appeal of a summary conviction, and a panel of three members of the Court of Appeal will hear any further appeal. As in the previous system, the Nunavut Court of Appeal is responsible for all appeals of indictable offences.

With the demise of a lower court, *Bill C-57* also did away with prerogative writs for judges. As is noted in a federal government document discussing this change, historically, prerogative writs were available to review the decisions of lower-court personnel.[13] In their place, *Bill C-57* set

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[11]Madam Justice Beverley A. Browne of Iqaluit has been appointed Senior Judge of the Nunavut Court of Justice. Prior to this appointment, Madame Justice Browne was a Territorial Court judge in the NWT. Also appointed to the court was Robert Kilpatrick. Prior to his appointment, Mr. Justice Kilpatrick was a Crown Counsel in Inuvik, NWT. The third judge is to be appointed within one year of the establishment of the court.

[12]Department of Justice (Canada), *News Release: Appointment of Deputy Judges to the Nunavut Court of Justice Announced*, March 25, 1999.

[13]Department of Justice, Canada, *Options for Court Structures in Nunavut - A Discussion Paper* (Ottawa: Department of Justice), November 1997. In this paper, it states that "At common law, such writs could be issued only by superior court judges and only against the so-called "inferior" courts. The use of prerogative writs has declined as a result of the rights of appeal in the *Criminal Code* and the remedies available under the *Charter*. As well, the modern requirement that lower-court judges be legally trained, in addition to their accumulated expertise in criminal law, may reduce the practical need for prerogative-writ review. Prerogative writs remain valuable, however, as an expeditious method of correcting certain errors in criminal matters. This is particularly true in matters where time is of

out a statutory review process to review the decisions by the judges in matters such as warrants, subpoenas, preliminary inquiries and orders relating to public access to court proceedings. A single judge of the Court of Appeal will hear the review, and the second level of appeal will be a three-judge panel of the same court.

The Nunavut Court of Appeal is composed of superior court justices from the three territories and a number of judges from other courts across Canada. At present there are no Inuit on this court and none of the judges reside in Nunavut.

2.2 Bill C-57 Amendments: The Strengths

The Nunavut Court of Justice, as a single-level trial court, is expected to improve accessibility and reduce delays and to reduce judges' travel and the number of court circuits.[14]

Bill C-57 amendments supported the recommendations proposed in the Nunavut Implementation Commission (NIC) report called *Footprints II*. The unified court structure is expected to achieve the intentions noted above because, unlike the previous two-tier system, this circuit court will be able to hear all judicial matters to be addressed. "In a single visit to a community, the judges will be able to deal with both minor and major criminal offences, as well as divorce matters and disputes over money and property."[15]

2.3 The Remaining Challenges

While the unified court may address the issues associated with the delays caused by the two-tier trial system[16], there are other outstanding challenges of the court structure. These include a number of accessibility issues resulting from linguistic, cultural, gender, racial, economic, and social barriers and a lack of adequate services to support the delivery of justice. These challenges disadvantage all Inuit but, in particular, they have a detrimental impact on Inuit women.

2.3.1 Cultural Sensitivity of the Court Structure

Perhaps the most persistent issue regarding the Nunavut court structure is that it remains rooted in the Euro-Canadian justice system. The results of an analysis of the justice system that takes

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the essence (for example, an application to recover the fruits of an illegal search) or where matters will become moot if allowed to proceed to trial (for example, a decision to commit an accused for trial after a preliminary inquiry)."

[14]Department of Justice (Canada), *News Release: Creation of Nunavut One Step Closer as Nunavut Court of Justice Bill Receives Royal Assent*, March 12, 1999.

[15]Communications and Executive Services Branch, Department of Justice, *Backgrounder: The Nunavut Court of Justice*, p. 1.

[16] For a more detailed discussion of the impact of delays of the two-tiered circuit court on women refer to Department of Justice (Canada), *Record of Proceedings of the Aboriginal Women and Justice Consultations*, April 1994. This is included in Appendix #2 of this report.

account of the perspective of all of its diverse constituents can be complex and the solutions far from straightforward. For example, the 1986 reforms to the *Jury Act* of the NWT allow Inuit who speak only Inuktitut and reside close to the community (i.e. in out-post camps) to participate in jury trials. These changes have been commended for their cultural appropriateness.[17] In fact in the Report of the Aboriginal Justice Inquiry of Manitoba, Justices A.C. Hamilton and C.M. Sinclair noted that they were "impressed by the Northwest Territories' method of limiting the area from which a jury is drawn."[18] The Justices noted a number of advantages to this approach with the most important being that it involves the community in the trial of one of its members:

This solution is attractive to us, since it seeks to return to the community involved in a direct sense of involvement in, and control and understanding of, the justice system. ...In aboriginal areas, those people would be able to understand the nuances that might apply to the relationship between victim and accused, or local factors that might escape the attention of non-Aboriginal people.[19]

This reform speaks directly to recent legal arguments made elsewhere in Canada that an Aboriginal offender's rights are denied where Aboriginal people are not available or selected for jury duty. [20]

At the same time, this reform and the legal arguments obscure the fact that within Inuit culture it is not acceptable to "judge" one another or to "pass judgment".[21] This cultural value is in direct opposition to the role of the jury. Furthermore, not only does the jury process require Inuit to "judge" another individual, as a result of the judgement the jurors are indirectly responsible for the sentence meted out for the accused. This conflict between Inuit values and the judicial process, when coupled with the reality that Inuit communities are small, remote and closely knit, have particularly negative consequences in crimes involving violence against women.

In a number of communities, where accused have elected to be tried by jury for sexual assault crimes, the jury appears unwilling to convict. This has become a particular problem in the community of Pond Inlet. Between 1983 and 1995, not one sexual assault conviction occurred in the many jury trials that took place in Pond Inlet. [22] Many have speculated about the reasons for the lack of convictions. The two most common reasons noted by Inuit are the unwillingness

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[17]In 1986 the *Jury Act* of the NWT was amended to allow for unilingual Inuit who reside no more than 20 miles from the place fixed for the sitting of the court to be included in the jury list.

[18]A.C. Hamilton and C.M. Sinclair, Commissioners, *Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1*, Government of Manitoba, 1991, p. 386.

[19]Ibid., p. 386.

[20]See Margo Nightingale's, *"Just Us" and Aboriginal Women*(Ottawa: Department of Justice, 1994), p. 18. This is included in Appendix #2. In this article, Nightingale notes that these failures to have Aboriginal people available or selected for jury duty denies an Aboriginal offender's rights.

[21]NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998,, p. 16; Curt Taylor Griffiths et al. (1995). *Crime, Law and Justice Among Inuit in the Baffin Region, NWT, Canada*. pp. 116, 141. Both of these reports are included in Appendix #2.

[22]See Margo Nightingale, *"Just Us" and Aboriginal Women*, p. 18

of Inuit to "judge" one another, and the unwillingness of jurors to be responsible for having an individual removed from the community to serve a prison term.[23]

While no formal inquiries or studies into the jury trial process have been undertaken, the reasons cited above are worth noting and considering.

This failure of juries to convict has been the focus of serious discussions at many of the annual meetings of Pauktuutit. For example, at its 1994 annual meeting, delegates passed a resolution calling upon the justice system not to locate jury trials in the same community as the alleged sexual assault took place.[24] This resolution was a response to the failure of juries to convict in Pond Inlet and other communities, such as Rankin Inlet and Pangnirtung.

The use of juries in sexual assault trials has contributed to a shared view among many Inuit women that the justice system is not effective in dealing with and preventing violations to their personal security. At the national consultation on justice and Aboriginal women, Inuit women participants noted that "[j]uries do not work in Northern communities," and reinforced the Pauktuutit resolution, in their statement that there be no "[n]o jury trials in communities where the crime is committed (it should be noted that this recommendation was made to sexual assault cases involving women and children)."[25]

Those committed to reforming the Nunavut justice system appear committed to recognizing incarceration has a role as the appropriate disposition for some "serious" crimes.[26] However, what constitutes a "serious" crime and who defines it is cause for concern. There is a palpable tension between the commitment to having offenders dealt with in their communities and the need to condemn violence against women. As such, it is unlikely the Nunavut administration of justice, in the foreseeable future, will be able to dispel the impression Inuit women have that a judicial response to violence against them is weighted in favour of an accused.

2.3.2 Cultural Sensitivity of the Judiciary

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[23] See Department of Justice (Canada), *Record of Proceedings of the Aboriginal Women and Justice Consultations, November 1993*; and Pauktuutit, *Inuit Women and the Administration of Justice, Phase II: Project Reports -Progress Report #2 (January 1, 1995 - March 31, 1995) -Appendix #6 - Minutes of Proceedings and Evidence from the Standing Committee on Justice and Legal Affairs Respecting: Bill C -41*, Tuesday February 28, 1995, Witnesses: Inuit Women's Association of Canada. This latter document is also included in Appendix #2.

[24] This resolution initiated Pauktuutit's justice project to begin the work necessary to undertake an in-depth review of the use of the jury trial in sexual assault and child sexual abuse cases in Inuit communities in NT[Nunavut]. This work is in direct response both the AGM Resolution and the growing concern around the judiciary's unwillingness to order change of venues when requested by the Crown in these specific cases. The project funding ended before this study could be pursued. Following the end of the project, Archibald & Crnkovich did prepare and donate a research design for a jury trial study in consultation with both Pauktuutit and the Crown's office of the NWT. The proposal was submitted to SAGE in 1996 but due to administrative difficulties Pauktuutit did not undertake the study.

[25] Department of Justice (Canada), *Record of Proceedings of the Aboriginal Women and Justice Consultations, November 1993*, pp. 2 and 14.

[26] NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, p.9.

All of the judges serving on the two courts in Nunavut are non-Inuit and most live outside of Nunavut. The life experiences of the majority of deputy judges of the Court of Justice and the appellate court judges are far removed from those of the people living in the communities of Nunavut.[27] Accordingly, their familiarity with Inuit and with Inuit culture and values is based primarily on what is learned through reading, cultural orientation workshops, and their interactions through court work and visits to the communities. Those reforming the Nunavut court structure were not oblivious to these problems. The expanded role of the JPs and use of justice committees in the communities are attempts to bridge these linguistic and cultural gaps.[28]

In the meantime, Inuit women remain the unfortunate victims of a judiciary that struggles with the biases that plague an Euro-Canadian justice system that is male dominated. Similar to all other courts in Canada, the courts in Nunavut will no doubt continue to have their share of gender bias[29] As the next few paragraphs attest, previous courts serving Inuit living in Nunavut have demonstrated their capacity for: (1) sexual stereotyping about the proper roles and true nature of women and men; (2) cultural misinterpretation and misunderstanding about the roles between the sexes and the relative worth of women and men; (3) acceptance of myths and misconceptions about social and economic realities encountered by both sexes; and (4) behaviours that impose greater burdens on Inuit women than men.

Inuit women who have come into contact with the justice system because they have suffered violence have spoken about their feeling of having no control. They have also noted that they have felt afraid, humiliated and blamed for the violence and that they were not taken seriously. [30] In proceedings before the court, the treatment of Inuit women is, in part, attributable to an inadequate understanding on the part of justice personnel of the dynamics of abuse as well as misconceptions about Inuit culture. This attitude has been displayed most flagrantly in judgments from the bench which have created a separate category where Inuit women are unconscious due to sleep or intoxication.[31] In these cases, judges have held that women who were

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[27] Superior court judges from Alberta, Manitoba, Ontario, and Saskatchewan have been appointed as deputy judges of the Court of Justice. Also, Mark de Weerdt, now retired and formerly the Senior Judge of the Supreme Court of the NWT since 1981, was also appointed. Of the twenty-one deputy judges, four are women. In the brief biographies presented by the Department of Justice, it is not possible to determine if any of the justices are of Aboriginal ancestry. Two of the appointed justices are specifically identified as having practiced Aboriginal law. The Nunavut Court of Appeal is composed of superior court justices from the three territories and a number of judges from other courts across Canada. The core of the Nunavut Court of Appeal, like its predecessor the NWT Court of Appeal, remains the Alberta Court of Appeal. The Chief Justice of the Court is Chief Justice Catherine Fraser of the Alberta Court of Appeal and the NWT Court of Appeal. In addition to Chief Justice Fraser, 15 other superior court judges have been appointed to the Court. Of the fifteen, one third of the appointments are women and of the five women, one has been a judge of the Supreme Court of the NWT for the past four years. Among the male appointments, two are from the Yukon and two are from the Northwest Territories. The remaining female and male appointments are from Alberta and Saskatchewan.

[28] See comments made by Elijah Erkloo, Chair of the NSDC Justice committee in the NSDC Report.

[29] These four behaviours /attitudes are widely accepted across the United States as components of the working definition of "gender bias" in the courts. See Norma Wikler, "Researching Gender Bias in the Courts: Problems and Prospects," in Joan Brockman and Dorothy Chunn (eds.*) Investigating Gender Bias – Law, Courts and the Legal Profession* (Toronto, Thompson Educational Publishing, 1993), p. 50.

[30] Katherine Peterson (1992). *The Justice House Report of the Special Advisor on Gender Equality.* p. 57.

[31] See Pauktuutit, *Inuit Women and the Administration of Justice, Phase II: Project Reports -Progress Report #2 (January 1, 1995 - March 31, 1995) -Appendix #6 - Minutes of Proceedings and Evidence from the Standing Committee on Justice and Legal Affairs Respecting: Bill C -41*, Tuesday February 28, 1985.

intoxicated when assaulted did not suffer as serious an assault as they would have had they been sober.[32]

There have been instances where the court has displayed an incorrect understanding that sexual assault against women and sexual abuse of children are acceptable in Inuit society.[33] For example, a case in which the sentence was mitigated because, as the judge pronounced, there is no prima facie age restriction on sexual intercourse in Inuit culture, that menstruation signals the age at which sexual relations can commence. This case is often cited by Inuit women as an example of the court accepting a myth about Inuit culture and using it to mitigate sentence.[34]

In other cases, incorrect cultural assumptions on the part of judges have resulted in reluctance to sentence an Inuk offender convicted of a sexual assault to a federal penitentiary. The reasoning turns on the judges' perceptions of culture. These include cases in which short sentences were given to avoid sending offenders to federal institutions and cases in which lenient sentences were given to someone convicted of a sexual assault who was seen by the judge to come from a good family, who is an accomplished hunter, and not a violent person. Other factors that have been used by the court to mitigate sentences include having traditional skills; being a family man with no record; not being well educated; being under the influence of alcohol; and being a 'respected' community member.[35]

More fundamentally, the cultural insensitivity displayed by the judiciary in past cases demonstrated the fallibility of the judicial selection process. In her report, Katherine Peterson reported that there was an inadequate screening of judicial candidates of cultural attitudes and stereotypes with respect to women.[36] The same selection process remains for Nunavut, therefore so do the problems identified by Peterson. Other problems she noted were the lack of lay representation on the committee that makes judicial appointments to the court; the inability to have extra-judicial conduct reviewable as a ground of discipline; and the slow and inflexible judicial discipline process.

Inuit women have spoken out against the judiciary and their sentences. Primarily, they have criticized judges for their lenient sentencing of sexual assault and domestic assault cases. In particular, the women have decried these sentences because, in their view, they demonstrate that violence against Inuit women is not taken seriously. In the existing justice system, the longer the period of incarceration the more serious the crime. In commenting on the appropriateness

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[32] Margo Nightingale, *Judicial Attitudes and Differential Treatment: Native Women and Sexual Assault Cases* , (Ottawa: University of Ottawa, 1991). This is included in Appendix #2.

[33] See Pauktuutit *Phase II, Progress Report #2, Appendix # 6* and Nightingale's *Judicial Attitudes and Differential Treatment* for further details.

[34] See Pauktuutit Bill C-41 presentation and Margo Nightingale's *Judicial Attitudes and Differential Treatment: Native Women and Sexual Assault Cases* , for further details.

[35] See Pauktuutit Bill C-41 presentation and Margo Nightingale's *Judicial Attitudes and Differential Treatment: Native Women and Sexual Assault Cases* , for further details.

[36] Katherine Peterson, *The Justice House Report of the Special Advisor on Gender Equality*, 1992. This is included in Appendix #2 of this report.

of sentences in these cases, however, Inuit women face the risk of being isolated within their own families and communities when they advocate for longer sentences. [37]

Critiques of sentencing are made within the context of the existing punitive system of justice if meaningful rehabilitation is not seriously considered or provided simply because of the significant absence of resources and support services for both perpetrators and survivors. Accordingly, Inuit women have felt they have no other option than to call for longer sentences to ensure violence against women is taken seriously. This position places them on a "side" whereby they are seen by other community members as advocating or promoting the existing system (including corrections)—a system that systematically discriminates on the basis of race and culture and does little to address the underlying factors of criminal activity experienced by the accused.

[37] The issue of appropriateness of sentencing and the dilemma confronted by women who speak out being considered as promoters or advocates of the current correctional system is discussed in detail in Manitoba Association of Women in the Law, *Gender Equality in the Courts Criminal Law,* (Manitoba: MAWL, 1991).

3. JUSTICES OF THE PEACE

3.1 The JP Program

In the absence of legislative changes, the Nunavut JP program is operating under the same terms as the previous GNWT program in the initial stages. Accordingly, the JPs jurisdiction is set out in the *Criminal Code*, however the extent to which JPs exercise their full jurisdiction depends on other factors. Following their appointments, the Chief Justice of the Court of Justice is responsible for directing JPs and assigning duties.

Depending on the level and the assigned duties, JPs are authorized to conduct trials of any by-law offence, territorial offence, or federal summary offence (but not trials involving a young offender).[38] They can impose jail sentences of up to 18 months. They are also authorized to conduct judicial interim release hearings for both adults and young offenders, issue or cancel search warrants under all federal and territorial statutes, conduct remand courts for criminal matters and bail applications, peace bond hearings and perform other judicial functions. JPs are empowered to conduct some preliminary inquiries and hear guilty pleas, however, prior to April 1, 1999, no JP had conducted a preliminary inquiry in Nunavut (or elsewhere in the NWT).

With the creation of a unified court system, it is anticipated that JPs will be in a position to take on more of the minor cases leaving the superior court to deal with the more serious cases. Although *Bill C-57* did not expressly deal with JPs when she introduced *Bill C-57*, Justice Minister Ann McLellan described the Nunavut JPs as "the key to the ability to deliver a high quality justice system."[39]

Historically, JPs in Nunavut have not exercised all the powers available to them under the *Criminal Code*. In a *Nunatsiaq News* article about the JP program, the duties performed by Nunavut JPs are summarized into three areas of experience—" signing documents, hearing guilty pleas and conducting trials"—which is considered by the Nunavut Government's Deputy Minister of Justice to be the "lower end of the scale" compared to powers exercised by JPs in other parts of Canada.[40]

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[38] Each JP is appointed to one of five levels of JPs. Of the five levels, two are administrative and the remaining three are presiding justices of the peace.

[39] This quote of McLellan's was recited in Annette Bourgeois's article, "JPs to play larger role in single court system," *Nunatsiaq News*, March 19, 1999.

[40] Annette Bourgeois, "JPs to play larger role in single court justice system", *Nunatsiaq News*, March 19,1999, p.1. In comparison, there are two categories of Native Justices of the Peace in Ontario—presiding and non-presiding justices. The presiding justices can receive and swear information and complaints; issue summons and warrants; preside over first appearances and set trial dates; conduct bail hearings; conduct trials and sentencing offenders for provincial offenses and violation of certain statutes such as the *Indian Act*; and conduct weddings. The non-presiding justices cannot conduct trials or sentence offenders. See the Inuit Justice Task Force, Appendix #2, for further details of this comparative analysis.

The absence of continuing education left many JPs uncomfortable with exercising duties that extended beyond swearing information, and arrest warrants.[41] In terms of cases, it is estimated that prior to April 1, 1999, JPs heard from 30% to 60% of all cases that came to court with the circuit courts hearing the indictable offence cases.[42]

The Nunavut Justice of the Peace program has a coordinator whose primary responsibility, as identified by the Deputy Minister, is recruiting and training JPs. Deputy Minister Nora Saunders briefly described this position as follows,

> We see that this JP administrator will have a role in talking ahead of time to people who are considering [becoming a JP], perhaps by traveling to different communities and different regions and by talking with local officials about the kind of person needed, so that they have a sense of what that person's expected to do.[43]

Prior to April 1, 1999, there were 82 individuals (26 women and 56 men) working as justices of the peace in 27 Nunavut communities.[44] The number of Inuit participating as JPs in the communities today was not available at the time this report was prepared. While most of the JPs have full time-employment other than as a JP, having JPs paid a salary remains an outstanding issue.[45] The Nunavut government is committed to ensuring JPs are paid for their services.

The NSDC presented an alternative to paying JPs a salary directly. It proposed establishing a protocol that would compensate employers of the JPs for the employee's absence from work while performing jury duty.

3.2 The Strengths

The expanded role envisioned by the federal Minister of Justice is one shared by the Nunavut Department of Justice and reflective of the recommendations from the NSDC Justice Conference. None the less, both the Nunavut Deputy Minister and Assistant Deputy Minister of Justice have given assurances that an expanded role for JPs depends entirely upon the training made available and the willingness of JPs to take on these added responsibilities.[46]

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[41] See Margo Nightingale, *Nunavut Single-Level Trial Court* (Yellowknife: GNWT Department of Justice, December 1998), p.2. This is included in Appendix #2 of this report.

[42] Inuit Justice Task Force, *Inuit Justice Task Force Final Report: Blazing the Trail to a Better Future (*Lachine, Quebec, Makivik, 1993), p. 164.

[43] Annette Bourgeois, March 19,1999, p. 2. Under the GNWT program, an individual becomes a JP by first being appointed by the hamlet council and then being appointed by the territorial government. It is not clear whether the community justice committees have played a role in identifying individuals to the hamlet councils as potential JPs. There do not appear to be any guidelines on the selection of individuals for position of JP.

[44] Annette Bourgeois, *Nunatsiaq News*, March 19,1999, p. 1.

[45] Prior to April 1, 1999, under the GNWT program JPs received an honorarium of $200.00 per year for their services.

[46] See article by Annette Bourgeois, *Nunatsiaq News*, March 19,1999, p.1.

At the NSDC justice conference, recommendations regarding JPs and their role in the Nunavut justice system were based on the following principles:

1) Wherever possible, conflict should be resolved through consultation with those involved.
2) If the conflict only involved a few people, these people should be the ones involved in the resolution of the conflict. It is not necessary to bring out the big guns every time.
3) If the "lesser group" cannot resolve the problem, then access to larger or more influential individuals or groups is important.
4 Every opportunity should be made to encourage a person to accept responsibility for what he or she did. This is somewhat contrary to the present system whereby people only accept responsibility if they are proven to be guilty, although there is some opportunity for people to plead "guilty".[47]

The NSDC report notes that traditionally it is believed that hiding one's guilt creates sickness in the individual and if hidden for a longer period of time, this sickness spreads to others around the individual, and those individuals also become sick or dysfunctional. Eventually the whole community could be infected with this sickness. It is not until the story is told and the person discloses his or her wrongdoing that those who are unhealthy can become healthy again. It is therefore important to deal with issues as soon as possible. Furthermore, where there was a breach of rules a consultation process would have to take place. Where it was a minor offence, the consultation would be within a family. If the breach resulted in a major offence, the consultation would be within the community.[48] It remains to be determined what factors are considering in making the distinction between major and minor offences (e.g. scale of impact of the offence on community members).

From these principles the NSDC recommends an expanded role for JPs and encourages JPs to "involve others in helping to make decisions as to sentencing." Wherever possible, families of both the accused and the victim should be involved. The victims should be involved as often as possible, recognizing that at times the victim might not feel comfortable in being involved and that it is important to protect and respect his or her rights. However, the traditional approach to dealing with problems generally involved everyone, including the victim.[49]

The NSDC recommendations regarding JPs are as follows:

[47] NSDC, *Report of the NSDC Justice Retreat and Conference,* November 1998. , p. 15.

[48] Ibid., p. 14.

[49] Ibid., p. 14.

1. Increase community support for justices of the peace so that people are encouraged to take on the duties and responsibilities and so that people will feel more confident having matters dealt with in JP Court.[50]
2. Increase the Justice of the Peace Training Program in order to meet the responsibilities JPs are provided with under the *Criminal Code*.[51] This should include providing more legal training programs to train JPs in laws and regulations that they must deal with, including the criminal law, family law, procedures of the court, young offenders law, and some civil law; and developing a justice of the peace support network.
3. Change the way JP court operates to reflect the Inuit traditional practices of having groups not individuals make decisions.[52]
4. The Court's physical set up should be much less formal to facilitate consultation and lessen the adversarial approach.
5. Screen all cases by the Justice of the Peace and the Community Justice Committee for referrals to the Community Justice Committee, Justice of the Peace court or higher court.
6. Establish a protocol to deal with the employer of the JPs to allow time to be free for sittings and training. The idea of the protocol is to establish an arrangement whereby employers are compensated for the employee's absence from work.
7. Expand the sentencing options available to the Justices of the Peace, including Community Correctional Centres and Outpost Camps.

What is positive about the NSDC approach is the attempt to have Inuit culture and traditions form an integral part of the JP court structure and program, including JP selection, training and mandate. The NSDC recommendations reflect the work being done to ensure that while Inuit traditions and culture are respected and incorporated, the concerns of Inuit women regarding this inclusion are not overlooked. For example, in making the recommendation for all charges to go through an initial screening involving local JPs with the justice committees, the NSDC notes that concern was expressed about preserving the privacy of complainants in domestic assaults and sexual assault cases and ensuring that no pressure is brought to bear on these complainants. In response, the report states that "it was felt that these types of cases should only be screened by the JPs and the justice committee if the complainant agrees to the process."[53]

Likewise, the NSDC acknowledges that there was some discussion about actually having the JPs sit with "hand-picked" panels in certain instances such as sentencing hearings. These hand-picked panels would provide for the benefit of persons involved or involve those individuals who are considered most suited to deal with the particular matters. As the NSDC report states, "[t]raditionally, women would deal with matters which were considered "women's issues" and

[50]Ibid., p. 17

[51]Ibid., p. 17

[52]Ibid., p. 18.

[53]Ibid., p. 20.

men with the "men's issues" and it may be that there are instances when it is appropriate to select a panel based on gender."[54]

3.3 The Remaining Challenges

3.3.1 Community Perceptions of JPs

The NSDC recognizing the current status of JPs in the eyes of the community is not sufficient to absorb an expanded role, has suggested measures that would increase community support for JPs. It recommended, for example, a change in title for JPs to "Community Judge" in order to reflect the importance of the JP in the community.

Such a change is more than cosmetic. If JPs are to take on such expanded roles as presiding over domestic violence and sexual assault matters, which was a key NSDC recommendation, then it is critical that JPs first have credibility and the respect of the community.

It is worth noting that while the NSDC proposes JPs begin to hear cases involving violence against women; it also calls for JPs to have more freedom to expand their sentencing options. Such recommendations when viewed collectively, as the NSDC intended, suggest that the NSDC is attempting to use methods other than incarceration as appropriate dispositions for serious crimes. The court structure, legally, does not recognize JPs as having an authority greater than a lower court.[55]

The challenge of this approach for the NSDC and Inuit generally, is the reliance upon adequate services and resources being available in the communities from which JPs can rely upon when creating alternative dispositions. At present, there is an extreme shortage of services for victims of violence. At the same time, the services to assist those who are convicted of sexual assault or other forms of violence against women are not available in the communities. This specific challenge will only be overcome if JPs and their communities are adequately equipped to provide alternatives to incarceration that Inuit women and other members of the community identify as: accountable, effective in dealing with the underlying factors leading to the crime, and do not jeopardize women's safety.

3.3.2 JPs Preparedness

The NSDC assessed that before JPs take on greater responsibilities such as preliminary inquiries, child welfare matters and small claims actions, they would benefit from the development of a justice of the peace support network and from regular legal training on the substantive components of criminal law. The Nunavut government's commitment to and

[54] Ibid., p.18.

[55] JPs are limited to giving a sentence of imprisonment that does not exceed 18 months.

recognition of the need for ongoing training of JPs is essential to the success of this program. In light of the JPs expanding role, their lack of training impacts on the quality of the justice system in Nunavut.

For example, the majority of preliminary inquiries conducted in the North are for sex offences. Margo Nightingale notes, in inquiries for these types of offences there are significant risks of both jeopardy of an accused and of psychological harm to a complainant and the potential for violations of his or her rights to privacy. She explains this point by way of the following example,

> …it is not uncommon for defence counsel to seek information about prior sexual conduct between the complainant and the accused (or others) which is subject to restrictions under s. 276 of the *Criminal Code*, or to elicit personal records in the hands of third parties which is subject to restrictions under s. 278.1-278.8. Given that there are still many debates among counsel about the application of these provisions there is real concern that a J.P. may not adequately understand the *Criminal Code* in these areas to act as arbiter.[56]

To conduct a preliminary inquiry of this sort requires a skillful application of the sections of the *Criminal Code* that address disclosure of personal records, for example, as well as the ability to properly respond to objections from the Crown which seek to protect a complainant from inappropriate questions.[57]

In the past, concerns were raised that JPs did not possess sufficient knowledge about the *Criminal Code* and of evidentiary issues to be able to competently fulfill their duties. This lack of knowledge and understanding greatly affected the JPs' credibility within the communities and the understanding of the role of the JPs among community members.[58]

Uniform training in respect of substantive law matters is even more important in view of recent case law. A recent Court of Appeal decision involving a charge under the GNWT *Liquor Act* suggests that trials conducted by JPs may be held to a lower standard of legal and evidentiary requirements.[59] The implications of this decision for training are significant since the decision suggests that trials conducted by JPs may result in lower standards of legal protection for the accused than trials conducted by judges.[60]

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[56] Margo Nightingale, *Nunavut Single-Level Trial Court (SLTC)*, p.3.

[57] Ibid., p.3.

[58] In its Phase II Justice project report, Pauktuutit noted that in order to be more credible, JPs needed to be selected from the community they serve. However, the current criteria create a barrier for unilingual Inuit, since training is not available in Inuktitut. (Pauk. Phase II, July –Dec. 1994). In its report, the NSDC noted that the community has a limited understanding of the work that JPs do, and the process by which they are appointed. It noted, for example, that there is a perception that JPs do not do important work.

[59] *Camsell v. Her Majesty the Queen*, unreported, July 9, 1998.

[60] It is unclear at this point whether a future *Charter* challenge to this case or the principle for which this case stands, would be successful particularly if the trial were in respect of a *Criminal Code* offence (see Nightingale, *Nunavut Single-Level Trial Court (SLTC)*, p. 2, 3 for further dicussion)

As noted above, this type of decision reinforces the attitudes and perceptions that the subject matter dealt with by JPs is of lesser significance and therefore the consequences of such criminal activity is also not as serious.

One remaining challenge in relation to JP preparedness is the matter of training with respect to awareness of issues of sexism and gender bias. As noted below, there is an attempt to ensure that a more representative group of JPs serves a community. None the less, there remains a challenge on how to reconcile gender bias issues and the conflicts arising in relation to attitudes and behaviours rooted in religious, cultural, or traditional values that devalue and discriminate against Inuit women. Inuit delegates to a national Aboriginal women and justice consultation raised the following concerns on this point:

> Traditions and culture are often confused. They are not the same thing. … There is a need for a balance between the past and present to be achieved. Aboriginal peoples must stop romanticizing the past and address the realities of the present. [61] …
>
> - It was noted that the Christian influence can be responsible for many "bad habits", especially for the non-acceptance of certain community members, such as gay community members.[62] …
>
> With regards to abuse, one must explode the myths and promote understanding about the dynamics of why men abuse. Common myths include:
>
> 1. Myths about culture and Christianity - Elders are holy and leaders are above the law;
> 2. Elders, leaders and Christians who abuse are under stress;
> 3. Women ask for abuse;
> 4. Inuit culture allows assault against women and children;
> 5. Inuit culture allows men to control women;
> 6. Children can be sexually assaulted when they reach puberty ; and
> 7. All Inuit people are drunks.[63]
>
> Excuses used to support myths and absolve the offender from responsibility for the crime are as follows:
>
> 1. if you learned to abuse in your upbringing;
> 2. if you are "nagged" by the woman you assault;
> 3. if you have a stressful job;
> 4. if you are an Elder, leader or "good" Christian;
> 5. if you are or planning to undergo treatment
> 6. if you plead guilty;
> 7. if the woman you assault was under the influence of alcohol or alcohol involved in some way;

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[61] Department of Justice, *Record of Proceedings of the Aboriginal Women and Justice Consultation*, November 1993, p. 7.

[62] Department of Justice, *Record of Proceedings of the Aboriginal Women and Justice Consultation*, November 1993, p. 7.

[63] Department of Justice, *Record of Proceedings of the Aboriginal Women and Justice Consultation*, November 1993, pp. 7-8.

8. if you support your family (for government employees, it is assumed the wife will become homeless); and
9. if you are " born again."[64]

> The message must be conveyed that violence is not part of Inuit culture. A positive approach must be taken in the development of role models for the community. Children must be taught their rights to protection and personal safety.[65]
>
> A justice system must be defined as one which is culturally relevant yet does not romanticize the past. It must deal with the realities of today[66]

With the recent court decisions and lack of guidance in *Bill C-57* the door has been left wide open for JPs to operate with more autonomy and less understanding of the law. At the same time, the serious concerns raised by Inuit women regarding attitudes, values and beliefs in the communities about violence against women and children relate directly to those in the community who act as JPs. These concerns regarding JPs preparedness need to given the attention and response they deserve.

3.3.3 An Inuit-based JP program

Other challenges remaining for the JP program are those related to making the JP court system more reflective of Inuit traditional practices. The inclusion of more Inuit, especially unilingual Inuit, is seen as a positive step. None the less, the NSDC notes that the lack of extensive training, in both English and Inuktitut for all JPs, leaves them ill-equipped to fulfill their responsibilities and more dependent upon the RCMP and others to tell them what to do. Recognizing the importance of maintaining the impartiality of the decision-maker in the eyes of the community, the NSDC warned, "if JPs are not well trained, they may be open to influence by the RCMP. JPs who lack the necessary legal training tend to rely only on the RCMP for advice, and in fact sometimes just do what the police ask them to do, rather than be independent as they should be."[67]

Another challenge the program confronts is achieving a JP program that is also independent of the pressures brought to bear on individual JPs living in their small, inter-related community by other community members (e.g. relatives, powerful families, etc). The NSDC recommends that the JP court consider using a group of JPs and possibly others to decide a matter in order to overcome the cultural conflict faced by Inuit "judging" another Inuk. This approach of sharing responsibility also may serve to

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[64] Department of Justice, *Record of Proceedings of the Aboriginal Women and Justice Consultation*, November 1993, p. 8.

[65] Department of Justice, *Record of Proceedings of the Aboriginal Women and Justice Consultation*, November 1993, p. 9.

[66] Department of Justice, *Record of Proceedings of the Aboriginal Women and Justice Consultation*, November 1993, p. 9.

[67] NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, p. 18.

alleviate the other challenges facing community members. As discussed earlier in relation to jury trials, there are conflicts arising when community members are left to judge or participate in matters dealing with sexual assault and other crimes of violence against women. The NSDC recommends JP selection focus on identifying longer term residents, with a mix of ages and gender, and a minimum of four for each community to ensure JPs are more representative of community values and therefore encourage more respect for their decisions, to avoid conflict of interest issues that presently arise, and allow JPs to team up and sit as a larger group for support.

4. COMMUNITY-BASED JUSTICE

4.1 Community-based Justice Initiatives

Community-based justice initiatives were first introduced in Nunavut by the GNWT in the early 1990s. These initiatives were presented as a means to address the many long-standing problems identified by Aboriginal peoples in the NWT communities. The program had its foundation in principles of restorative justice which focus on healing damaged relationships to restore harmony within the family and the community, rather than on punishment.[68] This approach was seen as compatible with and easily incorporating the teachings of Aboriginal people emphasizing healing, respect, cooperation and balance.[69] As such, the process of resolving conflicts in a way that repairs, heals, and restores harmony includes the victim, the offender, and the community. The initiatives introduced by the GNWT included:

> • the promotion of a community-based justice system, consisting of local justice committees supported by a community justice specialist, employed by the GNWT to serve a specific region;
> • the promotion of alternative measures to the existing criminal justice system such as the adult court diversion program set up in Baffin regional communities; and
> • the promotion of sentencing alternatives, especially by Justices of the Peace such as reparative sanctions (ie. probation requiring community service work, rehabilitation, and restitution to the victim) and on the land programs for young offenders; [70]

Officially, the Nunavut government has said little about the community-based justice initiatives it intends to pursue. Likewise, *Bill C-57* did not address this area directly.

4.1.1 The Program

The most obvious departure from the previous government's program and policies is the Nunavut Government's current endeavour to incorporate Inuit Qaujimajatuqangit (IQ) as a fundamental policy and operating principle of its work. Translated into English, IQ refers to the traditional knowledge of Inuit. What the IQ policy is and its relationship to the workings of the various departments is still being sorted out. The example readily presented (by most Nunavut government officials, including those in the Department of Justice) to describe the role of IQ in policy development is the incorporation of the knowledge of Inuit hunters with western scientific

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[68] Department of Justice, Community Justice Division, *Your Community Justice Committee: A Guide to Starting and Operating a Community Justice Committee* (Yellowknife: GNWT, 1997) p. 1.

[69] Ibid. p.1

[70] See Pauktuutit, *Inuit Women and Administration of Justice, Progress Report #2 (January –March, 1995, Appendix 2: Male Abuser Counselling Program Pilot Project Proposal*, pp. 1-2.

knowledge when it comes to management of wildlife resources. What IQ means for the justice system is not so apparent but this approach could compliment the recommendations of the NSDC.

The NSDC Justice Conference report links the need to give local people greater control over justice matters in their communities with expanded roles for existing justice bodies in the community such as the justice committees and JPs. The report calls upon JPs and justice committees to work more closely together and proposes ways in which this can be achieved.

In his remarks at the conference, the President of the NSDC, Elijah Erkloo identified the need for Inuit to take on a greater role in community justice issues:

> We want to know how we can allow Inuit to take more responsibility for dealing with justice issues at the community level, in ways which respect our traditional values and beliefs. ...This meeting is about Inuit taking more responsibility for justice issues in their communities. ...We want to come up with clear recommendations about what more we can be doing in our communities that we are not doing now. We want to know how the Nunavut justice system can bring peace to Inuit.[71]

The Nunavut government has recognized that the former community-based justice initiative lacked the necessary infrastructure to support the committees operating in the communities. The Nunavut Department of Justice has indicated it is committed to providing adequate physical space for the committees to carry out their work. As well, it will encourage the development of a communications network between the various justice committees and provide ongoing training for committee members. Information regarding the type and subject matter of this training was not provided. Whether individuals participating on the committees will be paid for this public service that they provide voluntarily is still an unanswered question.

Within Nunavut there remain four community justice specialists operating as the link between the Department of Justice and the community. The title and role of the "specialists" are being reconsidered by the Department. The four individuals operating in Kitikmeot, Keewatin, North Baffin and South Baffin as community justice specialists are expected to take on the role and responsibilities of coordinating and supporting community justice committees within the communities of their region. The Nunavut Department of Justice is committed to having the coordinators assist in the design and delivery of the community-based justice committees' work. This change in roles also reflects a broader, perhaps, philosophical shift – from the "specialist" or "expert" directing the community to the "coordinator" who assists and supports the community in its work.

[71] NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, pp. 4-5.

4.1.2 Community Justice Committees

The GNWT program adopted by the Nunavut government empowers community justice committees to operate within the communities once a motion is passed by the hamlet council recognizing the authority of its community justice committee to deal with cases involving youths and/or adults. Pursuant to the the *Young Offenders Act*, the territorial government will formally appoint members to the community justice committees to deal with cases involving Inuit youth upon concluding an agreement with the hamlet council.

In some cases in the past, adult offences, including minor cases of wife assault, have been diverted to the community-based justice committees according to protocols signed by the federal Crown counsel office (since the federal government retains the prosecutorial powers in Nunavut), the RCMP, and hamlet councils.

For the most part, whether or not a protocol existed, it appears that in Nunavut, criminal cases have been and continue to be diverted to these committees at the discretion of the Crown and the RCMP.

The Nunavut Department of Justice has indicated that it would include, as its parties, the chairs of the community justice committees, Crown Counsel, RCMP and the Nunavut Department of Justice. It appears this new diversion protocol compliments the NSDC recommendations regarding the involvement of the justice committees and JPs in the important decision-making processes. For example and as discussed below, the NSDC recommends that the with RCMP and Crown Attorney's office powers to determine which cases be diverted should be shared with the committees and JPs of the community.

The NSDC report recommends that the justice committees take on the following tasks to improve their effectiveness in their respective communities:

- strengthen and increase capability, through the use of traditional ways and elders, and through ongoing training and networking;
- deal with serious matters, including domestic violence;
- deal with matters brought to them by community members and groups, not only the RCMP;
- communicate with RCMP to deal with problem quickly;
- require better community awareness and respect for these committees; and
- teach young people about traditional values.

As commitment to greater Inuit control over justice matters, the NSDC report recommends that committees join with JPs to be responsible for hearing serious crimes by first time offenders and also dealing with repeat offenders for crimes that are not serious offences. The report does not clarify what it considers to fall within or outside of the category of serious offences. However, there is specific reference made to the justice committees dealing with "domestic violence". The specific role of the committee in dealing with these cases (for example: at what stage of the

process) is not clarified. The report suggests that the committee could assist the JP and higher courts in proposing and implementing sentences in cases involving these offences.[72]

4.1.3 Committee Methods

In the NSDC report, consultation is identified as a fundamental component of resolving disputes. The consultation method used and participants involved depend upon the nature of the offence. As stated in the NSDC justice report, traditionally, where there was a breach of rules, a consultation process would have to take place. Where it was a minor offence, the consultation would be within the family. If the breach resulted in a major offence, the consultation would be within the community.[73]

Consultation appears to be at the heart of many of the diversion programs commonly used by justice committees in Nunavut today. While the government program uses different labels for the methods such as victim/offender mediation, family group conferencing, basically the committee consults with the offender, individuals impacted by the offence and other community members in determining what is needed to "make things right."

The following is a general description of the established GNWT criteria for a matter diverted to a community justice committee:

- The offender accepts responsibility for the offence;
- The offender voluntarily agrees to work with the Community Justice Committee;
- The victim can have a role in the proceedings, and in any case, is consulted to determine what needs to be done to "make things right." If the victim is not actually present during the Justice Committee meeting, the victim's statement will be used.
- At the meeting(s), the Community Justice Committee serves to take the offender through the following process:
    1) the offender is required to take responsibility for the behaviour;

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[72]Ibid., p. 11. The GNWT diversion program states that a Community Justice Committee can handle such matters as:

• Providing arbitration in civil cases.

• Providing advice to the court with respect to sentencing. This could include a judge asking the community justice committee for advice on sentencing. Community justice committees can also hold a sentencing circle at which a judge will invite members to assist in the sentencing decision. 72

• Providing counselling or supervision. Committee members or elders can counsel offenders and victims, and provide cultural opportunities such as arranging for an offender to work with an elder. Counselling or supervision can be offered to offenders whose case has been processed either by the court or by the community justice committee, as well as to offenders after they have been incarcerated.

•Diversion in cases where the police have not laid charges. For further details see Department of Justice, Community Justice Division, *Your Community Justice Committee: A Guide to Starting and Operating a Community Justice Committee* (Yellowknife: GNWT, 1997) pp. 4 to 15.

[73]NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, p. 14.

2) the offender is assisted to explore the consequences of his actions;
3) the offender commits to repair the harm through an agreement; and
4) the offender looks for guidance to turn towards a healthier life style;

- At any time the offender can have the matter referred back to the RCMP;
- A Community Justice Committee can reject a referral from an RCMP officer.

The GNWT program identifies victim-offender mediation and family group conferencing as possible methods of resolving problems. Where the victim-offender mediation model is used, the victim and offender meet face to face. The role of the committee is to act as a mediator and to focus attention on problem solving. The committee moves through the same four-stage process described above.

Family group conferencing is a method which the RCMP has strongly supported throughout the north. It is unclear whether support for this alternative among some committees is a result of its being a primary alternative supported by the RCMP or because it complements Inuit traditional practices and values.

In the GNWT family group conferencing method, the committee is supposed to bring together a circle made up of the victim, the offender, the community and all of their respective support persons for a family group conference. The process is to address such issues as the offender's behaviour and the impact of the offender's behaviour on the victim. A facilitator appointed by the community justice committee helps the parties arrive at an appropriate solution to compensate the victim and ensures that meaningful consequences are established for the offender. If consensus is not reached, the case returns to the RCMP for processing through the courts.

The NSDC Justice Conference made specific recommendations dealing with family group conferencing. The NSDC report notes that family group conferencing is being practised "with great success" in the Kitikmeot region. The NSDC report endorses this initiative and indicates that it can be provided by community residents and adapted to suit a particular community once training is provided. The report states that "it has the great effect of getting everyone involved and making the offender realize the consequences of his/her actions and recognize that there is community support and concern."[74] The NSDC conference report calls upon government to provide training in family group conferencing in all regions of Nunavut.[75] According to the NSDC report, "family group conferencing training also provides a way for our young people to feel important and involved, to take responsibility for their actions in a meaningful way. ... Family

[74]Ibid., p. 24.

[75]Ibid., p. 24.

Group Conferencing [sic] gets everyone together who is involved, in an informal setting, when there is agreement to participate."[76]

4.1.4 Community Justice Committee – Membership

A guide was prepared by the GNWT setting out the basic guidelines to be followed when setting up a community justice committee. It described participants as respected members of the community; they must not be involved in criminal or otherwise offensive activities; and they could not have been convicted of a criminal offence in the last three years. In addition, committee members must represent a broad cross-section of the community, and should be able to contribute a wide range of experience and knowledge.[77]

Within Nunavut, there is no uniformity to the membership or operation of community justice committees. Where committees exist, they operate on a voluntary basis and vary in size and mandate. On the latter point, it appears that the role of a committee is dependent on the willingness of the Crown and RCMP to recognize and work with the committee and the commitment of its membership.

The community justice committee is considered by NSDC as the vehicle by which elders can play a vital role. The NSDC recognizes that the elders are essential to ensuring those using and providing committee services do not lose touch with Inuit traditions. It acknowledges that committees have been used in the past as tools for the defence[78] and now must take the whole community into account, including the victims and their families. However, the means by which this goal will be met are not clarified.

4.2 The Strengths

When considering the NSDC recommendations regarding community justice committees collectively with those regarding JPs, it is clear the NSDC is promoting a new system whereby the justice committees and JPs will be the "nucleus" of the justice system for the community. For example, as noted in the JP discussion, the NSDC proposes that the committees and JPs together screen all cases and determine which route each case should take—determining whether it should be a matter dealt with by the court, a JP or the committee. This is a departure insofar as the RCMP have tended to be the community representative on justice matters with JPs working under the guise of RCMP officers.

The nature of the justice committees' work, as proposed by the NSDC, is rooted in traditional approaches and responses to problems in the community. The committee is promoted as a

[76]Ibid., pp. 26-27.

[77] Department of Justice, Community Justice Division, *Your Community Justice Committee*, p. 3.

[78]NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, p. 10.

body that can counsel, discipline and provide activities for wrongdoers in a way that allows a "traditional approach" to be used in "modern times."[79]

The NSDC views the increased use of community based justice committees as a means of ensuring local people have a greater say and control over justice matters in the communities, and can perform their role in ways which respect traditional values and beliefs.[80] This, in the words of Chair Erkloo, is a means to ensuring that "the Nunavut justice system can bring peace to Inuit."[81] Providing Inuit with the ability to regain control over their affairs in this way also has the potential effect of facilitating a more efficient handling of matters, and ultimately a quicker resolution of issues.

The work of the NSDC brings the fundamental conflict of Inuit approaches to justice and the punitive nature of the existing justice system to the fore. The approach taken by the NSDC is a positive step towards reflecting Inuit values of restoring harmony and peace within the community rather than punishing an individual for a crime committed against the state. As noted in its report, the NSDC strives to achieve this by keeping one goal in mind, "Wherever possible offenders must be kept in their community". This is best achieved, it is thought, "… by giving more responsibility to Community Justice Committees and Justices of the Peace."[82] The NSDC also recommends expanding the sentencing options of committees, as it did for JPs, when dealing with matters involving first time offenders of serious offences and repeat offenders cases.

This is a clear shift from the ideological framework of the Euro-Canadian justice system. For the NSDC, incarceration is no longer the only means to respond to criminal activity.

4.3 The Remaining Challenges

Certainly, improvements in the technical administration of justice and approaches to the justice system that are culturally sensitive would benefit all people who encounter the justice system in Nunavut.[83] However, reforms which meet the aspirations of Inuit for a culturally sensitive approach to justice may still fall short of delivering a satisfying experience of justice for Inuit women. Specifically this will be so, if the reforms fail to consider the compounding disadvantage experienced by Inuit women and the ways in which race, gender, age, sexual orientation, geographical proximity, and mental or physical ability might converge to affect the needs of Inuit women who come into contact with the justice system.

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[79] Ibid., p. 10.

[80] Ibid., pp. 4-5.

[81] Ibid., pp. 4-5.

[82] Ibid., p. 11.

[83] Most of the documents listed in Appendix #1 noted that community-based justice initiatives responded to repeated calls for more community involvement in the justice system, and for resolution mechanisms that are responsive to traditional Inuit ways and cultural values.

The NSDC recommendation to have committees deal with "more serious matters including domestic assault" is based on the NSDC conference participants' view that "the community knows more about what is wrong than someone from the outside and can make more effective recommendations for rehabilitation and healing.[84]

A credible resolution of these more serious matters by community justice committees presumes that the committee is truly reflective of the community and that participation in the resolution processes of the committee is voluntary. The "voluntary" nature of a victim's participation in a community justice initiative is questionable for many Inuit women.

The potential for a victim to feel pressured to participate in such a committee is great.[85] When the community, including the accused and the victims, are given the choice between the outside Euro-Canadian justice system and their "own," the pressure to choose their own system will be great.

Those choosing the existing system are perceived as not supporting "their own" system. This has the effect of further alienating women and places pressure on them, making it difficult for them to choose the existing system.

In Inuit communities, many people are related. These family and kinship lines impact severely upon a victim if her abusive partner is related to a powerful family or leader. Women and children may therefore be silenced and not believed when they speak about their abuse. If they do speak out, they are often blamed.

Pauktuutit and others have challenged how committees are structured. In particular, controversies have arisen regarding the range of the "community" members represented on these committees. The controversies appear to be rooted in the fundamental value differences between the committee members and members of these marginalized groups associated with such factors as age, gender, and religion.

For example, community-based initiatives provide a role for elders to work one on one with the offender. However, as noted in the discussion regarding JPs, there are concerns that community justice committees will put elders in the awkward position of judging the offender.[86] Again, as noted in the discussion regarding JPs, there may also be conflicts between an elder's values and those of other members of the community, particularly women. Some women have

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[84] NSDC, *Report of the NSDC Justice Retreat and Conference*, November 1998, p. 20.

[85] Pauktuutit (1994). *Inuit Women and the Administration of Justice, Phase 1 Progress Report, Number 1*, p. 22. Curt Taylor Griffiths et al. (1995). *Crime, Law and Justice Among Inuit in the Baffin Region, NWT, Canada.* p. 206.

[86] Nightingale, *"Just Us" and Aboriginal Women*, p. 25.

experienced elders that do not perceive violence against women as a serious problem or do not have the required skills to provide effective counselling to an offender of this type of crime.[87]

Perhaps a more fundamental challenge underlying the issue of representative membership is the ability of the community to take on the responsibilities required of community justice initiatives.

Inuit women see an essential determinant of a community preparedness to do this work as the health and well being of the community and those participating in the committees.[88]

If this achieved, the next challenge is ensuring that all committee members are adequately trained. For example, it is generally accepted that members of community justice committees must have an adequate grounding in the Criminal Code offence with which an individual is charged.[89]

However, the importance of training with respect to the dynamics of abuse is less often acknowledged. Inadequate training in this area has left many Inuit women choosing not to turn to the existing justice system to address the violence they have experienced. The solution lies in gender and racial sensitivity training for all justice personnel – including judges, Crown Attorney, RCMP officers, JPs, community justice committee members – to help bridge the distance between the experience of Inuit women with both the community-based justice initiatives, the Euro-Canadian justice system, and the promise of these reforms.

While training and awareness of the issues described above is essential, just as important is providing community justice committees with necessary support. To a certain extent, the community justice coordinator positions being considered by the Department of Justice and referred to earlier in this report, may alleviate the burdens associated with organizational details, including the work associated with providing the infrastructure services.

It remains a challenge to ensure that the other supports and services required to assist the committees in carrying out their work and achieving the goals of community-based justice are in place.

Without proper consideration of the interests and needs of the victim, the offender and the community, committees may increase the vulnerability of women and girls.[90] To date, justice committees have been perceived by Inuit women to inordinately focus on the offender.[91] This

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[87] Nightingale, *"Just Us" and Aboriginal Women*, p. 26, Canadian Panel on Violence Against Women (1993). *Changing the Landscape: Ending Violence – Achieving Equality*. P. , Curt Taylor Griffiths et al. (1995). *Crime, Law and Justice Among Inuit in the Baffin Region, NWT, Canada.* p. 202.

[88] Department of Justice, *Record of Proceedings of the Aboriginal Women and Justice Consultation,* November 1993, p. 16.

[89] There is some question as to whether elders understand the definition of sexual assault found in the *Criminal Code*. This point was raised in the Report of the Canadian Panel on Violence Against Women, *Changing the Landscape. Ending Violence – Achieving Equality , Chapter 14: Inuit Women*, 1993, pp. 103-104. This Chapter of the report is included in Appendix #2 of this report.

[90], Griffiths et al., *Crime, Law and Justice Among Inuit in the Baffin Region, NWT, Canada*, 1994.

[91] Nightingale, *"Just Us" and Aboriginal Women*, 1994.

perception reflects the earlier noted point of the NSDC that committees have been used as a tool by defence counsels.

The justice committees' methods of addressing the issues before them have been criticized by advocates of Inuit women survivors of violence. This has lead the same advocates to call upon the various levels of government to prevent the committees from dealing with offenses involving violence against women. For example, in its publications, Pauktuutit recommends that the federal and territorial governments set guidelines, standards or criteria for both membership on these committees and for the types of cases they are able to deal with.[92]

It is evident when these arguments are reviewed in detail that the concerns being raised by Inuit women are rooted not so much in the methods used by the committees, but rather the lack of adequate resources and ongoing training provided to these committees to perform these tasks in a manner that protects and supports the women and adequately addresses the underlying problems of the violence.

The issue of a community's preparedness to take on the responsibilities of community-based justice initiatives is ongoing. The challenge in preparing a community to take on this responsibility is multi-faceted. The further challenge is sustaining the commitment of the community and the members of these committees. Again, the individuals participating on the committees are providing an essential public service on a voluntary basis. The question remains whether they will be able to continue to provide this service if other opportunities arise that remunerate them for their services.

[92] Pauktuutit, *Inuit Women and the Administration of Justice, Phase I and II Reports*, In particular, the organization's presentations to a National Symposium on Offenders (the male batterer's program) and on Bill C-41 to the Standing Committee on Justice and Legal Affairs.

5. FAMILY LAW

All family law matters are dealt with by the Nunavut Court of Justice.[93] It is anticipated that JPs may be encouraged to hear matters regarding interim custody, support and temporary orders related to child protection.

The use of the courts to resolve family law matters is limited in Nunavut. In 1996, a total of 66 family-related cases from Nunavut were processed by the Supreme Court and Court of Appeal.[94] As of 1992, only ten women in Nunavut, outside of Iqaluit, were registered with the Maintenance Enforcement Program for child support orders.[95] Prior to April 1, most family law matters were cases which the lower court would hear. With the unified court structure, it is anticipated that JPs will be encouraged to take on more responsibilities formerly falling within the purview of the Territorial Court.

Among Inuit women, there is lack of awareness of the legal remedies available to those involved in family law disputes. This stems, in part, from the severely restricted access to legal aid as discussed earlier.

The role of the community in family law matters is much less prominent than in criminal law matters. The community-based justice initiatives introduced prior to April 1, 1999 focused entirely upon criminal law. This absence of community-based family law initiatives may be attributed to the criminal law focus of the government. Reforming the criminal justice system appears to have overshadowed any reform initiatives in family law and civil matters. This is most evident in the work done by a Ministerial working group on family law reform established by the Territorial Government in 1988. A discussion of the

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[93] Prior to April 1, 1999, the territorial court shared jurisdiction with the Supreme Court on matters regarding child protection, custody and support applications pursuant to territorial legislation and enforcement of child support.

In addition to these matters, the Supreme Court also has the jurisdiction to hear matters regarding adoptions and applications for divorce; support and custody when tied to divorce; restraining orders against parents; all matters related to division of property upon family break up; and guardianship and property of child. As the superior court, it also hears first level appeals from final and interim order or judgments of the Territorial Court.

[94] This statistic was cited in the Department of Justice, online document entitled *Options for Court Structures in Nunavut - A Discussion Paper*, Ottawa: Department of Justice, November 1997.

[95] This information was also obtained from the federal department's online document, *Options for Court Structures in Nunavut - A Discussion Paper*, Ottawa: Department of Justice, November 1997. Note that of the six women registered in the Child Support Maintenance Enforcement program for the Nunavut region, excepting Iqaluit, it is noted two women were in the Baffin region with four women each in the regions of Kitikmeot and Keewatin.

findings of this working group and the legislative amendments resulting from their recommendations is provided in Appendix #3.

6. CONCLUSIONS: A BLUEPRINT FOR A MORE RESPONSIVE SYSTEM

The success of any justice system will be determined in part by the ability of administrators to manage a system which is efficient, timely and fiscally responsible. Certainly, the federal government fashioned these criteria into the core objectives of the legislative reforms for the court of Nunavut. In its news release announcing the legislative framework for the new court structure, the Department of Justice stated that the reforms were intended to simplify the structure, improve accessibility and reduce delays, judges' travel and the number of court circuits.[96]

It is equally true, however, that a system will also be judged by the extent to which it is reflective of the community which it serves. A justice system that does not reflect the realities of the public it serves will be perceived by that public as not being credible.[97] To this end, components of the justice system in Nunavut - whether a vestige of the court system of the Northwest Territories prior to April 1, 1999 or an innovation borne of *Bill C-57* – must also be representative of the men, women and children who are the residents of Nunavut. Member of Parliament Nancy Karetak-Lindell framed the expectations of the population of Nunavut in the following way:

Establishing the Nunavut court of justice reflects the long-standing desire of the people and leaders of Nunavut to create a new institution which is more suited to our unique traditions, culture and needs. The court reforms reflect the desire of the Nunavut people to have an accessible and integrated justice system. [98]

The need for such a representative and responsive system is evident. The systemic racial-cultural discrimination faced by Aboriginal peoples in the existing justice system has been well-documented and was most recently affirmed by the Supreme Court of Canada in its decision in *R. v. Gladue*.[99] In *Gladue*, the Court reaffirms its view that there is widespread bias against Aboriginal people within Canada, and "[t]here is evidence that this widespread racism has translated into systemic discrimination in the criminal justice system". It goes on to state that "statements regarding the extent and severity of this problem are disturbingly common" and quotes *Bridging the Cultural Divide*, supra, at p. 309, the Royal Commission on Aboriginal Peoples report, where it listed as its first "Major Findings and Conclusions" the following striking yet representative statement:

The Canadian criminal justice system has failed the Aboriginal peoples of Canada -- First Nations, Inuit and Métis people, on-reserve and off-reserve, urban and rural -- in all territorial and governmental jurisdictions. The principal reason for this crushing failure is the fundamentally different world views of

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[96]Department of Justice (Canada), *News Release:Creation of Nunavut One Step Closer as Nunavut Court of Justice Bill Receives Royal Assent,* March 12, 1999.

[97] Honourable Madam Justice Rosalie Abella, "Introduction to a Panel Discussion on "Who is the Public and how are Perceptions Created," in Canadian Institute for the Administration of Justice, *Public Perceptions of The Administration of Justice* (Montreal: Les Éditions Thémis, 1995), p. 11.

[98]Hansard Government Orders,

[99]R. v. Gladue, April 23, 1999, [1999] S.C.J. No. 19 in the SCJ database.

Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice.

Prior to April 1, 1999, the justice reforms undertaken at the initiative of government or justice system players (e.g. judges, police) and funded through the federal and territorial government remained within the context of the existing justice system. This system requires the confrontation of the accused within an adversarial system, a finding of guilt, and sentencing consequences that may take a convicted individual out of the community for a period of incarceration. While more recent restorative justice practices emphasizing reconciliation and healing have been introduced as alternatives to the Euro-Canadian system, these alternatives have still been implemented through the existing system. For example, the community-based reforms often had at the center of decision-making and operations those individuals working within the existing system at the community level, such as RCMP officers, the community justice specialist, and to a lesser extent, judges and Crowns. Therefore, while the reform was located in the community, it was questionable to what extent it was community-based. It is further questionable whether the notion of a "community-based" reform was in fact Inuit-based since the principles and values under which these reforms operated are interpreted within the context of the existing non-Aboriginal justice system.

The NSDC conference recommendations offer a significant departure from the existing system of justice. The recommendations in the NSDC report promote a community-based justice system that does not simply relocate the responsibility of dispensing justice, as understood within the existing system, from justice officials outside of the community to those based in the community. Rather, it promotes establishing pivotal roles for JPs and community justice committees and equipping these alternative dispensers of justice with greater independence from officials within the existing justice system. These expanded roles further suggest a broadening view of justice that embraces Inuit values and culture. The unified court structure similarly helps to bridge the distance between justice in the existing system and justice in Inuit culture where it also encourages the expanded role for the JPs and justice committees.

The strengths of the Nunavut administration of justice and of the proposed recommendations of the NSDC are not without their challenges as this report notes. However, these challenges are not insurmountable.

Notably, while these challenges emphasize shortcomings or gaps relating to different aspects of the three components of administration of justice—unified court, JPs and community justice committees; there are certain themes that flow through these challenges that are worth considering when developing responses. They are:

- Accountability - is the response accountable to the community?
- Cultural Sensitivity - is the response sensitive to Inuit culture?
- Gender Sensitivity - is the response sensitive to its impact on Inuit women?
- Representativeness - does the response represent Inuit women?
- Community Preparedness - is the community prepared and able to implement the response?

This report has demonstrated that emphasis on one of these themes to the exclusion or lack of importance of another can cause more harm than good. The examples of the judiciary's attempt to make the judicial process more cultural sensitive noted in Section 2.3.2 of this report are one case in point. Another example, also focused on the same theme of cultural sensitivity was the expanded role of JPs. . It is noted by those advocating this reform that in order to be successful, JPs would require more training on legal procedures and substantive elements to perform their expanded role.

The report noted the impact on Inuit women when judicial reforms like these have been made to address the need for cultural sensitivity to the exclusion of gender sensitivity, representativeness of women in the design and delivery of these reforms and the community's preparedness and role in the accountability chain. A fundamental lesson learned is that there is need in any reform to give due regard to the need for developing a process of community involvement that is accountable and community-based, representative and sensitive to gender as well as culture.

With this in mind, possible responses to the challenges identified include the following:

- Training and education of justice personnel;
- Public Education – The educators and the message;
- Increasing Public Confidence and Judicial Accountability to the Community;
- Support Services for All Community Members; and
- Monitoring and Evaluation.

6.1 Training and Education

Without question, decision-makers must recognize the need for similar education for all justice personnel, including JPs, community justice committee members, and courtworkers in the communities. This will ensure that all justice personnel have a thorough understanding of the criminal justice system rules, procedures and practices as well as the Inuit traditions and practices. Funding for this type of continuing education/training must be on even terms for all justice personnel.

The training must not only be comprehensive in its application but also in its scope. Training and a thorough understanding of the dynamics of abuse, in particular sexual violence against women and girls, for all justice personnel must also be included in this continuing education/training component. It is critical that these individuals and groups have grounding in the reality of abuse before they exercise their considerably wide discretion regarding the appropriate method for addressing a case involving violence against a woman or child.

Providing training on these matters to all those working on justice issues in the community also provides an opportunity to begin to explore and, hopefully, learn to deal with the conflicts arising when values, traditions or practices based on different cultures, race, religions, gender, and age clash. Within a learning environment, the various players can explore these sensitive issues and conflicts in a supportive way rather than confronting them in an actual case and further

victimizing those involved. Continuing education and training in these areas must be incorporated as integral parts of the larger education and training program for all justice personnel.

6.2 Public Education

6.2.1 The Educators

Training for community justice committee members and JPs could also include training about broader legal concepts that would enable them to function as resource people in the community about such matters as the unified court, and other general legal concepts. This use of the committee members and JPs as public educators would help to address the more chronic lack of Inuit understanding of the judicial system, particularly around such broad concepts as criminal procedure, the administration of justice, substantive and procedural law, the history of the justice system and the roles of justice personnel. The lack of understanding among Inuit about such 'foreign' concepts is well documented and has been damaging to their support for the justice system.[100]

Members of community-based justice committees have the potential to more easily convey information about this component of the justice process to the community, thereby increasing public confidence in the initiative. As well, an increased awareness of the work of JPs and the committees will also equip community members enhance the community's confidence in the individuals performing these roles.

6.2.2 The Message

In addition to increasing community awareness about the roles and responsibilities of JPs and community justice committee members, there is a need to increase the level of community support for their work and decisions. If community members in their capacity as justice personnel are making decisions involving violence against women, more community education is required about these crimes. The federal government could support the increased decision-making roles of these community members by undertaking a comprehensive public education campaign. For example, public service announcements could be developed for radio and television (in Inuktitut and English) with simple messages, such as violence is a crime; sexual assault is a crime; child abuse is a crime, etc., from respected elders and other community members. With this campaign, JPs and community justice committee members (and the judiciary) dealing with such crimes will be better understood by the community at large.

6.3 Increasing Public Confidence and Judicial Accountability

[100] Katherine Peterson (1992). *The Justice House Report of the Special Advisor on Gender Equality.* pp. 14-15.

The efforts to enhance the public's knowledge of the system and its players is important step to enhancing it's confidence in both. In particular, an increased awareness of the work of the courts, JPs and committees will also equip community members to evaluate the performances of these players. Also, it is anticipated that with an increase in people's knowledge of the roles of these various justice players, more community members will be encouraged to participate as JPs or committee members. Ultimately, confidence in JPs, committees and the judicial process, in particular the confidence of Inuit women, rests with the individuals selected or appointed to perform these roles

The need continues for an improved mechanism to screen candidates for all judicial positions – community justice committees, JPs and the courts—regarding their awareness of gender, racial and cultural bias. Engaging Inuit women and men in the selection and appointment processes and the development of a more transparent system of discipline of justice personnel is essential.

These reforms will help to encourage, rather than deter, women turning to the justice system. They will also help to convey the message that women are valued in the community and that violence against women will not be tolerated. They will help dispel the impression Inuit women have that a judicial response to sexual assault is weighted in favour of an accused at the expense of the rights of the victim.

6.4 Support Services for All Community Members

Adequate support and services for JPs and justice committees also includes supports and services for women and children who are victims, especially those who decide to participate in JP court or community justice initiatives. [101] For these reasons, all victims who have the choice of participating in community-based initiatives, at a minimum, require support to make an independent decision regarding their involvement. Anything less than a fully supported right to decide, has the potential to make the community based initiative as coercive as, and therefore no better for them than, the Euro-Canadian justice system can be.

6.5 Monitoring and Evaluation

Many of the challenges identified in this report highlight the need for some mechanism to assess beforehand and monitor and evaluate the impacts of the system and its alternatives. Moreover, since the potential for JP courts and community-based justice committees to further victimize women is no less than that of the existing system, it is equally important that mechanisms be in place to respond to complaints about the committees or JPs and their determinations.

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[101] Pauktuutit, *Inuit Women and the Administration of Justice, Phase II: Project Reports -Progress Report #2 (January 1, 1995 - March 31, 1995) -Appendix #6 - Minutes of Proceedings and Evidence from the Standing Committee on Justice and Legal Affairs Respecting: Bill C -41*, Tuesday February 28, 1995.

The prerogative writ remains in place for JPs, however there seems to be little, if any, discussion regarding how to deal with complaints involving community justice committees or how participants can seek redress.

There is a need to establish a system of evaluation and monitoring of the impact of these reforms. The burden should not remain with Inuit women to continually speak out after the justice system has harmed them. As discussed, to speak out is a risky proposition in the communities.

Evaluation and monitoring of the administration of justice, including such matters as the use of jury trials, community-based justice committees, JP decisions, are effective means of keeping officials and the public informed on how the system is operating.

It is worth noting that under the federal Aboriginal Justice Strategy, the federal government will provide financial support of up to 50% (and in some instances 70% in any one year) of the costs of a justice program arrangement agreed to by the territorial government and the Aboriginal community. However, there are criteria that the communities must meet before the federal department will enter the agreement to implement the programs. The criteria include the following:

- the *Charter* and the *Criminal Code* will apply to the program;
- the community supports the initiatives, established through reports of consultations with the communities
- the community demonstrates that support through financial assistance or in-kind community support;
- the initiative also has the support of the territorial government;
- women in the community play a significant role in all stages of the development, negotiation and implementation of the arrangements;
- the program meets the community's needs;
- the goals of the justice program can be met in a timely fashion, and at reasonable cost;
- interrelated services such as police, health, education, substance abuse, welfare, child protections, and other services must be in place and that these services must be coordinated with the justice programs; and
- programs have accountability mechanisms to ensure open decision making, that decisions are free from inappropriate influence, and conflict of interest guidelines are in place.[102]

While these criteria are admirable, there do not appear to be any criteria that apply once the program is in place in order to monitor or evaluate whether the ongoing operation of the program continues to adhere to the criteria identified above.

[102] Department of Justice, *Aboriginal Justice Programs Handbook* (Ottawa: Department of Justice Canada, 1997) pp.7-9.

As noted in this report, Inuit women have raised concerns about the existing justice system and some of the alternatives being used in their communities. In spite of these concerns, the system and alternatives continue to operate. Failing to respond to these concerns challenges the intent of the system and alternatives and their potential effectiveness. Ongoing evaluation and monitoring are also useful means to examine the impacts and better understand how the concerns being raised can be adequately addressed. They may offer useful means of redress to those who have complaints about the system or its alternatives.

Seldom are written judgements available in the areas of concern to Inuit women, such as criminal trials for sexual assault. The expense incurred in having the transcripts of proceedings created makes this an unrealistic option for women in the communities to undertake.[103] Nonetheless, there is a need to monitor what is happening in the courts (judges and JPs) and within community justice committees. How this work will be undertaken and by whom requires further discussion with all parties affected, including Inuit women in the communities.

At a minimum, monitoring and evaluation of government-funded programs are integral components of funding agreements. How the monitoring and evaluations are done and by whom are issues that go beyond the scope of this paper. Evaluation and monitoring of the system, like the system itself, must be accountable to and fully representative of all community members, especially those marginalized and often silenced. If evaluation and monitoring are to be used, a shared understanding of their purpose is required.

6.6 The next step…

Reconstructing a model of a criminal justice system that meets the needs and reflects the culture, traditions, values, ideas, and ways of all community members is a monumental task. This work is developmental in nature and accordingly, is a major challenge not only to government and its funding agencies but also government agendas to move forward on certain issues and demonstrate "success" and the "effectiveness" of these government-funded initiatives. At the same time, it is also a major challenge to the communities designing and implementing justice alternatives and living with this work-in-progress and its impacts. Determining what is meant by "effectiveness" and "success" requires discussion and shared understanding by all members of the community.

[103] Sheilah Martin raises this point in her article "Proving Gender Bias in the Law and Legal System", Joan Brockman and Dorothy Chunn (eds.), *Investigating Gender Bias – Law, Courts, and the Legal Profession* (Toronto: Thompson Educational Publishing, 1993), p. 33.

APPENDIX 1

LIST OF DOCUMENTS REVIEWED

Appendix 1:

List of Documents Reviewed

Canadian Panel on Violence Against Women (1993). *Changing the Landscape. Ending Violence – Achieving Equality.* Report on Inuit Women.

Department of Justice (Canada) (1993). *Record of Proceedings of the Aboriginal Women and Justice Consultations, November 1993.*

Department of Justice (Canada) (1994). *Record of Proceedings of the Aboriginal Women and Justice Consultations, April, 1994.*

Curt Taylor Griffiths et al.(1995). *Crime, Law, and Justice Among Inuit in the Baffin Region, NWT, Canada.*

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APPENDIX 2:

OVERVIEW OF ISSUES AND CONCERNS OF INUIT WOMEN

Appendix 2:
Overview of Issues and Concerns of Inuit Women

This Appendix presents excerpts of materials listed in Appendix 1 and relied upon to prepare this report. The excerpts identify or refer to issues or concerns of or associated with Inuit women with the three components of the Nunavut administration of justice examined in this report. For ease of review, the excerpts from each document are categorized under the relevant component — court structure, Justices of the Peace, or community-based justice.

Pauktutit. ***Inuit Women and the Administration of Justice, Phase 1: Project Report*****, 1993**

(a) Court Structure

Decisions of Court have failed to reflect any understanding of the impact of sexual assaults and abuses upon women and children who are victims. Women who are victims have little confidence in the system's ability to demonstrate to the community that women are a valued part of the community and violent acts against them will not be allowed.

However, it is commendable that the judiciary in NWT have created more opportunities for community members to participate in the system. Moreover, NWT judges are more open to incorporating Inuit culture into the judicial process and the content of decisions (e.g., circle, elders groups, community diversion). However, the fact remains that judges, when consulting with community, have to consult more widely, and incorporate a wider range of views.

(b) Community-based Justice Initiatives

Community-based justice initiatives have the potential to permit meaningful community participation. They reflect a commitment to responding to repeated concerns of the community, as represented in the comments of the Chair of the Inuit Justice Task Force who said people want to be more involved in how people in the justice system are treated.

However, much remains to be done to ensure equality of access, equal representation and accountability within the administration of justice. In one sentencing circle, it was observed:

- People involved in circle didn't know why judge was holding the circle.
- No explanation was provided to community about its goals or origin of circle.
- Nothing said about how it relates to Inuit customs.
- The judge didn't explain what participants to circle could do "to help" the accused.
- The timing of circle precluded a lot of community participation.
- The size of the room limited number of people who could observe.
- No plan was prepared regarding how to set up the actual circle.

- Little thought was given to how circle could be structured and where specific participants would sit.
- Great responsibility was placed on Mayor, putting a burden on his time and resources.
- The judge did not provide any information about the ground rules, or about what was expected of participants.
- Very little was said about the victim.
- Some circle members spoke of the assault as "their" – the couple's - problem.
- The victim never spoke about what the impact of the actions had been on her or her family.
- No one from community indicated dislike for what offender had done..
- The Judge suggested wife should attend the support group. What was troubling about this suggestion was that the judge overlooked his own power over the victim; consequently, that suggestion was perceived as an order.

There is great pressure not to speak out against a sentencing alternative supported by so many.

Pauktuutit. ***Inuit Women and the Administration of Justice, Pauktuutit, Phase II: Project Reports -Progress Report #1*** **(July 1, 1994 -December 31, 1994)**

(a) Court Structure

Jury Trials in Sexual Assault and Child Abuse Cases
At the 1994 Pauktuutit AGM, the delegates called upon the justice system to not locate jury trials in the same community as the alleged sexual assault took place. The Justice Project will be undertaking an in-depth review of the use of the jury trial in sexual assault and child sexual abuse cases in Inuit communities in NT[Nunavut]. This work is in direct response both the AGM Resolution and the growing concern around the judiciary's unwillingness to order change of venues when requested by the Crown in these specific cases. (p.4)

... it is essential Pauktuutit and the women we present be prepared to negotiate and lobby for a justice system that they fully support. This requires focusing on initiatives currently being proposed by both levels of government that will impact on the new territories' justice systems such as the devolution of the prosecutorial function; community-based justice and its impact on women and children who are victims of violence; and the transfer of corrections to community-based operations.(p.5)

On December 9, 10, and 11[,1994], an NWT-wide victims advocacy and services workshop was held as part of the Justice Project. The Victims Advocacy / Victims Services workshop was a continuation of the work completed in the first phase. In the earlier phase, Pauktuutit played an active role in commenting on the GNWT's Pilot Project on Victim Impact Statements (VIS) and calling for Government to adopt a permanent program that was not a police-based

system and that was structured to meet the needs of women and children who are victims of violence. (p.5)

The President of Pauktuutit, along with members of the Pauktuutit Justice Project, met with Stephen Kakfwi and his officials to discuss the VIS Program and the GNWT's efforts to build a strategy to address violence against women and children in July 1994. At that time, the proposed permanent VIS project was presented to us. Pauktuutit was and remains very concerned that this permanent project will provide little, if any, assistance to women and children who are the victims of sexual assaults or victims of non-sexual assaults where the victims are in intimate relations, trust or dependency relationships with the abusers.

There is very little money being committed by the Government to addressing violence against women and children through the VIS program or other victim services. The permanent program lacks any formal structure and relies entirely upon volunteers within the community to assist victims in participating in the program. To date, it is unclear what the level and extent of training will be for volunteers in communities who perform these services. (Inuit Women and the Administration of Justice, Pauktuutit, Phase II: Project Reports -Progress Report #1 (July 1, 1994 -December 31, 1994 pp.5-6)

We strongly support the development of a victim services and victims advocacy infrastructure for Inuit women and children. We believe the VIS program is an initial step. To ensure women and children benefit from this program we are hoping this workshop will be the starting point for building a victims advocates and victims services workers network for the specific communities being represented in the workshop. (Inuit Women and the Administration of Justice, Pauktuutit, Phase II: Project Reports -Progress Report #1 (July 1, 1994 -December 31, 1994) (p.6)

Pauktuutit, *Inuit Women and the Administration of Justice, Phase II: Project Reports - Progress Report #1* (July 1, 1994 -December 31, 1994), Appendix 3 -Presentation to the Advisory Committee on the Administration of Justice in Inuit Communities[104]

There is extensive information provided in this document on concerns and opinions of Inuit women regarding Justices of the Peace and community-based justice in Nunavik (Northern Quebec). The excerpts reflect similar concerns raised by Inuit women in Nunavut and, therefore, have been included as a useful reference for readers.

(a) Justices of the Peace (pp.34-39)

III. Referral the Justice

[104]The participants of the justice workshop held in Ottawa August 12-16, 1994 presented their views, recommendations and response to the working document of the Quebec Advisory Committee on the Administration of Justice for Native Communities. Two representatives from the Ungava Coast and two representatives from the Hudson Coast accompanied Martha Flaherty and Ruby Arngna'naaq in the oral presentation to the Committee members. This presentation took place in Ottawa on August 16th before the Committee Chair, Judge Coutu. This was an Advisory Committee established in Quebec however, the issues raised parallel the issues and concerns identified by women in Nunavut.

Question: Do you see a need to appoint a justice in your community?
Answer

- -there is a need for local Justices, we have assumed these justices would be Justices of the Peace with more powers than they presently have in Nunavik
- -the people appointed as a Justice should be Inuit, and other well respected people in Community,
- -the criteria could serve to create barriers and systemically discriminate against unilingual Inuit from ever getting appointed- for example the need to be available and open to getting training and instruction; training is to be done by the judges and their association, if it is not done in Inuktitut, these people would not be available or able to train in English so they would not meet the criteria

Question: In your opinion, should the justice who is appointed be a resident in your community or come from another community?
Answer

- -there should be JPs in each community, and if there is a conflict of interest or the JP does not feel comfortable taking a case in her or his own community that should be able to ask and have resources to bring a JP from another place who is willing to take the case, to do the work
- -the discretion to do a case should be left to the JP
- -the Justice should be free to consult with other Justices in other places whenever they want to

Question: Should there be more than one justice sitting in the community in the event of conflict of interest, kinship, absence due to health reasons vacations, etc.
Answer

- -the number of Justices per community would seem to depend upon a number of factors such as the size of the community, the rate of crimes that the Justice would be dealing with and also the factors mentioned above

Question: Do you it would be preferable to have more than one justice who would sit at the same time?
Answer

- -it may be very useful to have more than one Justice hearing a case, this is done in NWT with new JPs to train and assist them
- -the Justice should always have the option and resources available to have another Justice sit with him or her when doing the work

Question: Assuming that proper training would be provided, are there men and women in your community or outside your community would be willing to take on this responsibility?
Answer
Training of Justices

- on the issue of training, this is essential that all Justices have equal access to a very high level of training so they know what the Criminal Code is about, what it says and how it works,
- in the Working Document it says the training would be the responsibility of the ministère de la justice under the supervision of the Chief Justice of the Cour du Québec, if there Justices who are unilingual Inuktitut speakers, they should get their training in Inuktitut and if there are non-Inuit Justices they should be educated and learn about Inuit ways, they should get ongoing training about Inuit ways, all JPs should get training on the dynamics of family violence and sexual assault if they are going to deal with these cases, it is essential

Selection Criteria for Justices

- -the working document suggests, as we understand it, a person who was charged and convicted of an indictable offence of the Criminal Code,
- there are some people who never get charged because people are afraid to call police or press charges or there are some who have been charged and convicted of a summary conviction where they have abused or assaulted someone; these people would be eligible to be Justices under this criteria who may not be healed and still abuse
- if they were recommended by the local authority, people with summary convictions for minor crimes that do not involve any social conflict should not be banned from becoming Justices, if they unknowingly broke the law or have reformed and corrected themselves they should be considered
- -the issues raised under the sections on mediation and diversion about people who can mediate or do diversion apply to an even greater extent to the selection and appointment to Justices - since the Working Document appears to see Justices as more important and more powerful than Diversion Committee or mediators and they are permanently employed to do this work
- -there should be a clear job description and job application provided to people interested in applying for this job; this application would outline the job and set some very basic criteria and standards for the job
- -at the same time the reference to a criminal charge is a permanent ban- there may be a person who has a criminal record from over ten years ago who may have changed a lot and is a very good candidate and they should be allowed to be at least considered

Screening Process for Justices

- -people in the community who would be appointed to be Justices must be thoroughly screened
- -the screening process must be confidential
- -peoples past employment history, criminal records, should be screened
- -need to talk to others who have information about a candidate
- all candidates for Justice should be thorough screened, community and regional groups involved in social issues should be involved in the screening process
- -not sure how the process should work but it is essential to have this process
- -thought has to be given to the process because locally there may be people afraid to speak out against a person who is abusive or has other problems that are not public knowledge because that person is in a position of authority or has a lot of power
- -at a minimum there must be more detailed guidelines set out about what is required to be a Justice, making sure it does not discriminate against unilingual Inuktitut speakers and there

must be a screening process developed to screen out people who are not suited to have this role

Other Issues regarding Appointment

- -some discussion required about whether an elected person could be a Justice, right now some mayors who are justices of the Peace, this might be a problem with their expanded role as proposed in the Working Document
- -need to look at the proposals of KRG which proposes through devolution that mayors take more responsibilities as Justices of the Peace and get more involved in the administration of justice
- -ordinary citizens who are not part of a Board or Committee should also be consulted about a particular individual being considered for appointment as a Justice on a confidential basis

Code of Conduct

- -the Working Document suggest people can be removed for "improper behaviour"
- -what is "improper and who decides what is improper",

- -the Justices should have to follow a Code of Conduct which are guidelines that address a variety of aspects, including lifestyle, for example, if you don't drink, do drugs, but at home neglect your kids or wife, or if you behave at home and then leave town drink, act up, have affairs with others this is not acceptable conduct and you would be removed because you went against the Code of Conduct (Pauktuutit has developed a Code of Conduct that is being considered by Inuit organizations in the NWT and the Minister of Justice in the NWT)

Question: Do you believe that the jurisdiction of a Justice should be restricted, at first, to hearing cases pertaining to band or municipal by-laws?

Answer

Yes

Question: Should the jurisdiction be restricted at first to cases where a plea of guilty will be entered, thus leaving the courts to hear disputed cases ?

Answer

- -this question is a bit unclear- if Justices are only doing by-law and municipal infractions these are not so complex, they could probably hear these cases and get experience doing some disputed cases

Question: Should the jurisdiction eventually be extended to all offences against federal and provincial penal statutes and Criminal Code offences that are punishable by summary conviction?

Answer

(Note: the issues raised about mediators and diversion committees dealing with offences that are identified by the Crown as summary conviction (ie. spousal assault, sexual assault, child abuse) also apply to the jurisdiction of the Justices)

- -perhaps, this depends entirely upon the training that JPs get,
- if they don't get good training in areas such as family violence, sexual assault, must seriously consider if they are able to deal with these cases

- -if they are dealing with these cases, then consider whether they can be done by local Justice or by some Justice from other region, also whether more than one Justice should hear the case

Question: Should the placement of a young offender in a youth center or a foster family eventually be brought under the jurisdiction of the justice?
Answer
-possibly yes, due to time constraints we discussed this briefly and we did not explore this in any detail.

Question: Should the same apply in matters of adoption?
Answer
- -JPs should only have responsibility for adoption once they have had adequate specialized training in this area

Question: Are you of the opinion that customary adoption (if it exists in your community) should be codified and incorporated in to the Civil Code of Québec?
Answer
- -this was not discussed
- -we would like an opportunity to explore the approach used in the NWT, where there is a law being proposed that would not codify the customary adoption practice but legally recognize customary adoptions and leave the substantive issues of what a "customary adoption" out of the law and leave it up to local Inuit to determine whether specific adoptions would be recognized as "customary"

Question: At what interval should the Justice or Justices schedule hearings?
Answer
- -this depends on the JP, the rate of crime, the size of the community, there is no one answer each community may vary

(b) Community-Based Justice (pp. 23-33; pp.)

The working group examined the Working Document within the context and from perspective of women living in Nunavik. As such, this Document was evaluated and its proposals were assessed in terms of how such models or proposals could address family violence, sexual assault, child abuse and assault. In evaluating and assessing the models and initiatives a basic assumption is that the safety of women and children in the communities cannot be compromised or jeopardized in any way.

With this basic assumption, in general there was considerable concern many of the options would not promote the safety of women and children who are or could be victims of abuse or assault in the communities. his concern prompted this very important question from one of the working group members: what do we give up to get what they are offering us? If such models

are given to the communities at the sake of the safety of women and children this is too high a price to pay to "improving" the existing justice system.

We recognize that the existing system is failing Inuit, yet at the same time, new alternatives must be seriously examined to ensure that they do not compound the damage and suffering already caused by the existing system. We are seriously exploring alternatives that meet the needs of all persons in the community including victims and accused.

As a minimum standard to any of these alternatives there must be guarantees that provide women with an effective and meaningful role in the administration of justice. Accordingly, we would support the inclusion of a guarantee of equal representation of women and men on any justice or diversion committee and as Justices.

I. Mediation

Question: Is mediation a method for resolving conflicts which interests you? If so why and how?

Answer

- -Inuit have said the long waiting period to appear in court is a problem, during that time the person accused of the crime and the victims are reluctant about life and worried- the answer is not mediation but having the circuit court come more often to the community or have a judge in the community who is available all the time
- -the Committee proposes that mediation would be used to deal with "disputes and conflicts of a social nature"; more consideration must be given to what is meant by conflicts and disputes of a social nature; many conflicts and disputes of a social nature include family violence, assaults, abuse in the home, and abuse and neglect of children; many of the conflicts are seldom reported to the police or considered to be criminal offences because they do fit within the definitions of assault within the Criminal Code; for example, spousal abuse takes many forms other than physical assaults that can be equally debilitating and threatening and could easily fall within the category of conflicts or disputes that are mediated; this is not acceptable to our working group
- -the type of disputes to be mediated are to be negotiated by members of the community and the Department of Justice. However, there is very little confidence that the type of disputes we have described above would be considered inappropriate for mediation; we are very sure that these types of disputes that often get downplayed or blamed upon the women in relationships would be left for mediation, as they are not taken seriously
- -in our view, mediation is a good method for resolving disputes arising from the James Bay Agreement, labour disputes, business differences, but not disputes that are minor criminal law matters or could become criminal law matters in Inuit communities.
- -in order for mediation to work, both have to consent to go, which means one of the two involved, if it is a type of abuse would have to come forward; there is too much responsibility placed upon victims to come forward to seek assistance of a mediator to resolve the abuse;

- -it is useless to go through mediation when dealing with issues like family violence, spousal assault and other abuse because the conflict will not be taken seriously,
- -mediation is a slap in the wrist
- if person repeatedly abuses other and each time goes to the mediator this is useless
- -if someone does something to me I want to go to court right away, we have to go through the justice system and use the law that is there
- -mediation is too informal and we would put people in danger until an even more serious abuse takes place and then the criminal court has to get involved
- -abuse is a learned behaviour and if it is not dealt with it will go on it cannot be "mediated"
- -can't play with law today, treat it carefully, mediators would not have much powers; if something goes wrong in mediation who is responsible
- -in many cases the individuals involved in certain types of social conflict are like a time bomb waiting to go off, if a mediator confronts them and they go off this could be very scary
- -in the case of an abuse or assault, the victim would be left to go to the mediator to get help but many times the victim in spousal assault is blamed, it is her fault and told that things will get better if she just didn't complain or tried to be more happy, the victim is the one who is punished when this kind of thing happens
- -mediation is too weak
- -what type of agreement do you reach when one person has abused another person, man to woman or child; there is too much of a power imbalance
- -what if they break the agreement then what happens
- -what local authority does the mediator report to,
- -who monitors the agreement to make sure it is being followed
- -how do we protect people in danger who are going through mediation or if the agreement is broken
- -if they go ahead and bring in mediators they should only be responsible for issues that might be considered summary convictions if charged under the Criminal Code that relate to property crimes
- it would take many years of on the job training and specialized training before they could be ready to deal with summary convictions about assault, abuse, sexual assault
- -in the communities when there is a problem-like a spousal assault it is very hard to say something about it to someone
- -if we forgive or the justice system doesn't really do much or take this seriously the victim is hurt even more
- -there are high rates of suicide of victims who are hurting, the person who did the harm may go on but the victims are affected and don't heal, they may try to kill themselves.

Question: Are there elders, men or women, in your community who are already acting as mediators?

Answer

- -Inuit had leaders in camps, camp leaders who were elders would counsel and help women and men where there was abuse, these elders who would counsel people in trouble- men who beat their wives for example- in traditional days these people maybe could be considered as mediators

- -today the elders are reluctant to use their knowledge and do things , they may have the knowledge to counsel but wait to do their work and wait to be asked because now they are told that this is "none of their business"
- -traditions like this have been left behind
- -today there are social workers, prevention workers, who already seem to do what a mediator would do
- -the explanation of "mediator" in Inuktitut suggests the mediator resolves the dispute but that is not to be the case- the mediator only facilitates, and it is the people involved that are responsible for finding solutions
- -if you introduce a new worker- the mediator- its a lot like another social worker and it will be hard to understand the difference
- -confusing

Question: Can you identify persons in your community who would be willing to act as mediators?

Answer

- there is nothing in the Working Document that says how many mediators would be needed in the community
- -not very clear on who appoints or identifies mediators
- -it may not be appropriate for a mediator to mediate in their own community, perhaps mediators should mediate in other communities where they don't know the people as well, are not related and are more objective - in the other region
- -the criteria for becoming a criteria are not strong enough
- -what does "respected" really mean
- -there are leaders who might be considered "respected" but they are not really they may be privately using drugs, drink a lot or have problems with their family- they cannot be mediators and have these problems
- -you also have to look back in their past, think about their past,
- -Judges should appoint mediators but only people who, even if they are respected, are screened and trained (to a certain level- to see if they would be appropriate)
- -someone who is being considered as a mediator has to be someone who is fully healed, if not healed they should not be allowed to be a mediator
- -in one community a person who abused a child, became a born again Christian and a minister, he has power as a minister people are afraid to speak out against him and could never really say he is not "respected" and afraid to speak out against him to the local authority; at the same time to a judge or official from the outside he may look very respected
- -very difficult in a small community to say something about someone
- -in Inuit communities we often are very willing to "forgive" and encourage everyone to forgive someone who has done something wrong- yet there are people still hurting after we have forgiven, if that person who has hurt others is a mediator, people will continue to hurt and will not speak out
- -mediators would have a lot to do, if they are really respected people sometimes they are already doing something else, they may not have time to be trained and do their work,

- -mediators would have to be paid they cannot be volunteer-they have to be readily available, if it is volunteer work their job will always come first

Question: Would be it useful to have the person selected to act as a mediator receive specific training to perform that role?

Answer

- -not useful but a necessity, extensive training required
- -law is serious business and a mediator would have to be someone who has knowledge of the legal system and issues to know their limits- if this person is dealing with "social conflict"
- -they would need considerable training if dealing with any relationship where any type of abuse is existing, starting, they need special counselling and standards to know when it is not appropriate to do mediation - a lot of people who are family law mediators in Canada and US go through extensive screening and have to do a lot of screening before undertaking a specific mediation to make sure that it is not dangerous, many will not mediate a family law matter where there has been any type of abuse; all academies, associations and organizations of Family law mediators have agreed that training and education on the dynamics of abuse is essential to do family law mediation, at a minimum this would have to apply in mediating cases that could be seen as criminal law matters or becoming criminal law matters

II. Diversion

Question Do you consider that it would be possible to implement this method for resolving conflicts in your community?

Answer

- -yes for cases for youth who are in trouble with the law
- -there are no resources in the communities to take on diversion and, more importantly, deliver the appropriate measures or sanctions for adults who commit criminal offences of assault and abuse against others
- -the type of alternative measures described in the Working Document would be too lenient for adults or even youth who are involved in sexual assault, abuse or other similar violent acts
- -if diversion is considered for adult offenders it should be restricted to summary offence type incidents that relate to property, for example vandalism, break and enter, theft under $200, but not for assaults or sexual assaults

Question: In your opinion are there members of your community who would be willing to participate on diversion committee and decide on alternative measures?

NOTE: the concerns raised under the section on mediation about selection, appointment, screening, and training of mediators, apply also to the selection appointment, screening, and training of diversion committee members

Answer

- -the justice committee could also act as the diversion committee not just oversee it
- -the communities are too small to have layers of communities there are not enough people

Question: Would some members of your community be willing to assume responsibility for the alternative measures chosen and see to their implementation?

Answer

- there is a need to clarify in this model what the role of the community social workers and probation officer would be, for example would a probation officer be responsible for making sure a person on diversion was following the committee's orders or would that be the responsibility of the diversion committee?
- -the diversion committee when deciding what to do in a particular case and on alternative measures should not just talk to the probation officer and social worker but also talk to family members, foster parents and guardians; these people should be well informed about what is happening?

Question: Would you limit the use of this method to minor or lesser offences?

Answer

- -based on the type of alternative measures available (as described in the Working Document and also due to financial resources), the powers of the diversion committee would have to be limited to minor or lesser offences involving property offences, by-laws, driving offences because the measures would be considered too lenient for other offences or that the type of services outlined are not available in the community (how do could you order weekend custody if there is not place to hold someone, or order a workshop on violence or sexual assault if there are no workshops available or no funds available to send a person out to attend a workshop elsewhere?)
- -recognizing we think diversion is only useful for youth as provided for under the Young Offenders Act, we think diversion in Inuit communities should not be used for cases where youth involved in serious crimes like sexual assault, abuse of a girlfriend, child, or murder, and other crimes against a person
- -don't want diversion to be considered an easy way out, now people are seeing "circle sentencing" as an easy way out, to avoid jail,
- -people will begin to think it is not worth pressing charges because the problem is not dealt with seriously and the sentence is too lenient
- -also community committee may not have the resources to provide the measures needed for example workshop or therapy for sexual assault or violence or alcohol and drug abuse, they can only do weekend or overnight stays, but if not facilities, no police, no guard how can this be done?

Question: In your opinion, would alternative measures in certain cases make it possible to revive or apply traditional methods for resolving conflicts?

Answer

- -must be careful that "traditional methods" or traditional practices are not used to simply get the easy way out, "created" to be used as an excuse for behaviour or conduct prohibited in the Criminal Code or other penal statute, or used to unduly influence a jury or other members of an alternative model like a diversion committee or justice committee or Inuk justice

- -if the system uses its laws to convict it should also follow its laws when it decides the sentence

Justice Committee

Question: Is the justice committee a more effective method to meet your expectations:
Answer

- -unclear what the Committee is being compared to, if it is the existing criminal justice system use of circuit court judges, we don't see the committee replacing the justice system
- -have to continue to ask the question in order to get this committee and the other models proposed in this paper, what do we have to give up

Question: Is the justice committee as described in the Working Document in harmony with your cultural values
Answer

- -the Committee is still very much rooted in the existing criminal justice system, to the extent it gives back to the community some control over its own affairs, it is in harmony with our view that we are responsible for our own affairs but there is still some concern that when the "community" is given to control there are some who may abuse that power to the detriment of women and children who are victims of abuse and assault
- -in terms of the "committee" being within our "cultural values", it would be hard to say because we have not traditionally had justice committees

Question: Should elders only be appointed to this committee?
Answer
No

Question: On the contrary, do you believe that a justice committee should include besides elders, men and women of all ages as well as young people?
Answer

- -a lot of consideration has to be given to who can have responsibility for justice in the communities, the same process of selection appointment and codes of conduct that we have proposed for Justices, diversion committee members should apply for members of the justice committee
- -at a minimum there should be certainty that women and men are equally represented regardless of age

Question: Are the powers granted to the justice committee sufficient?
Answer

- -taking into account our earlier responses to mediation and diversion, the role of the justice committee seems adequate
- but there could be more in relation to probation (see next answer)
- -if the committees take on more responsibility that should be done so ONLY if they have adequate resources and training to take on different responsibilities

- -as discussed under the diversion section, in many small communities having a diversion committee and a justice committee is too many layers, the should have one committee to do both.

Question: Do you see other possible functions which could be performed by the justice committee?

Answer

- -the Committee or Justices should be mandated to oversee probationary orders granted by the judges, the probation officers are too few and do not adequately follow-up and there are a lot of breaches
- -the Committee could meet with probationers on a regular basis to ensure they are following their orders, if there is a breach, they would be responsible for notifying the Judge and police immediately to take action

Question: Do you believe that members of your community would be willing to participate in a justice committee? If so, could you identify them?

Answer

- -our comments regarding who would be mediators, the need to be paid not volunteers (which was raised under mediators and diversion) and the need for extensive screening and selection criteria (as proposed by us for Justices) would have to be undertaken for a justice committee

- -there are too many committees on a volunteer basis, this is far too important to leave it to volunteers, we need people paid to do this and they must be thoroughly screened and would apply just like a JP
- -they should also receive extensive training about the criminal justice system, impacts and dynamics of family violence, abuse, child abuse and assault and sexual assault on victims

Question: Do you have any other suggestions regarding other methods of participation by the community in the administration of justice

Answer

- -we would welcome the opportunity to further develop alternatives, we haven't had an opportunity to spend some time thinking about this
- -this is the first time we have been consulted on this matter, with more time we can feel we can develop some safe and workable alternatives and models
- -we have reviewed the proposals of the Inuit Justice Task Force and we do not fully agree with their proposals as they would not adequately address the needs of women and children who are victims of violence and could compromise the safety of women and children in our communities even more so than the existing system

Potential Initiatives Under the Current System

Question: Should judges consult the community in the choice of sentences?

Answer

- -the answer depends very much on how that consultation takes place, and who is being considered "the community"
- -there are some leaders who may be consulted who are abusers themselves
- -people in the communities are close friends, relatives by blood or marriage it is hard to expect friends or relatives who make up the community to tell the judge he should send a person leave the community for many reasons, for this reason the people in the community designated to advise the judge may be in a very difficult and awkward position and if pressured to advise may advise the judge do something that may not be the most appropriate sentence for the accused simply because they do not want to be responsible for sending him south, away from his community, family, relatives and friends, causing pain and hardship for the family that stays behind, etc.
- -judges have responsibilities to sentence as described under the laws of Canada and provincial laws, they are also independent from political interference when doing so, in their decisions and the laws there are often guidelines or maximum sentences set out, at a minimum these should be followed to ensure that people get sentences that are appropriate
- -the "independence" will be less if a judge relies upon the direction of a leader in the community who is asked to give his opinion to the judge on what is best for the community, there seems to be some value in having someone independent, a mayor or some other community official or elected leader cannot always be this way and that may be a problem
- -in Nunavik judges take into consideration what would be considered native practices or Inuit factors such as whether the accused is a "good hunter" or "good provider" and that seems to influence the judge since he knows Inuit are hunting people, that is not always appropriate though; the judge should not give more lenient because the Judge relies on "native methods" or "native practices"

Question: Do you believe persons chosen by your community would be willing to give their opinion to judges concerning the types of sentences to be rendered?

Answer

- -the communities are very small in the sense that people know each other or are related through marriage or blood so the judge would have to be very careful about who is being consulted regarding the sentence there could be a conflict of interest
- -people chosen to give their opinion regarding the sentence should be screened and there should be some process to exclude persons with certain biases or familial connections in favour or against the accused

Question: Which approach, among those proposed in the Working Document, would be the best way for the judges to consult the community?

Answer:

Circle Sentencing

- -this is not an Inuit method, it is not Inuit tradition
- -when this is used in spousal assault, sexual assault, child sexual assault, abuse cases it only victimizes the victims more, it silences them

- -in the Yukon the drop in the crime rate could be attributed to the fact that many women are afraid of sentencing circles and don't report abuses and assaults; these models have to be severely scrutinized for abuse and assault cases
- -when it was used in Kangiqsujuaq, we were used like guinea pigs in a test, we cannot play with peoples lives
- -the recommendations and concerns raised in our Pauktuutit report on the circle in Kangiqsujuaq should be reviewed and considered by the Committee
- -sentencing circles are not "group therapy" and did not lead to a "very significant involvement of the community prior to during and after the sentence" when dealing with spousal abuse
- -more focused on meeting the needs of the accused at the expense of the victim
- -victims may "consent" due to family pressure or perceiving that they consent because the judge wants to do this
- -it is a contradiction in terms to suggest someone who lives in an abusive situation is "free" to express her or his view

Exhaustive Examination of Sworn Witnesses

- -this may be useful method where the offence was an offence that was against the entire community - i.e. vandalism of the community hall,
- -use of sworn "community" witnesses in assault or abuse cases seems inappropriate

Consultation of the Justice Committee

- -this would be useful for some cases, again it may not be appropriate for abuse and assault cases in that specific community due to the inter relatedness of the community or if they have had no specialized training relating to family violence and sexual assault
- -this would be useful as long as the committee is adequately resources and the concerns raised under our response on the judicial committee are addressed

Question: Would it be preferable to use different approaches depending on the circumstances
Answer:

- -as mentioned above, the type of offence would seem to indicate which approach is better suited
- -could use some approaches already provided for in the Code that are not being used now such as use of Victim Impact Statements
- -the use of VISs would be beneficial if there were adequate resources available to have persons trained and experienced in dealing with victims who could work with victims in filling out a VIS and providing the necessary counselling necessary when dealing with the impact of the offence

Question: Is there a danger that a judge or justice would lose his judicial independence in consulting with the community?
Answer

- -yes, if the judge wants to involve the community and make this process credible in the eyes of the community, it will be very difficult to take a contrary view of what the recommend for sentence, to avoid such conflict a judge may either go along with what is said, even though he/she may have some concerns or else try to get some information unofficially about the

accused before agreeing to a certain approach in sentencing methods- either way judicial independence is being eroded

- -judicial independence would appear to be weakened with the concept of justices from the community, judicial committee members or diversion committee members, if it is possible justices or either diversion or justice committee members could also be elected officials such as a mayor or elected official of Makivik, etc.

(c) Family Law

Pauktuutit completed its workshop/ consultation of seven Inuit women from each of the NWT regions to review the policy paper produced by the (GNWT) Department of Social Services, the Family Law Reform Report and the proposed Custom Adoption Ordinance. As a result of this consultation, Pauktuutit requested territorial funding to assist in the development of a detailed review of the impact of the proposed legislation on Inuit women. This was not approved. The report of the consultation held this past summer will be completed shortly.

In the meantime, Pauktuutit has met with the Department of Social Services officials on December 20, 1994 to review their proposed Child Welfare Legislation to discuss problems, concerns and issues that have been raised by Inuit women. (p.8)

Pauktuutit, *Inuit Women and the Administration of Justice, Pauktuutit, Phase II: Project Reports -Progress Report #2* (January 1, 1995 - March 31, 1995)

(a) Court Structure

Transfer of Prosecutorial Function to GNWT

We met separately in Yellowknife with Deputy Minister of GNWT and with federal Director of Public Prosecutions for the NWT Region to discuss the GNWT proposal to have the prosecutorial function transferred from the federal level to the territorial level. The concerns raised by Pauktuutit were outlined in a letter sent to Minister of Justice Allen Rock.

Inuit Batterer's Counselling Program

While in Rankin Inlet in December 1994 conducting our Victims Advocacy /Victims Services Workshop..., the Justice Project coordinator was approached by the Sappujjijit Friendship Centre in Rankin Inlet to provide information regarding male battering treatment counselling. Pursuant to earlier discussions with the Solicitor General[105], Pauktuutit and Sappujjijit put together a proposal for a 3-year pilot project for a male abuser counselling program with the Sappujjijit Friendship Centre as the agency delivering the program

[105] At the last Aboriginal Women's Justice Consultation, we approached the Solicitor General representative about the possibility of applying for funds for a male abusers' counselling program pursuant to program funding under s.81 *Corrections and Conditional Release Act*.

The proposal was completed and submitted to the Aboriginal Offenders in March. A copy of the proposal is attached to this report and identified as "Appendix #2".

In addition to this pilot project, the justice project prepared a presentation for the National Symposium on Aboriginal Offenders held in Prince Albert in February. A copy of the presentation given by Martha Flaherty is attached to this report and identified as "Appendix #3".

(b) Community-Based Justice

Community Justice

The Justice Project continues to receive calls from women in the NWT raising concerns or sharing personal experiences with community justice matters. Often the calls are from women who are victims of abuse and are seeking assistance and support, as they have very little in their community, to address the abuse and deal with the criminal justice system. Attached to this report and identified as "Appendix #5" is a copy of letter sent to a GNWT community justice specialist which further illustrates the problem. To date we have not received a response to this letter.

One specific community justice matter involving the Pangnirtung's Men's Group was the subject of discussion in the presentation made by Pauktuutit before the Standing Committee on Justice and Legal Affairs regarding Bill C-41. It appears there is very little commitment on the part of the GNWT to set standards or guidelines to ensure community justice initiatives in Nunavut do not further victimize or harm Inuit women who are victims of violence. For further details please refer to the copy of Pauktuutit's Bill C-41 presentation to the Standing Committee which is attached to this report and identified as "Appendix #6".

Pauktuutit, *Inuit Women and the Administration of Justice, Phase II: Project Reports - Progress Report #2 (January 1, 1995 - March 31, 1995) -Appendix #5 -Letter from Justice Project Coordinator to Baffin Community Justice Specialist*, February 16, 1995

(a) Community-Based Justice

...writing to you about some information we received since our workshop in Rankin Inlet regarding the community justice committee's activities in Sanikiluaq.

As you are aware, Pauktuutit's Justice Project has focused on the need to ensure community-based justice reforms be accountable and acceptable to all members of the community. Flowing from this, we have been advocating for the use of negotiated guidelines and standards that would be used to guide communities in the way in which the establish their committees, who can participate and what types of matters they can undertake.

We have increasingly become more concerned with the operations of the committee in Sanikiluaq. I was informed that you have the responsibility for community-based justice in

Sanikiluaq and therefore have directed this matter to you as we understood from Kristina's presentation in Rankin Inlet, the concerns we are raising would be matters you are addressing as the community justice specialist.

We would very much like to know what is being done to rectify the problems with this committee- its membership; the type of cases it is involved with; the lack of training provided, the lack of any procedures regarding referrals to the committee.

We would like to know how this committee was established -was it under your program. We understand that this committee came to be established by Judge Brown. We would like to know if the Department plans to establish some type of procedural guidelines as to how these committees get established; who can participate; and what their mandate is? How is this body sanctioned to be dealing with justice issues through a diversion program? We would like any information that you can provide on these issues.

Pauktuutit*, Inuit Women and the Administration of Justice, Pauktuutit, Phase II: Project Reports -Progress Report #2* (January 1, 1995 - March 31, 1995) -Appendix #6 - Minutes of Proceedings and Evidence from the Standing Committee on Justice and Legal Affairs Respecting: Bill C -41, Tuesday February 28, 1995, Witnesses: Inuit Women's Association of Canada

(a) Court Structure

Perhaps with the exception of Iqaluit, where there is a Judge permanently based, a courtroom, a legal aid service, an Inuit-women run victims advocacy group, and permanently based police force, the services are nominally better than Labrador and Nunavik. (p. 85:10)

There are Justices of the Peace being used in the Baffin communities quite regularly to deal with summary conviction matters, traffic matters and municipal by-law infractions. There are police in most communities in the Baffin, Kitikmeot region. In the Keewatin, there are police based in four of the seven communities.(p. 85:10)

There are no legal aid services permanently based in the Kitikmeot and one legal aid lawyer based in the Keewatin region. For these two regions and the Baffin communities, other than Iqaluit, the fly-in court, with judge, Crown and defence counsel, court worker and interpreter is the only thing available.(p. 85:10)

Purpose and Principles of Sentencing

We stand behind the right of Inuit women to receive maximum benefit and protection of the law. For this reason, we have called for appropriate sentences for offenders convicted of violent crimes against women and children. Within the existing system, however, this would mean longer jail terms in distant institutions - institutions that are geographically and culturally distant. Pauktuutit recognizes the hardship and ineffectiveness of this approach if it means offenders are

isolated from their own culture for long periods of time AND are without access to counselling that will help them address the underlying reasons for their violent behaviour. (p. 85:17)

Bill C-41 states that the fundamental purpose of sentencing is to contribute, along with crime prevention, to a respect for the law and to maintain a just, peaceful and safe society by imposing just sanctions that have one or more of the objectives listed in Section 718. Without sounding, like a broken record, we remind you that in many Inuit communities women and children are not safe from abuse and assault. To suggest the purpose of sentencing is to maintain the safe society we live in, ignores the reality. (p. 85:18)

Judicial Attitudes - Sexism/Racism

These provisions still leave judges with considerable discretion in determining the appropriate sentence. The problem with this is that it assumes judges are sufficiently informed and aware to exercise their discretion in way that is neither racist nor sexist. We do not have this same confidence. (p. 85:18)

Sections 718. 1 and 718.2 list the principles to guide the judges when determining sentences and clearly direct judges to ensure the sentence is equal to the seriousness of the offence and degree of responsibility of the offender. While we feel that there are other aggravating factors that should have been listed, we strongly recommend that the aggravating circumstances listed in section 718.1 (a) should not be removed. This list, as incomplete as it is, is still necessary. We do not support suggestions being made to amend paragraph (a) in such a way as to delete reference to the specific circumstances listed such as race, religion, sex, age, mental or physical disability and sexual orientation. We are not confident that the judges we have presently serving our communities at the trial and lower level appeal courts fully comprehend the nature and impact of sexual assault and spousal assault crimes upon Inuit women. This list goes some way to addressing the current gender and racial bias in the courts. (p. 85:18)

Sentencing - Cultural Factors

Reviewing some of the sentencing decisions of trial and lower level appeal judges for violent crimes against women in one Inuit region, illustrates the extent to which Inuit culture is often misunderstood and misapplied. It is not uncommon in these decisions to see the judge's reluctance to sentence an Inuk offender convicted for sexual assault of an Inuk women to a federal penitentiary. The reasons are often expressed in terms of culture. (p. 85:19)

In a 1987 case the trial judge gave a sentence of two years less a day to an accused convicted of having non-consensual sexual intercourse with a sleeping victim. The judge stated:

> "Our courts have been conscious for many years of the undesirability of sending Inuit or other aboriginal offenders of the NWT to penitentiaries in southern Canada... The infection of those communities by the culture

> of the penitentiary population is something which should be avoided, if at all possible."(p.85:19)

This type of case demonstrates how there are too many areas in which misunderstandings can occur when people from different cultures and circumstances, who know nothing about the people who they are judging or their lives. ... In one case a man pleaded guilty to having committed sexual assault on an young woman. In this case, we are told by the judge that the woman told the young man that she did want to have sexual intercourse and yet he went ahead despite her crying and telling him no, pushing him away. The accused told her that "he had sold his soul to the devil and that she would die if he did not complete intercourse". The judge also informs us that he accepts this as a death threat and that the accused was drunk at the time of the attack. In this case, the accused was given a suspended sentence for two years. He was required, in addition to keeping the peace and being on good behaviour, to report to a senior probation officer in his home community and during the first year of his probation he would abstain from alcohol, and perform 200 hours of community work. In coming to this decision, the judge stated:

> "...we can understand why this kind of offence is a serious crime under our law, the Parliament of Canada speaking for all of us has made a law under which the Court may send a person to jail for up to 10 years for this offence. When a person goes to jail for more than two years, they can be sent to a penitentiary in Southern Canada which is a place where murderers and sexual perverts go. It is not a good place for an Inuit or a young man but if it is necessary to teach people sexual assault is a serious crime, the Court will send even young men to the penitentiary."

... In another case, a father was convicted of indecently assaulting his daughter with violence over a period of years. While condemning this act of incest, the judge noted the accused had no previous criminal record and stated:

> "I have nothing before me to indicate that he is anything but a good hunter and a competent provider for his family."

The accused received a 6 month sentence.

A man was convicted of sexually assaulting two adult women in their homes during the course of one night. The accused was intoxicated when he committed these crimes and stated that he did not recall the assaults. The accused was 35 years old and no criminal record. The judge gave the man a suspended sentence for one year with conditions of 300 hours of community [work] and abstaining from alcohol. In pronouncing his sentence, the judge said:

> "I'm satisfied [the accused] enjoyed a good reputation in his home community...He comes from a good family and learned from his father that traditional Inuit way of life, as a result of which he is accomplished

> hunter. He has a grade nine education in the formal sense; however having him speak in Court he appears to me to be more intelligent and articulate than most people with a grade nine education. Character references favourable to [the accused] were provided to the court [by two prominent non-Inuit business leaders] in the community. ..I'm satisfied that what [the accused] did was completely out of character for him. He is not a violent person. ...
> More often than not, offences such as those committed by [the accused] result in a [jail term] when the cases come before this court, but in my view jail is not the only possible answer or solution."

In another trial case, the judge said;

> "For the people of [this specific Inuit region] there is no prima facie age restriction when it comes to sexual intercourse. The acculturation process of children does not include the terms 'statutory rape', 'jail bate' and other terms suggesting prohibition. Rather, the morality or values of the people here are that when a girl begins to menstruate she is considered ready to engage in sexual relations. That is the way life was and continues in the small settlements... It is clear on the material before me that each of the accused was raised with this attitude and value. I note each one did not consider their actions "wrong" until confronted by the police and the Criminal Code."

This case involved three men who sexual assaulted a 13 year old girl. In the eyes of the judge, these men were simply doing what their culture permitted. Each accused was sentenced to one week imprisonment based on the cultural defence discussed above. While culture was not accepted by the judge as a defence, it was used to mitigate the sentence. The case was appealed and each accused was sentenced to four months. The appeal court did not correct or comment on the trial court's misinterpretation of Inuit values. In effect, both levels of court condoned this misinterpretation.

Based on these specific cases and others, it appears that mitigating factors when the offender is an Inuk include:

- having traditional skills;
- being a family man with no criminal record;
- not being well educated;
- under the influence of alcohol; and
- being a "so-called" respected community member.

The bottom line is that if your an Inuk and convicted of sexual assaulting an Inuk women in the NWT you will not serve more than two years less a day. (pp. 85: 19-21)

Sentencing must be meaningful and appropriate. While we recognize penitentiaries do little to rehabilitate offenders and may often do little more than encourage them to recommit their offences, the response of the judiciary has been inappropriate weighted in favour of the accused and at the expense of the rights of the victims. (p. 85:22)

Sexist Judicial Attitudes

In the case referred to earlier where a thirteen year-old girl was sexually assaulted, the judge referred to the victim as "slow". It appears that this mental disability was considered a mitigating circumstance. As a result of the assaults the girl became pregnant. This is not considered a harm or injury rather it appears to be irrelevant. The judge states:

> "...She did not object to the intercourse, but I must temper that with the fact that she may not have completely understood what was going on...In any event, I note that she was not injured or hurt in any way."

At the appeal level, the judges did not seem to do much better in this case. In fact, the appeal court demonstrated even greater lack of regard to the harm suffered by the victim. It states:

> "No affection was involved here. It was a simple matter of sex."

We are not lawyers or judges but one thing we do know is that sexual assault is NOT a simple matter of sex.

In another series of a cases, the judges have established a special category of sexual assault when determining the sentence. These involve cases where the Inuit women victims are unconscious due to sleep or intoxication. In these cases, the judges accept the unconsciousness of the victim as a mitigating factor, if no physical injuries are sustained. They conclude no harm or injury was done to the victims as they were not conscious at the time of the assault. The violence and power in this type of crime seems to go unnoticed by the judges, unless there are visible physical injuries.

In a case where a 36 year old man attacked a sleeping 22-year old woman, the judge denounced the offence but in a way that was degrading to Inuit women:

> “You might think of that the next time you've had a few drinks and you see a woman lying around, asleep. First of all, you have no right to force yourself on any woman, asleep or any other way...They're not there just to keep you happy....[no man] can simply go along helping himself to whatever he thinks is available."

This unfortunate use of "whatever" to describe Inuit women, in our view is offensive and degrading. (pp. 85:21-22)

Community Resources

Inadequate supervision within the community is largely a problem of a lack of resources and proper facilities. There are very few parole or probation workers in the communities and so very often offenders are repeatedly breaking their conditions of probation or parole but there is nothing that can be done. ...

While there is considerable compassion and concern for the offender, at the same time, there is considerable concern for the safety of other in the community if there are no proper safeguards in place. (p. 85:22)

Conditional Sentences

The final area of concern with Bill C-41 which we wish to raise with you today is the introduction of a new sentence called "conditional sentence" in Section 742. Section 742.1 outlines when the conditional sentence can be imposed by a judge. If we rely on the past practice of judges in sexual assault and spousal assault cases in the North, it is likely they would consider these cases are eligible because the safety of the community would not be endangered. (p. 85:22)

Based on past practice, the judges are more likely to consider the safety of the community to be endangered if a conditional sentence is not imposed. In other words, they will more likely to accept that the community and the offender's family cannot afford to lose the good hunter, the good provider, the family man, the heavy equipment operator, the respected community member or a repented member. These interests of the community will outweigh the harm that the victim may suffer should a conditional sentence be imposed. (p. 85:22)

If conditional sentences are allowed, then we must ensure we have the necessary resources to adequately deal with offenders in our communities.(p. 85:22)

We addressed the need to have express reference to funding guarantees for alternative measures. This point also applies to conditional sentences. We recommend the Bill expressly identify funding responsibility for compulsory and optional conditions listed in Section 742.3. Again, it is important to reiterate that in our communities we do not have the same resources urban centres in the south have. We do not have trained Inuit psychologist, sexual assault counsellors. We have only one independent, Inuit-women victims advocacy and support program in all of the North. We do not have any culturally-appropriate counselling and treatment programs or facilities for offenders who sexual assault or abuse. We do have alcohol programs but this is not sufficient. Based on our experience, we have painfully learned that alcoholism is a contributing factor not the cause of violence. (p. 85:23)

Pauktuutit could support conditional sentences for male abusers if and only if there are programs for abusers and services for victims of abuse run by specially-trained, permanent members of the community. We have stressed the development of programs that will be responsible and accountable to the community, including the women and children who are the victims of the specific abusers within the program.(p. 85:23)

We are not confident this can be done and therefore can conclude this proposal will not make Inuit communities safer unless significant resources are available and there are trained Inuit available to provide the many services required. (p. 85:23)

(b) Community-Based Justice

Existing community-based justice initiatives

In evaluating and assessing the amendments presented in Bill C-41, our basic assumption is that the safety of women and children in the communities cannot be compromised or jeopardized in any way. We recognize that the existing system is failing Inuit, yet at the same time, the new alternatives being proposed in Bill C- 41 must be seriously examined to ensure that they do not compound the damage and suffering already caused by the existing system. (p. 85:23)

Since 1991, the Government of the Northwest Territories -the GNWT- has taken a number of steps in introducing community-based justice alternatives. These have included the promotion of a community-based justice system, consisting of local justice committees supported by a community justice specialist within each region; the promotion of alternative measures to the existing criminal justice system such as adult diversion programs along the lines of diversion programs for Young Offenders; and the promotion of sentencing alternatives, such as sentencing circles, reparative sanctions and restitution in the form having to go hunting and providing country foods to victims and community service. (p. 85-8)

The experience to date, however, provides certain lessons about how they should - and should not - be implemented if they are going to be successful at meeting the needs of *all* members of the community. (p. 85:8)

Culturally inappropriate community -based justice models

Like many other community justice initiatives, Pauktuutit is concerned that the alternative measures provisions of Bill C-41 will sanction and result in the implementation of aboriginal models that do not relate to Inuit, or will focus on the needs of the offender to the exclusion of all others - namely women in the community. (p. 85-8)

Community-based systems are also said to offer Inuit and other Aboriginal communities the chance to deal with accused and offenders in ways that are more consistent with our own traditional cultural values. The expectation is that this will lead to less emphasis being placed on "retribution" or "mere punishment" and more on "restorative justice" that is directed at restoring harmony between the offender, the victim and his/her community. The underlying intent is to empower a community to deal with its own problems in a way that meets broader social goals, not just narrow legal ones. (p. 85:8)

Women's Safety

In Bill C-41, it states Alternative Measures may be used to deal with an accused person ONLY IF it is not inconsistent with the protection of society and the listed conditions are met. Before we discuss the specific conditions, we would like to remind you that in many communities there are no police, no probation officers, no specialized or trained workers who can counsel either offenders or victims. In these communities, there are many who live in fear and cannot and will not report crimes in fear of the reprisals they will suffer. Some of you may reply, then it is unlikely such alternatives would be legally sanctioned. We remind you some of these measures are presently operating in Inuit communities and the situations within which we live is accepted by governments as adequate and safe.(p. 85:10)

The efforts to reform the justice system in the North so far have been initiated primarily by reform-minded people working within the justice system and who do not live in the community. The obvious problem in these alternative measures is that the reforms are from the outside, they are not really community-based. This is not to suggest that everything must by an original creation by the community in order to be useful or successful. We will look anywhere for solutions to our problems, but it is us Inuit that must make the decision about what will work for us. We strongly believe the measures most likely to succeed will be ones that have grown out of the community's own efforts to deal with their problems. A home-grown approach will better reflect a community's sense of its own needs and priorities, in light of the resources it feels it has at its disposal. (pp 85:11-12)

In preparing for this presentation, one woman told us that one of the reasons she left her community in the North was because she was not sure she would be able to protect her daughters and keep them safe from harm in her home community. The tragic consequence for this women and others is that in order to find a safe community, they must leave their homes and search out larger urban settings, where they have access to services and supports necessary to survive as a woman. This means that their children are raised outside of their culture and when they become adults, may have a very difficult time fitting back into Inuit society. (p. 85:18)

With this basic assumption, in general there was considerable concern many of the options would not promote the safety of women and children who are or could be victims of abuse or assault in the communities. This concern prompted this very important question from one of the working group members: what do we have to give up to get what is the government offering us in this Bill? If these amendments are being offered at the risk of the safety of women and children. This is too high a price to pay to "improve" the existing justice system. (p. 85:23)

"Community-based" means women's participation

A truly "community-based" approach, therefore, must be one that reflects *all* segments of the community in particular, the women and children who are the victims of abuse.

We welcome the proposal that all not just one or more of the conditions must be met. Yet, even so, from our perspective there is something missing in all of this. That is the needs of the victims. (p. 85:11)

There is no certainty the programs authorized in (a) will be programs negotiated with the communities. Accordingly, when this provision is read in the context of Inuit, we recommend that there be specific recognition in the Bill regarding that of the right of aboriginal peoples to define our own alternative measures through self government negotiations. In saying this, we are speaking only for Inuit women, when we say, that these are matters better suited for self-government negotiations, once we have secured full and effective participation for Inuit women in this process. (p.85:12)

Lack of Resources

The other major problem we have identified that has the potential to undermine the effectiveness of any alternative measure is a lack of resources, both technical and financial. Recent reforms in the NWT provide a case in point. These initiatives have focused on the rehabilitation of offenders (mainly through alternative sentencing reforms), and the provision of assistance to victims (through the establishment of Victim Impact Statements) In both cases, the communities are being given responsibility to deliver these new programs without any support structures in place, specially-trained, local personnel or additional financial resources at their disposal. This approach could easily have the effect of setting communities up for failure because their existing resources are already seriously over-extended. While the intent behind this specific amendment is positive, it can nonetheless do a disservice to the remote, northern communities that don't have the resources to implement them successfully. (p.85:12)

We are concerned that these measures will become part of an authorized program and police, Crown attorneys and judges will encourage their use without securing the adequate resources to deliver an effective and accountable service. In addition to our earlier recommendation for this specific paragraph, we recommend an express statement identifying funding responsibility for such measures. (85:12)

Offender-focused community-based justice

We are now learning the consequences of reforms that have been community-based in name only. Alternative measures that focus on the needs of offenders, for example, and neglect the needs of victims and others in the community cannot be said to be reflective of the community as a whole: restoring harmony within the community means dealing with *all* those involved in, or affected by, the crime, equally. A truly "community-based" approach, therefore, must be one that reflects *all* segments of the community in particular, the women and children who are the victims of abuse. (p. 85:11)

Our concerns with Paragraphs 717 (1)(b) to (g) are related to the issues we discussed regarding the focus of these amendments being on the offender, to the exclusion of the victim. (85:13)

While neither English nor French, is our first language, we fully understand the consequences of using words like "needs" or "besoins" for the accused and "interests" or "interet" of the society of the victim in paragraph (b). There is a priority implied in these words, that the accused needs come first and second interests of society and the victim. Especially when paragraph (b) is read alongside the remaining conditions. What if the victim does not want to participate in the alternative measure because of fear, reprisals from the accused, the accused's family or the community? This does not seem to matter, or if it does, it is one of last and least considerations given. (p. 85:13)

The needs of the victim must also be recognized, this can be done without violating the *Charter* rights of the accused. (p. 85:13)

Based on our experiences, we recommend, as a minimum, not only must the "needs" of the person alleged to have committed the offence be considered when determining whether or not an alternative measure is appropriate but also the "needs of the victim", followed by the interests of society. (p. 85:15)

Definition of "Community"

It is the underlying assumption that the interests of victim and society are one in the same. When we consider Inuit society and narrow this done to particular Inuit communities, often the interests of the victim may be in conflict with that of the "community". Firstly, what interest does the "community" at large have in sexual assault case that directly impacts on a specific victim and family. In small Inuit communities, there are many people who are related by marriage, powerful families, and male-leaders in charge. These family and kinship lines along with the power structures impact severely upon a victim if her abuser is someone related to a powerful family or a leader. Not unlike the South, in our communities women and children are silenced and not believed when they speak about their abuse. If and when they do speak out these women are then blamed in some way for the assaults they have sustained. (p. 85:13)

We must recognize that the term "community" must be all inclusive. For Inuit women, this also means not using "community" to prevent organizations such as Pauktuutit from participating. For many women, Pauktuutit is the only safe and non-threatening forum in which these issues can be discussed. We know from experience many women are often afraid to speak out in their communities about their specific concerns on these issues.(p: 85:15)

Victims/Complainant Consent

Please notice that we are not making a recommendation that the section regarding alternative measures include a condition that states the victim/complainant must be fully informed and

consent to the alternative measure. We have specifically avoided this recommendation, although it is one we see appearing judicial decisions as conditions for conducting a sentencing circle. To place the onus once again upon the victim, isolates her and may result in her being further victimized should her wishes differ from those of the accused. Such a condition, ignores the reality facing women and children who are victims of abuse, it ignores the power imbalance that exists between the abuser and victim and, in many instances in our communities, the power imbalance between the victim and her community.(p: 85:15)]

We must recognize that the term "community" must be all inclusive. For Inuit women, this also means not using "community" to prevent organizations such as Pauktuutit from participating. For many women, Pauktuutit is the only safe and non-threatening forum in which these issues can be discussed. We know from experience many women are often afraid to speak out in their communities about their specific concerns on these issues.(p: 85:15)

In making this a condition, the judges are assuming that all members of the community have equal access to information and equal opportunities to speak out. This is not the case. The barriers preventing women from fully participating in these decisions must be addressed if all members of the community are to participate in a meaningful way. (p: 85:15)

Limitation of Jurisdiction

Alternative measures for cases involving sexual assaults, child abuse and spousal assaults cannot be allowed. We know based on our experiences that where women inform the police of abuses or sexual assaults they have suffered and charges are laid against another community member, depending on who that member is, the community may or may not support the victim. In many cases where women have had charges laid against men for sexual abuses they sustained as children, these women are being isolated and ridiculed for bringing these cases forward by their communities. In specific incidents we have documented, women have not only not been given support, they have been threatened and intimidated for participating in the court process as witnesses. (p. 85:13)

Accountability - Community Power Imbalances – Religion

In one community there was a request made to the judge by a group that had assumed responsibility for working with offenders who return to the community, to have a sexual assault case diverted out of the court to them. Members of this group had worked with the accused and felt he should not have to go through the court system. The specific case involves an assault alleged to have taken place 24 years ago. The complainant in the case, now an adult was 13 years old at the time of the alleged assault. The community's response to this particular incident and more specifically, this group's response to the judge for the reason's for having the matter diverted, raised a number of concerns and issues for Pauktuutit while at the same time demonstrating how alternative measures can be result in greater injustices than the current system for the victims. In the letter sent to the judge, the group presents its reasons for having the matter diverted to them. We would like to read a portion of this letter:

" [Our group] during our last meeting agreed to help the accused after his last court appearance.
[The accused] attended the last [group] meeting to ask for our help. He has recognized the function of the [group] and asked for our help regarding him being charged with a sexual offence which happened years ago.
[He] was charged for an incident that happened many years ago and from what [he] has said, [he] has already let this pass when he confessed his sins in church. We [the group] are proposing, instead of going through court, we [the group] can handle this through counselling [the accused]. [The accused] also commented that at the time, [the victim] had told him that she was having boyfriends now.
We [the group] know of [the victim], when she was young, she used to go out with everybody, even older men, she is divorced from her husband... and now married to [someone else]. And for a Christian to go back to the past and persecute someone is not fair, to just get back at what happened many years ago. Especially at a person who has confessed his sins to let go of the past.
We [the group] all agreed that we should help out the accused. [The accused] was also very concerned about his wife and children and what this would do to his family." (p. 85:14)

Accountability - Lack of guidelines

There are no guidelines set down in a law for the use of sentencing circles, only the criteria being set down by judges in their decisions. Yukon Territorial Court Judge Barry Stuart is recognized as the person who introduced this alternative measure to Canada. It was first used in case in which he presided over in the Yukon, In that case, *R. v. Moses*, he described sentencing circles as a means of "empowering community members to resolve their own issues, restoring people's sense of collective responsibility and improving the capacity of communities to heal individuals and families and ultimately to prevent crime".

The experiences to date with the use of these circles in Inuit communities and other aboriginal communities when dealing with sexual abuse and spousal assault have not been positive for the victims. It would seem that alternative measures must adhere to the safeguards already provided in the existing system. For example, within judicial proceeding the principles of judicial independence and impartiality are basic tenets. This too should be he case for alternative measures. In other words, this would mean that community political leaders cannot be given decision-making roles in alternative measures. To date this has not been the case.

Issues of Fundamental Justice

Alternative measures, like the judicial proceedings they replace, would be required to adhere to the principles of fundamental justice and other basic tenets of the system. For example, the need for judicial impartiality in resolving these matters is a strongly held founding principle of the

system. When it comes to alternative measures, this would also have to apply in our view. In other words, political leaders cannot be given decision-making roles in any alternative measure because of this principle. (p: 85:16)

Likewise alternative measures, like judicial proceedings, must be designed, in our view to seek out the truth NOT hide it. If this cannot be achieved, it would seem the specific alternative measure could not be used. We believe this view of ours is shared by the highest court in Canada. (p. 85:16)

We are not lawyers, so we cannot discuss the Supreme Court rulings in such cases as R v. Seaboyer, [1991], R. v. B (K.G) [1993] and R. v. L. (D.O) [1993] from the legal perspective, but we do want to raise some points from these cases as they relate to alternative measures. In these cases, the court addressed the principles of fundamental justice from the rights of the accused. In the most recent of the three cases, the R. v. L. case, Madame Justice McLaughlin that when explains that when looking at this constitutional issue before the court, it has to be looked at in context. She says that it is necessary to look at the broader political, social and historical context to be truly meaningful. The context in which Judge McLauglin looks at the section 7 and 11(d) rights of the accused is the context of child sexual abuse in Canadian society. She reminds us the same Court agreed that a particular right or freedom may have a different value depending on the context. She acknowledges the parallel between the historical discrediting of children and women who report sexual assaults. She goes on to state that,

> " the innate power imbalance between the numerous young women and girls who are victims of sexual abuse at the hands of almost exclusively male perpetrators cannot be underestimated when 'truth' is being sought before a male-defined criminal justice system."

The rights of the accused should then be assessed in terms of the context of the specific case. It seems this balancing of rights exercise done by the Supreme Court has not been adequately reflected in Section 717. (2). (pp. 85:16-17)

In this same case, Madame Justice L'Hereux-Dubé informs us that

> "the goal of the court process is truth seeking and to that end, the evidence of all those involved in judicial proceedings must be given in a way that is most favourable to eliciting truth. ...If the criminal justice system is to effectively perform its role in deterring and punishing child sexual abuse, it is vital that the law provide a workable, decent and dignified means for the victim to tell her story to the court."

When we take these remarks of the Supreme Court of Canada in these decisions and the experiences of Inuit women into consideration with respect to the alternative measures proposed in Bill C-41, it is not only recommended but necessary that there be an explicit statement under section 717.2, which prohibits the use of alternative measures to deal with a

person alleged to have committed either an indictable offence or summary conviction offence of sexual assault, child sexual assault or spousal abuse. (p. 85:17)

Accountability - Lack of Evaluations of Existing Community-based initiatives
There have been no formally evaluations done on the circles, yet we have learned that in these circles, when they are dealing with sexual assault or spousal assault, seldom can victims speak freely. Pauktuutit, through its Justice Project has begun to conduct its own evaluation of the use of sentencing circles for sexual assaults and spousal abuse cases.(p: 85:15)

Pauktuutit, *Memorandum from Pauktuutit Justice Project Coordinator to General Counsel of Aboriginal Justice Directorate, David Arnot, Comments on the Justice Memorandum,* November 7,1995

(a) Community-based Justice

#16 - recognition of power imbalances and the difficulties women have making their voices heard within the political institutions in the community-

This paragraph stops short of addressing the issue of what happens to those women who cannot speak in their community. In the case of Inuit women, it is through the Justice Project that community women have been able to seek not only the assistance and support of Pauktuutit but voice their concerns in way that they are less vulnerable than they would have been had they said nothing or risked speaking out in their own communities. For women, Pauktuutit is seen as the organization that can represent their interests without the women feeling threatened. This is important to acknowledge because if we define "community" as the local geographic unit, the end result means women may be further discriminated against and unable to speak out. Pauktuutit clearly does not fit within this definition of “community” if defined by geography, yet many women recognize this organization to be their "community voice"- the community of women.

#17 - use of phrase "recognized elders"

The use of this phrase or similar phrases (“respected elders”) should be more thoroughly addressed-these are terms used frequently and have lost their significance. There is a need to clarify what these terms are intended to mean. For example, does it refer to elders that groups in the community identify as persons who are respected; or persons that the outsiders consider or see as "respected" or "recognized" elders?

#18- this notion of a "consensus " approach and community-based solutions-

Must make sure “consensus” does not become the mechanism used to decriminalize violence against women. The adoption of restorative models that involve community members has been reflected in civil law matters (ie. family law mediation). There is a need to address the

relationship between the use of these alternatives in matters falling within the criminal justice system with related civil dispute issues.

The models of restorative justice are broader and may be able to adapt and address issues that are not only criminal matters - for example the use of family counselling groups to resolve custody disputes may be appropriate in a specific matters, not involving violence, rather than the spousal assault cases we see these alternatives being used for.

There is a need to work closely with provincial and territorial authorities to assist communities in developing alternatives that can reach out beyond the criminal justice system and can be utilized for civil matters, when these initiatives are found to not be appropriate to address the criminal matters.

The issue of what "consent" means arises when we discuss the use of the consensus approach. The issues of power imbalances between the individuals involved, inequalities and forced consent must all be considered and what measures can be taken to ensure "consensus" does not simply mean sanctioning the transfer of power from the judges and others of the existing system to with local powerful (economic, political) leaders.

#20 - "The demands for the return of the traditional systems of justice must be balanced against the needs of women and children not to be forced into reconciliation nor should they be required to surrender access to the mainstream justice initiatives.." (also #17)

The reference to the "return to traditional systems" begs the question, who is requesting this and when they are, what are they really requesting? This phrase suggests that there are "systems" or "practices" within aboriginal cultures that are well known, shared and that can deal with matters presently dealt with through the criminal justice system.

What does it matter that an alternative initiative or system is identified as "aboriginal"? If it is the code for sanctioning greater inequalities and practices that put women and other victims at greater risks this has to be specifically addressed. A practice that is identified as part of an "aboriginal" system and part of "self government" (paragraph #21) may allow for certain flexibility that is not allowed for in policies and laws subject to the Charter.

We would certainly advocate that all alternatives are subject to the Charter, however, we know from our experiences in the Constitution negotiations and Aboriginal Justice Reform inquiries, that law makers, politicians and others that are not Aboriginal become very "hands off" about the "details" of many systems and practices in so far as it deals with matters of the victims. They can and do discuss the "rights" of the accused and the requirement to respect these rights, regardless of the system or practice being used. Self government rights do not collectively sanction internal inequalities based on gender or any other of the enumerated or non-enumerated grounds of the Charter. However, there appears to be a certain degree of complacency with or discomfort among these individuals in questioning and scrutinizing whether these alternatives are appropriate in addressing the "needs" or "interests" of victims. I do not

mean culturally-appropriate, but rather or not they are appropriate in promoting equality among its members and not undermining the individual rights of those who are not as powerful or privileged as leaders in the communities. When identified as "aboriginal" those representing the larger "public" do not make certain demands or requiring certain standards to ensure women and others are not further victimized by the alternative system because it is "aboriginal". This clearly is not acceptable.

The reference to "systems" also implies not only that these systems exist but that there is a certain degree of homogeneity among Aboriginal peoples and within each indigenous people grouping, which is in fact not the case. Within Inuit communities in Canada., the practices and language of Inuit in each region varies. Accordingly, the variation between regions and communities will also result in different systems among Inuit, depending what region you locate yourself. Having said this, the predictability and professed universalism of the existing system may be more appealing because it is well known and experienced by many.

There are certain safeguards in place in the existing system along with infrastructural supports where victims have some protection. So, if these are not available in the alternatives, then it would seem likely that women ultimately will choose what offers them the most protection. Yet, when the community - the accused and victims- are given the choice between the outside system and their "own", the pressure to choose their own system will be great. Those choosing the existing system gets interpreted as not supporting "their own" system. This further alienates the women and places unbearably, yet intangible, pressure making it difficult for them to choose the existing system.

In the context of Inuit culture, there is nothing so exact, complete as a "traditional system" or "traditional practices" you can immediately identify and implement. The traditional practices such as a shaming song, parties individually fighting one another, banishment, -are not being called upon by women to replace the existing system.

There seems to be a practice adopted by those who write about aboriginal justice reform wherein they refer to "community-based initiatives" and "traditional practices" as if they are synonymous. People may be calling for 'community participation' but that does not necessarily mean a return to an actual "traditional practice". Traditional values and a return to these, may be what some are calling for - but that is not always the case.

There is a need for clarity and distinction between conventional community-based initiatives and traditional practices. These are seen to be one in the same by many observers. There is an assumption that because the members of the community are aboriginal therefore the alternative being proposed must be a “traditional practice”, or at least, “aboriginal”. I sense this is also a theme in this federal document-that I would suggest be confronted and dealt with.

It would be useful to examine the system or practice being advocated in the community (regardless of whether it is a traditional practice or a community-based initiative involving

community people. designed by and implemented by local people), in terms of the issues raised above around creating further obstacles and barriers to victims.

The criminal justice system as it operates in the community is identified and the alternatives (traditional or community-based) are presented here as two separate systems operating mutually exclusive of one another- the distinction being used (artificially) being non-traditional and traditional. Many of the alternatives being initiated and used in Inuit communities are initiatives such as diversion, mediation, sentencing circles and are part and parcel and very much dependent upon the existing criminal justice system as it exists to day. They are far from separate and apart from each other. In fact the amendments of Bill C-41 regarding alternative measures attempt to incorporate these alternatives into the system.

The right to choose between the systems or practices means that one of the group of rights, those of the accused, no doubt will be focused upon. Ultimately the "rights" of the accused vis-a-vis the "needs" or "interests" of victims, are perceived as paramount- so, where choice is an issue between what initiative is used, it is clear that the right of the accused, as defined by the existing system will be presented as be paramount to the "interests" of the victim. The right to choose, unless standards sanctioned by laws were in place that provided guidelines to be followed when making the choice, ultimately means the choice of the accused will prevail. The amendments to Bill C-41 regarding Alternative Measures and their use are vague in setting out guideline or standards- this is left to programs to be designed.

This begs the questions, how do you ensure the victim has a say in this determination or choice of what route to follow and that the victim is able to fully participate without coercion, harm or fear of reprisals? These questions must be asked and their response should help determine the standards and guidelines applying to the use of these alternatives and the election or choice of specific alternatives.

#21 - "consensus"

(see also #18 - "consensus"; #16 - "consensus-based")
need to ensure that the assumption that "community" and "victim" are one in the same, share the same values, interests and outcomes- is challenged

- -this is an assumption that is perpetuated in the existing system - the Crown represents the “public”, including “victim” as if they are one in the same-the conflicts surrounding this have been addressed to a certain extent with independent victims advocates, working with victims of violence, or, in the case of the NWT, Victims Assistance workers employed by the Crown, to work with the victim (again this person is still working with the victim to prepare them to participate in the court process and would not be able to provide support should this matter not be in the courts)
- -in the community-based alternatives process, this assumption is even more problematic because the models are premised on this notion of "consensus” and that creates pressures upon victim to support the community.

#21 - advocacy support and confidential protections

The issue of lack of support and protections are indirectly addressed in this comment to ensure aboriginal women and men requiring the same level of services available to other victims and offenders in Canada. This reference, which implies that women and men now have the same level of services and that these should not be diminished, minimizes one of the major criticisms raised by Pauktuutit with respect to these community-based initiatives. Pauktuutit is very clear that unless services are in place to provide support to both offenders and victims and do not rely on these services being provided without additional resources - to train and pay those involved- alternatives are not welcome.

It is important to identify the success of the implementation of these alternatives is conditional upon the necessary infrastructure being implemented or already in place- such as victims service workers, male batterer counselling program, in addition to the social worker and addiction's counsellors in the communities. This point again relates to the earlier one on credibility and accessibility of alternatives.

The issue of credibility of an alternative will arise if it is poorly funded and not accountable; these issues must be addressed so that the choice between the existing system and alternative does not come down to which is better funded and able to support, assist and protect the woman. If this is the basis of the decision, the alternative will never be seen to be credible in the eyes of the woman, young girls and children who are the victims in these cases.

The women working with Pauktuutit on the Justice Project have been very clear in stating that one of the reasons the existing system is not working is because they don't have the advocacy services available in other parts of Canada, and other services available to victims and offenders found elsewhere.

This raises a general point/issue that I think is missing and perhaps a separate paragraph under the Aboriginal Women section is required. Any alternative, be it traditional or a community-based conventional initiative, must have the necessary infrastructure in place to sustain this alternative, including trained and skilled community service providers who are paid for their services. If an alternative is reliant upon a significant volunteer component, it will be unreliable and can vary considerably in level of services, it also means that existing, over-utilized community resources will be further taxed. In the new Corrections legislation dealing with early release, there is an express provision dealing with the need to establish within aboriginal communities, half way houses (s. 81). This provisions is followed by a very explicit provision expressing the federal government's obligation to fund these initiatives. This type of statutory commitment is needed for alternatives we are discussing as well I think.

The reference to "traditional systems" or "practices" implies there is something already in place, waiting to be implemented by people who are skilled and trained to do so. We know this is not the case with respect to Inuit communities. This terminology, furthermore, makes it difficult to argue and substantiate the need for funding to promote activities at a community level that

provide opportunities for members of the community to design community-based initiatives and implement them and to provide training for community members to deliver these services. We must address the need to have infrastructure and services in place prior to implementing a community-based program or initiative.

Furthermore, the requirement for funding of infrastructure and resources associated with the initiative can also be directly connected to the requirement of funding being conditional on these programs or initiatives having certain safeguards and protections in place for victims that are supported by organizations representing women before they are eligible for funding.

 # 21 - negotiation of protection of women's rights in self-government arrangements

- -earlier I raised the issue surrounding those involved in these types of negotiations not being concerned with women's rights and issues of concern to women (government and aboriginal leaders)
- -if there is a serious commitment to addressing these issues at this level, then there must be a serious commitment to ensure the "real" representatives of women's voices are fully participating and fully funded- right now the negotiations model as proposed by Irwin at community and regional levels provide no safeguards or opportunities for the inclusion of women's groups such as Pauktuutit, we are told Nunavut Tunngavik represents "all" Inuit.

#23 - Inuit youth in pre-trial incarceration and suicide

The levels of Inuit male youth committing suicide while awaiting trial was the subject of a research study done by an Inuk man in Iqaluit. His findings were very disturbing and revealed a very high number of youth who commit suicide awaiting trial.

#25- the nature and scope of youth crime has to be addressed

In Inuit communities a significant number of offences of youth involve serious violent offences by male youth against women and young girls. This needs to be addressed in terms of appropriate response to these offenders and identification of their needs as well as the needs of their victims.

- -while we don’t want to see alternatives used to decriminalize violence against women and girls, for youth, there are other issues that need to be considered more thoroughly

#25 - child abuse

There is reference to child abuse in this paragraph. Studies have shown there is a correlation between child sexual abuse, child abuse, children witnessing abuse and youth crime. There is a need to address this correlation. In the context of violence against Inuit women, of the 80 to 90% of women being abused, most of this abuse is taking place in homes where Inuit children are exposed or aware of such violence. This exposure to violence impacts upon youth and their own criminal activity as youth or later as adults. This should be addressed.

#2? (paragraph not noted)

There is reference to "women may have needs and demands different than males". As accused or victims, we know that the needs and demands are different, who so tentative?

There is reference to "other social ills may differ by gender". There is very clear factual evidence demonstrating the impacts of poverty being very different for women than men, for example, again why written so tentatively. There is a need to identify the connection of gender inequality to violence and other social ills- you quote and rely on the Canadian Panel on Violence Against women for statistics, they also point this link out clearly, and make recommendations on the need to address this link - why not here?

Evaluation of these Alternatives

- -measures of success of projects and alternatives must not simply look at recidivism rates, rates of reported crimes. These measures further victimize women by relying only on quantitative statistics women have challenged as not reflective of what is the true picture of the community. For example, many crimes are not reported for fear or safety reasons. Some women may not report crimes if they know the response will be use of a diversion program and not go to court.

Measures used in evaluation must address the barriers and systemic inequalities facing women in the communities not promote them.

Department of Justice (Canada)*, Record of Proceedings: Aboriginal Women and Justice - Consultations - Inuit Women,* - November , 1993

(a) Court Structure

Individuals in the justice system must be sensitive, they must unlearn racism and they must be culturally aware without romanticizing Aboriginal life and culture. (p. 3)

Training of justice workers should be evaluated. (p. 3)

Cross-cultural training for lawyers, judges and other justice representatives should be mandatory. In order for the justice system to be culturally sensitive, the personnel must be educated about the Inuit communities, the culture and traditions, and the laws which highlight women's issues and needs. (p. 9)

A victim must deal and resolve their own pain before they can help others. A victim support program is needed. (p. 14)

The women must be given means with which they can protect themselves. i.e., access to services such as police protection and information about support, legal rights, etc.(p. 14)

A need for independent victim advocates to provide support and information to victims. A victims advocated would also ensure that sensitivity to all the needs of the victim is given by all justice workers.(p. 14)

Women need help facing their fears in order to speak out against their abusers. The Inuit women feel the need for support from an women's advocate. An advocate would counsel and support them when searching for solutions to problems of violence. The Inuit women feel that the advocate should be someone outside of social services and accountable only to the victim. Court support is also necessary. (p. 13)
Effective services targeted to women and victims must be staffed by women in all areas of justice - from advocates to Crown offices. (p. 14)

There is a need to eliminate myths about women, violence and Inuit culture (i.e. the myth that Inuit culture allows sexual assault). (p. 14)

Juries do not work in Northern communities.(p. 2)

No jury trials in communities where the crime is committed (it should be noted that this recommendation was made to sexual assault cases involving women and children) (p. 14)

In order for victims to serve as jurors, it is important that they have undergone healing. This is essential to perform their duties objectively. (p. 16)

The jury system does not adequately meet the needs of the Aboriginal people in the North. For example, community members are usually reluctant to serve as jurors - an offender could be a relative. (p. 18)

(b) Community-based Justice and JPs

Note to Readers: The issues raised in these excerpts speak are relevant to both community-based justice initiatives and JPs working in the communities. It is difficult to separate excerpts specifically directed at JPs from those specific to community-based justice, as the women often saw JPs as part of community-based justice.

Justice committee selection is inappropriate. (p. 2)

The aim of the justice systems is to ensure the safety of all community members and to help create a healthy community Services should be suited to the community and not the reverse.(p. 16)

Diversion programs have been implemented before community healing and development. One must be careful not to put the "cart before the horse."(p. 16)

Diversion must begin at the regional leave only when comprehensive development training has been undertaken and completed. (p. 16)

There must be a balance between community diversion and the needs of the victim. Victims must be included in the process if they select to do so. (p. 16)

A major dilemma for victims of abuse is that the community often supports the accused. There is no understanding of "zero tolerance" of violence in the North. In order for victims to serve as jurors, it is important that they have undergone healing. This is essential to perform their duties objectively. (p. 16)

Inuit women...must work towards a balance between two worlds. It is essential that Inuit women participate in the planning of priorities and development of a process by which specific needs can be identified and addressed. It is crucial that women be in the forefront of change and play a role in solutions for today's world. Acceptance and support of these solutions can only be accomplished through active participation in the process. (p. 2)

With regards to a role in the justice system, Inuit women stressed the importance of equality between men and women. They must be given equal access to the same opportunities. (p. 2)

A justice system must reflect and support equality between men and women. As an integral foundation of this Aboriginal justice system, the fundamental principle of equality between men and women as defined by the respective traditions and cultures of the Inuit, Métis and First Nation, must exist (p. 2)

Traditions and culture are often confused. They are not the same thing. Traditions can be "bad habits" where culture allows one to be the best s/he can be. There is a need for a balance between the past and present to be achieved. Aboriginal peoples must stop romanticizing the past and address the realities of the present. (p. 7)

A vision should include a broader perspective and go beyond the role of the Elders. It was noted that the Christian influence can be responsible for many "bad habits", especially for the non-acceptance of certain community members such as gay community members. (p. 8)

With regards to abuse, one must explode the myths and promote understanding about the dynamics of why men abuse. Common myths include:

1) Myths about culture and Christianity - Elders are holy and leaders are above the law;
2) Elders, leaders and Christians who abuse are under stress;
3) Women ask for abuse;

4) Inuit culture allows assault against women and children;
5) Inuit culture allows men to control women;
6) Children can be sexually assaulted when they reach puberty ; and
7) All Inuit people are drunks.

Excuses used to support myths and which dismiss the offender from being responsible for the crime are as follows:

1) if you learned to abuse in your upbringing;
2) if you are "nagged" by the woman you assault;
3) if you have a stressful job;
4) if you are an Elder, leader or "good" Christian;
5) if you are or planning to undergo treatment
6) if you plead guilty;
7) if the woman you assault was under the influence of alcohol or alcohol involved in some way;
8) f you support your family (for government employees, it is assumed the wife will become homeless; and
9) if you are " born again."(p. 8)

The message must be conveyed that violence is not part of Inuit culture. A positive approach must be taken in the development of role models for the community. Children must be taught their rights to protection and personal safety. Pauktuutit is a good role model and should initiate steps to generate public interest. (p. 9)

A justice system must be defined as one which is culturally relevant yet does not romanticize the past. It must deal with the realities of today. (p. 9)

Changes to the justice system are happening too fast and without the involvement of Inuit women.(p. 2)

Legal Aid

Legal Aid should be accessible to all women who are in need. Access to the justice system must be made possible through legal aid so that all women including isolated communities have access to family law and other aspects of the justice system.(p. 16)

There is a need to support the family before a child is removed from the home. (p. 20)

Disabled Women

Disabled women are more vulnerable to abuse (p. 2)

Department of Justice (Canada)*, Record of Proceedings: Aboriginal Women and Justice - Consultations - Inuit Women*, April 6-7, 1994

(a) Court Structure

Circuit court was described as "hit and run". Common problems are postponements, plea bargaining, pressure is put on an accused to plead guilty to minor criminal cases when they are in fact not guilty. The accused does not realize the consequences of having a criminal record, even if the charge is a minor one. The court does not schedule time satisfactorily; cases can take up to two years for disposition. During such lengthy waists, victims and witnesses can become fearful and apprehensive, and accused persons may commit more crimes. Suicides have been linked to lengthy delays. Because cases can take so long to be concluded, offenders don't see the immediate consequences of their actions and don't take the judicial process seriously or as a deterrent to future criminal actions. (p.30)

> "I have never seen a case resolved even in six months." (p.30)
>
> "People commit suicide during the long wait for disposition." When it takes so long, how can the judge be surprised when the victim has forgiven her abuser and tried to get on with her life."(p.30)

Even in Iqaluit...which does not rely on a circuit court, there are lengthy delays. During delays, offenders who have been charged with dangerous crimes of violence remain free in the community, until such time as they may be incarcerated. The need for public safety is not paramount in the non-Inuit criminal justice system.(p.30)

One delegate said that offenders play the system in order to manipulate an appearance before particular judges who may be perceived as lenient. (p.30)

They have insufficient time to meet with the defence attorneys and encounter patronizing attitudes and lectures from legal representatives. (p.30)

The court is only concerned with whether you broke a law, and if you did, what you owe the state, not the community or the person you offended. One could say the Criminal Code has no relevance in communities, because it does not force an offender to compensate or make peace with the person who has been offended, it only considers the Crown and state's interests. (p. 31)

There must be mandatory charging - with increased education about the dynamics of violence. Inuit women endorse mandatory charging. Police must respond to calls. Even if both partners request that a charge not be laid, it is up to the police to lay the charge. When police don't charge, they increase the power exercised by the abuser. Women can be forced to feel the only way the can escape is to kill their abuser or themselves. Someone who has not experienced

violence can empathize but not truly understand. Often the only thing that keeps women from resorting to violence is their children. (p. 9)

> "I would like a list of priorities before we leave here: I suggest policing, the court system, circult court, the question of wehther the punishment fist the crime and the need for Inuit research into reform of the criminal justice system." (p. 33)

(b) <u>Community-based Justice Initiatives</u>

An Inuit women commented on the use of circle sentencing and how this has affected her community. "Inuit don't have circle sentencing. We are not Indians. The feds often treat Inuit like First Nations people. I am glad circles are being re-evaluated and a closer look is being taken at the administration of justice. ... Circle sentencing has increased the problem in our communities. Offenders sit in circles and they have relatives. Those relatives have in-laws. They often hold the power. As you said, crime suddenly went way down and we have healed in ten months. Thank you for taking a second look. ... On circle sentencing, no thank-you."(p. 27)

Fundamental differences exist between the administration of justice, the justice system itself and the needs and wishes of Inuit. Who determines the priorities? A delegate explained that the word "rights" does not exist in the Inuit language. A participant related "we have hurts, problems and obstacles to a group operating effectively."(p. 18)

A participant noted that "the government officials and judges are telling communities what alternatives to the justice they use. While this is coming from 'well-intentioned outsiders', it is not coming from the community" as it must. (p.18)

Delegates explained that healing circles and sentencing circles are not part of Inuit culture. One participant stated that "outsiders may think that it's a nice touch" (p. 18)

The concept of diversion might be more appropriate. They explained that because Inuit have been told how to do things for the last fifty years they have come to expect it. ..Inuit, especially women, are much more likely to assert their views now and that some communities are ready to take over responsibility for some aspects of the administration of justice. (pp. 18)

...there are many unreasonable demands put on volunteers in the implementation of alternative justice. They contended that adequate funding and recognition of the value of work done by volunteers is both lacking. People providing these services should be paid for their efforts. (p. 19)

> "...the Nunavut government could indicate what crimes police should focus on, and subsequently have a significant degree of control of the administration of justice." (p.19)

When Inuit are charged, for example, with petty crimes for actions that are not considered criminal by Inuit society, such as borrowing, they are totally baffled by the court system and why they are there. The concept of ownership of law determines what becomes the norm and affects priorities such as treating property offenses more seriously than crimes against the person." (p.19)

Participants held that by not allocating funding for justice initiatives equally among the regions, problems are created. One delegate stated "if you have a group of children and give candy to only two, you have a problem. If you're going to do something somewhere, do it everywhere not only in Iqaluit." (p. 19)

Participants also expressed that they felt it was unreasonable for southern professionals "parachuted" into communities to expect Inuit people to compensate for their lack of ability to communicate. It was also a problem to expect people to provide this service without compensation. (p. 19)

Inuit women began this session by raising a number of key points: ...questioning real justice and whose it is; considering the safety of children; and asking who evaluations community values? (p. 30)

> "The question of ownership of the law becomes the larger question. Patch-working a system that never applied or worked in the first place is not solution. ...if someone maliciously damages my personal property it is not an offence against the Crown, it is an offence against me and my property. By extension, harm done to a child is also done to a mother. My child is merely a statistic to the legal system. When you own your own laws you can place emphasis on people over property and power. What is valuable in our society is human life. The western world on discovered this recently, and this is not reflected in the Criminal Code. The whole premise of the system is based on something foreign to Inuit, so it will never work. Band-aid solutions will not solve the problem." (p. 31)

I am not afraid of the court system. I might be afraid of having a criminal record and perhaps not getting a nice government job. I would be scared shitless of going before respected elders and having to explain why I had committed a crime. Not only does the southern system impose itself, they try to restrict what we say." (p. 31)

The government has assumed the responsibility for the administration of justice by imposing white male-dominated judicial system on Inuit. Elders were not consulted and were excluded from the process. Whereas the community traditionally would have intervened to maintain social order and safety, the impersonal southern justice system does not make allowances to permit the time or support needed to bring change and does not deal with situations immediately, as would happen in traditional society. (p. 31)

It seems society is afraid to say no to anything any more and everyone cites the human rights of the offender if we ask for labour or for restitution. In the Baffin, we can't find anyone to supervise people on fine option. (p.32)

> "The cost of maintaining the existing system is not solving the problem. "Will community justice mean inheriting the existing system or will it mean designing a new system."(p. 33)

> "I would like to suggest that the process of transferring administration of justice is slowed down until Inuit women are consulted, feel safe and fully involved. I would like to go at the speed of the women, and wait for Inuit women to do their own research and assessment. I do, however, recognize that may not be possible and we must take advantage of the current initiatives." (p.33)

> "...the long term solution is that the transfer of the administration of justice must be accountable to Inuit women and their children. The must be participation of women, not just as "victims" but because these policies and initiatives directly impact on all women's lives and further entrench the inequality of women. Many of these policies and initiatives victimize women. Justice can't be blind when it comes to gender." (pp. 33-34)

Nunavut Social Development Council, *Report on the Rankin Inlet Justice Conference*, 1998

Excerpts of this document have been included and referred to in the text of this report.

(a) Court Structure

In the current system, a lot of time passes after an incident occurs which requires healing.

People have committed suicide because of delays. The justice system makes it easy for offenders to avoid the consequences of their actions when they are sent away. It is easy for young people to lose touch with their families and their elders when they are removed from the community.

(b) Justices of the Peace

There is a poor understanding of the ways in which Justices of the Peace (JPs) operate in the community. People have questions about how JPs get appointed, for example, and why it is difficult to get Inuit to become JPs. It has also been observed that the relationship between JPs and Community Justice Committees is not well understood.

There is a widely held perception that JPs and the proceedings in JP Court are not important, pointing to the need for better public legal education regarding the role of the JPs.

The JPs who are appointed are not adequately representative of the community, neither in gender nor in age.

JPs need better legal training, and they need a support network. JPs themselves feel uncomfortable with their role in the community, and people who become JPs put their families at risk of ridicule.

JP Court is too formal. There is a need for increased flexibility to permit JPs to sit more frequently, and to deal with matters where delay brings hardship to the family and community. JPs do not have an adequate range of sentencing options that are alternatives to jail.

JPs can help to deal with repeat offenders and more serious crimes committed by first offenders. A positive development is that JPs have assumed more responsibility for criminal matters, addressing some long-standing concerns about court delays. This increased responsibility requires increased training on the substantive law as well as on the dynamics that often accompany acts of male violence against women in the community.

(c) Community-based Justice Initiatives

It has been widely observed that the government has not been very successful at reducing the number of inmates. Jails seem to be filling up. Moreover, the current system does not show much respect for Inuit ways. There is no recognized role for traditional Inuit approaches to conflict resolution. For example, there is no clear role for elders and their methods, and giving the individual a choice to act on the elders' advice.

The current system, by contrast, is more focused on what a person does rather than who they actually are. This is an offence-based approach that ignores the individual needs of the offender.

There are also many pressures on the members who make up the Community Justice Committees. And they have been used as a tool for the Defence.

Since incarceration takes Inuit away from their homes, and this makes reintegration harder, Community Justice Committees should be more involved with inmates.

Nancy Karetak-Lindell, Member of Parliament, Nunatsiaq, *Hansard*, November 1998

(a) Court Structure

Those members familiar with the delivery of justice in the eastern Arctic will know that with the exception of Iqaluit, court parties must fly into various communities of the eastern Arctic in order to deal with trail matters. Currently there are two circuits, on e for the territorial court and one for the supreme court. Neither of these two courts will hear all matters arising in a particular community. On average each of the courts visits a particular community only three or four times a year. As a result there can be significant delays between the laying of a charge and final determination of guilt or innocence, or in family law matters, solution of custody issues for example. This can have a devastating effect on the parties and can lead to division within the community until the matter is resolved. I can give some examples of what we have to go through with these court procedures.

Currently a court party will fly into a community. The lawyer arrives on the same plane with the court party. In some cases the accused spends 15 minutes with the lawyer before the case is heard... the future of the accuses is to be determined in that little time. There are also suicides directly related to people waiting for the dates of the court cases. ...The long waits between cases is just not healthy for anyone. All the communities are small and the accused and the victim have to live in the same community. Consequently the have to see each other in the store and the community hall. They are forced to live near each other which is very stressful for both.

(b) Community-based Justice

There is also a strong desire in the north for more matters to be diverted from the formal justice system or in criminal matters if charges are laid, to have the court cases hear by local justices of the peace. Having matters dealt with in the community rather than by the circuit court enhances access to justice by removing time and distances barriers between the parties involved and the decision maker. This would help address those situations which I just gave examples of.

Katherine Peterson, *The Justice House Report of the Special Advisor on Gender Equality,* 1992

(a) Court Structure

People have a poor understanding of the administration of justice. There is a widespread experience of alienation, particularly outside of urban areas. There is also a poor understanding of the justice process, justice personnel, dispute resolution methods. Language is hard to understand even for those who speak English.

It is promising that GNWT has resources devoted to training interpreters for court; the Department of Justice has also funded full-time interpreter/translator to work in Iqaluit and goes on circuit with the court in the Baffin. However, the translation into Aboriginal languages needs to be more broadly available. Interpretation should be provided for all proceedings, whether or not the direct participants can speak English. This last recommendation goes to making the court more of a public place. An amendment to the *Jury Act* which permits non-English speaking

aboriginal persons to sit on juries can be viewed as making the court a more accessible place for Inuit people.

Court proceedings should use plain language. People have little understanding and harbor numerous misperceptions about criminal procedure, the administration of justice, substantive and procedural law and history of the justice system, and the roles of justice personnel.

There are ongoing efforts to raise the awareness of the community regarding the court structure: for example, from time to time, lawyers have provided public legal education. Arctic PLEI has published pamphlets and conducted workshops to increase public awareness of legal remedies. As well, some limited work ongoing to link administration of justice with other agencies and community organizations

Understanding gender fairness

"In order for women to fully utilize legal remedies, they must firstly have an awareness of the existence of them." (P. 15) No formal effort has been made to coordinate an interagency response to violence against women and the experience of women who come into contact with the justice system.

Greater public awareness is required of the dynamics of violence and the position of a victim of violence. Women victims of violence did not understand the court process, had no one to explain it to the, felt they had not control, decisions out of their hands, felt blamed, had no credibility, were not taken seriously, in proceedings they felt afraid and humiliated. Moreover, cultural conditioning and inappropriate assumptions can underlie the problem of understanding violence against women. Justice personnel – Crowns, defence, judges, RCMP - do not have an adequate understanding of the dynamics of abuse and of gender attitudes.

The Canadian judiciary has taken some significant steps forward with respect to general fairness and cultural sensitivity. And there is a greater willingness to permit persons other than lawyers or judges to offer training. For example, in May 1990, the National Judicial Institute started a gender equality program for its judges. Some judges have made an effort to make remarks that show an understanding of the victim and an intolerance of violent conduct. JPs have also indicated a willingness to take training on gender equality.

Access to Civil Remedies

Women are not aware of various forms of remedies available to them, particularly child support orders. Legal aid clinics do not adequately provide service for civil cases. Legal aid not available, as a matter of policy, for protection from violence (unless custody of children or maintenance is involved.) Having the RCMP seeking peace bond applications is not sufficient to provide women with adequate coverage for peace bond matters.

Not surprisingly, criminal legal aid is given higher financial priority than family law particularly the needs of victims, children and questions of financial support. Not many people know that one can appeal from decisions pertaining to legal aid. There is a poor level of knowledge among women living in smaller communities regarding the existence of criminal injuries compensation. There is also a poor knowledge of remedies available for obtaining child support and the ability to have assistance in enforcing support orders.

On a positive note, regional clinics have been instituted with a view to increasing accessibility of legal assistance to residents in the regions; however, this increase is limited because its focuses on criminal.

Mandatory Charging/Services to Victims

With respect to mandatory charging, there has been a notable absence of support and counseling to the victim to decide whether to proceed with the prosecution. The absence of victim support and services as well as support for child victims of violence has been voiced most strongly and consistently by women in the community. There is also an absence of victim advocacy services at the community level, both in the court process and in other areas. No agency has the mandate to provide service to victims, therefore leading to a fragmented response to the problem.

Court Process

Physical resources are inadequate to keep women who are the victims of domestic violence/sexual assault separate from their abusers. Court delays impose great pressure on both the victim and the accused.- they often live in the same community or house. As has been noted before, there is an absence of support for the victim before, during and after the court process.

Courts are not sufficiently familiar with the strain of raising children in single parent families, the cost of maintenance, and the inability of women to have the same economic strength as men in the workplace. They do not recognize the extent of inequality which women experience, to see the position of women in society in accurate terms.

Proceeding by way of indictment means the victim has to give evidence 2 times: once at a preliminary inquiry and once at trial; it also means delays.

Mediation

Court is not the place to resolve issues about the breakdown of a relationship
-mediation is available for family law but not widely. There are currently no legislated standards governing the training of mediators nor licensing or other requirements directed at controlling competence.

Judicial Selection, Appointment and Discipline

The judiciary carry around cultural attitudes and deeply imbedded stereotypes about the role of women. There is inadequate screening of potential candidates for judicial office regarding their attitudes about women. Inappropriate attitudes about women need to be a factor in determining the suitability of potential candidates. A policy is required to ensure representative appointment of lay persons to the Judicial Council. There is no requirement for lay representation on the committee which appoints judges to the Supreme Court of the NWT. There are currently no policy directives that encourage the appointment of qualified women candidates and members of visible minorities to the committee.

While it is true and commendable, that some of the judges have made an effort to learn the aboriginal language spoken in their region. the bench is not representative of the people that it serves: either women or Aboriginal people. There is no active recruitment of competent women candidates. The conditions of work for judges need to be modified to make it easier for women who have child-rearing responsibilities. There is no procedure for anonymous complaints by lawyers with respect to the conduct of Territorial Court Judges. Extra-judicial conduct that would erode confidence in the judge's ability to do the job is not currently reviewable for disciplinary purposes. Expanded grounds are needed for discipline, such as neglect of duty and incompetence.

Codes for judicial conduct are not well understood by the public; judiciary must engage in interaction with members of the public, and better public legal education. A position of Chief Justice of the Supreme Court is required to have responsibility for reviewing at first instance concerns raised about the conduct of superior court judges and the administration of justice. Lay representation required on the Canadian judicial Council – with appropriate gender and cultural representation. Disciplinary measures need to be more flexible.

Judicial evaluation should be established to permit problems to be addressed by a quick informal mechanism. (programs are ongoing in the U.S.)

(b) Justices of the Peace

JPs need to be selected disciplined and removed by an independent and impartial council with adequate lay representation. The selection process encourage selection of aboriginal women. There is currently no mechanism in force for making a complaint against a JP and no mechanism for discipline or for review of conduct of JPs. Furthermore, the grounds for discipline not adequately specified and should include behaviour out of court.

- -JPs can administer justice in the communities where the live
- -they are increasingly assuming larger roles in the administration of justice
- -they can be the symbol of community standards.
- JP training materials don't deal with gender equality, nor do they participate in interagency training

- -little effort has been made to train justices of the peace to hear civil matters arising from family law issues. This has resulted in diminished accessibility at the community level for these matters.

(c) Community-based Justice Initiatives

Any input received must be truly representative of community opinion or value. Aboriginal women have expressed concerns that their voices are not heard when input from the community is solicited regarding community justice.

The issue of violence against women is not seen to be treated with seriousness. To that end, the voice of women on community justice committees must be guaranteed; alternatives to the traditional justice process must not become a mechanism for excusing violence conduct.

It is also true however, that Community Justice Committees represent an attempt by the court s to get more input from communities into the resolution of cases. These committees show a greater willingness by the courts to consider other cultural values and approaches and to accord a greater degree of respect to aboriginal culture in the NWT. They also reflect a greater understanding that other cultures might have different goals such as reconciliation and healing. The creation of these community-based initiatives shows an acceptance that the current system does not have all the answers nor does it achieve all of its goals

Curt Taylor Griffiths et al., *Crime, Law and Justice Among Inuit in the Baffin Region, NWT, Canada*, 1995

(a) Court Structure

- dilemma of the court: harsh sentences and incarceration critiqued as being culturally insensitive. But lighter sentences criticized for imposing a double standard
- circuit court is an imposed institution
- people have little understand of the role and objective of the circuit court
- critiques of the court: delay, double standard, overuse of probation, ineffectiveness of community-based sections; comprehension difficulties understanding administration of justice, and sexual assault sentences and sentences for violent crimes
- court not effective in deterring offenders from re-offending regardless of the type of sentence
- likelihood that spousal assault suspect would not receive a prison sentence or would spend little time out of the community means victim discouraged from reporting assault because nothing meaningful is done
- *some feel that people outside the community more likely to be objective
- court is ignorant of culture, the communities and about crime victims and the offender
- judges lack traditional wisdom
- -schedule of circuit court is hurried and makes it ineffective

- frequent change in court personnel is a problem
- court requires Inuit to behave in non-traditional ways: confronting in public, judging
- Inuit culture stresses apologies, reconciliation, and forgiveness which does not fit with the court, and which are foreign to non-Inuit, especially the approach that attempts to reintegrate offenders: community feels sorry for the one going to jail
- language a major barrier to Inuit becoming more knowledgeable about the court, procedure and case processing, and many legal concepts and terms that are not easily translated or understood
- defence lawyers know little of the community, don't take the time to prepare, cause delays encourage dishonesty
- Crowns don't understand community and impact of sentences and don't take enough time to prepare
- consequences of case delay on victims, offenders families, justice personnel and communities particularly problematic in Baffin: source of tension for the accused, victim can become confused
- suggestion that defence come to the community in advance, and the court visits should happen more often and that JPs have wider jurisdiction
- view that the court does not make more decisive action on repeat offenders
- view that sexual assault sentences to lenient and court doesn't provide sentences that deter offender and protect women in the community

Reluctance of Inuit to Judge One Another

- confrontation and passing judgment in a public forum opposite to the manner in which Inuit resolved disputes and sanctioned offenders traditionally
- reflected in Inuit juries' reluctance to convict
- some question whether jury members understand the court proceedings
- *putting Inuit on Juries reflects an effort to involve the community
- *Territorial court judge involves community in sentencing: makes effort to maintain contact with community through community meetings and involving elders and the JPs, goes on radio to inform the community to answer legal questions, welcomes JPs to sit with the judge in hearing cases
- question is whether an "outside" court premised on Canadian law, will ever be able to respond effectively to crime and trouble in Baffin region communities
- court might pay attention to the offender, but does not similar attention given to the victims of crime, some feel

To improve the delivery of court services:

- increase the participation of Inuit in the court process
- expand the JP program
- develop community sentencing panel with different age groups and men and women

- JP tribunals that would involve multiple JPs and would reduce community pressure on a single UP-community-based programs may be more effective than the court-Inuit elders should be more involved
- less serious offences should be managed by the community
- Territorial court needed to be educated
- circuit court should extend their stay to several days or even a week
- cases should be resolved more quickly
- more direct communication between the court and the community required.

(b) Justice of the Peace

- JP courts designed to speed up the precisian of cases and to encourage the resolution of cases in a forum more closely linked to the community
- 1995: JPs handle summary conviction offences
- *widespread support among the Inuit and non-Inuit with respect to the work of the JP courts
- *JPs have a better understanding of the community, the defendant and the families involved
- *JPs more likely to impose tougher sentences in certain cases than the Territorial Court judges on circuit court
- *successful panel of non-Inuit/Inuit panel (female and male) which addresses the traditional reluctance of Inuit to pass judgment
- Inuit and non-Inuit believe the role of JPs should be expanded
- JPs often come under pressure from community residents when hearing specific cases because they pass sentence
- JPs find it difficult to make decisions about community residents
- *JPs process their cases in half the time of the Territorial and Supreme Courts

(c) Community-based Justice Initiatives***

- -decentralized justice initiatives must consider the impact on crime victims, communities and offenders
- -some evidence that cjc's might increase the vulnerability of some community residents, particularly women and girls
- -policies to decentralize justice must consider each community's environment, including hierarchy levels of crime and trouble and the capacity of each community to effectively manage these programs and services to the benefit of all.
- *decentralization is the territory's effort to increase community involvement in the delivery of justice services.
- *also an effort to prepare for the increased authority which Inuit will excise over justice in Nunavut
- -some concern that high levels of dependency of Inuit on outside government may undermine any attempts to transfer authority for justice services to the communities
- -not clear that hamlet councils and political positions – like mayor- can support the creation of local justice programs and deliver justice services

- -use of committees undermines the role of the elders in settlement life.
- -committees not recognizable way of doing things
- -successful local committees due to residents who commit time and energy, where elders play a pivotal role, communities are close knit , and low trouble
- -authority and role of elders has been eroded
- *some elders expressed an interest in being involved in justice initiatives and providing assistance and guidance
- *elders make an impact one on one
- -should be focus on the education and development of younger persons in the communities
- -RE: Elder abuse: little discussion, but they are victimized, physically and sexually abused, have their personal property and money stolen
- -elders do not support women who have experienced abuse at the hands of their partners
- -these elders also have an impact on sentencing
- -need for community initiatives that will heal the victim especially in cases involving violence and sexual assault
- -women and young girls have little authority in many of the communities ; a fundamental restructuring will be required to reduce their vulnerability and to empower them
- -self-help committee in the community could provide assistance to victim's family and to the offender
- -victims family could be involved in decision to return offender to community
- --difficult to sustain the interest and participation of community residents in various justice initiatives
- -Inuit less inclined to partake of activities where they are passing judgment
- -high volunteer burnout on the CJCs
- -different RCMP have differing levels of support for community initiatives
- -problem of the collective interests paramount over individuals rights, and the implications of this priority for women and young girls
- -historically there has been a dependency of community residents on outside agencies to solve problems, therefore difficult for community to seize the initiative
- --community residents have to be encouraged to become involved in the administration of justice
- -practice of paying for community work has an impact of willingness of community residents to volunteer
- -some families in the community feud with one another, some families have more power in the community which will impact on the response of the community to crime and trouble, particularly for vulnerable groups in the community including women and girls
- *potential is there for young people to take on law-enforcement roles
- *people available to establish outpost camps and to take young offenders out with them on the land
- -alcohol education committee a mixed success
- Community law Enforcement Groups (CLEGS) have frequently failed but its mandate is to improve police-community relations – involved in investigating cases of child abuse, providing counseling for offenders on probation and working with offenders one-to-one

- *decentralized justice services have potential to increase community involvement and to create programs and services that may be more effective if: 1) perspective of all residents including vulnerable groups be considered; 2) at a certain point, it's necessary for social service and justice personnel must become involved; particularly for cases of violence and sexual assault better to uses CJCs for young offender issues and B & Es; 3) the inter-family and power dynamics in the community should not compromise the administration of justice in the community; 4) leaders in the community should have addressed their own issues of sexual abuse, violence, alcohol abuse and abuse or neglect of children; 5) it would be dangerous to reduce the presence or the jurisdiction of the RCMP in the community especially for women and young girls

Canadian Panel on Violence Against Women. ***Changing the Landscape. Ending Violence – Achieving Equality*** **, Chapter 14: Inuit Women, 1993**

(a) Court System/Court Structure

The circuit court system also serves to deny women in the North the right to timely disposition of sexual assault, wife assault and child sexual abuse cases. In the Baffin region of eastern Arctic, for example one judge serves 13 communities, resulting in large backlogs and long periods between court appearances. Many abusers have learned to use the circuit court system to their advantage by obtaining frequent delays. (p.121)

Owing to the small population ...there is competition between defendants and prosecutors for available legal services. As a result, lawyers and court workers are placed in a conflict-of interest situations since they represent the batterers who have peace bonds against them and also represent the victims in court when necessary. (p.121)

(b) Justices of the Peace

...there are justices of the peace in each community, the positions are becoming difficult to fill with Inuit. Inuit are sometimes reluctant to assume these positions because judging others—who are often family members—is contrary to Inuit culture, and those who do are often subject to retribution. (p.121)
(Mary note - contrast "judging" a family member with "shaming them or disciplining them - as in the old days- the role played and means used - so while community-based in the sense that is where the bodies are coming from - the structure is still culturally problematic - how and what they are trained in may help to address the systemic discrimination

Justices of the peace can only hear certain offences, defendants who plead not guilty are automatically referred to circuit court. (p.121)

(c) Community - Based Justice

- Elders

Young Inuit women have expressed their concern that justice dispensed by community committees and/or tribunals of elders cannot adequately ensure their safety or provide effective counselling(p.122)

Elders today report confusion about the Criminal Code because the definition of assault in traditional Inuit law was quite different. Today's definition of sexual assault would have been too broad for the days of arranged marriages. (103-104)

- Traditional Ways

Many young Inuit women, however, are concerned about the danger they face when traditional counselling is not effective in eliminating violence against them. (p. 120)

The underpinning of Inuit justice was the respect and authority given elders. This basic law of respect was taught from early childhood, the key to its success being the intensive training children received from their parents, grandparents and other relatives. Elders describe how important discipline was in their childhood in learning to be productive people, knowledgeable in the laws that preserved the community. These laws included the protection of people within the community from violence.(103-104)

Justice was handed out by elders. The Inuit Cultural Institute describes the Inuit equivalent to the courts as tribunal made up of elders who were asked to intervene when the re was trouble. The elders would give advice and positive support to a troublemaker or, if the crime was severe, they would embarrass, shun, banish or, in very extreme cases, order the killing of an offender. (103-104)

Traditional Inuit society was similar to other cultures the practice of arranging marriages which ensured all adults found partners during he childbearing years and bloodlines were protected against intermarriage. Strict laws around surrounded marriages, discouraging promiscuity, incest and early pregnancy. To many young women, however, marriage was a frightening event, and there are many stories of women being carried off kicking and screaming by their potential husbands. (p. 103)
Men used to fight with women to have sex. That was the way it used to be. As long as the parents agreed, then the man could have the daughter, even if she didn't want to go. When we took a wife she had to be taught for a long time before she would agree to sex [willingly]. That is because she had been taught all her life not be with men... Today if we did the things we used to do, all the men would be in jail.
(p.104)

- Women's Participation

L.86 Ensure any new Aboriginal system(s) of justice are developed and administered with the full participation of Aboriginal women. (p. 58 of the Action Plan)

Margo Nightingale, *"Just Us" and Aboriginal Women*, 1994

(a) Court Structure

(i) Cultural-bias

"recognition of culture in the courts has led to the portrayal of Inuit culture as one in which it is acceptable to physically and sexually assault women; it is acceptable to sexually abuse children...Pauktuutit has rejected these as myths about Inuit culture and has expended a great deal of effort trying to eliminate these and end their application within the justice system (p.17);

...cultural misunderstanding and the acceptance of offenders' misrepresentations of cultural defences are often only heightened by the inadequate training of those within the justice system on the dynamics of family violence and sexual abuse. (p. 17)

(ii) Jury Trials in Sexual Assaults

Another emerging issues is the appropriateness of jury trials against Aboriginal offenders. Recently legal arguments challenging the jury selection process have been made, arguing that an Aboriginal offender's rights are denied where Aboriginal people are not available or selected for jury duty. Controversy over the effectiveness of the jury system in Pond Inlet which relies primarily upon Inuk [[sic] jurors was raised in April 1993. It was noted that since 1983, no offender choosing a jury trial was convicted of sexual assault.
(p. 18)

...In 1992, one offender came close to a conviction in the case of R. v. Tongak where the jury presented a note to the judge stating that they believed the victim, but though there was consent and "if he ever does this again he'll be in trouble."
(p. 18)

A counsellor had been working wit the victims in this case and in the community more generally prior to this trial. The worker is no longer in Pond Inlet and her efforts at providing support and education, which likely had a significant role in ensuring a conviction, are now absent.(p. 18)

(b) Justices of the Peace

Many also fear that the continued reliance upon individuals with no training in the dynamics of family violence and sexual abuse may be incapable of providing workable solutions which will eliminate the violence and reform the offender. (p.23)

(c) Community -Based Justice

Many also fear that a "traditional" responses to address the virtual epidemic of physical and sexual violence is likely to fail and will allow for recidivism. Commenting on the inclusion of violent offenders in a diversion program in Iqaluit, one resident said: "Violence against women should not be in this program because such violence is a very big offence against women. The offender might do the same crime over and over again in the future." (p.23)

- Training

Many also fear that the continued reliance upon individuals with no training in the dynamics of family violence and sexual abuse may be incapable of providing workable solutions which will eliminate the violence and reform the offender. (p.23)

- Elders or Community Group - counselling

Women are also concerned that continue focus upon the offender does not ensure that panel members can or will address victims' needs or that their safety and well-being will be provided. There is also a fear that emphasis on sporadic, unstructured family counselling, rather than individual or group counselling specific to abusers and victims will not change the violent or abusive behaviour. (p. 24)

People who have returned to a practice of traditional ways have raised concerns about the potential to place elders in inappropriate positions by, for example, requiring them to judge others where their traditional role was always non-judgmental. (p.25)

...Elder involvement in these projects is too often exploitative as they are expected to devote themselves to these projects often with sufficient or any payment for their services or time. (p.25)

Some question the utility of elder involvement in project where the respect for Elders in the community is eroded... (p. 25)

Some Aboriginal people also suggest that Elders can be targets of financial, physical, sexual or emotional abuse from their family or community, something which contradicts traditional values. (p. 25)

There has also been the identification of a problem inherent in conflicting values between some Elders and younger women, particularly regarding wife abuse and sexual offences. Some Inuit elders for example, believe the wife abuse is "not a serious crime or is the result of a woman's lack of obedience to her husband or non-acceptance of her traditional role. (p.26)

Several women have also said that some "elders use traditional healing methods as opportunities to physically or sexually abuse women and children and then when someone discloses abuse

involving an Elder, the victim/survivor is most likely to be shunned and harassed. Aboriginal women have been reluctant to identify these problems fearing this will diminish respect of their true Elders and healers, yet they feel that the abuse of their positions of trust must be stopped. (p. 26)

- Diversion

Other problems arise when diversion projects operate without sufficient community awareness and support. Allegations made that he project was not community-based, did not reflect the communities values and re-victimized women. Many of the elders involved in the project came from outside of the community and were all from the same extended family. (p. 24)

Margo Nightingale, GNWT Department of Justice, *Nunavut Single-Level Trial Court (SLTC)* , December, 1998

(a) Justices of the Peace

The legislated jurisdiction of JPs will remain unchanged under the SLTC structure. However, there have been suggestions that the roles of JPs could expand. For example, JPs could become responsible for the conduct of preliminary inquiries and for conducting trials in Youth Court. It should be pointed out that the jurisdiction to conduct preliminary inquiries is already vested in JPs under Section 2 of the *Criminal Code*, however JPs in NWT have not used it. (page 1

The government's stated goal is to increase the role of Inuit in the justice system. As such, designating lawyers as JPs – none of whom are Inuk – would not be consistent with this goal. Nor is it practical to think that lawyers would take the salary decrease to become JPs. (page 4)

Individuals who appear as representatives of the Crown and the accused are not usually lawyers, but RCMP officers and court workers. They are not competent to conduct complicated court proceedings. Without receiving intensive training in criminal law, evidence and advocacy, neither would be able to competently represent their interests in a preliminary inquiry. (page 5)

Margo Nightingale, "Judicial Attitudes and Differential Treatment: Native Women in Sexual Assault Cases," *Ottawa Law Review*, Vol. 23 : 1, 1991, 71

(a) Court Structure

"Another indication that judges misunderstand the nature of sexual assault is by placing blame for the assault on the victim. ... A more prevalent form of victim-blaming often results where the complainant was intoxicated at the time of the assault." (p.87)

The cases involving "passed out" victims then only constitute approximately one-seventh of the sexual assault cases studied. These numbers clearly contradict the comments of Judge Bourassa that the "majority of rapes in the Northwest Territories occur when the women is drunk and passed out." Regardless of whether or not the numbers refute his assertion, it is unacceptable to suggest that because a woman is asleep or passed out, the violation experiences is less serious or non-existent. (pp. 88-89)

Establishing sentencing guidelines may be helpful to eliminate disparities in sentences. However, guidelines are only truly beneficial when judges are able to understand the nature of the offence to which they apply. For guidelines to be applied appropriately, it is also necessary that judges adopt the rationale without the influence of personal attitudes or biases. (89)

Amid Native requests for self-determination and for the recognition of Native justice systems, two judicial decisions attempting to give Inuit communities more control have been subject to a great deal of controversy. Judicial sensitivity to Native values, community interests and community treatment programs is essential and has a number of advantages. Such an approach affords great respect to Native peoples and their values. Reference to community standards is also preferable to subordinating a community's views regarding a federally based sentencing policy "particularly where the application of that policy will have the effect of undermining the Native community's cohesion and ability to resolve its own problems." (Jackson,) However, identifying an community's values, interests or relevant cultural differences is problematic. The tow Northwest Territories cases *R. v. Nagitarvik and R. v. Curley, Nagmalik and Issigaitok*, outline some of the difficulties that arise.

While the trial decision shows a greater awareness of cultural diversity, neither it nor the appeal decision is acceptable as both fail to address, or consider the effect of the assault on the victim. (pp. 92-93)

APPENDIX 3

FAMILY LAW REFORMS IN NUNAVUT

Appendix 3:

Family Law Reforms in Nunavut

In 1988, an eight-member working group was appointed to examine family law in the NWT. This working group was comprised of representatives from Aboriginal organizations, including Pauktuutit, the status of Women Council, the Law Society of the NWT and the GNWT Departments of Justice and Social Services.

The report of the working group was released in September 1992 and contained 256 recommendations.[106]

The family law issues examined by the working group included family property and dividing upon family break-up, levels of financial support for spouses and children, access issues, intestate laws, child welfare and adoption. A component of the study did explore Aboriginal customary family law.

A major recommendation of the group was the need to develop a new body of legislation for family matters. As a result, a significant portion of the recommendations and the report itself were very legalistic. Many of the recommendations are proposed wording changes to the existing laws and proposed wording for a new *Children's Law Act*. Upon review, the recommendations are directed at harmonizing the territorial legislation with family laws in other provinces.[107]

The report makes one general but significant recommendation worth noting—the establishment of Aboriginal Justice Councils is recommended to enable communities to control their own lives according to Aboriginal custom and community-based values of an alternative system to the existing court process for Aboriginal peoples in the NWT. The report recommends establishing Aboriginal Justice Councils with responsibilities for family law matters, operating on a community or regional basis. Working group members suggest that the primary responsibility of the Councils be child welfare and adoption of Aboriginal children. The communities themselves should determine what kind of responsibilities by the Aboriginal Justice Councils should assume.[108] The structure, mandate and membership of the Councils is to be determined by the communities and regions in which they are established.

While the concept of Aboriginal Justice Councils was not acted upon, legislative reforms arising out of this report encourage community participation and control in family law matters. Only the *Aboriginal Customary Adoption Recognition Act*, passed in 1994,[109] has an Aboriginal-specific focus.

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[106] See the Ministerial Working Group on Family Law Reform, *Family Law Review Report: Report of the Ministerial Working Group on Family Law Reform* (Yellowknife, GNWT), September 1992.

[107] Little guidance regarding family law issues specific to the socio-economic and cultural realities of Inuit women was provided in the final report of the working group. An Appendix to the Report contains a chapter on Aboriginal Law. The chapter outlines an alternative for communities to the current court system for family law matters and information regarding the laws, customs and practices of Inuit when dealing with families and children.

[108] Ministerial Working Group on Family Law Reform, *Family Law Review Report: Report of the Ministerial Working Group on Family Law Reform* , p. 6.

[109] S.N.W.T. 1994, c.26.

The *Aboriginal Custom Adoption Recognition Act* sets out the procedure within the community by which an Aboriginal customary adoption is legally recognized by the Courts. Under the Act, an "Aboriginal custom adoption commissioner" is appointed for each community. The community councils are responsible for nominating up to four individuals for this position.[110] Other than specifying that "Adoption Commissioners must know their community's customs and traditions about Aboriginal customary adoptions,"[111] the guidelines set down by the government leave much of the discretion regarding criteria for the position to each community. The guidelines specify that the Cabinet will consider the backgrounds of nominees before appointing them. If there are no objections or directions from Cabinet, the Minister will appoint an individual for the nominations provided by the community. Commissioners are required to receive training before they are appointed. The term is for three years and a Commissioner is paid $100.00 for each adoption that they are asked to confirm. The Commission is responsible for ensuring that traditional custom adoption procedures have been followed. Once satisfied of this, the commissioner can confirm a custom adoption has taken place according to tradition and issue a Certificate of Custom Adoption.

Alternatives to the courts resolving family law matters became more of a reality with the recent legislative changes and initiatives—*Adoption Act*,[112] a *Children's Law Act*,[113] *Children and Family Law Services Act*,[114] and a *Family Law Act*.[115]. All of these laws while passed by the GNWT are grand-parented into Nunavut legislation and remain as Nunavut laws until such time as amended or repealed by the Nunavut Legislative Assembly.

The *Children's Law Act* and *Family Law Act*, both provide the courts with the power to appoint a person selected by the parties to mediate any matter that the court specifies.[116]

The *Child and Family Services Act* provides for greater community control over matters under the Act. These matters include:

- establishing a Child and Family Services Committee;
- defining the committee's role and the power and duties that it would fulfill under the *Act*; and
- setting a procedure to establish and change community standards with regards to the level of care adequate to meet a child's needs and whether or not a child is in need of protection.[117]

Community standards must include the minimum community standards established by the regulations.

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[110]Hamlets and communities are limited to nominating only two members, and towns can nominate up to four people.

[111]Department of Health and Social Services, *The Aboriginal Custom Adoption Act*, August, 1995, p. 5.

[112]S.N.W.T. 1998, c. 9. This Act is not in force until an order is made under section 79.

[113]S.N.W.T. 1997, c.14

[114]S.N.W.T. 1997, c.13.

[115]S.N.W.T. 1997, c.18.

[116]s. 71(1) of the*Children's Law Act* 1997, c. 13 and s 58(1) of the *Family Law Act*, S.N.W.T. 1997, c. 18.

[117]*s. 57(1) , 58(2) and (59(1) of the Child and Family Services Act*, 1997, c. 13