



LEGAL AID
RESEARCH SERIES

LEGAL AID, COURTWORKER
AND PUBLIC LEGAL
EDUCATION AND
INFORMATION NEEDS IN
THEYUKON TERRITORY



Legal Aid, Courtworker, and Public Legal Education and Information Needs in the Yukon Territory

Final Report

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*The views expressed herein are solely those
of the author and do not necessarily reflect those
of the Department of Justice Canada*



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Executive Summary

Background

This study of the needs of the legal aid, courtworker and public legal education and information (PLEI) systems in the Yukon Territory addresses 10 research areas defined by representatives from the three territorial governments in July 2001. Together with parallel studies in the Northwest Territories and Nunavut, its purpose is to describe needs that are specific to the northern jurisdictions in the delivery of legal aid and related services.

Methodology

Central to the research were 53 interviews conducted with a range of key respondents – people involved in the delivery of legal aid, courtworker services and PLEI, others in the criminal justice system, and people in the community who had had direct contact with the legal aid system themselves or through clients. In addition, statistical data was gathered from the Department of Justice of the Yukon Territory Government (YTG), especially Court Services, the Yukon Legal Services Society (YLSS), the Yukon Public Legal Education Association (YPLEA) and the Yukon Bureau of Statistics. A focus group was held in August 2002 to reflect on the priority, rationale and strategies for needs that had been defined to date.

Impacts of Court Structure, Geography and Culture on Legal Aid

Key macro-characteristics impacting legal aid delivery are:

- An Aboriginal population that is 20 percent of the territorial population, but which forms a majority in seven of the thirteen communities outside of Whitehorse.
- A single resident court in Whitehorse, with all other communities served by circuit courts of varying frequency.
- An intention to increase the use of Justice of the Peace (JP) courts between regular circuits in outlying communities.

These characteristics require that much of the legal aid delivery be adapted to the rhythm of the circuit system, which may increasingly include some legal aid presence in the JP courts. Furthermore, the role of courtworkers is critical in bridging between the court system and First Nations populations.

The vast majority of serious personal and property criminal matters brought before the courts in the past three years have involved legal aid. Statistics on approved criminal legal aid applications closely mirror the fluctuations in total charges before the courts in this period.

The major development in relation to the delivery of legal aid in the Yukon in the past three years has been the strengthening of its staff-based structure, based on recommendations of an Operational Review in March 2000. This was a response to a crisis in which YLSS had lost four staff lawyers. Although YLSS has now achieved stability, it is dependent on the Yukon Territory Government's (YTG) continued high level of support, which has increased to 69 percent of combined federal/territorial contributions, compared to 50 percent in 1997–98. In addition, many respondents in the legal profession, while acknowledging that the strengthening of the staff system was necessary, voiced concerns about the continued viability of the private bar as a legal aid resource.



Circuit Courts

The primary merit of circuit courts is that they bring the justice system to smaller communities that cannot sustain resident courts. The primary disadvantage is the speed at which matters have to be addressed because of the limited time legal aid lawyers are in the community and the large number of trial matters to which they have to attend. Respondents felt this resulted in less case preparation time, less time to understand the dynamics and relationships in the communities that may affect cases, and less client confidence in the justice system. Significant case delays, however, are not common on circuits.

Courtworkers

The devolution of some courtworker positions from the Council of Yukon First Nations (CYFN) to several First Nations in the 1990s has meant, on one hand, greater community control over the hiring and functioning of courtworkers. On the other hand, from a territorial perspective, there is less of a unified vision of the roles and training needs of courtworkers than existed in the first half of the 1990s.

Although defence counsel and courtworkers characterized their personal relationships as positive, there was a strongly expressed feeling from most legal professionals that there should be more formal co-ordination between the courtworker structure and YLSS. It was generally agreed that courtworker training initiatives would be the most realistic focus for increased collaboration. Various strategies were suggested by respondents, including certification levels for courtworkers, piggy-backing courtworker training on training sessions for justices of the peace, participation in national courtworker training initiatives, and individual mentoring of courtworkers by legal aid lawyers.

Justice of the Peace Court

A significant majority of charges heard by Justice of the Peace (JP) courts are territorial offences, with smaller proportions of justice administration, impaired, and other *Criminal Code* charges. JP court in Whitehorse handles almost 80 percent of JP cases in the territory, but there are plans to expand the JP court role in those communities and, ultimately, throughout the territory.

Duty counsel in JP court in Whitehorse will assist any accused person on first appearance, or on subsequent appearances to obtain adjournments. They may also be assigned as counsel for accused with more serious charges likely to be heard by a judge after first appearance.

Over the past three and a half years, 9 percent to 12 percent of dispositions in JP courts have involved fines of more than \$100, and 13 percent to 14 percent have involved jail sentences. Whereas at present it is likely that, in the vast majority of these cases, individuals receive assistance from duty counsel or courtworkers, if the JP courts are expanded as planned, there will be greater demands on duty counsel and courtworkers. This will be especially true if the JP court sits between regular circuit dates, requiring visits by duty counsel or courtworkers.

Civil Legal Aid

A central recommendation of the Operational Review of YLSS in 2002 was that the expansion of family law services be prioritized over any other expansion of services. In response, the YLSS has begun to fund selected family cases through to permanent orders. The overall refusal rate of family/civil applications, based on 2001–2002 data, is higher than for criminal application (18 percent versus 2 percent). Nonetheless, it would appear that legal aid is covering approximately 65–80 percent of family cases heard in Territorial and Supreme courts.

At present only one or two members of the private bar will take civil/family legal aid cases, primarily because of the low tariff. The vast majority of family cases are, therefore, handled by staff lawyers.

Respondents acknowledged progress has been made in the funding of family matters, but urged that more consistent funding of cases to the final order stage be undertaken. Other related issues raised by individual respondents concerned “less bureaucratic” billing arrangements, more incentives to settle family matters without trial, and coverage for *Family Violence Protection Act* cases. In civil matters, several respondents felt that there should be greater access for individuals to summary advice rather than simply to information.

Activity Prior to First Appearance

The primary concerns identified by respondents in assisting clients prior to first appearance were:

- Difficulties for detained persons in accessing counsel during the day. Duty counsel are on-call in the evenings, but are usually in court during the day.
- Although the vast majority of show cause hearings are held in Whitehorse before a JP, approximately 10 percent are done by telephone. Several respondents felt this system is inadequate for proper representation, and one respondent would simply refuse to do telephone show causes at all.
- Delays in receiving disclosure from Crown, leaving defence counsel insufficient time to consult with clients.

Interplay Between Criminal and Civil Issues

In exploring the interconnections between criminal and civil matters, respondents described a typical pattern in which family disputes would lead to domestic assaults, abduction of a child, seizure of property, or other crimes. Disputes were described as usually involving children and usually involving alcohol. Respondents felt that a more holistic approach would be required to break this type of pattern. Such initiatives as the Domestic Violence Treatment Option Court and community justice processes were seen to be steps in this direction.

Public Legal Education and Information

The Yukon Public Legal Education Association (YPLEA) is a non-profit organization that provides legal information to the public to promote understanding of and access to the legal system. Its main and best-known service is the Law Line, a 1-800 service that responds to callers from throughout the Yukon. Over the past three years 38 percent of calls have concerned family matters, and 44 percent civil matters.

Among our respondents, apart from YPLEA, legal professionals such as defence lawyers, Crown counsel and judges provide PLEI services with a substantive law and procedural focus; RCMP officers have a prevention focus; while other’s PLEI services are more diverse and holistic, including both justice and social issues.

In PLEI, the key substantive law needs were perceived by respondents to be in the area of family law, with mention also of civil areas such as employment standards and landlord-tenant information. Procedural information needs included how to apply for legal aid and how court processes work. Many respondents spoke strongly of the desirability of moving YPLEA to a more central downtown location in Whitehorse, and also recommended more outreach to outlying communities and/or intermediary organizations. A third area of concern was expanding assistance to clients by including a summary advice function. This would require a change of YPLEA’s mandate.



Cost Drivers

The major drivers of legal aid delivery costs identified by respondents included:

- Servicing outlying communities by circuits.
 - Circuit expenses account for 5–10 percent of the legal aid budget, and put similar demands on some courtworker budgets. Apart from the Law Line, YPLEA has not been able to undertake direct community outreach.
- A large seasonal workforce, and a higher proportion of unemployed than in southern jurisdictions.
- Higher per capita reported crime rates and higher rates of violent crime than in southern jurisdictions.
- Higher alcohol consumption indicators than in southern jurisdictions.
- The highest divorce rate in Canada.
- Residential school syndrome and a high rate of child welfare cases.
- The need to pay salaries competitive with those of comparable employers such as the federal Department of Justice or territorial government, so as not to continue to lose staff, as prior to 2000.
- Unrepresented civil litigants consuming court time, impacting some legal aid cases.

Federal and Territorial Legislation and Policies as Drivers

Among federal and territorial legislation and policy factors, the following were identified as major drivers of legal aid costs in the Yukon Territory:

- Increased federal resources for Crown prosecutors. This creates direct pressures on legal aid to mount a comparable defence.
- Commitment to alternative sentencing procedures, especially for Aboriginal offenders, e.g., the *Gladue* decision, *Criminal Code* requirements (section 718.2e). To consider all available sanctions other than imprisonment can increase the time required of defence counsel, both in preparation for and during sentencing.
- Spousal assault mandatory charging and prosecution policies increase legal aid expenditures.
- Over-policing.
- Crown case assignment and handling procedures were felt to give defence counsel inadequate time to review disclosures and talk with their clients, thus necessitating adjournments.

Conclusions

Three broad areas of need emerge from this study:

- Corporate needs
Although YLSS has achieved corporate stability, allowing it to retain staff since the Operational Review in 2000, this has been accomplished only through significantly increased YTG funding. A rebalancing of federal and territorial contributions would seem an essential starting point in future Access to Justice Agreement negotiations. Another basic need for YLSS

is to achieve some parity with prosecution staffing and resources funded by the federal Department of Justice, which directly impact on legal aid resource requirements.

- **Aboriginal needs**

Several themes directly and indirectly related to the needs of First Nations clients have implications for future funding agreements. These include the need for increased courtworker training; delivery of legal aid (duty counsel) and/or courtworker services if JP courts expand services in outlying communities; and the need for more time and support, especially on circuits, to serve First Nations clients.

- **Gender needs**

Insofar as the majority of criminal legal aid matters involve- males and the majority of family matters usually involve female legal aid clients, the emphasis on family legal aid needs can be seen as gender-related. Respondents, while acknowledging improvements in coverage by YLSS in the past year and the important role YPLEA has played in filling information needs in family cases, identified several areas in which assistance could be significantly increased. All have funding implications.



1.0 Introduction

This is the final report of a study of the needs of the legal aid system in the Yukon Territory. It addresses needs concerning not only formal legal aid delivery (i.e., legal representation and duty counsel through the Yukon Legal Services Society (YLSS)), but also the services of courtworkers and the public legal education activities of the Yukon Public Legal Education Association (YPLEA). All three components of the overall system are funded under the Access to Justice Agreement between the federal Department of Justice and the Yukon Territory Government (YTG).

1.1 Background

The federal Department of Justice has initiated a range of research initiatives to determine legal aid needs across the country. This research will form a foundation for the process of renewing legal aid agreements with the provinces and the Access to Justice Agreements with the three northern territories in 2003. At a meeting of the Federal/Provincial/Territorial Working Group on Legal Aid in early 2001, territorial representatives requested that research be undertaken in each of the three jurisdictions to address themes that were specific to the northern context for the delivery of legal aid. This request was followed up in a two-day meeting in July 2001, in which territorial representatives identified 10 themes that should be researched to describe the dynamics, processes and needs in their jurisdictions. Although the YTG representatives were not able to attend the meeting, they subsequently reviewed and approved the research themes identified in a plan dated July 9, 2001.

The research was subsequently tendered, and the 10 themes formed the core of the research conducted in the Yukon Territory between March and August 2002. The themes are listed below, together with the section number in this report in which they are addressed:

- To examine the interaction between court structure, geography and culture in the territory, and how it impacts the demand for legal services, the pattern of service delivery, and quality of services (Section 2).
- To describe the impacts of circuit courts on clients, compared with those of resident courts (Section 3).
- To describe the roles of courtworkers in the justice system, resulting needs for increased capacity, and how these can best be addressed (Section 4).
- To explore unmet needs for representation of accused in JP courts (Section 5).
- To determine unmet needs in the delivery of civil law services (Section 6).
- To determine unmet needs prior to first appearance, related to representation or assistance required by accused persons (Section 7).
- To explore the interplay between the criminal and civil sphere in the generation of legal needs (Section 8).
- To assess public legal education and information (PLEI) needs in the territory (Section 9).
- To describe factors that drive the cost of legal representation in the territory (Section 10).
- To analyze the impacts of key federal legislation, policies and resource allocation on legal aid costs, and on territorial allocation of legal aid resources (Section 11).

1.2 Methodology

It was acknowledged in the July 2001 meeting that there would be limitations on the availability of statistical data on the specific themes described above. This fact was confirmed in an analysis of information needs and availability in March and April of 2002, and has led to an emphasis on qualitative methodologies. Four data collection methods are described below:

1.2.1 Key Respondent Interviews

Central to the research were 53 interviews conducted with a range of key respondents -- people involved in the delivery of legal aid, courtworker services and PLEI, others in the criminal justice system, and people in the community who had had direct contact with the legal aid system themselves or through clients. The respondent groupings are shown in Table 1:

Table 1: Interview Respondents	
Respondent Type	# of Interviews
YLSS staff lawyers	6
Private bar lawyers	7
YLSS board member (2 of the 7 private bar lawyers were also board members)	1
Judges	4
Justice of the Peace	1
RCMP	6
Courtworkers and/or community justice co-ordinators (some respondents held both roles)	11
Social agency and Aboriginal organizations	9
Crown counsel	4
Yukon Public Legal Education Association (2 of the 7 private bar members also were or had been on the YPLEA board)	1
Department of Justice officials (YTG)	3
Total	53

Separate questionnaires were developed for seven of these groupings: lawyers, judges, RCMP, courtworkers, community justice workers, crown counsel and social agencies. For the remainder, interview guides were used, consisting of specific questions related to the respondent's particular role or capacity to address an issue. The vast majority of interviews were by telephone. Interviews ranged from 30 minutes to two and a half hours.

The questionnaires were triangulated. That is, questions were frequently common to two or more respondent groups, so that the perspectives of different groupings could be taken into account. They were reviewed both by the executive director of YLSS and by the Department of Justice prior to the implementation of the interviews, and were conducted by five research team members between May and August 2002.

1.2.2 Statistical Data

During the information needs analysis stage, several sources of statistical data were explored, including the YLSS database, Access to Justice Agreement reports, Court Services data, federal financial contribution data, courtworker reports and YPLEA annual reports. Data from these sources are found in the tables throughout this report. For the most part, the data have been useful general indicators of need or demand rather than specific answers to research questions. In many instances the data had to be compiled manually (e.g., from monthly statistical sheets or from data lists) or condensed from a larger data set. The Yukon Bureau of Statistics was also a useful source of data for information provided in Sections 2.1 and 10.2.

1.2.3 Document Review

A number of YLSS internal documents were reviewed to facilitate understanding of procedures relevant to the research.



1.2.4 Focus Group

A focus group was held on August 7 to reflect on the priorities that should be assigned, and the rationales and strategies that should be applied to a number of legal aid needs that had been identified in the research to date. The focus group report is contained in Appendix 1; some of the strategies to address needs are also reflected in Sections 2 to 11 of the current report.

1.3 Methodological Limitations

The two primary methodological limitations of the study are:

- Inherent limitations of statistical data
 - As noted above, there are few instances in which quantitative data are available to answer specific research questions. Data sets – especially for courtworker services – were in some instances incomplete.
- Lack of direct client interviews
 - It was known that there were insufficient funds for direct interviews with clients, so the primary way of attempting to reflect client opinion was to interview key respondents in social agencies and Aboriginal organizations who might be advocates or intermediaries for clients. Nonetheless, the lack of direct client interviews makes it more difficult to explore Aboriginal or gender issues with greater specificity.

It should also be noted that the study was an examination of unmet needs and primary pressure points, rather than an evaluation of the strengths and weaknesses of the system per se. The primary implication of this orientation is that, although positive elements are described, the report does not systematically address respondents' opinion of what YLSS, YPLEA or courtworkers are doing well, nor whether respondents feel positively about the work of legal aid deliverers even if they identify limitations.

2.0 How Court Structure, Geography and Culture Impact Demand for Legal Services, the Pattern of Service Delivery and the Quality of Services

This research issue arose initially out of a desire to assess impacts of the single-level Nunavut Court of Justice, but it was felt that, in each of the three territories, there were defining characteristics at the nexus of geography, culture and court structure that established the parameters of legal aid delivery. In the Yukon, these characteristics appear to be:

- A large territory with one moderately sized town of approximately 20,000 population (Whitehorse), connected in most cases by road to approximately 13 small communities, most of which have populations of less than 1000.
- A majority Aboriginal population in seven of the 13 smaller communities, and a majority non-Aboriginal population in Whitehorse. Overall, the First Nations population is 20 percent of the total population, going by the 1996 Census.¹
- A single resident court in Whitehorse, with all other communities served by circuit courts of varying frequency.
- The territory's Supreme Court sits almost exclusively in Whitehorse.
- An intention to increase the role of JP courts between regular circuit tours, in order to make the court system more accessible in outlying communities, increase efficiency of the circuit court sittings, and speed case processing.

Some of the impacts of these factors are addressed in greater detail in other sections, specifically: Section 3, circuit court issues; Section 5, JP courts; Section 6, civil law; and Section 10, cost drivers .

2.1 Data on Court Cases and on Clients Receiving Legal Aid Services

Table 2 presents data on criminal charges in all Yukon courts from January 1999 to June 2002. Table 3 shows approved criminal legal aid applications by YLSS for the last three fiscal years. There are limitations in comparing the two tables:

- The court data is by calendar year and YLSS data is by fiscal year.
- Court data are for charges, and YLSS data are for approved legal aid applications (which could cover several charges). The executive director for YLSS states that there have been cases involving more than 10 charges, and that, on average, there are approximately three charges per case. Cases in Table 3 that involve multiple charges are listed only by the most serious offence, so serious charges like homicide, sexual assault or robbery are more likely to be represented than a justice administration charge.
- The categories are not identical between the tables.
- It is also difficult to make meaningful comments about trends based on only three years' data.

¹ Census 2001 data are not yet released at this level of detail.



Despite these major caveats, several broad observations are possible:

- There has been considerable fluctuation in court charges over the three-year period, with an overall increase of 13 percent in the second year. The increase in approved criminal legal aid applications mirrors this increase in charges from year one to year two (14 percent). The decline in court charges in 2001 is also reflected in a decline in approved legal aid applications in 2001–2002.
- Even without exact comparability of data between the tables, it is fairly clear that legal aid is covering the vast majority of the more serious personal offences (homicide, sexual assault, robbery), and main high volume property offences (theft over and under \$5000, breaking and entering, possession of stolen property). Coverage of overall justice administration offences is more difficult to determine because the charges are frequently among other more serious charges. Impaired driving cases frequently involve two or more charges. A rough estimate of coverage of these charges by legal aid is 50 percent. In addition, many other accused persons would be assisted by duty counsel in these cases (see note 4 for Table 3).

Table 2: Criminal Charges by Year in all Yukon Courts (Territorial and Municipal Acts Excluded)

Charge Type	Total Charges 1999	% of Total	Total Charges 2000	% of Total	Total Charges 2001	% of Total	Total Charges (Jan–June 2002)	% of Total
Offences Against Person								
Homicide, Murder, Death-related Crimes	3	0%	6	0%	2	0%	3	0%
Sexual Assault	79	2%	72	2%	49	1%	34	2%
Robbery	8	0%	8	0%	22	1%	9	1%
Kidnapping/Abductions	21	1%	11	0%	15	0%	13	1%
Assault	369	10%	420	10%	431	12%	182	11%
Other Offences Against the Person	182	5%	195	5%	194	6%	82	5%
Offences Against Property								
Arson	4	0%	7	0%	8	0%	5	0%
Theft over \$5000	24	1%	50	1%	27	1%	12	1%
Theft under \$5000	183	5%	173	4%	142	4%	72	4%
Theft (unspecified)	3	1%	6	0%	27	1%	6	0%
Break and Enter	168	4%	189	4%	202	6%	63	4%
Possession of Stolen Property	78	2%	98	2%	113	3%	50	3%
Other Property Offences	101	3%	120	3%	49	1%	43	2%
Justice Administration Offences								
Escapes/Failure to Attend or Comply	536	14%	674	16%	673	19%	382	22%
Failure to Comply with Probation Order	498	13%	461	11%	420	12%	215	12%
Breach/Other Offences Against the Administration of Justice	67	2%	89	2%	67	2%	40	2%

Table 2: Criminal Charges by Year in all Yukon Courts (Territorial and Municipal Acts Excluded)

Charge Type	Total Charges 1999	% of Total	Total Charges 2000	% of Total	Total Charges 2001	% of Total	Total Charges (Jan-June 2002)	% of Total
Other <i>Criminal Code of Canada</i> (CCC) Offences								
Impaired Driving	515	14%	512	12%	380	11%	152	9%
Weapons Offences	71	2%	100	2%	88	3%	71	4%
Mischief	157	4%	170	4%	132	4%	48	3%
Order of Prohibition	31	1%	39	1%	28	1%	11	1%
Other CCC Offences	250	7%	443	10%	234	7%	113	7%
Other Statutes								
<i>Controlled Drugs and Substances Act</i>	110	3%	151	3%	72	2%	51	3%
<i>Immigration Act</i>	8	0%	0	0%	1	0%	0	0%
Other Federal Acts	336	9%	333	8%	144	4%	67	4%
Total Charges	3802	103%	4327	100%	3520	101%	1724	100%

Notes:

1. Source: Court Services, Department of Justice, YTG.
2. Percentages do not necessarily total 100% due to rounding.
3. This table does not include territorial and *Municipal Act* cases, which comprise approximately half of all cases, and the vast majority of which are heard in JP courts.
4. The frequency counts refer to charges, not cases, so no direct comparisons can be made with legal aid data, which are by cases. No data are available on the number of charges per case.
5. Year is determined as the year of the first appearance; frequencies include charges that are closed in that year or subsequent years, as well as charges ongoing as of June 30, 2002.
6. There has been a significant decrease in youth cases appearing in court for fiscal 2001/2002, because of the increase of diversions through the establishment of the Youth Justice Panel.

Table 3: Approved Criminal Legal Aid Applications

Offence	1999 – 2000		2000 – 2001		2001 – 2002	
	# of Approved Cases	% of Total	# of Approved Cases	% of Total	# of Approved Cases	% of Total
Offences Against Person						
Homicide and Death-related Crimes	6	1%	3	0%	1	0%
Sexual Assault	50	7%	38	4%	29	4%
Robbery	12	2%	6	1%	8	1%
Kidnapping	4	1%	1	0%	7	1%
Assault	116	15%	201	24%	23	28%
Other Offences Against the Person	64	9	29	3	39	5%
Offences Against Property						
Arson	4	1%	1	0%	4	0%
Theft/B&E/ Possession of Stolen Property	178	24%	186	22%	167	20%
Other Offences Against Property	17	2%	3	0%	11	1%
Justice Administration Offences						
Failure to Attend/Comply	86	11%	95	11%	73	9%
Failure to Comply with Probation	56	7%	41	5%	54	7%
Breach of Sentence and Other Offences Against the Administration of Justice	15	2%	44	5%	31	4%
Other CCC Offences						



Table 3: Approved Criminal Legal Aid Applications

	1999 – 2000		2000 – 2001		2001 – 2002	
Drunk/Impaired Driving	22	3%	67	8%	49	6%
Weapons Offences	6	1%	16	2%	23	3%
Mischief	25	3%	34	4%	32	4%
Order of Prohibition	4	1%	8	1%	-	-
Other CCC Offences	21	3%	18	2%	12	1%
Other Acts						
Narcotics	19	3%	31	4%	17	2%
Young Offenders Act	44	6%	26	3%	18	2%
Appeals	-	0%	7	1%	11	1%
Total	749	101%	855	100%	818	99%

Notes:

1. Source: YLSS database.
2. Percentages do not necessarily total 100% due to rounding.
3. 2001–2002 data will be available in early September for inclusion in the final report.
4. Duty counsel records show that they assisted 587 clients in 1999–2000, 800 in 2000–2001, and 1064 in 2001–2002. Although in part these numbers may reflect actual increases, they primarily reflect more systematic record keeping.

2.2 Changes in Patterns of Service Delivery

Respondents described a number of actual or impending changes in the delivery structure of court, legal aid and courtworker services. In some cases they have cost implications for legal aid. The changes are described below.

2.2.1 Delivery of Court Services

- Domestic Violence Treatment Option Court (DVTO).
As a specialized component of the Territorial Court, this court began hearing spousal assault cases in April 1999. It was meant to address high rates of collapse in spousal assault cases by providing treatment options for accused persons over a four to five month period for charged persons willing to participate in the program. Defence counsel are required to attend pre-court meetings related to the cases and have been invited to planning and policy meetings. The net impact on defence time is felt by respondents to be roughly the same as or slightly higher than court time expended on such cases prior to the initiative (see also comments in Section 11).
- Youth Justice Panel.
Established in early 2001, the objective of this initiative in Whitehorse is to divert youth matters out of court. As with the DVTO, the implication for defence counsel is that case preparation is different (i.e., more “up front” activity) but only slightly more demanding of time than comparable cases prior to the establishment of the Panel (see also comments in Section 11).
- Restorative justice and sentencing Circle initiatives.
Sentencing circle initiatives began in the Yukon in the early 1990s and, in the subsequent decade, other forms of restorative justice such as diversion developed in many communities. Although diversion procedures require little defence counsel time, sentencing circles demand considerably more time (e.g., six hours) than traditional sentencing procedures (approximately 45 minutes). However, respondents report that in recent years the frequency of circles appears to have declined. This was attributed to factors such as declines in funding for justice committees, the perception that circles are “tougher” on offenders than traditional courts, and

the fact that many of the specific needs of Aboriginal peoples in the sentencing process are being considered in the conventional court system. Nonetheless, given that circles occur more frequently in the overall caseload in the Yukon than in southern jurisdictions, there is a commensurately greater demand on legal aid resources. As will be discussed in Section 11.0, sentencing in the Yukon Territory still involves considerable time, with or without sentencing circles.

- Increase in the use of justices of the peace.
It is the intention of the Territorial Court to expand the use of JPs in several communities outside of Whitehorse. This will likely place demands on the legal aid and/or Courtworker systems to provide assistance to individuals between regular Territorial Court circuits. This issue is discussed in Section 5.0.

2.2.2 Delivery of Legal Aid

The major development in relation to the delivery of legal aid in the Yukon in the past three years has been the strengthening of its staff-based structure. This development flowed directly from the recommendations of an Operational Review conducted in March 2000.² In the previous year YLSS had lost four staff lawyers who were considered overworked and under-compensated. The report recommended, among other things, the hiring of a permanent executive director and an increase in legal staff from 4.5 to 6.5 lawyer positions, together with additional support staff.

At mid-October 2002, the YLSS had a complement of 5.5 lawyers, had hired senior staff counsel to act as a mentor for junior staff lawyers, and had a full-time executive director as well as an in-house executive assistant. Furthermore, current guidelines make staff lawyers and support staff salaries competitive with British Columbia Legal Services Society (BCLSS) rates; subsequent salary increases will be linked to Yukon Government Employees Union negotiated rates.³ Other recommendations from the Operational Review have been or are in the process of being addressed. Some, such as the strengthening of family law coverage, are discussed in subsequent sections of this report.

There are two general points flowing from the Operational Review that are relevant in the context of the current report. The first is that the crisis that led to the Operational Review is no longer felt as urgently within YLSS because Yukon Justice has significantly increased its contribution to the Society. As shown in Table 4, the YTG's commitment has approximately doubled since 1996/1997 and 1997/1998, while the federal contribution has remained the same.

² *Operational Review of the Yukon Legal Services Society: Final Report*, Whitehorse, September 2000.

³ This arrangement, while a substantial improvement, does not place staff lawyers on par with federal Crowns, nor give them "trips out" allowances provided to Crowns. One respondent felt parity with federal Crown rates was more appropriate than with BCLSS rates.



Fiscal Year	Federal Contribution	Territorial Contribution	Total
1996/1997	428,000 (47%)	475,057 (53%)	903,057 (100%)
1997/1998	428,000 (50%)	428,000 (50%)	856,000 (100%)
1998/1999	428,000 (46%)	503,000 (54%)	931,000 (100%)
1999/2000	428,000 (34%)	827,300 (66%)	1,255,300 (100%)
2000/2001	428,000 (32%)	928,000 (68%)	1,356,000 (100%)
2001/2002	428,000 (31%)	944,541 (69%)	1,374,541 (100%)

As a result, the YTG now shoulders approximately 69 percent of the YLSS budget, compared to 50–53 percent four and five years ago. The needs that led to and were addressed by the Operational Review were, by general consensus, about the basic viability of the legal aid system in the YTG. The fact that the essential structural needs have been met by the YTG’s decision to increase funding should not deflect from an examination of the federal government’s role in supporting that structure.

The second point concerns the future of the private sector in the legal aid system. The Operational Review suggested that an optimum balance for the overall system would be 80 percent staff lawyers and 20 percent private bar contracts or certificates. However, even that balance may be difficult to maintain. There are only three firms of significant size (six to nine lawyers) in Whitehorse, only one of which does a small amount of legal aid. Of five other firms who do legal aid in the Yukon (only one of which does civil legal aid), all are single-lawyer firms operating from residences. Because of the lack of overhead, these firms are better able to survive on the legal aid tariff or on contracts for duty counsel.

The majority of respondents conceded that the strengthening of the staff system was necessary and inevitable given the staffing and morale crisis that preceded the Operational Review, but there remain some concerns over the viability of the private criminal bar as a legal aid resource. These concerns arise not only from the fact that an increase in the staff lawyers complement lessens the availability of legal aid cases for the private bar, but also because the tariff is approximately half of what is charged in private practice. These respondents claimed that, increasingly, senior counsel in firms will not do legal aid work themselves and will discourage or prohibit junior counsel from taking on legal aid cases. As a consequence, the private bar will not gain or maintain experience in criminal law in the Yukon. They felt that, to a greater degree than in southern jurisdictions, legal aid is the creative driving force of criminal law, and that a vital and active private criminal bar should be part of that stimulus. Decisions that might lessen the capacity of the private bar to participate in legal aid delivery should be carefully considered. They also felt that the private bar may become unavailable to act as second counsel in the event of conflict on circuits; that this would also be a problem in family cases; and that pressures on the staff system resulting from low private bar participation will lessen the effectiveness and quality of representation.

2.2.3 Delivery of Courtworker Services

In 1995, as a result of devolution agreements, control of courtworker services passed in most cases from the Council of Yukon First Nations to individual First Nations. This means that there is now no overarching co-ordinating mechanism within the Yukon Territory for hiring and

training courtworkers, determining their roles, and/or managing and overseeing the delivery of their services. The implications of these changes are described more fully in Section 4.0.

2.3 Trial by Jury

Although the frequency of trials by jury is a significant driver of costs in the Northwest Territories, Table 5 shows that in the Yukon Territory, over the past three years, only a third of elections have been for trial by jury. Furthermore, the actual number of jury trials has not exceeded five in any of the past three years, and these have not necessarily all involved legal aid.

	Calendar Year				
	1999	2000	2001	All Three Years	
	Frequency	Frequency	Frequency	Frequency	% of Total
Judge alone	10	6	9	25	68%
Judge and jury	4	5	3	12	32%
Total	14	11	12	37	100%

Notes:

1. Source: Court Services, Department of Justice, YTG.
2. Trial type determined by the accused's election.
3. Year determined as calendar year of first trial appearance.

2.4 Unmet Needs

Approximately half the justice system respondents (staff and private lawyers, Crowns and judges) stated that the financial eligibility cut-offs for legal aid coverage are too low and are especially difficult for the working poor.⁴ These respondents felt that this situation contributed to an increase in unrepresented litigants in courts.

While acknowledging that unrepresented litigants are a subject of ongoing concern and discussion within the justice system, the Executive Director of YLSS feels that this is an issue primarily in civil cases (see Section 6). He states that the YLSS has exercised greater discretion in determining eligibility in the current year. Although the financial eligibility cut-off points have remained the same since the Operational Review, a number of files have been reviewed retroactively, and assistance provided to clients where they may have had misunderstanding as to their eligibility. Furthermore, the YLSS employs what it calls a “soft cap” on financial eligibility. This allows the Board to review applications that are over the cut-off points, but where there may be circumstances that would effectively preclude a client being able to pay for his/her own representation (e.g., if their work is seasonal, or if they are carrying a high debt load for essential items). The Executive Director maintains that most applicants who are denied legal aid are usually considerably above the cut-off points. Although the “soft cap” is not advertised publicly, applicants who are slightly above the cut-off point are encouraged to request a review of their application. Thus, out of 836 applicants for criminal legal aid in 2001–2002, only 18 (i.e., 2 percent) were refused and, of these, only nine were refused for financial reasons.

⁴ It is possible that a larger proportion of justice system respondents felt this way. Respondents were simply asked about unmet needs, rather than specifically asked about the financial eligibility criteria. On the other hand, one respondent felt that some legal aid clients should accept more responsibility in terms of representation. The respondent felt that in some drug cases the clients had undeclared resources, and that, in general, clients should be asked to make at least some contribution toward the cost of representation, even if minimal.



Other needs identified by respondents include:

- **Increased funding for family matters.**
This need was also identified in the Operational Review, and a central recommendation was that the expansion of family law services be prioritized over any other expansion of services. Increased funding provided by Yukon Justice has allowed YLSS to undertake some permanent (as opposed to interim) custody trials (six as of April 2002) and implement a Support Variation Maintenance Project. YLSS has also funded some permanent wardship trials. The fundamental importance of addressing these types of needs was emphasized by respondents, not all of whom were aware that YLSS had begun to implement coverage in this area.
- **Difficulty in obtaining summary advice.**
Some respondents noted different practices among duty counsel in regard to providing summary advice to individuals prior to first appearance. Some duty counsel felt they should respond to all summary advice needs of individuals to the best of their ability while they were in court, while others would only help those who were eligible for legal aid. This issue is dealt with again in relation to PLEI in Section 9.0. As noted in Section 3.2, this issue is less of a problem on circuits.
- **Mental health cases.**
The tariff was considered inadequate because it does not take into consideration the need to attend client case management meetings nor requirements for expert witnesses.
- **Coverage for expert witnesses.**
A lack of funds to cover the costs of expert witnesses – for such issues as impaired driving, paternity testing, and psychological assessments – was considered a problem in the past by many respondents. Most, however, felt that the increase in YTG support had alleviated the problem in the past year.

3.0 Circuit Courts

Feedback on circuit courts should also take into consideration the activities and location of courtworkers and the proposed developments for JP courts. These are discussed in the next two sections.

3.1 Background

Circuit courts are a key delivery structure for justice in the Yukon. They serve 13 communities with varying frequency and duration, as shown in Table 6.

Communities	Frequency of Circuits Per Year	Length of Circuits	Number and Type of Legal Aid Counsel
Dawson City	6	3 days	2 staff
Watson Lake	6	2 days	1 staff; 1 private
Old Crow	5	1 day	1 staff
Teslin	5	1 day	1 staff
Haines Junction/Burwash	5	2 days	1 staff
Faro/Ross River	5	2 days	1 staff
Mayo	5	1 day	1 staff
Beaver Creek	2	1 day	1 staff
Pelly Crossing/Carmacks	5	2 days	1 staff
Carcross	5	1 day	1 staff

The same staff and/or private lawyers are assigned to the specified communities for the entire year, thus ensuring case continuity. The private lawyer has a block contract for Watson Lake. If a conflict of interest arises in a particular case, an additional counsel may have to be assigned on a certificate basis, or counsel will simply switch assignments for a particular circuit. However, this situation rarely occurs.

3.2 Advantages of Circuits

The primary merit of circuits is that they bring the justice system to smaller communities that cannot sustain resident courts, rather than conduct all court operations in Whitehorse. Given the majority of First Nations population in half of the smaller communities, circuits also represent a higher level of service to Aboriginal persons than might otherwise be the case. Another advantage is that accused persons often receive help in communities on the circuit days that they would likely not get in Whitehorse. Most defence counsel said that, to whatever extent possible, they would handle most matters that are on the docket, irrespective of whether the accused would meet eligibility requirements. For example, this might include diversions or speaking to sentence where the matter would likely involve only a probation order. Similarly, unless an individual was clearly not in financial need, they would receive help. Thus, while not a “presumed eligibility” system such as exists in Nunavut and the Northwest Territories, the lawyers referred to this system as “practical delivery” or “legal aid pro bono” work. One respondent said that this approach derives in part from the expectation of the bench that legal aid should have a broader obligation to clients in isolated communities.



A variant of this “practical delivery” was also cited by one courtworker, who said individuals in smaller communities expect courtworkers to deal with a wider variety of issues than they do in larger centres. For example, victims would sometimes expect her to facilitate being heard in court, even if she were representing the accused. Thus roles that would obviously be seen as in conflict in other situations tend to be blurred into a general function of “helping things happen.” Nonetheless, the courtworker clearly articulated the necessity of clarifying to the victim her role on behalf of the accused, and the limits to which she could help the victim with her/his concerns.

For the most part, continuity of counsel is achieved on circuit through the assignment of specific counsel for a given community throughout the year (as per Table 6). Community justice workers and courtworkers corroborated that continuity of counsel is not a problem for most clients.

3.3 Disadvantages of Circuits

The primary disadvantage of circuits is the speed with which matters have to be addressed because of the limited time in the community and the large number of cases involved. Respondents said it was not uncommon to arrive in a community at 7:00 p.m., the evening before court day, and have 20 people needing assistance, many on trial matters. Significant contacts could seldom be arranged with clients in between circuits because of distance, lack of telephones, and lack of client initiative or confidence. Several respondents felt that such contact might be enhanced if there were increased funding to achieve a stronger courtworker presence in the communities. Others suggested that community visits by the lawyer one week in advance of the circuit would significantly help in case preparation. This is clearly a funding issue. Another initiative currently being planned – to expand the role of justices of the peace in certain communities – may require defence counsel to visit certain communities between regular circuits, or to establish telephone links with the JP court for mid-circuit hearings. This initiative would have significant funding implications for YLSS, and is discussed in Section 5.0.

According to respondents, the main negative impacts of having to conduct business so quickly on circuits are: less case preparation time; less time to understand the dynamics and relationships in the communities that may affect cases (although this is partially offset by having the same community assignment); less client confidence in the justice system (as reported by community justice workers and courtworkers) because the court has no permanent presence in the community; and some case delays. Despite reporting that clients lack confidence in the justice system, the majority of community justice and courtworker respondents reported that individuals, for the most part, understand what is happening in their case.

It was anticipated that the infrequency of some circuits would result in significant delays and prolonged completion times for cases on circuits. However, the data in Table 7 shows that, while average case times in circuit communities do tend to be longer than in the resident court in Whitehorse, they are not dramatically so. For 1999 and 2000, young offender circuit cases tended on average to be completed faster than in the resident court in Whitehorse. The implementation of the Youth Justice Panel in Whitehorse may account for the speed-up in youth case time in 2001. Average time for adult cases has been consistently longer in circuit communities, but only by three days in 2001. One respondent suggested that delays on circuit can also be an advantage to some clients; e.g., by enabling them to “get their act together,” or to earn some money before sentencing.

Table 7: Average Time from Case Initiation to Final Disposition in Territorial Criminal Court (in Days)									
Location of Court	Young Offenders			Adults			Overall		
	1999	2000	2001	1999	2000	2001	1999	2000	2001
Whitehorse	177	184	147	192	172	204	189	173	195
Circuit Communities	161	151	164	210	219	207	200	207	203
Combined	171	168	153	199	188	206	193	186	199

Notes:

1. Source: Court Services, Department of Justice, YTG.
2. Case age is determined as the number of days from first appearance to final disposition.
3. Statistics are provided for completed cases only. Ongoing cases, which might be older or eventually have a greater case age, are not included. This will have an impact on case statistics.



4.0 Courtworkers

4.1 Structure

In 1993, the federal Government, the Yukon Territory Government and the Council for Yukon Indians (CYI) signed an Umbrella Final Agreement (UFA), and five individual final agreements with four First Nations were signed in 1995. The UFA provided the basis for individual land claim settlements with each of the fourteen Yukon First Nations and for the negotiation of self-government agreements with these First Nations. Part of the self-government agreements provided First Nations with law-making powers in the area of the administration of justice.

Prior to 1995/1996, the CYI administered the courtworker program for the Yukon Territory. Under devolution of some justice functions, individual First Nations took over administration of courtworkers serving their communities from the CYI and its successor organization, the Council of Yukon First Nations (CYFN). This means that, on the one hand, there is community control over the hiring and functioning of the courtworker. On the other hand, from a territorial justice perspective, there is less of a unified vision of the roles and training needs of the courtworker than existed in the first half of the 1990s.

Table 8 outlines the communities that currently have courtworkers. The CYFN has the largest program with a manager and two full-time courtworkers in Whitehorse, also serving six outlying communities. Other communities have part-time courtworkers, two of whom act as community justice co-ordinators in the other part of their position. One courtworker serves Carmacks, Pelly and Mayo on a half-time basis.

Table 8: Courtworker Locations in the Yukon Territory		
Administrative Council or First Nation	Number of Courtworkers	Communities Served
Council of Yukon First Nations	2 plus manager	Whitehorse, Kwanlin Dun, Haines Junction, Beaver Creek, Burwash, Teslin, Carcross
Northern Tutchone Council	.5	Carmacks, Pelly, Mayo
Tr'ondek Hwach'in Han Nation	.5 (other half of position is as a community justice co-ordinator)	Dawson City
Kaska Tribal Council	1	Watson Lake
Ross River Dena Council	.5 (other half of position is as a community justice co-ordinator)	Ross River
Vuntut Gwitchin First Nation	.5	Old Crow

4.2 Federal and Territorial Contributions

Table 9 shows the balance between federal and territorial contributions to courtworker programs. There is considerably more parity in the federal contribution level for courtworkers than for legal aid (YLSS), as was shown in Table 4. With the exception of 2000/2001, federal contributions have remained at roughly 50 percent of total contributions for the past eight years.

Fiscal Year	Federal Contribution	Territorial Contribution	Total
1994/1995	153,400 (50%)	153,300 (50%)	306,700 (100%)
1995/1996	138,800 (50%)	138,900 (50%)	277,700 (100%)
1996/1997	164,200 (51%)	158,000 (49%)	322,200 (100%)
1997/1998	165,000 (47%)	185,900 (53%)	350,900 (100%)
1998/1999	170,800 (50%)	170,700 (50%)	341,500 (100%)
1999/2000	171,500 (51%)	167,000 (49%)	338,500 (100%)
2000/2001	136,100 (40%)	204,800 (60%)	340,900 (100%)
2001/2002	146,400 (50%)	146,300 (50%)	292,700 (100%)

Source: Department of Justice, YTG.

4.3 Courtworker Roles

Depending on the community, the courtworker's skills and confidence, the mode of operation of defence counsel, and the relationship the courtworker has with defence counsel, the courtworker's role may include any of the following:

- Bridging functions, i.e., assisting the legal aid lawyers by:
 - locating clients and witnesses to set up appointments with defence counsel;
 - helping clients fill out legal aid applications; and
 - informing lawyers of the client's background and circumstances and acting as a cultural interpreter.
- Court functions, i.e., assisting clients prior to or during court appearances by:
 - acting as their agent;
 - assisting with plea, speaking to adjournments, fixing trial dates, in some cases helping with the trial itself, and speaking to sentence;
 - acting as a support to client and family; and
 - communicating with Crown counsel in regard to client charges.
- Participation on relevant committees and boards.
- Working with First Nations in the communities in regard to:
 - providing information on court outcomes of clients;
 - obtaining information on programs that may assist the clients; and
 - Aboriginal justice processes and programs.
- Various administrative tasks.

Respondents in the legal profession (staff and private lawyers, judges, Crowns) most clearly valued the bridging functions played by courtworkers. They had major reservations about court functions such as plea and, especially, representing accused at trials. There were fewer reservations about courtworkers speaking to sentence, and some respondents felt the courtworkers' role in gathering client, family and community information was critical in creating effective *Gladue* sentencing. In fact, one legal professional said that, at some future point, some clients could pay user fees for a courtworker to speak to sentence on their behalf, a procedure that exists in some U.S. jurisdictions. However, respondents



emphasized that courtworker skills, personality and experience varied considerably. Courtworkers themselves were equally frank about tasks they felt least comfortable with, and expressed a strong desire for more training.

If plans go ahead to increase the role of JP courts between and/or just prior to circuits (see Section 5.0), there may be more pressure on courtworkers to undertake more court functions. Training needs for courtworkers in regard to court functions will become even more urgent.

4.4 Client Data

With varying degrees of consistency, courtworkers have maintained monthly aggregate data sheets on client demographics, previous convictions, charge types, and courtworker time expenditures. As shown in the notes to Table 10, the data submitted to (and/or on record with) the YTG Department of Justice is spotty and inconsistent or non-existent for some of the community sites, although it appears complete for Whitehorse. No data are available for Ross River or Old Crow. The inconsistency of data for other sites can be explained in part by staff turnovers (and, therefore, periods of inactivity) or activity only during a circuit month, but some reports are simply missing.

The main drawback of inconsistent data collection is that the overall counts are understated. The understatement is likely in the order of 5–15 percent, as the absence of data is generally from smaller communities. It should also be emphasized that the data refer to client *contacts* rather than clients per se, so the actual number of clients would be smaller, and the exact number is not known. The data are more useful in describing relative proportions rather than overall numbers.

General observations that can be made from Tables 10 to 13 are:

- (Table 10) Approximately three quarters of courtworker client contacts with adults are male; however, among youth the proportion of males is lower (between 53 and 60 percent).
- (Table 10) Approximately 85 percent of courtworker client contacts are adults.
- (Table 11) Approximately 85 percent of adult clients have prior convictions versus 64–81 percent of youth. The increase in prior conviction rates is significant among youth, but it is not possible to determine whether it is a trend.
- (Table 12) While the profile of charge type that courtworkers deal with is similar to that handled by legal aid lawyers, as shown in Table 3, it differs in two respects: impaired driving cases represent a higher percentage of courtworkers' caseload than they do of legal aid lawyers'; and approximately 20 percent of courtworkers' caseload comprises territorial offences, which legal aid does not cover.
- (Table 13) A remarkably high percentage of recorded courtworker time (between 26 and 41 percent) is ascribed to administrative functions. This may reflect excessive administrative burdens, categories that do not capture accurately the essence of courtworker activities, inaccurate recording practices, or inefficient use of time. If time management is an issue, it could usefully be addressed within ongoing training sessions (see next section).

Table 10: Demographics of Clients Assisted by Courtworkers						
	1999 – 2000		2000 – 2001		2001 – 2002	
	Number	%	Number	%	Number	%
Adult						
Male	776	75%	781	71%	1368	74%
Female	262	25%	312	29%	479	26%
Total	1038	100%	1093	100%	1847	100%
Youth						
Male	102	53%	117	54%	147	60%
Female	92	47%	100	46%	96	40%
Total	194	100%	217	100%	243	100%
Combined						
Male	878	71%	898	67%	1515	72%
Female	354	29%	412	33%	575	28%
Total	1232	100%	1310	100%	2090	100%

Notes:

1. Data source: aggregation of monthly statistics sheets submitted to Department of Justice, YTG. Counts refer to client contacts rather than clients. If clients are seen more than once, they may be counted several times.
2. Data were not consistently available for several locations, so cannot be considered reliable in terms of overall number. However, relative proportions can be considered reliable.
3. For 1999–2000, data were aggregated for all of the Yukon by the Department, but neither specific sites nor months were identified.
4. For 2000–2001 data were available as follows:
 Whitehorse – all months.
 Trondek Hwetchin – Mar–June 2000, Oct–March 01.
 Northern Tutchone (Mayo, Pelly, Carmacks) – May–Aug 2000, Oct 2000, Dec–Mar 2001.
 Carcross – May, June, Nov 2000.
 Teslin – May 2000.
 Liard First Nation (Watson Lake) – Oct 2000–Mar 2001.
 Haines Junction – Sept and Nov 2000.
5. For 2001–2002 data were available as follows:
 Whitehorse – all months.
 Teslin – July, Oct 2001.
 Carcross – June, Sept, Nov 2001.
 Liard First Nation (Watson Lake) – Apr to Sept 2001.
 Haines Junction/Burwash – May, July, Sept 2001.



Table 11: Clients Assisted by Courtworkers: Whether Client had Previous Convictions						
	Year					
	1999 – 2000		2000 – 2001		2001 – 2002	
	Number	% of Known Responses	Number	% of Known Responses	Number	% of Known Responses
Adult						
Prior Conviction	675	86%	718	86%	1271	85%
No Prior Conviction	114	14%	119	14%	228	15%
Unknown	169	-	219	-	286	-
Youth						
Prior Conviction	92	64%	123	79%	152	81%
No Prior Conviction	51	36%	32	21%	36	19%
Unknown	67	-	56	-	53	-
Total						
Prior Conviction	767	82%	841	85%	1423	84%
No Prior Conviction	165	18%	151	15%	264	16%
Unknown	236	-	275	-	339	-

Notes: The notes for Table 10 also apply to this table.

Table 12: Clients Assisted by Courtworkers: Types of Charges						
Category of Offence	Year					
	1999 – 2000		2000 – 2001		2001 – 2002	
	Number	%	Number	%	Number	%
<i>Criminal Code</i>						
Homicide/ Attempted Murder	1	0%	1	0%	21	1%
Assault	269	16%	367	19%	656	17%
Sexual Assault	36	2%	50	3%	32	1%
Robbery	16	1%	18	1%	7	0%
Other Violent Offences	78	5%	25	1%	58	1%
Property Offences	246	15%	297	15%	455	12%
Morality	10	1%	4	0%	0	0%
Firearms-related CC Offences	8	0%	14	1%	46	1%
Other CC Weapon Offences	0	0%	10	1%	71	2%
Breach of Probation/ Failure to Appear	245	15%	357	18%	824	21%
Impaired Driving/ Refuse to Blow	268	16%	295	15%	358	9%
Other CC Offences	83	5%	141	7%	275	7%
Federal Statutes						
Drug Offences	22	1%	32	2%	74	2%
Firearms-related Federal Statute Offences	1	0%	1	0%	0	0%
Other Federal Offences	7	0%	11	1%	34	1%
Territorial Statutes	329	20%	303	15%	847	22%
Unknown	42	3%	47	2%	140	4%
Total	1661	100%	1973	101%	3898	101%

Notes:

1. The notes for Table 10 also apply to this table.
2. Percentages do not necessarily total 100% due to rounding.



Table 13: Courtworker Time Spent on Services

Service	Year					
	1999 – 2000		2000 – 2001		2001 – 2002	
	Number of Hours	% of Total Time	Number of Hours	% of Total Time	Number of Hours	% of Total Time
In-court Services for the Accused	453	10%	496	13%	384	11%
Out-of-court Services for the Accused	420	9%	458	12%	447	13%
Counselling/Referrals for the Accused	250	6%	293	8%	489	14%
Services to Other Than the Accused	212	5%	152	4%	185	5%
Liaison with Criminal Justice Personnel	243	5%	310	8%	223	6%
Work Within the Community	74	2%	98	3%	130	4%
Alternative Measures	310	7%	223	6%	77	2%
Administrative Functions	1829	41%	967	26%	960	28%
Training	267	6%	350	9%	265	8%
Travel	65	1%	134	4%	91	3%
Other	350	8%	293	8%	213	6%
Total	4473	100%	3774	101%	3464	100%

Notes:

1. The notes for Table 10 also apply to this table.
2. Percentages do not necessarily total 100% due to rounding.

4.5 Supervision, Communication, Co-ordination and Training

For the most part, defence counsel and courtworkers characterized their personal relationships as positive. However, there is no supervisory relationship between defence counsel and courtworkers. The provision of information or advice by lawyers to courtworkers is generally on a reactive basis rather than a proactive one. Furthermore, most respondents in the legal profession had little knowledge of what training courtworkers were receiving, if any.

There was a strongly expressed feeling from most legal professionals that there should be more formal co-ordination between the courtworker structure and YLSS. Although this suggestion was not formally raised in the courtworker interviews, it is clear that the community-based courtworker delivery and administrative structure described in Section 4.1 evolved out of strong political convictions about cultural and community control. It is thus likely that any formal intent that would reduce the independence or perception of independence of courtworkers as community-based roles would be resisted.

The conviction held by both legal professionals and courtworkers about the need for more courtworker training is a more fruitful starting point for increased collaboration. This was also emphasized in the focus group, which rated the training of courtworkers as a top-level need. Annual training is usually co-ordinated by the Whitehorse courtworker office for all courtworkers, focussing on topics that are seen as mutually beneficial. In the current year, training funds were pooled to allow most of the courtworkers to attend the March conferences of the National Aboriginal Courtworkers Association, where the last three days were devoted to training. One courtworker from the Whitehorse office also attends annual training sessions conducted for justices of the peace. Courtworkers from outlying communities have also been

invited to this training, but have reportedly been unable to attend for lack of travel funds. The Whitehorse office offers a one-week job-shadowing arrangement for new courtworkers from outlying communities at no cost, but has no mandate, nor funds, to develop more formal training procedures.

Several respondents advanced the idea that courtworkers could be trained and certified to undertake court work either in terms of specified levels (e.g., courtworker level 1, level 2, level 3) or of functions (e.g., speaking to sentence, plea discussions, show cause hearings). This would clarify the roles that they have been trained to undertake in court (as opposed to the bridging roles described in Section 4.3); provide other justice personnel with greater confidence in their ability to assume those roles, and provide incentive and reward to the courtworkers themselves. It would also help in transitional periods of staff turnover. A new courtworker replacing a courtworker level 2 or 3 might start as a courtworker level 1. This designation would help limit the expectations of activities he/she could perform, reduce the pressure to perform beyond his/her competence, and allow time to consolidate skills before receiving training for a higher level.

In the focus group from this study, it was also suggested that crown counsel and/or a legal aid lawyer could train individual courtworkers in their own communities on a periodic (e.g., quarterly) basis. This approach could supplement other approaches, but would have the advantage of addressing specific needs and skill levels of the individual courtworker. It was felt that this could be feasible if crown or legal aid lawyer travelled to the circuit community a day earlier.

Development of systematic training should also be coupled with a clearer shared vision of the role courtworkers are expected to play. Again, this will be a complicated task, given potentially different visions within each First Nation. Some courtworkers already feel the need to respond to requests from unrepresented criminal and civil litigants who are ineligible for legal aid. If the JP court activity increases in the future and there are no resources for legal aid or duty counsel at this level, there may be more pressure on courtworkers to respond to requests for in-court assistance.



5.0 Justice of the Peace Court

5.1 Statistical Data

Although there are plans to expand the use of Justice of the Peace (JP) courts, the number of charges for JP court cases declined from 5507 in the year 1999 to 4970 in 2000, and to 3668 in 2001. A significant majority of the charges (60–68 percent) are territorial and municipal. Charges related to the administration of justice e.g., breaches, failure to attend, escapes) at 9–14 percent and impaired driving at 6 percent are other significant categories.

As shown in Table 14, over 90 percent of recorded pleas in JP court are guilty pleas, with a slightly higher ratio of guilty pleas in the communities than in Whitehorse. Without knowledge of individual cases, it is not possible to interpret whether this apparently high rate of guilty pleas is indicative of a need for increased assistance for individuals in JP court.

	1999					2000					2001				
	Plea				Total	Plea				Total	Plea				Total
	Guilty		Not Guilty			Guilty		Not Guilty			Guilty		Not Guilty		
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Whitehorse	1845	92%	161	8%	2006	4516	88%	210	12%	1726	1082	90%	115	10%	1197
Other Communities	486	96%	18	4%	504	418	95%	23	5%	441	269	92%	23	8%	292
Total Charges	2331	93%	179	7%	2510	1934	89%	233	11%	2167	1351	91%	138	9%	1489

Notes:

1. Source: adapted from Court Services data, Department of Justice, YTG.
2. These data only include charges for which a plea was recorded. Plea was *not* recorded in the criminal information system in 33 percent to 47 percent of charges in the years presented in this table.

Another approach in considering the need for representation is to consider the consequences for individuals facing charges in JP court. Table 15 presents a variety of indicators of seriousness of disposition. It shows that:

- 9–12 percent of overall dispositions result in fines of \$100 or more.
- 13 percent of overall dispositions result in jail sentences, the vast majority of which are under three months.
- 7–10 percent of overall dispositions result in probation orders, a majority of which are for six months or more.
- 3–4 percent of overall dispositions and slightly less than half of impaired cases result in a driving prohibition order.

Item	1999	2000	2001	Jan 1–Jun 30, 2002
1. Percentage of overall dispositions resulting in fines	43% (1612/3762)	36% (1334/3683)	33% (896/2707)	35% (368/1056)
2. Percentage of overall dispositions resulting in fines of \$100 or more	12% (467/3762)	10% (385/3683)	9% (247/2707)	9% (100/1056)
3. Percentage of overall dispositions resulting in restitution orders	2% (89/3762)	2% (75/3683)	1% (29/2707)	1% (8/1056)
4. Percentage of restitution orders that were \$100 or more	78% (69/89)	81% (61/75)	86% (25/29)	100% (8/8)
5. Percentage of overall dispositions resulting in jail sentences	13% (497/3762)	13% (490/3683)	13% (359/2707)	14% (151/1056)
6. Percentage of jail sentences that were 3 months or more	14% (70/497)	14% (71/490)	18% (65/359)	11% (17/151)
7. Percentage of jail sentences that were 1 year or more	1% (4/497)	0% (2/490)	1% (3/359)	0% (0/151)
8. Percentage of overall dispositions resulting in probation order	10% (395/3762)	9% (321/3683)	9% (242/2707)	7% (74/1056)
9. Percentage of probation orders that were 6 months or more	56% (223/395)	61% (197/321)	67% (163/242)	64% (47/74)
10. Number of firearm prohibition orders	4	12	16	1
11. Percentage of overall dispositions resulting in a driving prohibition order	4% (149/3762)	4% (146/3683)	3% (78/2707)	3% (29/1056)
12. Percentage of impaired driving cases resulting in driving prohibition order	49% (149/305)	48% (146/303)	44% (78/178)	29% (29/101)

Notes:

1. Source: adapted from Court Services data, Department of Justice, YTG.
2. Percentages are based on the figures in parentheses. For example, for item No. 1, in 1999 there were 3762 overall dispositions, 1612 of which (or 43 percent) were fines.

For many individuals these consequences would be significant. Although they represent a small percentage of overall cases, in combination with the high rate of guilty pleas, the data would suggest an ongoing need for duty counsel and courtworkers to monitor representation needs of accused persons in the JP court. It is likely that the majority of the cases shown in Table 15 were heard in Whitehorse, and that clients received assistance from duty counsel and/or courtworkers. However, these data should also be considered in relation to respondent feedback presented in Section 5.3, especially in regard to plans for the expansion of the JP system.

5.2 Client Representation in JP Court

In JP court in Whitehorse, duty counsel will assist any accused person on first appearance. They will also help any persons on subsequent appearances to obtain an adjournment to seek counsel. They may also be assigned as counsel for accused with more serious charges that are likely to be heard by a judge after first appearance. Involvement of legal aid in show cause hearings is described in Section 7.0. Duty counsel also assist clients in JP court in Watson Lake the day prior to the regular circuit court.

Anecdotally, 30 percent of accused in *Criminal Code* matters are unrepresented at first appearance in JP courts, mostly on first-time impaired driving charges. In territorial *Motor Vehicle Act* cases, 90 percent of litigants are unrepresented. These cases are not covered by legal aid.



Depending on their skill level and confidence, courtworkers will assist clients in JP court on plea, speaking to sentence and, in some cases, trials on motor vehicle and other territorial offences (e.g., *Wildlife Act*, *Liquor Act*).

5.3 Needs in JP Courts

Opinion was divided among legal professionals on the need for increased representation in JP courts. Slightly over half the respondents felt that the level of representation was satisfactory. A minority expressed significant concerns about the lack of representation. These concerns were based on their perceptions of the court, including impressions that some JPs lack skills commensurate with their responsibilities; that JPs are inclined to agree with Crown or RCMP; that serious offences are sometimes heard in JP court; that there is a lack of training of RCMP to properly perform a prosecution role in JP court; and that there is a tendency for JPs to detain persons even on minor charges so that they will plead guilty.

Concerns about the adequacy of representation should also be considered in relation to plans to expand the use of JPs as part of capacity building at the community level. There are current plans to do so in Watson Lake, Dawson City and Haines Junction, and, in the longer term (one year or more), to all communities. Where these plans involve dockets on the day prior to circuit court, YLSS could provide defence counsel as part of current circuit activity. Where they involve interim days (i.e., approximately half way between circuit dates), it would require additional legal aid funding to provide representation. The purpose of the JP court between circuits would be to deal with first appearances and pleas, and to set over matters that will require trial or more complex sentencing for the regular Territorial Court circuit.

It was suggested that a mid-circuit JP hearing need not necessarily involve a legal aid lawyer appearing in person. Duty counsel in Whitehorse could be connected by telephone or teleconference with the client and courtworker. The courtworker would, ideally, be with the client in the client's community, but could also be connected by phone from a third community.

The feasibility of this type of arrangement is obviously dependent on technical capacity and appropriate facilities in each community. Lawyers have also expressed concerns about the adequacy of assistance by telephone in regard to show cause hearings (see Section 6.2).

6.0 Civil Legal Aid

6.1 Coverage of Civil and Family Matters

Until 2001, legal aid coverage in civil and family matters included:

- Child protection proceedings.
- Interim proceedings in cases of family breakdown where children are involved, resulting in issues of custody, access, child support, restraining orders and/or exclusive possession of the matrimonial home, and where:
 - there are no pre-existing orders of the court or other lawfully binding resolution; or
 - where the health or safety of a child or parent, or an established parent/child relationship is at risk.
- Proceedings under the *Mental Health Act*.

As noted in Section 2.4, in response to the Operational Review in 2000, the YLSS has begun to fund selected family cases through to permanent orders, has implemented the Support Variation Maintenance Project, and funded some complex permanent wardship trials. At this stage, formal criteria have not been developed to clarify what types of family cases merit funding, and coverage is provided on a case-by-case basis. However, in general terms, approval has been extended to more difficult cases or cases where parties are entrenched in strong disagreement.

Of 380 family and civil legal aid applications in 2001–2002, 70 (18 percent) were refused. Of these refusals, 43 (61 percent) were for financial reasons, 22 (31 percent) were for coverage reasons, and five (7 percent) were on the basis of merit. There is thus a higher overall rate of refusals of civil/family applications than for criminal applications (as described in Section 2.4). Coverage refusals reflect the discretionary decisions that YLSS is making based on the difficulty of cases (see previous paragraph). Financial refusals are likely a reflection of applicants having at least some resources, whereas criminal applicants often have none.

6.2 Civil Data

It is even more difficult to align YLSS civil/family data with civil/family data from the court system than is the case with criminal case comparisons. This is due to the fact that case categories are defined differently, that YLSS “cases” may involve more than one application by the same person, and because court data is on a calendar basis and YLSS data is on a fiscal year basis. Nevertheless, if one eliminates small claims and non-family civil cases in Territorial and Supreme courts from Table 16, legal aid coverage, reflected in Table 17, would appear to be dealing with 65–80 percent of family cases heard in Territorial and Supreme courts.



Table 16: Civil and Family Cases per Year in all Yukon Courts

Court Level and Case Type		Year			
		1999	2000	2001	Jan 1 – June 30, 2002
Supreme	Adoption	6	8	6	4
	Child	38	39	55	24
	Divorce	104	107	91	51
	Family	24	12	9	3
	Infant	-	1	-	-
	Maintenance Enforcement	16	15	21	7
	Other	383	349	356	145
	Reciprocal Enforcement	2	6	5	3
Territorial	Child	5	8	6	1
	Family	-	6	3	2
	Maintenance Enforcement	107	95	91	31
	Other	21	44	33	12
	Reciprocal Enforcement	2	5	2	2
	Wardship	23	25	21	15
Appeals Court	Other	17	20	28	7
Federal	Other	2	3	7	-
Small Claims	Other	225	224	227	80
All Courts		975	967	961	387

Notes:

1. Source: Court Services, Department of Justice, YTG.
2. These data do not include immigration cases.
3. “Other” refers to non-family civil cases (e.g., bankruptcy, labour relations, probate, etc.). Since these are not covered by legal aid, they are simply presented as a single category.
4. Frequency counts are based on cases *initiated* in the given year, but include cases that are closed in that or subsequent years, as well as cases ongoing as of June 30, 2002.
5. It appears that the volume of civil and family cases will decrease for 2002. Projections for the entire year, based on these data, are 774 for the entire year, or 811, based on supplementary data, to October 8, 2002.

Case Type	1999 – 2000		2000 – 2001		2001 – 2002	
	# of Approved Cases	% of Total	# of Approved Cases	% of Total	# of Approved Cases	% of Total
Family						
Interim Custody	150	61%	128	57%	170	55%
Enforce Custody	1	0%	0	0%	0	0%
Permanent Custody	1	0%	2	1%	5	2%
Guardianship	0	0%	0	0%	1	0%
Interim Maintenance	8	3%	8	4%	9	3%
Maintenance Variation	0	0%	0	0%	8	3%
Non-removal from Yukon	6	2%	2	1%	1	0%
Specified Access	4	1%	7	3%	16	5%
Restraining Order	2	1%	0	0%	1	0%
Exclusive Possession of Matrimonial Property	0	0%	0	0%	1	0%
Vary Corollary Relief	0	0%	1	0%	4	1%
Divorce	1	0%	0	0%	0	0%
Adoption	0	0%	0	0%	1	0%
Child Protection						
Temporary Wardship	36	15%	46	20%	39	13%
Permanent Wardship	9	4%	8	4%	24	8%
Rescind Permanent Wardship	0	0%	0	0%	1	0%
Mental Health	22	9%	24	11%	24	8%
Immigration	1	0%	0	0%	0	0%
Other	5	2%	0	0%	5	2%
Total	246	98%	226	101%	310	100%

Notes:

1. Source: YLSS database.
2. Percentages do not necessarily total 100% due to rounding.

The data on YLSS civil coverage in Table 17 clearly reflects the coverage described in Section 5.1, with interim custody cases comprising the majority of cases (55–61 percent), wardship cases approximately 20 percent, and mental health cases approximately 9 percent of overall cases.

6.3 Practical Limitations on Family/Civil Delivery

Several practical limitations on effective delivery of family and civil legal aid were identified:

- Supply of family law lawyers.
Family law matters have two parties, both of whom sometimes require funding. YLSS has two offices in Whitehorse to help deal with the likelihood of conflict, but, nonetheless, 30–40 percent of family matters need to be referred to the private bar. Respondents claimed that the legal aid tariff pays lawyers half what they would earn in private practice, so there is not a large incentive to attract family bar members. At present there are only one or two members of the private bar who will take civil (family) legal aid cases.
- Cumbersome billing arrangements.
Several respondents complained that YLSS's setting of ceilings for billings in regard to specific processes (e.g., initial interview, document preparation) places excessive administrative burdens on private lawyers who are invoicing for family legal aid work.



- One respondent felt that there is a financial disincentive to settle family cases without trial, as the time required to mediate a case is insufficiently remunerated.
- Legal profession respondents had an awareness of collaborative law practices, and this approach was discussed at a Law Society meeting in October 2002. The size of the Yukon bar may limit the adoption of this approach. Some respondents felt that if a collaborative law approach were used among key civil law practitioners, it could, ironically, necessitate bringing in a lawyer from outside the jurisdiction if a case needed to be litigated.
- Lack of resources.
One private bar respondent claimed that wardship cases are “assessed to death” by the Department of Health and Social Services. YLSS has been unable to support the casework necessary to gather independent witnesses.
- Another respondent from the private bar felt the tariff payments were not commensurate with the labour-intensive preparation required in *Mental Health Act* cases.

6.4 Family and Civil Needs

While respondents uniformly acknowledged that progress had been made in funding some family cases through to final orders, many felt there were still family and civil needs that needed urgent attention.

- Wider range of support for family orders.
Current funding for final orders is only on selected cases involving children. Criteria need to be more clearly defined. Support should be given to financially eligible persons for divorce, spousal maintenance and division of assets.
- Coverage for *Family Violence Protection Act* (FVPA) cases.
One respondent stated that 95 percent of battered women who would benefit from civil orders under the FVPA would meet legal aid financial eligibility guidelines, but there is no coverage. There is no emergency legal aid available to victims in the same way it is to the accused under the Act. Furthermore, although emergency legal aid is available to accused persons in criminal cases during extended holiday periods, it is not available for cases under the FVPA.
- Although small claims courts are relatively accessible by individuals requiring summary information and support, it is not feasible for the working poor to initiate claims in the \$5000 to \$20,000 range. The amount paid to a private lawyer would likely exceed the amount of the claim.
- A Whitehorse courtworker has in the past assisted unrepresented litigants with both family and civil processes, with some assistance from and referrals to YPLEA. However, criminal law demands have forced her to withdraw from this work. She feels there would be ample demand to warrant a full-time civil courtworker, if training were available. Several legal professionals felt that there was no reason, given appropriate training, why courtworkers should not undertake civil/family functions. YPLEA also provides information in family cases, as described in Section 9.0.

6.5 Delivery Strategies

Several strategies for more effective delivery of family/civil were discussed in the focus group. These included:

- Funding custody, access and support issues to the final order stage.
YLSS is currently doing this on a merit basis and will be able to continue doing so if the current YTG funding support continues.
- Storefront services combining some YPLEA information functions with advice functions under a supervising lawyer.
This approach has been under active consideration and will likely be discussed further within YPLEA and/or YLSS, as described in Section 9.3.2.
- Co-ordinated family court.
This type of court would likely make more efficient use of legal aid funds, but its implementation is outside the control of YLSS.
- Earlier legal aid intervention in child welfare cases.
While earlier intervention could well lead to more effective assistance for clients, a modality for effecting earlier intervention has not been determined.



7.0 Current Scope of Activity Prior to First Appearance

Staff and private lawyers (on contract) are assigned duty counsel responsibilities for four weeks at a time. These duties include:⁵

- Immediate summary advice by telephone to arrested and detained persons throughout the Yukon (whether youth or adult and whether under criminal, mental health or other legislation) while on-call during week-ends (from 5:00 p.m., Friday, until 8:30 a.m. Monday), holidays (5:00 p.m. the previous day until 8:30 a.m. the following day), and weeknights (from 5:00 p.m. until 8:30 a.m.);
- Representation of all detained persons brought before a Justice of the Peace, Territorial or Youth Court sitting in Whitehorse for hearing into the matter of judicial interim release;
- Summary advice to all persons appearing without counsel at the Adult and Youth criminal docket of the Territorial Court sitting in Whitehorse and seeking adjournment to make application for legal aid; and
- Summary sentencing where matters can be completed within a reasonable time frame within the parameters of Adult and Youth docket court.

Courtworkers also receive calls from detained persons who prefer to talk to a courtworker rather than a lawyer or who can't reach a lawyer. In these situations courtworkers' roles may include:

- Explaining the charge and/or reasons for arrest and detention;
- Explaining the purpose and process of show cause;
- Helping clients to prepare for the show cause;
- Referral of clients to legal aid;
- Contacting family and friends, and explaining release conditions; and
- Listening to clients and trying to diffuse their anger.

Although YLSS provides for a lawyer to do show cause hearings in all cases, one senior courtworker would very occasionally do a show cause hearing if the client was unwilling to work with a lawyer (she has not undertaken any such cases in 2002).

7.1 Statistical Data

Show cause hearings are not recorded as a separate activity in duty counsel reports, so these data are not available. Duty counsel assisted 587 clients in 1999–2000, 800 in 2000–2001, and 1064 in 2001–2002,^{*} but no breakdown of data by client or case is available.

⁵ From March 26, 2002 correspondence from YLSS Executive Director to duty counsel lawyers.

^{*} See note 4 to Table 3.

7.2 Issues Prior to First Appearance

Respondents identified the following issues affecting the client or representation of the client:

- Contacting counsel during day hours.
As shown in Section 7.0, duty counsel are on-call in the evenings but have responsibilities in court during the day. Almost all respondents said there was almost no problem contacting counsel from cells at night, but there was frequently difficulty during the day. Often RCMP will phone another staff lawyer, or even a private lawyer during the day, but this is not a recoverable expense. Some respondents advocated a type of *Brydges* hotline for calls during the day.
- Show cause hearings.
Although Court Services does not keep statistics on show cause hearings, respondents indicated that the vast majority of show cause hearings are heard in Whitehorse before a justice of the peace. This pattern occurs for one or more of the following reasons: 1) in a given community there is no JP who can conduct a show cause hearing; 2) there is no facility in which to detain the accused person on an around the clock basis, and/or 3) the lawyer is unwilling to conduct a show cause by phone (see below). If a telephone show cause hearing cannot be arranged and there is a strong likelihood that the person will continue to be detained, he/she will be flown to Whitehorse for the show cause. Detained persons who are subsequently released are often without resources, but have to make their way back to their communities at their own expense. This situation is clearly distressing for the charged individual, and, in some cases, is felt to lead to further crimes. The problem is still under active consideration by several parties in the social and criminal justice systems, but is largely beyond the purview of the legal aid system.

Approximately 10 percent of show cause hearings are done by a telephone conference call involving the JP (either in the community or, more frequently, in Whitehorse), RCMP, Crown, defence counsel and the accused. Some respondents felt this system was inadequate for proper representation because disclosure was often not made until moments before the call; because it was not possible to speak separately with the client; and because it was difficult to assess client comprehension by phone. One respondent said he would refuse to do telephone show causes, and would insist that the client be brought to Whitehorse.
- Delay in receiving disclosure.
Several respondents claimed that Crown disclosure often occurs at the last moment, leaving defence inadequate time to consult with and receive information from clients, and necessitating an adjournment of the show cause.
- Lack of summary advice.
It appears that duty counsel offer differing levels of client support to persons who may already have appeared in court (i.e., are not at first appearance). Some will offer whatever summary advice they can to any accused person who requests services, and make referrals, if appropriate, to YPLEA. They feel that if defence counsel are already in court and are able to assist an individual in other ways, they have an ethical obligation to do so (see also comments regarding the wider range of assistance offered on circuits, Section 3.2). Others take a narrower view and limit their advice and assistance to case-related matters for arrested and detained persons, representation in show cause hearings, and assistance with adjournments pending a legal aid application.



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- Choice of counsel.
One respondent felt that clients do not get any choice of counsel, because duty counsel will automatically follow through with clients they have served as duty counsel, even if an individual has used the services of another lawyer on a previous occasion. The YLSS executive director states that, in fact, if a client has previously used and prefers a given lawyer who does legal aid work, he/she will be assigned that lawyer whenever possible.
 - Lack of telephone in duty counsel room in Whitehorse.
One respondent felt that it was an impediment not to have a phone in the Whitehorse duty counsel room. It can be difficult to manage logistics, especially if the duty counsel lawyer has cases in both JP and Territorial courts.

8.0 Interplay Between Criminal and Civil Issues

The original intent here was to explore whether criminal and civil matters are interconnected, and if more adequate coverage of or earlier response to either type of issue might forestall the need for coverage of or response to the other. This matter cannot be examined in a useful way through a file review, to explore the impacts on non-coverage in one or other area, because, by definition, if there was no coverage there was no file to be reviewed.

The main pattern described by respondents was one in which family disputes lead to domestic assaults, abduction of the child, seizure of property, or other crimes. Respondents emphasized two aspects: that the disputes usually involve children, and usually involve alcohol. Respondents felt that a more holistic approach was required to help break the pattern. The Domestic Violence Treatment Option Court (and defence counsel's involvement in it) is considered a step in this direction. In the communities, a community justice co-ordinator sometimes offers counselling to help clients understand the larger picture, and to break the cycle that could lead to criminal incidents.

These patterns speak to the importance of increased legal aid at the final order stage so that disputes are not perpetuated; and of extending coverage to division of assets and property, and to victim assistance orders under the *Family Violence Protection Act*.



9.0 Public Legal Education and Information (PLEI)

9.1 Extent of PLEI Activities in the Yukon Territory

PLEI is provided in two ways in the territory. The first is through Yukon Public Legal Education Association (YPLEA), for which PLEI is the central focus. The second is through a range of criminal justice and social professionals, for whom PLEI is usually a secondary or even minor focus.

9.1.1 Yukon Public Legal Education Association

YPLEA is a non-profit organization that provides legal information to the public, in order to promote understanding of and access to the legal system.

Its main and best-known service is the Law Line, a 1-800 service that responds to callers from throughout the Yukon, providing free legal information on a range of issues. Table 18 shows that 38 percent of Law Line issues over the past three years have related to family matters, approximately 44 percent to other civil matters (consumer, contract, personal injury, landlord-tenant, wills and estates), and the remainder to criminal law and procedure issues.

Table 18: Yukon Public Legal Education Association Law Line Statistics: Type of Request					
Area of Law Requested	1999 – 2000	2000 – 2001	2001 – 2002	All Three Years	
				Total	%
Family Law	1014	954	786	2454	38%
Civil Litigation	421	381	375	1177	18%
Lawyers	108	80	7	195	3%
Personal Property	27	23	0	50	1%
Consumer	55	59	44	158	2%
Employment	62	59	58	179	3%
Administrative Law	-	7	31	38	1%
Wills & Estates	160	142	110	412	6%
YPLEA	-	13	-	13	0%
Criminal Procedure	136	79	155	370	6%
Crimes	0	55	130	185	3%
Landlord and Tenant	66	113	89	268	4%
Workmen's Comp.	-	11	0	11	0%
Motor Vehicle	43	19	0	62	1%
Real Estate	49	73	65	187	3%
Legal Aid	-	8	0	8	0%
Child Welfare	-	10	0	10	0%
Commercial Issues	24	50	101	175	3%
Yukon Statutes	71	47	89	207	3%
Bankruptcy	69	88	26	183	3%
Government	-	7	0	7	0%
Sentencing	-	6	0	6	0%
Aboriginal Issues	-	6	0	6	0%

Type of Request	2001–2002	2002–2003	2003–2004	Total	Percentage
Law-related Ed.	44	31	0	75	1%
Social Assistance	-	-	3	3	0%
	2349	2321	1769	6439	99%

Notes:

1. Source: YPLEA Annual Reports. For 2001–2002; data were compiled from monthly statistics.
2. Percentages do not total 100% due to rounding.

Table 19 shows that 87 percent to approximately 96 percent of the calls in the past three years have been from Whitehorse, although virtually all communities have used the service. Approximately 10–15 percent of overall requests are estimated to be from Aboriginal callers. The fact that the Whitehorse proportion of calls appears to be increasing is understandable given YPLEA’s location, but given that the Law Line is a 1-800 service, more publicity and/or community outreach could increase knowledge of the line and its accessibility to outlying communities. In many of the outlying communities, the caller was from a First Nations office, acting as an intermediary for an individual in the community.

In addition to the 2500–2800 annual telephone or mail contacts, there are approximately 200–250 in-person requests at the YPLEA office. This number is likely far below potential demand, because of the office’s location, far from downtown, on the Yukon College campus.

Method of Request	1999 – 2000	2000 – 2001	2001 – 2002
Phone	2817	2466	2221
Office	210	251	340
Other	0	50	10
Location			
Beaver Creek	8	0	0
Burwash	2	2	0
Carcross	9	7	2
Carmacks	11	9	0
Dawson City	124	90	11
Faro	30	25	3
Haines Junction	27	19	7
Mayo	18	13	3
Pelly Crossing	0	2	0
Ross River	0	2	0
Tagish/Marsh Lake	8	3	2
Teslin	19	7	4
Watson Lake	81	68	19
Whitehorse	2678	2270	2233
Old Crow	4	7	1
Out of Yukon	61	48	23
Yukon	-	-	164
Other, not specified	-	-	32

Notes:

1. Source: YPLEA Annual Reports. For 2002—2002; data were compiled from monthly statistics. The figures are reported as found, but it should be noted that the total of “method of request” is not identical to the total of “locations” in any of the three years.



2. Percentages of contacts by phone were 93 percent in 1999–2000, 89 percent in 2000–2001, and 86 percent in 2001–2002.
3. Percentage of calls from Whitehorse, of total locations for 1999–2000, was 87 percent, for 2000–2001 was 88 percent, and for 2001–2002 between 89 percent and 96 percent (depending on whether “Yukon” and “not specified” calls are considered to be Whitehorse).

Other activities of YPLEA over the past several years include:

- Training with local support groups on child support laws.
- Resource centre/library of legal materials for public use.
- Distribution of materials:
 - There are law-related materials, from a variety of sources, that can be distributed both to callers and, proactively, to front line service providers.
- Administrative law training:
 - YPLEA has developed and has provided training on fundamental principles of administrative law to various government boards and individuals.
- Participation in an annual Maintenance Enforcement information session.

9.1.2 PLEI Activities by Criminal Justice System Workers

Most respondents described activities that can be considered as “public legal education.” While seldom a major focus for any given person, collective examples of activity are shown in Table 20. In general, the major focus of PLEI for legal professionals (defence lawyers, Crowns and judges) is on substantive law and procedural issues; for RCMP officers, it is prevention; and, for other players (courtworkers, community justice co-ordinators and social agencies), it tends to be somewhat more diverse and holistic, crossing both justice and social issues. Most groups perceive their PLEI roles not just in terms of the general public, but also in terms of individual one-on-one contacts and education of or participation in intermediary service provider groups.

Table 20: Focus of PLEI Activity by Study Respondents			
Respondent	Typical focus of information	Typical target group	Examples provided by respondents
Defence Bar (staff and private)	<ul style="list-style-type: none"> • Substantive law • Procedures • Referral information 	<ul style="list-style-type: none"> • Clients 1:1 • Intermediary organization or service providers • General public 	<ul style="list-style-type: none"> • YPLEA (Board), JP college • Law Day, media
Judges	<ul style="list-style-type: none"> • Substantive law • Court system 	<ul style="list-style-type: none"> • Intermediary service providers • General public 	<ul style="list-style-type: none"> • Lawyers • School
Crown Counsel	<ul style="list-style-type: none"> • Substantive law • Referral information • Court system 	<ul style="list-style-type: none"> • Intermediary service providers • General public 	<ul style="list-style-type: none"> • YPLEA (Board), JP College, Territorial Court Users Committee • Law Day, francophone community

Table 20: Focus of PLEI Activity by Study Respondents			
RCMP	<ul style="list-style-type: none"> • Prevention • Procedures • Legislation • Referral information 	<ul style="list-style-type: none"> • Individual 1:1 (accused and victims) • General public • Intermediary service providers 	<ul style="list-style-type: none"> • Schools, service clubs, senior citizens groups, First Nation organizations (Neighbourhood Watch, Crimestoppers); pamphlets • Justice committees
Courtworkers	<ul style="list-style-type: none"> • Substantive law • Court process • Restorative justice • Referral information 	<ul style="list-style-type: none"> • Clients 1:1 (accused and victims) • Intermediary service providers • General public 	<ul style="list-style-type: none"> • Justice committees • Community meetings
Community Justice Co-ordinators	<ul style="list-style-type: none"> • Restorative justice • Family violence, grief, child custody • Referral information 	<ul style="list-style-type: none"> • Individuals • Intermediary service providers • General public 	<ul style="list-style-type: none"> • Justice committees • Community groups
Social Agencies	<ul style="list-style-type: none"> • Advocacy (family violence, women's rights, sexual assault) • Court procedures, legal rights • Referral information 	<ul style="list-style-type: none"> • Clients 1:1 • General public 	<ul style="list-style-type: none"> • Community radio, pamphlets, meetings

9.2 Linkages

As shown in Table 20, some of the respondents expressed their PLEI activity in terms of formal linkages with YPLEA, schools, JP training, court committees or community justice committees.

Referrals are another form of linkage. The predominant referral patterns were to legal aid, the Law Line, or the Lawyer Referral Service. However, in virtually all respondent groups, there were individuals who had not referred clients to YPLEA or the Law Line.

9.3 Unmet PLEI Needs

PLEI needs, identified by respondents, can be grouped into two categories: substantive and procedural information needs, and access and delivery needs.

9.3.1 Substantive and Procedural Information Needs

The key substantive law information needs were perceived to be for:

- A range of family law issues, e.g., how to do your own divorce/ how to deal with property issues, domestic violence legislation.
- The implications of plea (e.g., in impaired or firearms cases). As noted in Section 7.2, this information is not consistently offered prior to first appearance for persons who have not been detained, and yet is of major importance to them.
- Employment standards.
- Landlord-tenant information.
- Individual versus community rights.



With regard to procedural information, the needs identified by respondents were for information about how to contact and apply for legal aid, and step-by-step information on how court processes work for any given matter.

Several respondents noted that, in civil and family matters, what clients want is more than simply information. They want to weigh the implications of certain choices, discuss strategies and plan next steps – because they do not meet legal aid financial criteria or their matter is not covered by legal aid. Because many cannot afford a lawyer, and are unrepresented litigants, their real need is for summary advice. Depending on their skills, courtworkers will try to respond to this middle zone of needs. The same type of pressure is often felt by PLEI providers, and is one of the reasons to consider a closer collaboration with YLSS.

9.3.2 Access and Delivery Needs

Many respondents spoke strongly of the desirability of moving YPLEA from its present location at the Yukon College campus to a downtown location, either within the court building or in a storefront operation in close proximity to the courts, YLSS, courtworkers and several social service agencies. Various respondents expressed opinions that such a move would:

- generate better use of YPLEA's legal resource material;
- provide the YPLEA staff person quicker access to legal resources within the courthouse and YLSS; and
- create increased capacity for on-the-ground co-ordination and cross-referrals between YLSS, courtworkers and YPLEA.

Such a move has financial implications in terms of office rental costs (the space at Yukon College is free) and the likelihood that service demands (and therefore staff requirements) would increase.

In a similar vein, several respondents felt accessibility for both YPLEA and other PLEI deliverers could be improved by:

- outreach to outlying communities and/or to intermediary organizations (e.g., social agencies, First Nation offices, local mayoral and council offices);
- an emphasis on plain language for any written materials;
- participation in training of intermediaries; and
- the use of non-written methods (video, radio, TV) of conveying legal information.

Responding to the need of clients for summary advice (as discussed in the previous section) would require a change of mandate for YPLEA, the hiring of a supervising lawyer and/or the development of a supervisory relationship with YLSS. There will likely be further dialogue this fall within YPLEA and/or between YPLEA and YLSS to explore some of these access and delivery options.

10.0 Cost Drivers

This section focuses on factors that drive costs of providing legal aid in the Yukon Territory. One component of these factors – federal and territorial legislation and policies – is dealt with separately in Section 11.0.

10.1 Geography and Community Size

Although, with the exception of Old Crow, communities in the Yukon Territory are significantly better serviced by road than communities in the Northwest Territories or Nunavut, geography is still a major driver of costs for the legal aid system. All communities outside of Whitehorse are served by circuit courts rather than resident courts, so the entire legal aid system is adapted to this reality (see description in Section 3.0). Virtually all respondents felt that travel time and costs add disproportionately to the legal aid budget, as compared to southern jurisdictions. Circuit travel expenses alone comprise 3 percent of YLSS expenses, but factoring in lawyers' time on the road, it is estimated that circuit expenses account for approximately 5–10 percent of the legal aid budget.

Geography has also impacted delivery of PLEI and courtworker services. The Law Line is seen as the most cost-effective way of reaching individuals outside of Whitehorse, but direct outreach to these communities is not feasible on the current budget. Similarly, the courtworkers based in Whitehorse used to be able to spend several days in each community on their circuits, which allowed them to do training with local groups, undertake PLEI, and meet more substantially with clients to help prepare cases. They now have time only to serve the communities on the circuit court days, or the evenings before.

The community-based courtworkers (see Table 8 in Section 4.1) are a response to geography and cultural/political forces but, in most cases, only work part-time. In one case, a part-time worker is required to serve three communities. In two cases, the part-time courtworker position is combined with a part-time community justice co-ordinator position to make one full-time position.

10.2 Demographic and Socio-economic Factors

Respondents cited a number of demographic and socio-economic factors that they felt disproportionately drive legal aid costs in the Yukon, as compared to southern jurisdictions:

- A large seasonal workforce and a high proportion of unemployed.
For example, the December 2001 unadjusted unemployment rate for the Yukon was 9.5 percent, compared to 7.6 percent for Canada as a whole, and in August 2002 was 8.4 percent, compared to 7.7 percent for Canada. As in the rest of Canada, employment tends to peak in summer in the Yukon, but the peak is more pronounced in the Yukon than in Canada as a whole. For example, the employment rate was 4.2 percentage points higher in the Yukon in August 2002 than in December 2001, versus 3.0 percentage points in Canada as a whole. These patterns drive legal aid costs insofar as both unemployed and seasonally employed (summer only) individuals are more likely to meet legal aid financial eligibility requirements.
- Higher per capita crime rates and rates of violent crime.
Crime rate statistics compiled by the Yukon Bureau of Statistics for the years 1995–2000, based on Statistics Canada reports show that the Yukon:
 - Led all Canadian jurisdictions except the N.W.T. in overall reported crime rate (ranging from 20 to 25 incidents per 100 residents, compared to the next closest, B.C. and Saskatchewan, at



12–15 incidents). The Yukon’s clearance rate for these incidents, at approximately 50 percent, was equal to or higher than all jurisdictions except the N.W.T. and Nunavut.

– Led all Canadian jurisdictions except the N.W.T. and Nunavut in reported violent incidents rate (ranging from 3 to 3.2 incidents per 100 residents, compared to a range of 1 to 1.7 per 100 residents for the provinces). The Yukon clearance rate for these incidents (between 70 and 80 percent) was comparable to that of most provinces.

– Led all jurisdictions (except B.C. in two years) in reported property incident rates (ranging from 7 to 9 incidents per 100 residents, compared to less than 6 for all jurisdictions except B.C. and the N.W.T.). Clearance rates, at 25–35 percent, were in the middle range for most jurisdictions.

– Led all jurisdictions (except Saskatchewan in three of the six years) in reported *Criminal Code* traffic incident rates (ranging from 1.2 to 1.5 per 100 residents, compared to less than 0.7 for all jurisdictions except Saskatchewan and the N.W.T.).

Insofar as these incidents and (in most cases) higher clearance rates lead to charges and possible jail sentence, there are increased demands on the legal aid system.

- Higher per capita alcohol consumption.

Canadian Community Health Survey data from September 2000 to November 2001 reveal that on two alcohol consumption indicators, Yukon residents are second only to the N.W.T. among all Canadian jurisdictions. The Canadian average daily alcohol consumption is 0.52 drinks. The Yukon average is 0.62, or 119 percent of the Canadian average. The Canadian average for number of drinks consumed in the past week is 3.88. The Yukon average is 4.62, again 119 percent of the Canadian average (data supplied by the Yukon Bureau of Statistics). Several estimates by respondents placed the proportion of young people in courts who have fetal alcohol effect (FAE) or fetal alcohol syndrome (FAS) at 75–100 percent. FAE and FAS are seen to impact legal aid costs through higher rates of crime and higher rates of “no show” or absenteeism at court appearances – thus requiring more adjournments and higher rates of breaches, thus leading to more frequent court appearances and difficulties in getting clients released “on condition” in future cases. FAE/FAS clients are also felt to consume more lawyer time for explanations of processes and for referrals to or co-ordination with other resources.

- A higher divorce or separation rate.

Statistics Canada data for the period 1994–1998 (catalogue no.84F0213XPB) show that the Yukon’s crude divorce rate (number of divorces per 100,000 population) is significantly higher than any other Canadian jurisdiction’s (ranging from 313 to 370 per 100,000 in the five-year period, compared to those for all provinces, whose rates are well under 300 in all years, except for B.C. and Alberta in 1994). The Yukon Territory is also highest of all jurisdictions in the 30-year total divorce rate (the proportion of married couples who are expected to divorce before their thirtieth wedding anniversary). The Yukon rate ranges from 464–561 per 1000 marriages over the five-year period. The next closest province is Quebec, which ranges from 438–500. Family break-ups in the Yukon can also involve cases that are more complicated than in southern jurisdictions, because the spouse will frequently move to live with family in the south where he/she has support. This move will often be opposed by the other spouse because he/she fears total loss of contact with and access to the child(ren). Applications will often involve inter-jurisdictional issues.

- Residential school syndrome and volume of child welfare cases.

Residential school syndrome is seen to be a contributing factor to the relatively high volume of child welfare cases, family violence and civil/criminal matters. Child welfare cases often involve more than one defence counsel and, to minimize impact on parents, may involve as many as five pre-trials. A wardship application may involve five court sitting days. These demands bear directly on legal aid time and costs.

- Self-government negotiations.
This ongoing process may involve future transfers of justice administration functions to local First Nations, which may involve increased legal aid expenditures. Theoretically, this could mean there would be 14 separate programs, with funding for legal aid divided between them. However, it is extremely unlikely that this would happen, because of the difficulty in finding lawyers to reside in the smaller communities, and because the legal aid budget would have to be divided into 14 part-time positions. If a decentralization of the legal aid budget were to occur, it would more likely take the shape of a number of First Nations sharing a legal aid lawyer. This does not appear to be a prospect in the near future.

10.3 Corporate Factors

The strengthening of the staff system of legal aid outlined in Section 2.2.2 was necessary because, corporately, YLSS was not able to compete with private, federal Department of Justice or territorial Department of Justice pay and benefit scales, and thus was constantly losing staff. The adjustments that have been made since the Operational Review in 2000 reflect the high cost of doing business in the Yukon compared to southern jurisdictions.

10.4 Other Contextual Factors

The main implications of the court delivery system have been examined in Section 2.0 (court structure), Section 3.0 (circuit courts), Section 5.0 (JP court) and Section 6.0 (civil matters). Other contextual factors cited by respondents as driving the cost of legal aid delivery are:

- Unrepresented litigants.
Although unrepresented litigants primarily impact court costs, in the civil area they often drive legal aid costs because, as counsel for one party in the dispute, a legal aid lawyer may have to deal with an unrepresented litigant. This often involves more adjournments and court appearances because of the unrepresented litigant's lack of knowledge about procedures and law. Refusal of a civil legal aid application on financial grounds may thus still indirectly contribute to higher costs of representation of eligible clients.



11.0 Federal and Territorial Legislation and Policies

The following federal and territorial legislation and policies were identified as key drivers of legal aid costs in the Yukon Territory:

- Resources of Crown counsel.
As noted in Section 10.3, the YLSS had lost several staff lawyers prior to the Operational Review in 2000. Three of those losses were to the federal Department of Justice as Crown counsel. YLSS feels strongly that the business case that was made to the federal Department of Justice to increase prosecution resources should apply equally to the resources required for the legal aid system. An increased capacity to prosecute “marginal” cases, to pursue appeals, and/or to bring expert witnesses or other resources to support the prosecution’s case inevitably has a direct impact on legal resources required for YLSS to mount an appropriate and adequate defence.

- Commitment to alternative sentencing procedures.
The combined impact of the *Gladue* decision, the revisions to the *Criminal Code* (section 718.2 e) requiring consideration of all available sanctions other than imprisonment (especially for Aboriginal offenders), and the commitment of the Territorial Court bench to ensuring that such alternatives are fully considered, are seen by respondents to significantly increase the time required of defence counsel in preparation for and during sentencing. Respondents felt that, because of the high expectations and proactive nature of the bench, average sentencing processes for Aboriginal offenders take longer than anywhere else in Canada, even if a sentencing circle is not involved. Because of the limited capacities of some communities to provide resources to support an offender, sentencing processes can take even longer to develop a workable plan.

It was suggested that it is not essential that legal aid lawyers participate in the entire process for *Gladue* sentencing. Rather, their role should be to ascertain clearly at the beginning of the process whether the client wants to participate in a sentencing circle, and to explain what the outcome would likely be if the individual were to proceed within the mainstream court process. If the offender elects to proceed by circle, the legal aid lawyer would no longer be involved, and the courtworker would become the main source of support as a “defence” representative within the larger circle process. (As noted in Section 4.3, working with First Nations in Aboriginal justice processes is one of the roles of courtworkers.) Another variant would be to have “pre-circles” prior to formal sentencing that would not involve the full court party. Recommendations from this circle could then be incorporated in the court-based sentencing hearing.

- Spousal assault charging and prosecution policy.
Some respondents felt that spousal assault mandatory charging policies result in charges that stand little chance of being successfully prosecuted, but nonetheless incur legal aid expenditures.
- Over-policing.
Some respondents felt that, compared to southern jurisdictions, the Yukon is over-policed. These results in higher detection and charge rates, which ultimately involve higher legal aid expenditures (see comments in Section 10.2 concerning incident and clearance rates).

- Federal weapons legislation.
Federal firearms legislation is believed to have contributed to increases in weapons-related offences and associated defence costs.
- Forensic DNA analysis legislation.
Although not seen as a major cost driver, nor one disproportionately affecting northern jurisdictions (except for the cost of hiring expert witnesses), the inclusion in the *Criminal Code* in the latter half of the 1990s of provision for DNA analysis was felt by one respondent to contribute to increased defence costs.
- Crown case assignment and handling procedures.
Several respondents felt that Crown case assignment and handling procedures in Whitehorse have resulted in inefficient use of time for defence counsel. They said that Crown are not consistently assigned to the same case, that they often arrive at show cause hearings at the last minute, and that they are often late in providing disclosure. Under these circumstances, defence counsel are given insufficient time to review disclosures and talk with their clients, thus necessitating adjournments.
- Domestic Violence Treatment Option Court and Youth Justice Panels.
As noted in Section 2.2.1, both of these initiatives are seen to slightly increase defence time expenditures. The comments in regard to a potentially more limited role of defence counsel in sentencing circles could also apply to the front end of these processes as well. For example, in the Youth Justice Panel, if the client wants to plead guilty right away, the defence lawyer would clarify the implications of a guilty plea, and the client would proceed through the panel. If the client states that he/she is not guilty, the lawyer would examine the disclosure and discuss the evidence with the client; if appropriate, offer to see if the panel would accept the client; and, after obtaining this information, discuss alternative outcomes with the client. If the client still wants to plead not guilty, the defence lawyer would proceed with the case; otherwise the client would go through the panel without further legal aid involvement.
- Reductions in defence time requirements.
Two respondents identified changes that they felt helped decrease demands on defence counsel. The first identified *Criminal Code* changes (section 499.1) that enlarged police officers' options for releasing offenders (lessening the need for show cause hearings). The second felt that the *Young Offenders Act* had led to more diversion of youth matters, thus decreasing the need for defence counsel.



12.0 Conclusions

The primary conclusions that emerge from this study can be described in terms of three sets of needs: corporate, Aboriginal and gender. They are described below:

12.1 Corporate Needs

Corporate needs are those that speak to the viability of the basic legal aid delivery structure. YLSS was in crisis prior to the Operational Review in 2000, but has since achieved stability through a variety of measures fortifying its staff model of delivery. As noted in Section 2, this accomplishment has been at the cost in part of the ongoing deterioration in the private bar's participation in legal aid delivery. Of even more significance, it could not have occurred without the YTG significantly increasing its share of the federal /territorial contribution to the operation of YLSS, which now stands at 69 percent, compared to 50 percent four years ago. Given that YTG's increase was required to address the most basic of corporate needs, i.e., the ability to retain staff, a rebalancing of federal/territorial contributions would seem an essential starting point in future Access to Justice Agreement negotiations. A second basic corporate need would be a mechanism to achieve ongoing parity with prosecution services funded by the federal Department of Justice. As pointed out in Sections 2, 10 and 11, increases in Crown counsel resources have direct impacts on the quality of service expected of legal aid.

12.2 Aboriginal Needs

As noted in Section 1, this study did not involve client surveys that could have characterized clients' individual and collective experiences with the delivery system, and the contexts of clients' lives that generate needs for legal assistance. Nonetheless, three strongly emphasized themes have significance for First Nations individuals in particular.

The first is the recognition of the need for increased emphasis on Native courtworker training. This acknowledges courtworkers' role as a cultural bridge between the court system, First Nation clients and their communities, as well as pressures to undertake more court-based roles such as speaking to sentence and plea.

The second theme is the anticipated expansion of JP court functions in outlying communities throughout the territory. Insofar as First Nations individuals comprise a majority of the population in over half these communities, the ability of YLSS and/or courtworkers to serve regular JP courts in between Territorial Court circuits is directly related to serving Aboriginal needs.

The third theme, raised at various points in this study, is about client needs for increased time and support. Part of this theme concerns the hurried pace of legal aid and courtworker interactions with clients on circuits. Although the pace of court work in southern jurisdictions is also often highly pressured, the specific context in the Yukon is one of isolated communities, lack of alternative resources for clients, and a lack of readily accessible PLEI. Another part of this theme concerns requests to courtworkers by First Nation clients for help with civil and family matters, to which they have generally not been able to respond, either because of lack of experience or lack of time. A third has been the fact that YPLEA, although reaching some clients in outlying areas through the Law Line, has not been able to do any systematic outreach outside of Whitehorse.

12.3 Gender Needs

Statistics on the gender of YLSS or YPLEA clients were not available for this study. Nonetheless, it is generally accepted that a large majority of clients in criminal matters are male (reflected in courtworker statistics in Table 10) and a majority of clients in family matters tend to be female. Even though YLSS service has significantly increased in family matters in the past year, that capacity is dependent on the YTG's continued high contribution level to YLSS, and/or an increase in the federal proportion of contributions.

Concerns having a bearing on gender were expressed in several ways. Many respondents, including focus group participants, felt that funding for family matters should be extended to all final orders, as opposed to interim orders, or final orders in selected cases only. It was noted in Section 6 that the proportion of legal aid refusals, both for coverage and financial reasons, is much higher for family matters than for criminal. One senior courtworker described a frequent demand for assistance in family matters, which she has been unable to meet. Alternative means of settling family matters without trial, and this need, were rated highly in the focus group. Such approaches should not be seen simply as financially expedient but also, if implemented with sophistication and attentiveness to power imbalances, as ways of addressing needs more holistically and compassionately. Another frequently expressed need, in relation to YPLEA, was for summary advice, rather than just information, to assist unrepresented litigants to pursue their cases more effectively.



Appendix 1: Summary of Legal Aid Focus Group Whitehorse, Yukon* August 7, 2002

1.0 Purpose

The purpose of the focus group was to reflect on the priority, rationale, and strategies that should be assigned to 29 legal aid needs in the Yukon. These needs had been identified through 44 respondent interviews and were listed in a document distributed to participants. This list was in turn drawn from a summary of a July 16 document entitled “Study of Legal Aid: A Point Summary of Findings to Date on Ten Research Issues.” Both the needs list and the summary document were sent, together with an agenda, to participants a week in advance of the meeting.

2.0 Participants

Twelve participants were invited to the meeting, all of whom attended. They were selected with several principles in mind:

- representation of different sectors of the criminal justice system
- representation either of activity governing the Yukon as a whole, and/or of activity in a variety of communities
- Aboriginal representation
- gender balance
- direct “front-line” experience
- substantial exposure to legal aid clients and/or legal aid issues
- ability to reflect on either/both criminal and civil (including family) issues
- ability to discuss matters in “systems” terms rather than solely as representatives of a particular constituency.

The participants were:

- Executive Director of Yukon Legal Services Society
- Director of Court Services (YTG Justice)
- Manager, Financial Services (YTG Justice)
- Executive Director of Yukon Public Legal Education Association
- Staff lawyer, YLSS, serving six communities
- Chairman, YLSS (and private lawyer)
- Courtworker serving five communities

* Note: this appendix is a slightly adapted version of the report of the focus group sent to the Department of Justice in mid-August, 2002.

- Director of Justice Programs, Kwanlin Dun First Nation
- Chief Judge, Territorial Court
- Special Project Co-ordinator, Victim Services, Family Violence Prevention Unit
- Director, Kaushee's Place (Women's Transition Centre)
- Crown Counsel (and former staff lawyer with YLSS).

3.0- Meeting Format

The meeting was divided into two parts, each one and three quarter hours in length.

Part One:

Following introductions and explanations, participants were asked to complete the rating document shown in Appendix 1. They then each explained the underlying principles or rationale that guided their assignment of priorities. Participants were free to change their ratings at any point in this discussion.

Part Two:

During the break the average ratings for each of the needs on the list were calculated and written on flipcharts. Participants were asked to suggest strategies and resources that would need to be mobilized to address the issues that had been rated the highest.

4.0 Results of the Focus Group

Averages of priorities assigned to each need are presented in descending order in Table 1. It should be emphasized that, because of the small group size, the notion of an "average rating" is very tenuous. Average ratings could have changed significantly with the addition of even a few more respondents; a single low rating could significantly lower the average of higher ratings by the majority of respondents. The ratings, although of interest in themselves, were intended as a reflective and discussion-generating process rather than as a planning process.

**Table 21: Average Priority Assigned to Legal Aid Needs by Focus Group Participants**

Applicable Sections Describing Issue in this Report		Need/Issue	Average on 7 pt scale: 1 = not important 7 = extremely important	Number of Respondents	Range of Rating
4	1	Increase training of courtworkers.	5.8	12	3–7
6	2	Extend legal aid support to all final custody and access orders in family cases (rather than just interim orders).	5.8	12	3–7
6	3	Provide adequate financial support for processes to settle family cases without trial.	5.7	12	4–7
9	4	Increase PLEI on how court processes work.	5.7	11	4–7
10	5	Develop procedures that more fully take into account the needs of FAS/FAE clients.	5.7	12	1–7
9	6	Increase PLEI on how to access Legal Aid and legal assistance.	5.6	10	4–7
2	7	Raise financial eligibility cut-off points for receiving legal aid.	5.4	12	3–7
6, 10	8	Increase legal aid tariff to account for case work required to gather witnesses in wardship cases.	5.3	9	2–7
2	9	Strengthen private bar participation in criminal legal aid.	5.2	10	1–7
3, 6	10	Increase presence of courtworkers in all communities between circuits.	5.1	12	1–7
7	11	Provide funding for telephone contact from cells to duty counsel during daytime hours.	5.0	10	2–7
9	12	Move Yukon Public Legal Education Association to downtown location.	5.0	11	1–7
2, 7	13	Increase provision of summary advice by <i>all</i> duty counsel.	4.9	9	1–7
6	14	Simplify billing procedures for civil tariff cases.	4.9	7	4–7
6, 10	15	Extend legal aid coverage to divorce.	4.9	12	4–7
6, 10	16	Extend legal aid coverage to spousal maintenance.	4.9	12	1–7
2, 6	17	Strengthen private bar participation in civil legal aid.	4.8	10	1–7
6	18	Extend legal aid coverage to <i>Family Violence Prevention Act</i> orders.	4.8	12	1–7

Table 21: Average Priority Assigned to Legal Aid Needs by Focus Group Participants

Applicable Sections Describing Issue in this Report		Need/Issue	Average on 7 pt scale: 1 = not important 7 = extremely important	Number of Respondents	Range of Rating
7	19	Develop improved disclosure procedures with Crown.	4.8	12	2-7
9	20	Increase community outreach by YPLEA.	4.8	12	4-7
4	21	Increase co-ordination between courtworker structures and YLSS.	4.7	11	3-7
6, 10	22	Extend legal aid coverage to division of assets.	4.7	12	3-7
4	23	Increase courtworker assistance to clients in JP court cases.	4.4	10	1-7
9	24	Increase provision of summary advice through walk-in clinic.	4.3	10	1-7
7	25	Provide alternatives to telephone conferencing for show cause hearings.	4.2	9	2-7
6	26	Provide funding and training for a civil courtworker.	4.1	11	1-7
2	27	Increase tariff for mental health cases to account for need to attend case management meetings.	4.0	10	1-7
5	28	Increase lawyer representation in JP court cases.	3.5	11	1-5
6	29	Provide summary advice for "medium claims" cases (e.g., \$5000 to \$20,000).	2.8	9	1-5

In general, the order of the averaged ratings shows that the current priorities in the Yukon, as perceived by the focus group participants, are:

- Focussing on the training and roles of courtworkers (items 1 and 10).
- Increasing support for family law matters, especially for final orders and alternatives to court (items 2, 3, and 8).
- Increasing support, information and time spent with clients (including those who are not necessarily represented) in a variety of ways, including PLEI (items 4 and 6); and finding ways to deal with the needs of unrepresented litigants (item 7), or FAE/FAS clients (item 5).

The sense of priorities reflected by the focus group should also be considered in relation to the relative frequency with which issues were emphasized by the survey respondents, as identified throughout the body of this report.

4.1 Rationale for Priorities

Participants were asked to describe the main principles, philosophies or rationales that guided them in rating items. This was done for two reasons: (1) to foster discussion that might encourage participants to



revise their rating (somewhat like a mini-Delphi exercise) and (2) to suggest principles that should be considered if the federal government directs and targets new expenditures in the area of legal aid.

The following rationales were described by participants:

- To avoid trials.
 - Trials were seen as the single most costly element of the legal aid and court systems.
 - Any processes or procedures that could be changed in any way to reduce the likelihood of trials would allow for funds to be directed toward front-end activity (fuller assistance to clients, diversion, prevention, counselling or treatment).
- To encourage wider access to legal support in civil/family matters.
 - Communities are impacted significantly and families lack support to solve problems, manage separation, custody and access issues, wardship matters or law-related problems of poverty.
- To enhance capacity to serve specific needs of Aboriginal communities effectively.
 - This rationale was closely related to the conviction that courtworkers are the main vehicle for providing value-added service specifically for Aboriginal clients, and for complementing anticipated increases in the use of JP courts to serve smaller (and usually predominantly Aboriginal) communities. However, there was a general consensus that significantly improved training of courtworkers is necessary.
- To maintain vital private bar participation in the legal aid system.
 - This rationale wove its way through discussions of the major role the staff system plays in the Yukon. Among the important concerns were the likelihood that the staff system may become even more predominant; the need to have experienced senior counsel mentoring junior counsel, and the degree to which that is achieved in the current staff system; the “bureaucratization” of the private bar (i.e., in contract or staff work for all government departments); and the level of increase in the criminal and/or civil tariffs that might be needed to encourage more private participation.
- To effect system savings and financial stability.
 - This rationale underlays discussions of financing of courtworker programs, Crown disclosure procedures and charging practices, and unrepresented litigants.
- To devote adequate time/attention to clients, to develop their understanding and confidence in the system.
 - This rationale underlays discussions of the functions of courtworkers, the role of PLEI, the need for more civil/family assistance, and the role of summary advice.
- To address the needs of persons who do not receive legal aid, but who cannot afford representation.
 - This rationale related to discussions about unrepresented litigants, needs for PLEI and for summary advice, the role of courtworkers, the financial eligibility cut-off points, and the predominance of unmet needs in the family/civil area.

4.2 Strategies for Addressing Priority Issues.

The main strategies for the three sets of priority issues identified earlier in Section 4.0 are presented in Table 22.

Table 22: Strategies for High Priority Needs		
Need	Strategies/Resources	Advantages and Disadvantages (if discussed) or related comments
Courtworker training	<ul style="list-style-type: none"> Piggy-back courtworker training on to JP training and fund travel/accommodation costs for courtworkers. 	<ul style="list-style-type: none"> Advantage: training program already developed, quality resources will not be duplicated. Disadvantage: requirements will not necessarily be identical for JPs and courtworkers.
	<ul style="list-style-type: none"> Crown counsel and/or legal aid lawyer provide periodic training (e.g., every 3 months) to individual courtworkers in their own communities one or two days before regular circuit dates. 	<ul style="list-style-type: none"> Advantage: can cater to specific needs and level of skill of courtworkers <ul style="list-style-type: none"> regular reinforcement of knowledge based in community. Disadvantage: requires funding (e.g., accommodation) for lawyer/Crown and time.
	<ul style="list-style-type: none"> Training through courtworker national association. 	<ul style="list-style-type: none"> Advantage: caters to courtworker-specific issues. Disadvantages: not yet established <ul style="list-style-type: none"> may not completely address Yukon context.
	<ul style="list-style-type: none"> Certification of courtworkers to perform various levels of tasks requiring specific competencies. 	<ul style="list-style-type: none"> Advantages: helps to consolidate and reinforce a career path <ul style="list-style-type: none"> should include both educational and experiential (supervised) training. Disadvantages: will limit courtworkers from undertaking certain activities that clients request.
Increased support for civil/family law matters	<ul style="list-style-type: none"> Fund custody, access, support issues to final order stage. 	<ul style="list-style-type: none"> YLSS currently is able to do this on a merit basis and will continue to be able to do so if current YTG funding level continues.
Increased support for civil/family law matters cont'd.	<ul style="list-style-type: none"> Storefront service combining some YPLEA functions with supervising lawyers. 	<ul style="list-style-type: none"> Advantages: provides summary advice component that YPLEA not able to offer <ul style="list-style-type: none"> support to unrepresented litigants makes their use of court time more efficient can take selected family and civil law cases not currently covered by legal aid accessibility, visibility. Disadvantages: would cost approximately \$200,000.
	<ul style="list-style-type: none"> Co-ordinated family court. 	<ul style="list-style-type: none"> Advantages: more efficient use of legal resources. Disadvantages: beyond control of legal aid to effect this decision.
	<ul style="list-style-type: none"> Earlier legal aid intervention in child welfare cases. 	<ul style="list-style-type: none"> Advantages: possibility of arriving at agreement to put family supports in place and avoid court.



Table 22: Strategies for High Priority Needs

Need	Strategies/Resources	Advantages and Disadvantages (if discussed) or related comments
Increased time and support to clients	<ul style="list-style-type: none">• Storefront service as per previous point.	<ul style="list-style-type: none">• Same as for previous point.
	<ul style="list-style-type: none">• Increased courtworker role in pre-post diversion.	
	<ul style="list-style-type: none">• Lawyers and/or courtworkers attend circuit communities between circuits and/or a day before.	<ul style="list-style-type: none">• Advantages: fuller opportunity to explain procedures and discuss options with client<ul style="list-style-type: none">- fewer adjournments, greater efficiency in use of court time.• Disadvantages: extra cost especially between circuits<ul style="list-style-type: none">- scheduling problems for day-before approach if more than one community is on the circuit.