



LEGAL AID
RESEARCH SERIES

Nunavut Legal Services Study
Final Report



Nunavut Legal Services Study Final Report

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

AJA	Access to Justice Agreement (between the federal government and the GN)
CJC	Community Justice Committees
GN	Government of Nunavut
JP	Justice of the Peace
NCJ	Nunavut Court of Justice
NLSB	Nunavut Legal Services Board
NTI	Nunavut Tunngavik Incorporated
NU	Nunavut
NWT	Northwest Territories
YCJC	Youth Community Justice Committees

Executive Summary

INTRODUCTION

The Nunavut Legal Services Study was commissioned by the Department of Justice Canada in order to gain an insight into the state of legal service provision in Nunavut; the challenges faced by legal services providers (including the Nunavut Legal Services Board – NLSB); the cost drivers associated with legal service provision; the areas where unmet need for legal services exists; the impact of this unmet need on the individuals and communities involved; and the ways in which these challenges can be addressed.

The study focused on 10 issues, arrived at jointly by representatives from Justice Canada, the Nunavut Department of Justice, and the NLSB:

- the impact of court structure, geography, and culture on the demand for legal services, pattern of service delivery and quality of services;
- impacts of circuit courts on clients;
- the increased role of Courtworkers;
- unmet needs for legal representation in Justice of the Peace Court;
- unmet needs in family and other civil matters;
- unmet needs prior to first appearance or first instance;
- interplay between the criminal and civil spheres in the generation of legal needs;
- public legal education and information needs;
- factors driving legal representation costs;
- impacts of key federal legislation, policies, and resource allocation decisions on cost per case and territorial allocations of legal aid resources.

A team of researchers from IER and Dennis Patterson conducted the Nunavut Legal Services Study. The study made use of a variety of methodologies, both quantitative and qualitative, in order to examine the issues:

- *Interviews* – Over 40 interviews were conducted (in person and by telephone) with a broad range of stakeholders in legal service provision.
- *Document review* – The research team was provided with documents from a number of different sources, including Justice Canada and the NLSB, which were reviewed as part of the study.
- *File-based research* – Legal aid applications and client files from prior to July 2000 and legal aid applications from after July 2000 were reviewed, along with the final and concluded dockets for circuit courts in Nunavut. File-based research was completed in Yellowknife and in Gjoa Haven.
- *Workshops* – Workshops were conducted in Iqaluit and Cambridge Bay in order to seek further input from community members and to validate, where possible, the study's preliminary findings.
- *Client interviews* – Fourteen clients were interviewed by staff from the Malliganik Tukisiiniakvik clinic, in order to gain insight into the experience of clinic users, a key stakeholder group.



BACKGROUND INFORMATION: NUNAVUT AND THE NUNAVUT LEGAL SERVICES BOARD

Nunavut

The population of Nunavut is distinct from that of the rest of Canada in many ways. These distinctions form the context in which legal services are provided. They have an impact on the demand for legal services, the types of legal services required, and the ways in which those services can best be provided. Key socio-economic issues include:

- *Population size and distribution by age group* – Nunavut has the smallest population of any jurisdiction in Canada. The population is very young, with the majority of individuals less than 14 years of age in 1996 (Census 1996). The population is distributed among 28 communities and several outposts, many very remote and difficult to access.
- *Family structure* – Family structure in Nunavut is more diverse than in other parts of Canada. Common-law and one-parent families make up half of all families, the highest proportion in Canada.
- *Housing and living arrangements* – Some 57 percent of Nunavut's families live in rental housing, while the remainder own their homes. The average number of people per household (3.9) is higher than in any other Canadian jurisdiction.
- *Education* – In 1996, almost half of the population of the NWT (which then included Nunavut) over the age of 15 did not have a degree, certificate or diploma, and only 13 percent had a high school graduation certificate.
- *Language and ancestry* – The majority of the population of Nunavut are Inuit and speak Inuktitut as their mother tongue.
- *Crime and policing* – Since Nunavut was established in 1999, the number of police officers has been increasing relative to the population. Nunavut has the third highest number of police officers per person in Canada (only the NWT and Yukon have more). Nunavut has one of the highest overall crime rates in Canada and the highest violent crime rate in the country.
- *Employment* – The average unemployment rate across all regions of Nunavut is 17.4 percent. The main sources of employment are the territorial government, local government, construction, and tourism (in some communities). Many people from smaller communities list their main source of employment as “traditional activities.”
- *Fetal Alcohol Syndrome and/or Effect (FAS/E)* – Several workshop participants identified FAS/E as a significant problem in Nunavut. Unfortunately, no statistics were available to validate this perception. Children with FAS/E experience difficulty recognizing the consequences of their actions and may lack the capacity to make decisions about right and wrong, and to solve problems effectively.

Nunavut's legal system

Nunavut's legal system is unique in Canada due to the Nunavut Court of Justice (NCJ), a unified court that replaces the dual court model (Territorial/Provincial and Supreme) used in the rest of Canada. This model was intended to improve service to residents of Nunavut by improving access to the court (by increasing the frequency and length of visits to communities) and simplifying the legal system. Another important characteristic of the Nunavut legal system is the practice of presumed eligibility, which means that individuals do not have to complete a legal aid application in order to receive the services of a duty counsel while in court. Only if the individual wishes to plead guilty (in a criminal case) or if the case becomes very complex will a formal legal aid application be required.

Nunavut's legal system is also a reflection of the process through which Nunavut was created. This process led to a commitment to decentralization of government services (and the benefits of employment and infrastructure development associated with providing those services) and Inuit

involvement in decision-making on all issues, which is also reflected in the organization of the legal system and of the NLSB.

The legal system in Nunavut is highly complex and interdependent. All of the components of the legal system interact and influence one another. This posed a challenge for the research team in isolating issues related to the NLSB from those related to other parts of the system. It also resulted in the need to discuss other parts of the system in order to gain insight on how issues that at first appeared separate from the NLSB could, in fact, be linked back to concerns over costs and service provision.

The Nunavut Legal Services Board

The NLSB has three primary roles: to provide legal aid services; to manage the Courtworkers program; and to provide public legal education and information (PLEI). The Act governing the NLSB indicates that these objectives must be accomplished to the best of the Board's ability.

The Board has a budget of \$3,362,000 in 2002/03. There are four clinics: one in Cambridge Bay (Kitikmeot Region); one in Rankin Inlet (Keewatin Region); one in Iqaluit (Baffin Region); and one in Pond Inlet (the High Arctic office, which is also in the Baffin Region). The NLSB employs eight staff lawyers, with the services of an additional four private lawyers on a contract basis to supplement staff lawyers as necessary, and fourteen Courtworkers (through the regional clinics), three of whom are full-time.

Demand for the Board's services, as measured by the number of legal aid applications received, is increasing steadily. The Board denies very few of the applications it receives for legal aid. The majority of denied applications are in the areas of family or other civil law. When an application is denied, it is not usually because the applicant is financially ineligible or because of the type of case involved. Rather, the most common reason for denial of an application is that the applicant does not provide all of the information necessary to process the application. The second most common reason for denial is that the Board believed that the case is unlikely to result in any benefit for the applicant.

SERVICE DELIVERY: DEMAND, PATTERN, AND QUALITY

The demand for legal services and the pattern and quality of legal services provided by the NLSB are affected by a number of different factors, including court structure (including both the NCJ circuit courts and the Justice of the Peace courts), geography, culture, and human resource constraints.

Court structure – Circuit courts

Respondents indicated that the circuit court structure is marked by long intervals between visits to communities and short times spent in the communities. This structure is believed to cause:

- Large court dockets, which result in a very heavy workload for all members of the court party while in the communities, and concerns about the quality of service provision.
- The extensive use of deputy judges, who do not provide the continuity and familiarity with Nunavut and particular communities that a resident judge provides (this issue will be somewhat alleviated by the recent appointment of a third NCJ justice).
- Concerns regarding the handling of spousal and sexual assault cases. Some respondents indicated that Victim Impact Statements are being taken by RCMP officers, but may not be presented to the court. They also reported that many non-Aboriginal members of the justice system (at all levels), out of a desire to be culturally sensitive, may be condoning attitudes towards women and violence against women that negatively affect those women in their communities.
- Difficulties in gaining access to clients, who often do not take advantage of the opportunities provided to meet with their counsel before they are required to appear in court. This is aggravated in the 13 communities (out of 28) where there are no resident



- Courtworkers to encourage attendance. There are rarely any consequences for individuals who fail to meet with the defence counsel before the court session, and this often contributes to delays and adjournments, as well as to the workload of defence counsel during the court's visit to a community.
- Pressures to clear cases from the docket, in order to meet the NCJ's goal of providing faster, more accessible justice. In some cases, this results in cases being returned to the JP court system, which in some respondents' opinions is not always appropriate.
 - Delays during circuit courts, which can be attributed to a number of factors, geographical (e.g., weather) and structural (e.g., length of docket, lack of opportunity to consult with clients, etc.). The general perception is that, while delays and adjournments occur too frequently in all cases, family law and other civil law cases bear the brunt of these problems as they are always last on the docket, after the criminal law cases. In turn, this means that the burden of delays may be borne disproportionately by women, who are more frequently the clients in family law matters.
 - Discontinuity in defence counsel, which places stress on clients (for obvious reasons), but also on counsel, who must bring themselves up to speed on the cases they are not familiar with as well as address the client's frustration at the change in counsel. Respondents indicated that, although they support the practice of presumed eligibility, they believe that it contributes to discontinuity in defence counsel when combined with the overall constraints on human resources available to the NLSB.

Court structure – Justice of the Peace courts

Justice of the Peace (JP) courts in Nunavut are intended to hear a wider range of cases than is common in the rest of Canada, in order to relieve some of the burden on the NCJ. However, although a significant effort is taking place to train all JPs to carry out these expanded duties, at the time of writing the JP courts have not yet been able to take up all of the slack resulting from the elimination of the Territorial Court. As a result, the NCJ is dealing with a significantly increased workload of cases that might otherwise have been heard in JP court, in addition to facing increasing demand due to the overall socio-economic situation, which exacerbates some of the problems discussed above.

Geography

The geography of Nunavut, and, particularly, the scattered, remote nature of its communities, affects legal service provision in a number of ways:

- It makes it more difficult for the NLSB counsel to go to the community beforehand to meet with clients.
- It makes it more difficult for the court to adhere to its schedule of visits to communities.
- It affects the perceived independence of NLSB counsel, as they must often travel on the same chartered airplane as the rest of the court party.
- It results in a very high cost of travel, which, in turn, can trigger a physical and emotional disconnect between clients and their representatives. (For example, civil clients often have their entire case dealt with without ever meeting their lawyers, and criminal clients in show cause hearings are usually interviewed over the telephone.)
- It causes infrastructure difficulties that compound communications problems (for example, limited Internet access) and make research more difficult. The lack of appropriate remand facilities in local communities also means that many accused are transferred to the Baffin Correctional Centre in Iqaluit to wait to speak to a lawyer or to go to court. This is very difficult for the client.

Culture

A number of respondents recognized that the justice system in Nunavut is making efforts to be more culturally sensitive. However, culture and cultural differences continue to have a negative impact on legal service provision and the ability to represent clients effectively. Such problems include:

- *Language issues* – Most Inuit do not have English as their first language. Translating and understanding the concept at hand, as well as the actual words used to represent that concept, are often extremely difficult. Some of the clients interviewed during the study indicated that they did not understand what was happening during the proceedings because of language issues. Others indicated that they only understood because the Courtworker explained to them.
- *Cultural disconnects and pressures* – In many ways, Inuit culture differs from the southern Canadian culture that underlies the justice system. For example, many Inuit are reluctant to plead not guilty if they did commit the crime and are susceptible to subtle pressures from authority figures. In family law and civil law, there are also a number of disconnects. For example, the practice of custom adoption (where a family member adopts the child if the birth parent cannot care for it) does not match up easily with the concept of child support payments.
- *Literacy and education* – Illiteracy, or low levels of literacy, in English and in Inuktitut may also be issues that make it more difficult to provide effective services to clients.

COST OF SERVICE PROVISION

A number of drivers have a significant effect on the cost of legal service provision in Nunavut. They include:

- *Geography* – NLSB counsel must travel to perform their duties in circuit court, and staff from the NLSB headquarters in Gjoa Haven must travel frequently to perform administrative duties. Given the difficulties of travel in Nunavut, geography implies significant additional costs for service provision.
- *Socio-economics* – Language issues and the level of formal education of clients increase the amount of time and effort needed to service individual clients. The socio-economic characteristics of Nunavut also contribute to higher overall demand for legal services.
- *The public-sector economy* – The government of Nunavut is the territory's largest employer and the largest economic force in Nunavut. Therefore, it is essential that the NLSB remain completely independent of the government in order to be able to provide independent legal advice to those who wish to challenge a government institution.
- *Decentralization and participation* – The commitment to decentralization and Inuit participation on the part of the government of Nunavut results in the NLSB head office being located in Gjoa Haven and the need to administer and support three regional clinic boards, as well as the NLSB.
- *Difficulty in obtaining and retaining human resources* – The NLSB must invest considerably in recruitment and retention activities, while managing the impacts of a chronic lack of human resources.
- *Federal legislation* – New legislation often entails increased demand for the NLSB's services. Respondents also indicated that new legislation is also developed without adequate consideration of the effects on Nunavut, and does not address the social problems leading to crime in the territory.
- *Federal policies* – Policies that affect the actions of the RCMP and Crown counsel (for example, zero tolerance for spousal assault), the actions of judges (for example, the "return back to court" policy that requires offenders to reappear in court on a given date), and PLEI activities (that encourage demand for NLSB services) all place additional stress on the justice system and on the NLSB.
- *Federal resource allocation decisions* – There appears to be an imbalance in resource allocation between the NLSB and the Crown, such that the NLSB is "out-gunned." Furthermore, as the NLSB is unable to raise any revenues to support its own activities, it is not in a position to attempt to address funding concerns on its own.



THE EXTENT OF UNMET NEED FOR LEGAL SERVICES

There was unanimous agreement among workshop participants and interviewees that there is unmet need for legal services in Nunavut. However, when discussing this topic, it became clear that some respondents defined unmet need as “lack of representation” (i.e., no counsel or Courtworker available), while others considered unmet need to also include “lack of *quality* representation.” It also became clear that the nature and extent of unmet need vary from region to region and between smaller and larger communities in any given region.

Unmet need in the area of family and other civil law matters is clearly a case of lack of representation. Although the NLSB is mandated to provide service in these areas, criminal cases take priority over civil law matters. (This is also the case on court dockets, where family and civil law matters are frequently adjourned for lack of time.) There are also practical limitations on service provision in this area, foremost of which is the lack of non-NLSB practitioners to represent the “other side” of the dispute. There are unmet needs in nearly all areas of civil law in Nunavut. With respect to family law, key areas of need are child welfare, child support, property distribution after divorce, alternative dispute resolution, and issues related to custom adoption.

In circuit courts, given the system of presumed eligibility and the Courtworker program, lack of representation appears to be less of an issue. However, given the structural issues associated with circuit court work (see discussion above) and the limited human resources at the NLSB, this is an area where respondents raised concerns over the quality of representation being provided.

In JP courts, the degree of unmet need seems to vary across the jurisdiction. In some areas, Courtworkers provide the majority of representation in JP courts. In other areas, NLSB lawyers provide representation (although this was considered to be a fairly rare occurrence when Courtworkers were available). However, in general, respondents indicated that if an individual is unrepresented in JP court it is of their own volition. Many JPs indicated that they would refuse to go ahead with an unrepresented accused. However, questions about the adequacy of the current Courtworker training program (which is being revised and improved) and the monitoring of JP courts did cause some respondents to raise concerns about the quality of the representation being provided in these courts.

With respect to unmet need during show cause or bail hearings (the most common situations where representation is required prior to first appearance), respondents noted that these duties are primarily fulfilled by Courtworkers, but that, occasionally, duty counsel serve as representatives. Several respondents, including Courtworkers and representatives of the NLSB, indicated that there are situations where the accused is unrepresented prior to first appearance because neither a Courtworker nor a duty counsel is available to represent them. In addition, the concerns raised about the training of Courtworkers with respect to JP court representation were also raised with respect to representation prior to first appearance.

Finally, with respect to prisoners on remand in Baffin Correctional Centre (BCC), it is clear that there is insufficient representation available. The BCC typically houses 30 prisoners on remand (it was designed for a maximum of 15). These individuals are waiting to see a lawyer or to go to trial. Respondents from the corrections system indicated that the most significant factor affecting the number of prisoners on remand at BCC is the lack of criminal defence lawyers in Nunavut.

THE IMPACT OF UNMET NEEDS

Respondents made very clear the devastating effects of unmet need for legal services on all parties involved: the accused, the victim, the community, and NLSB staff. This was one topic where the follow-on effects of unmet need in one area of the legal system clearly had an impact on other areas, including the NLSB.

The accused

The NLSB's inability to meet the needs of the accused has a significant impact on that individual's well-being. For example:

- Discontinuity in defence counsel affects the quality of service received and the extent of delays in processing the case.
- Unmet need in JP courts may result in the accused pleading guilty to offences they did not commit, or receiving unduly onerous or inappropriate sentences.
- Unmet need prior to first appearance may result in individuals being remanded to BCC in Iqaluit, where they face a further wait to speak to a defence lawyer.

All of these issues – combined with the lack of local support systems (such as addictions counselling), the socio-economic situation, and the effects of previous emotional traumas – were considered by respondents to put the accused at risk of depression and suicide, specific incidences of which they were able to provide as examples.

The victim

Victims are also negatively affected by delays in the justice system. Delays increase the potential for re-victimization, particularly in cases of assault, and leave the victim to face the accused on an ongoing basis for several months until the court returns to their isolated community.

In family law matters and other civil cases, the overall lack of civil law practitioners in Nunavut may result in a situation where one party obtains representation through the NLSB and the other cannot. Furthermore, delays in addressing family law and civil matters may result in one party becoming the victim of a criminal act by the other party as frustration over underlying issues increases.

The effect of unmet need on the victim is often compounded by the lack of Victim Services workers in many communities.

The community

Community members are affected by unmet need for legal services in several ways:

- Through frustration and cultural disconnects that occur due to delays and adjournments in circuit courts.
- Emotionally, through their ties to the accused and/or the victim.
- Through the increasing demands placed on community-level structures to interact with and take over responsibilities from the legal system.

The NLSB staff

NLSB staff are acutely aware of the extent of unmet need, and experience a great deal of stress, anxiety, and frustration as a result. These pressures lead to frequent burn-out and a high rate of turnover, which in turn has a negative impact on the remaining staff.

The legal system as a whole

The issue of unmet need is one where the impacts on one area of the legal system can quickly and easily spill over into other areas. For example:

- The unwillingness of NLSB counsel to represent the accused over the telephone in JP courts, combined with limited Courtworker services in each community, hampers the ability of JP courts to hear those cases, and sometimes causes the case to be moved up to the NCJ, adding to the workload of that court.
- When the accused is poorly represented in circuit court, the result may be an inappropriate sentence. It falls to probation officers in the community to conduct follow-up visits for house arrests and conditional sentences. If the accused is required to report



- back to court, the probation officer must then appear in court with the offender to report on his or her behavior.
- There may also be a relationship between unmet need for family law representation and the demand for criminal representation. Respondents who support this theory argued that individuals become frustrated because they are either unaware that family law remedies exist for their situation or are unable to access those remedies. Eventually, their frustration becomes so great that they engage in a criminal act, such as assault.

COURTWORKERS

Courtworkers' responsibilities include assisting the client and the client's family to interact meaningfully with the justice system and, where necessary, NLSB counsel. They work closely with counsel to ensure that clients understand their rights and the situation. Courtworkers also provide a valuable interface between the community and the justice system, and often counsel community members and provide PLEI services. In some cases, Courtworkers may also be involved in alternative justice programs. Courtworkers' responsibilities vary widely from community to community, and are somewhat related to the extent of their training and whether there is a JP court in their community.

Courtworkers experience a great deal of pressure to expand their role and services, as well as pressures due to their relationship with the RCMP and Crown counsel during proceedings. Community members can be another source of pressure for Courtworkers, who must often explain the court's decisions and actions once it has left the community.

Courtworkers also face a number of barriers when delivering their services. These barriers include a lack of infrastructure and resources (such as offices, telephones, and fax machines), an unfair and inadequate compensation system (Courtworkers are paid through the regional clinics, so there are discrepancies between the regions in terms of pay scale), and a lack of recognition for their work.

Nonetheless, Courtworkers have the potential to meet a number of unmet needs in the justice system in Nunavut, including areas such as family law, youth justice, PLEI, community and alternative justice, and JP courts. In order to fulfill this potential, Courtworkers will require improved training (which is currently being developed by the NLSB and will be tied to the three-tier JP training program), improved compensation (to encourage recruitment and retention), greater support from other members of the justice system, and improved infrastructure. In addition, more Courtworkers (and more in full-time positions) will be required to meet the additional demand.

PUBLIC LEGAL EDUCATION AND INFORMATION

Public legal education and information (PLEI) serves a number of important purposes, including promoting the informed use of legal institutions, encouraging the informed management of the individual's legal affairs, supporting educated citizenship, and avoiding confrontation with the law. There are a small number of PLEI activities currently underway in Nunavut, but the majority of respondents believed that unmet need for PLEI exists in the areas of civil law, family law matters, criminal law, rights-based law, administrative tasks, and the functioning of the NLSB.

Respondents indicated that PLEI delivery could be improved through better co-ordination, a broader definition of PLEI users (to include more than just the victim and the accused), different methods of PLEI delivery, improved training for PLEI providers, and increased funding for PLEI provision.

However, it should also be noted that some respondents raised concerns about increasing PLEI activities, as they felt that this might result in an enormous increase in demand that the NLSB would be unable to meet.

PROPOSED SOLUTIONS

In order to address the high level of unmet need for legal services in Nunavut and the effects of the factors described in the preceding sections, the research team has identified proposed solutions. These solutions relate to the need to ensure adequate funding for a wide range of improvements to the NLSB's human resource capacity, in order to address unmet need for services. They also relate to the need for the broader Nunavut justice system to focus on addressing those issues that have a significant impact on the functioning of the NLSB as a result of the high degree of inter-dependence of the various parts of the Nunavut justice system.

The proposed solutions for stakeholders of the NLSB are as follows:

1. Existing family law and criminal law positions should be built into the core funding formula for the NLSB and an ongoing mechanism should be established to review the adequacy of staff lawyer positions based on caseloads, legal aid applications, and the available private legal aid panel.
2. Adequate funds should be provided to give NLSB lawyers rough parity of benefits with Crown counsel.
3. Adequate funds should be provided for adequate office space for regional legal services clinics.
4. A funding base should be established to permit broader coverage of legal aid services in the family law and non-family civil law areas, and a mechanism should be developed to allow recovery from clients who can afford to contribute to legal services (to be credit to the Legal Aid Plan).
5. Funds should be provided to continue an intensive and ongoing training program for Courtworkers.
6. Funds should be provided to ensure that Courtworkers and office support staff in the Legal Aid Plan have salaries and benefits comparable to other community public servants in Nunavut.
7. Funds should be provided to maintain the independent database and communication system now being implemented by the NLSB.
8. There must be adequate funds for PLEI, including for adequate human resources.

The proposed solutions for the broader Nunavut justice system are as follows:

1. The NCJ should consider whether there are ways by which court circuits and flights could be scheduled so as to utilize more Mondays and Fridays for court sittings.
2. The NCJ should continue to review, in consultation with the Crown and the NLSB, whether court circuits could be scheduled differently, so as to maximize court time available in communities.
3. Funds should be provided to encourage appropriate government offices, the NLSB, Aboriginal organizations and private firms to establish articling positions ultimately aimed at increasing the number of resident members of the Nunavut Law Society.
4. A program should be established to hire and train local process servers.
5. The Crown office in Nunavut should be encouraged to develop the capacity to assist RCMP or lay prosecutors to review charges before they are laid at the community level.
6. The RCMP should be provided with resources to identify and train lay prosecutors to replace RCMP court officers in the communities.
7. Resources should be provided to permit the Crown office to decentralize prosecutor positions to regions.
8. Alternative justice measures should be encouraged and fostered.
9. In developing and implementing all aspects of alternative justice measures, great care must be taken to ensure that the human rights of women and victims are safeguarded and respected against societal pressures, which are sometimes oppressive.
10. The Nunavut Law Society should consider how best to deal with ethical issues raised by potential conflicts arising because there is a small pool of lawyers.



1.0 Introduction

1.1 PURPOSE

The Nunavut Legal Services Study was commissioned by the Department of Justice Canada in order to gain an insight into the state of legal service provision in Nunavut; the challenges faced by legal service providers (such as the Nunavut Legal Services Board, counsel, Courtworkers, and public legal education and information [PLEI] providers); the cost drivers associated with legal service provision; the areas where unmet need for legal services exists; and, finally, the ways in which these challenges and unmet needs could be addressed.

The request for proposal issued by Justice Canada contained a list of 10 issues to be examined by the research team. These issues and the questions associated with them were arrived at jointly by representatives from Justice Canada, the Nunavut Department of Justice, and the Nunavut Legal Services Board (NLSB). The 10 issues were:

- the impact of court structure, geography, and culture on the demand for legal services, pattern of service delivery and quality of services;
- impacts of circuit courts on clients;
- the increased role of Courtworkers;
- unmet needs for legal representation in Justice of the Peace courts;
- unmet needs in family and other civil matters;
- unmet needs prior to first appearance or first instance;
- interplay between the criminal and civil spheres in the generation of legal needs;
- public legal education and information needs;
- factors driving legal representation costs;
- impacts of key federal legislation, policies, and resource allocation decisions on cost per case and territorial allocations of legal aid resources.

1.2 METHODOLOGY

The Nunavut Legal Services Study was carried out by a team of researchers from IER and by Dennis Patterson. The study made use of a variety of methodologies, both quantitative and qualitative, in order to examine the issues raised by Justice Canada. The methodologies used were:

- Interviews;
- document review;
- file-based research;
- workshops;
- cClient interviews.

The details of these methodologies and a discussion of any challenges faced by the research team in their application are provided in the following sub-sections.

Maintaining confidentiality

Maintaining the confidentiality of individual NLSB clients has been a key concern throughout the project. Every effort has been made by the research team to respect confidentiality. In particular:

- A Confidentiality Undertaking was signed by each member of the research team and provided to research sites and participants as requested.
- No files or other sources of data were removed at any time from the offices of the Legal Services Board in Yellowknife or the Legal Services Board office in Gjoa Haven.
- Comments made by individuals during the interview process and workshops are not attributed in this document or any other documents produced by the research team.
- The client interviews were carried out by staff of the Maliiganik Tukisiiniakvik Clinic (Baffin Region), preserving the integrity of existing client/staff relationships and ensuring that there was no direct contact between the research team and NLSB clients.

1.2.1 Interviews

Over 40 interviews were conducted, both in person and over the telephone (some key individuals were interviewed several times). Interviewees represented a broad range of stakeholders in legal service provision, including:

- the Executive Directors of the Nunavut and NWT Legal Services Boards;
- the Directors of all legal aid clinics in Nunavut;
- NLSB staff counsel;
- members of the Legal Aid Service Board;
- the RCMP;
- the Justice of the Peace Courts Administrator;
- Nunavut Court of Justice Senior Judge;
- Justices of the Peace;
- Courtworkers;
- Members of the private bar;
- representatives of social justice organizations.

The questions used during the interview process were based on the questions posed in the original Request for Proposal for the project (these questions are provided in Appendix A). The interview questions and the selection of interviewees were vetted and agreed to by Justice Canada and by the NLSB. A complete list of interviewees is provided in Appendix B.

The interviews were transcribed and then, for key interviews, returned to the interviewees for amendments and revisions in order to ensure that they accurately reflected the respondents' opinions and views.

It should be noted that the original research protocol included interviews with representatives of the Nunavut Social Development Committee (NSDC). However, this organization was disbanded in February 2002, just as the research team was beginning to schedule interviews, and Nunavut Tunngavik Incorporated (NTI) assumed its responsibilities. Representatives of NTI were invited to participate in the workshop in Iqaluit (see Section 1.2.4) in order to ensure that their opinions were solicited and included in this report.

1.2.2 Document review

A number of documents were also reviewed by the research team. Documents were suggested and provided by a number of different sources, including Justice Canada and the NLSB. The following documents were reviewed by the research team:

- *Final Report of the Aboriginal Women's Justice Consultation*, September 26–29, 2001, Ottawa;
- *Steps Into the Future: Inuit Court Worker Training and Certification Workshop Report*, March 20-22, 2001, Iqaluit (by Lois Moorcroft);



- *Does Your Husband or Boyfriend Beat You?* Nunavut Edition 2001, produced by Pauktuutit;
- *Consultation on Violence Against Women: A Report on the Recommendations made to the Minister of Justice Canada*, June, 1996;
- *Inuit Women and the Administration of Justice: Phase II Final Report*, submitted by Pauktuutit Inuit Women's Association to the Department of Justice Canada;
- *Towards Justice That Brings Peace*, Nunavut Social Development Council Justice Retreat and Conference, Rankin Inlet, Nunavut, September, 1998;
- *Presentation to the Special Joint Committee on Child Custody and Access*, June 10, 1998, Ottawa, Pauktuutit Inuit Women's Association;
- *Nunavut Community Profiles* (draft), Research and Statistics Division, Department of Justice Canada, August 1999;
- *Family Law Report for the Nunavut Department of Justice*, 2000, by Kelly Gallagher MacKay;
- *Environmental Scan*, July 2001, RCMP;
- *Executive Director's Report*, February 2001, to the NLSB;
- *Legal Aid Bulletin 96-1*, June 5, 1996, produced by the NWT Legal Services Board;
- *Nunavut Court of Justice Annual Report*, 2001;
- *Consolidation of Legal Services Act* (Nunavut);
- *Nunavut Legal Service Board Main Estimates*, 1999/2000 through 2002/2003;
- *Justice Canada in Nunavut Budget*, 1998/1999 through 2001/2002;
- *Nunavut Economic Outlook: An Examination of the Nunavut Economy*, Conference Board of Canada, 2002; *Inuusirmut Aqqusiuqtiit/ Pathfinder Pilot Program Overview*, April, 2002, Eldridge & Associates, Ottawa.

1.2.3 File-based research

A file-based research process was designed in order to answer those questions in the request for proposal that were of a more quantitative nature. As with the interview questions, the questions assigned to the file-based research process were vetted and agreed to by Justice Canada and the NLSB.

The following files were reviewed during course of the study:

- legal aid applications and client files in Yellowknife (for information from before July 2000) and legal aid applications only in Gjoa Haven (for information from after July 2000);
- final dockets for circuit courts in Nunavut;
- concluded dockets for circuit courts in Nunavut.

Client Files

The initial file-based research process assumed that the research team would have access to the files of clients of the NLSB (and of the NWT Legal Services Board for material prior to July 2000). However, during discussions with Clinic Directors about accessing these files, it became apparent that there were significant concerns on the part of some Directors relating to the confidentiality of client files and the appropriateness of making them available to the research team. In order to address these concerns, and forward the research in a timely manner, alternative sources of data were considered. Upon further examination, the legal aid applications completed by clients were perceived to contain the bulk of the information required. The legal aid applications had the added benefit of being available in two offices (Yellowknife, for those files opened prior to July 2000, and Gjoa Haven for files opened after July 2000), thus facilitating the research process.

The perception of the research team that adequate information could be obtained from the legal aid applications themselves was validated by the team's experience at the NWT Legal

Services Board in Yellowknife. In Yellowknife, the team had access to the applications and to the related client files and found that the applications contained all of the relevant data, while the remainder of the client files consisted primarily of transcripts and memos from counsel relating to administrative aspects of the case. Therefore, the team felt confident in basing their research on the legal aid applications rather than on the client files, as originally intended.

Legal aid applications

Several challenges became apparent during the review of legal aid application files. Some of these relate to the transfer of the files from Yellowknife to Gjoa Haven that occurred in the summer of 2000, once the NLSB had been established and was ready to receive them:

- *Potential for overlap* – There was a potential that files that were open during the transfer period would be counted and reviewed both in Yellowknife and in Gjoa Haven, as they would appear in both systems. In order to avoid overlap as much as possible, only files opened after July 1, 2000 were counted in Gjoa Haven, as the transfer took place in June 2000.
- *Closing of files* – The majority of files reviewed in Yellowknife did not contain case closing sheets (in many cases, this was due to the file being open during the transfer period). In Gjoa Haven, the vast majority of files were still open, and therefore they, too, did not contain case closing sheets. For this reason, the information that the case closing sheets would contain – for example, information on the disposition of the case, any changes in counsel that took place, and any adjournments – could not be retrieved from the files as originally expected.

Another challenge faced by the researchers was the volume of files to be reviewed and the lack of an adequate database system to produce the necessary statistical information. In Nunavut there is no equivalent to the Legal Aid Information System (LAIS) used by the Legal Services Board in Yellowknife. The original intent of the researchers was to review all of the legal aid application files in Yellowknife and use a sampling protocol to determine the number of files to be reviewed in Gjoa Haven. However, on arrival in Gjoa Haven, it became apparent that a manual ledger system is in place to manage the filing system. This ledger system tabulates all files opened by type of legal aid requested (criminal, family law, civil, or youth) and indicates whether or not legal aid was denied. Cross-referencing is possible, based on the applicant's name, to a series of summary sheets that indicate why legal aid was denied and what charges were involved. Through use of the ledgers, it was possible to review all of the files in Gjoa Haven, rather than a portion, improving the validity of the data.

Finally, in some cases, the information presented in the legal aid application files was not complete or was unclear. In other cases, assumptions had to be made in order to draw conclusions from the data available. All such concerns and assumptions are noted in the discussion of findings, as and when necessary.

Circuit court dockets

The research team reviewed the final dockets and concluded dockets for Nunavut circuit courts, copies of which are held at the NLSB office in Gjoa Haven. These dockets address only the criminal charges before the court, and therefore did not provide information relating to the provision of services in the areas of civil and family law. The circuit court dockets were only available from September 2000 onwards, as it was at that time that Bonnie Tulloch became Executive Director of the NLSB and began the practice of keeping copies of the dockets in Gjoa Haven. Two concerns exist with respect to the data gathered from the final and concluded court dockets:

- *The collection of dockets may be incomplete.* Fewer dockets are available for some communities than for others. This may be a reflection of fewer court sittings in those



communities. However, it is also possible that, in some cases, dockets were not provided to the NLSB in Gjoa Haven, even after September 2000. If that is the case, the data gathered from those dockets is incomplete.

- *Consistency in docket descriptions.* A coding system is used in the final and concluded dockets to indicate the reason for an individual's appearance on a particular charge. For example, the charge may be coded as a first appearance, a preliminary hearing, or a sentencing hearing. However, the coding system does not appear to be uniform across the collection of dockets, perhaps as a result of dockets being prepared by different people. Therefore, there is a small possibility that some charges may have been mis-coded or that codes may have been misinterpreted during the data retrieval process. This would affect the validity of data presented on "normal" and "unusual" reasons for adjournment, and on work done by the NLSB under presumed eligibility as opposed to work done as a result of an application for legal aid.

Justice of the Peace (JP) Court dockets

The research team had initially hoped to conduct a review of the Justice of the Peace (JP) court dockets similar to the review of circuit court dockets described above. However, the team was unsuccessful in obtaining copies of the JP court dockets, even after several attempts. An analysis of the JP court dockets would have been particularly useful in validating the information provided by respondents with respect whether the cases being heard in JP courts are increasing in seriousness. It would also have been useful in identifying the training required to prepare Courtworkers, who are active in JP courts, to play an expanded role.

1.2.4 Workshops

The research team conducted two workshops after the *Preliminary Findings Report* was completed and presented to Justice Canada. The workshops were held in Iqaluit on June 20, 2002, and in Cambridge Bay on July 3, 2002.

The purpose of the workshops was:

1. to explain the Nunavut Legal Services Study;
2. to seek general input on the provision of legal services in Nunavut;
3. to validate preliminary findings (contained in the *Summary of Preliminary Findings*).

Ten or more people attended each workshop, representing a wide variety of interests and points of involvement with the Nunavut justice system and with legal service provision. Participants included lawyers for the NLSB and the Crown, Courtworkers, justice committee members, elders, counsellors, probation officers, RCMP officers, social workers, representatives from NTI, and representatives of the Nunavut Department of Justice. Well over half of the attendees at each workshop were women. Young people also attended each of the workshops, and raised particularly concerns with respect to youth and the justice system. Attendance lists for both workshops are provided in Appendix C.

The workshop proceedings and results were recorded through the use of flip charts and note-takers. Participants were able to provide input on all of the topics being researched, and their comments are incorporated throughout this document.

1.2.5 Client interviews

The research team, Justice Canada, and representatives from the NLSB and the Nunavut Department of Justice discussed several ways in which to gather input from actual clients of the NLSB with respect to the user perspective on legal service provision. The primary considerations in evaluating the various methods (face-to-face interviews, workshops, etc.)

were the need to maintain the privacy of the individual, the confidentiality of the information obtained, and the existing relationship between the client and the clinic's personnel. The method chosen was a series of client interviews, which were conducted by the staff of the Maliiganik Tukisiiniakvik, under the direction of Debra Ram, Clinic Director.

Fourteen clients were interviewed by the clinic staff, using a series of simple, open-ended questions developed by the research team, focusing on the user experience. These questions are provided in Appendix D. Of the clients interviewed, eight were from Igloodik and the remaining six from Iqaluit. Three of the people interviewed were female. The clients had been involved with the Maliiganik Tukisiiniakvik for a number of different reasons:

- seven for criminal law cases;
- two for family law issues;
- one each for Youth Court and Justice of the Peace Court;
- two for support in changing a name;
- one who was in custody in Iqaluit for a show cause hearing, but who is not from Iqaluit.

The transcripts of the client interviews were provided to the research team and the results have been incorporated throughout this document, under the appropriate subject headings.

1.3 EFFECT OF INTERACTIONS IN THE NUNAVUT LEGAL SYSTEM

The Nunavut legal system is a complicated entity, made up of many different parts, all of which have their own purpose and objectives. These components include, but are not limited to the NCJ, the JP courts, the RCMP, Courtworkers, NLSB counsel, Crown counsel, private practitioners, corrections officers, community justice participants, the RCMP, and Victim Witness Assistants.

All of these components interact with one another and have an influence on each other in a way that makes it very difficult to discuss any one part of the system in isolation. However, the mandate of the Nunavut Legal Services Study is to focus on legal service provision exclusively. Maintaining this focus has proved to be an ongoing challenge to the research team, because of the high degree of interaction between the various parts of the legal system in Nunavut.

Therefore, although every attempt has been made to focus on legal aid provision, Courtworker management, and PLEI, there are sections of this report that deal with the Nunavut legal system as a whole, or with parts of the system other than the NLSB. In these cases, the team has tried to make the link back to the NLSB as explicit as possible.

1.4 FORMAT OF THE FINAL REPORT

The final report on the Nunavut Legal Services Study has been organized in a different way from the *Preliminary Findings Report*. Rather than discuss each of the 10 issues separately, the issues and their component questions have been grouped together into broader sections. This format was chosen in order to avoid repetition, to present the findings in the clearest way possible, and to make explicit the connections between the different issues.

The final report is organized into the following sections:

- *Section 2.0 – Background information: Nunavut and the NLSB* – provides demographic information on the social and economic realities of Nunavut, which have an impact on the need for and delivery of legal services. It also includes a short history of legal services provision in Nunavut and a discussion of the NLSB's mandate and current level of resources.



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- *Section 3.0 – Service delivery: Demand, pattern, and quality* – addresses the impact of various factors, including court structure, culture, and geography, on the provision of legal services in Nunavut.
 - *Section 4.0 – Cost of service provision* – discusses the cost drivers affecting the provision of legal services in Nunavut and attempts to quantify, where possible, the effect of those drivers.
 - *Section 5.0 – Unmet need for legal services* – contains a detailed description of the areas where unmet need for legal services exists in Nunavut, as well as a look at the effect of unmet need on the individuals and communities involved.
 - *Section 6.0 – Impact of unmet needs* – identifies a range of impacts of unmet needs on victims, on communities and on the justice system.
 - *Section 7.0 – Courtworkers* – examines the current role of Courtworkers in legal service provision and identifies ways in which their role could be expanded to meet some of the needs identified in Section 5.0. The resources Courtworkers will require if they are to take on this expanded role are also discussed.
 - *Section 8.0 – Public legal education and information (PLEI)* – discusses the PLEI activities currently being carried out in Nunavut, as well as the unmet need for PLEI. Suggestions are provided for ways in which PLEI provision could be improved.
 - *Section 9.0 – Recommendations* – presents the solutions proposed by respondents to the issues under discussion.
 - *Section 10.0 – Conclusion* – summarizes and reviews the key findings of the Nunavut Legal Services Study.

At the end of each section, with the exceptions of Sections 9.0 and 10.0, a table has been provided, summarizing the key points associated with that section.

The report also contains a number of Appendices, as follows:

- Appendix A – Questions from the Terms of Reference
- Appendix B – List of Interviewees
- Appendix C – Workshop Attendance Lists
- Appendix D – Client Interview Questions

The majority of the information provided in this report is the result of activities carried out by the research team. All information from other sources has been cited, either in the body of the document or in the footnotes.

Quotes from the interviewees and workshop participants are interspersed (anonymously) throughout the document. They are highlighted alongside the appropriate sections of this report.

2.0 Background Information: Nunavut and the Nunavut Legal Services Board

Nunavut is a new territory, whose evolution has been characterized by rapid change. The Inuit, who make up 85 per cent of the population of Nunavut, are not more than a generation or two removed from their ancestral ways of life.

Now the Aboriginal people of Nunavut have a unique opportunity – the new territory, established alongside the settlement of the largest land claim in North America, has given the Inuit majority the tools to regain their cultural identity and regain control over their own lives. But the new territory is only in its first few years of political empowerment.

The new government faces formidable physical and demographic challenges. Nunavut is located in the most geographically remote area of Canada, characterized by extreme weather conditions, including harsh and dark winters. Nunavut has the smallest, fastest growing population in the largest area of Canada and the highest proportion of Aboriginal people in any jurisdiction. Nunavut also reflects daunting social and economic challenges compared to the rest of Canada, including: the highest number of people per household, the highest cost of living, the highest proportion of people living in rental public housing, and the highest crime rate. Nunavut leads the nation in many alarming social indicators: teenage pregnancy rates, infant mortality rates, incarceration rates and an extremely high suicide rate – six times the national average. The new territory's rapidly growing Aboriginal population is also coping with high unemployment rates in Nunavut's developing economy, and staggering costs of living.

In many ways, the challenges of Nunavut are focused on the justice system – an area of high visibility and high priority for reform. Here, again, the new territory is coping with rapid change and innovation. A new single level high court was created on April 1, 1999, along with the new territory, a legislated change that consolidated the previous Territorial Court and Supreme Court and placed new expectations on community Justice of the Peace courts. At the same time, the new Government of Nunavut was established with high expectations that Aboriginal cabinet ministers and legislators and the provisions of the Inuit land claim agreement, aimed at involving Inuit in program development and delivery, would result in a justice system more responsive to Inuit and reflective of Inuit values and traditions.

In order to better understand the context in which legal services are provided in Nunavut, the following sub-sections provide information on:

- *The social and economic situation in Nunavut* – demographic information and other statistics with respect to the population of Nunavut.
- *The legal system* – Nunavut's unique "unified court" system
- *The Nunavut Legal Services Board (NLSB)* – its responsibilities and current resources



2.1 SOCIAL AND ECONOMIC SITUATION

The population of Nunavut is distinct from that of the rest of Canada in many ways. These distinctions form the context in which legal services are provided. They have an impact on the demand for legal services, the types of legal services required, and the ways in which those services can be best provided. These impacts are discussed in greater detail in Section 3.0.

Where it really cuts is that there is really nothing being done ... to address the social crises that engender these crimes. We see it in suicide, drinking offences, domestic disagreements. The impact of western civilization on Inuit culture is wreaking havoc, ripping it apart... The impact of two different cultures has left the Inuit culture subordinate.

This sub-section provides information on the following issues:¹

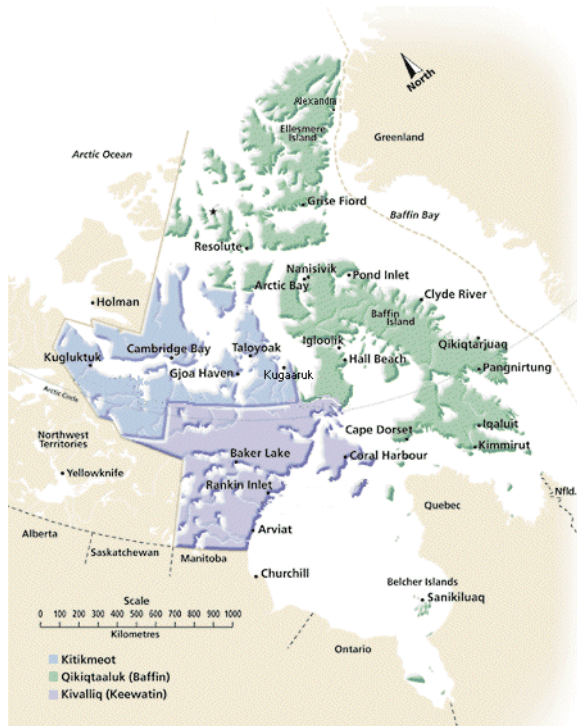
- Population size and distribution by age group;
- Family structure;
- Housing and living arrangements;
- Education;
- Language and ancestry;
- Crime and policing;
- Employment;
- Incidence of Fetal Alcohol Syndrome and/or Effect.

2.1.1 Population size and distribution by age group

Nunavut has the smallest population of any province or territory in Canada, with a total of 28,159 inhabitants (Census 2001). This population lives primarily in 28 communities, some of which are extremely remote. Some people live in outpost camps.

¹ Note that all information presented in Section 2.1.1 to Section 2.1.7 was obtained from the Statistics Canada Web site unless otherwise indicated.

Figure 2.1: Map of Nunavut Showing Communities and Regions²

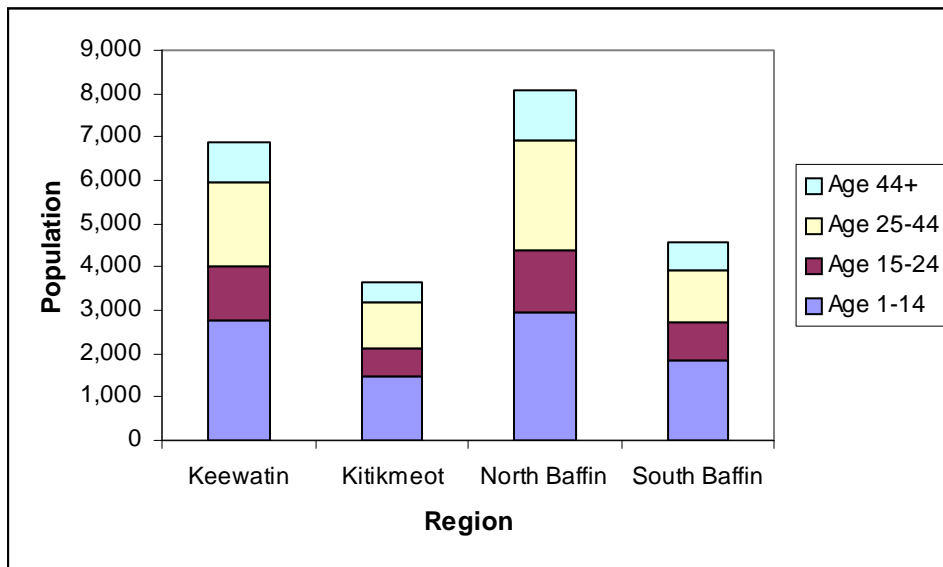


Nunavut's population is also very young in comparison with that of other provinces and territories. As is shown in the figure below, the majority of Nunavut's population is in the age group 1–14, while the number of people aged over 44 in Nunavut is very small. The age of the population has a bearing on the demand for legal services, as younger people are generally more likely to require legal services than older people. As the bulge in Nunavut's population moves up into the age group where young offender charges can be laid, it is expected that the demand for legal services will also rise.

² RCMP Web site (www.rcmp.ca).



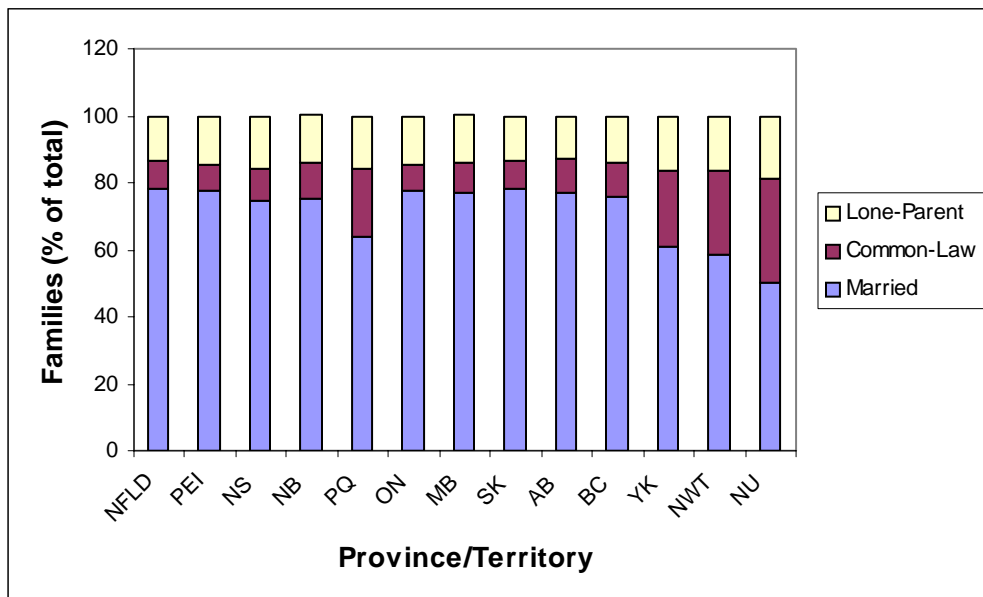
Figure 2.2: Population of Nunavut by Age Group (1996)



2.1.2 Family structure

Family structure (i.e., married couple, common-law couple, or lone parent) in Nunavut is more diverse than in other parts of Canada, as demonstrated in Figure 2.3 below. Only half of the families in Nunavut are based on a married couple; 31 percent of families are common-law; and 19 percent are headed by a lone parent. Nunavut has the highest rate of common-law and lone parent families in Canada.

Figure 2.3: Family Structure by Province or Territory (1996)

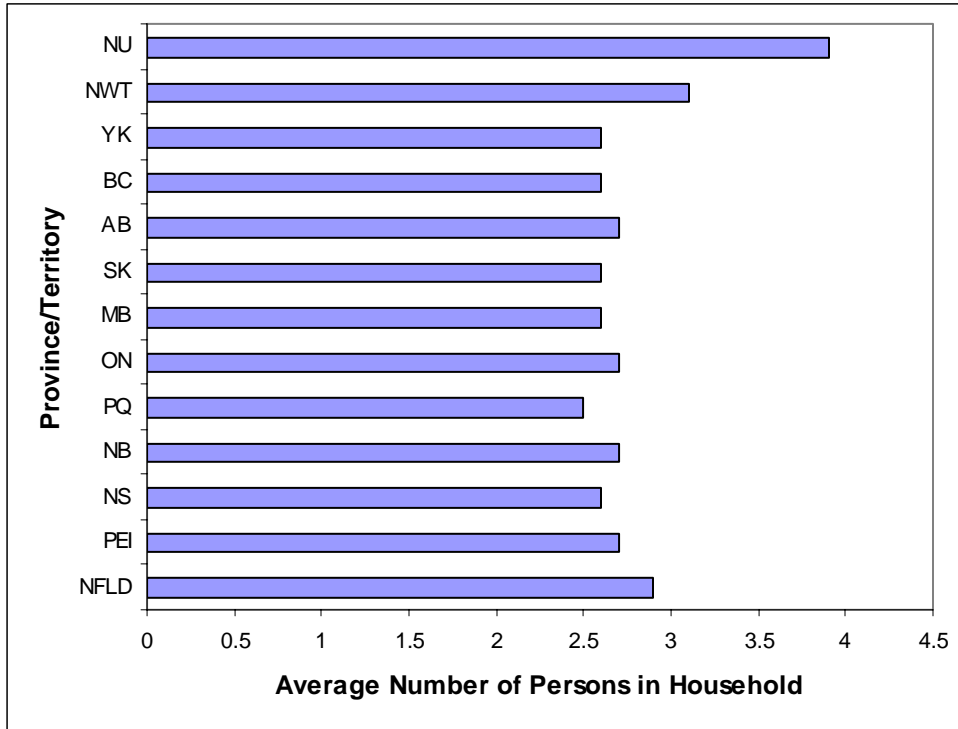


2.1.3 Housing and living arrangements

The majority of Nunavut's families live in rental housing (57 percent). The remainder live in homes that are owned by one of the occupants. As can be seen in Figure 2.4, below, the

average number of people per household is higher in Nunavut than in any other Canadian province or territory, at 3.9 people per household.

Figure 2.4: Average Number of Persons Per Household by Province or Territory (1996)

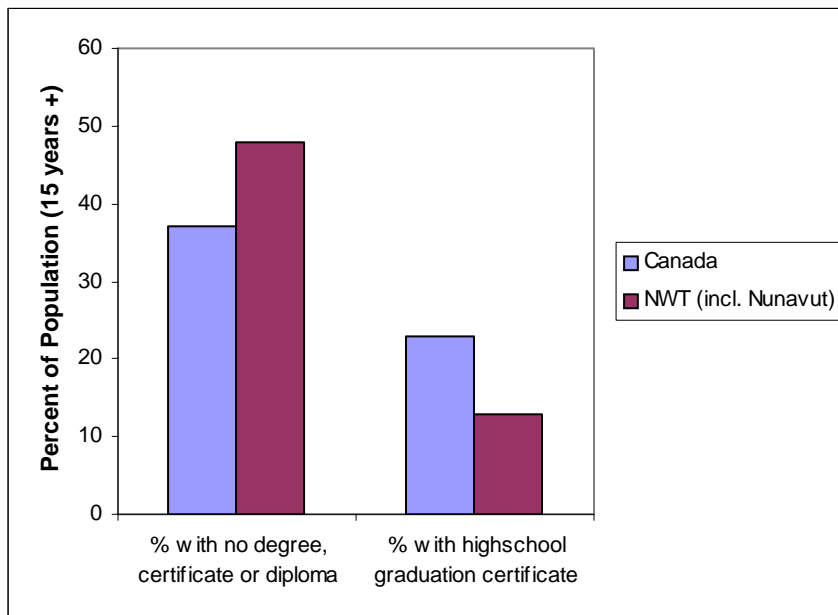


A factor contributing to the number of people per household in Nunavut is the number of individuals who are living apart from their nuclear family. In 1996, 71 percent of individuals living apart from their nuclear families in the Northwest Territories (which, at that point, included what is now Nunavut) reported that they were living with other relatives, while 29 percent reported living with non-relatives.

2.1.4 Education

Statistics Canada information on the level of education in Nunavut has not been updated since 1996, when Nunavut was still part of the NWT. At that time, 48 percent of the population of the NWT over 15 years of age had no degree, certificate or diploma, and only 13 percent had a high school graduation certificate. Figure 2.5 compares those figures with the Canadian average.

Figure 2.5: Level of Education, NWT (incl. NU) vs. Canada (1996)



2.1.5 Language and ancestry

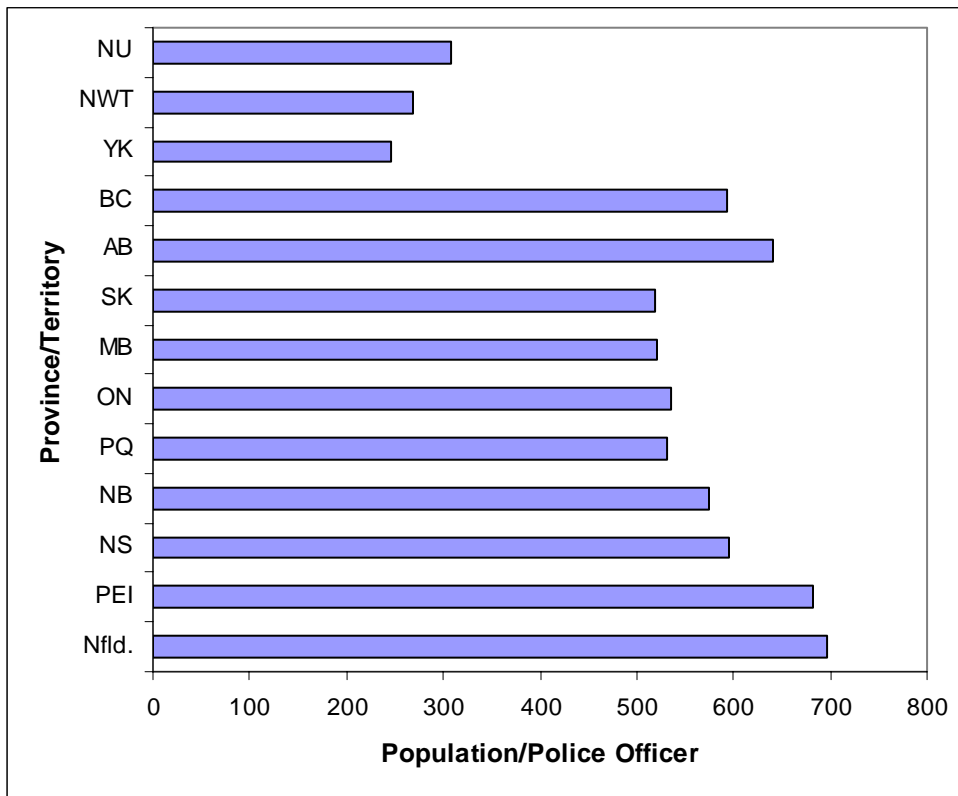
The population of Nunavut differs significantly from that of the rest of Canada in terms of ancestry and mother tongue. Again, the statistical information on these characteristics dates from 1996, prior to the establishment of Nunavut as a territory separate from the NWT. At that time, people of Inuit ancestry slightly outnumbered people of non-Aboriginal ancestry in the NWT (24,600 Inuit to 24,430 non-Aboriginal). The two groups together made up 76 percent of the population of the NWT, followed by North American Indians (18 percent) and Metis (6 percent).

As is to be expected, given the ancestry of the population, the mother tongue of the majority of the population of the NWT (including Nunavut) was Inuktitut (49 percent of the population). English as mother tongue followed at 40 percent. The remainder of the population had another Aboriginal language as mother tongue (the two most common were South Slave at 6 percent and Dogrib at 5 percent).

2.1.6 Crime and policing

Since the establishment of Nunavut in 1999, the number of police officers has been increasing relative to the overall population. As can be seen in Figure 2.6, Nunavut has one of the lowest ratios of population to police officers in Canada and the three northern territories have a far lower ratio of population to police officers than anywhere else in the country.

Figure 2.6: Ratio of Population to Police Officers by Province or Territory (2001)



Nunavut also has one of the highest crime rates in Canada, at 25,000 crimes per 100,000 people in 2001.³ Only the NWT had a higher rate (the Yukon had the same crime rate as Nunavut). Nunavut's violent crime rate was the highest in the country (6573 violent crimes per 100,000 people), followed by the NWT and the Yukon at 5000 violent crimes per 100,000 people and 3751 violent crimes per 100,000 people respectively.

2.1.7 Employment⁴

The employment opportunities available in Nunavut are limited, particularly in the smaller communities. As shown in Figure 2.7, below, the average unemployment rate across all of Nunavut's communities is 17.4 percent. The main sources of employment are the territorial government, local government (for example, the Hamlet office), construction, and tourism (in some communities). Many people from smaller communities list their main source of

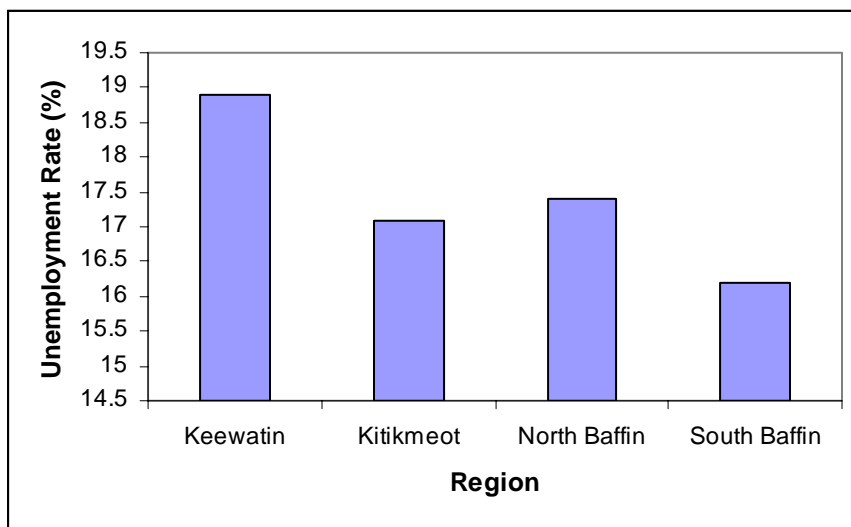
³ As reported on the CBC News North Web site (<http://www.north.cbc.ca/>).

⁴ *Nunavut Community Profiles* (draft), Research and Statistics Division, Department of Justice Canada, August 1999.



employment as traditional activities (hunting, fishing, trapping, and arts and crafts), and consider themselves to be self-employed when engaged in these activities.

Figure 2.7: Unemployment Rates in Nunavut Communities (1996)



2.1.8 Incidence of fetal alcohol syndrome and/or effect

Fetal Alcohol Syndrome and Fetal Alcohol Effect (FAS/E) are caused by a mother drinking while she is pregnant. Children with FAS/E experience a number of physical and mental disabilities. The most relevant, for the purposes of this discussion on legal services, are difficulty recognizing the consequences of their actions, and a tendency to lack the capacity to make decisions about right and wrong or solve problems effectively.⁵ Therefore, the incidence of FAS/E in Nunavut may have an effect on the demand for legal services, as individuals affected often come into conflict with the law, either as youth or as adults.

Several workshop participants identified FAS/E as a significant problem in Nunavut. Unfortunately, there are no statistics available on the incidence of FAS/E in Canada, due to the lack of accepted, standardized diagnostic instruments. However, it is believed that the incidence rate is quite high, particularly in communities where alcohol abuse, combined with lack of education and information, is a concern.⁶

There are, however, statistics available (from the Fetal Alcohol Syndrome Surveillance Network) on the incidence of FAS in Alaska, a state which has many demographic and geographic characteristics in common with Nunavut and the other northern territories. These statistics indicate that, from 1995 to 1997, the incidence rate for FAS in Alaska was 1.5 cases per 1000 population. In comparison, the rate for the other three states studied (Arizona, Colorado, and New York) ranged from 0.3 to 0.4 cases per 1000 population. The study also shows that, among Alaska Natives, the incidence rate was much higher: 5.6 cases per 1000 population.⁷

⁵ Health Canada FAS/FAE Web site (www.hc-sc.gc.ca/hppb/childhood-youth/cyfh/fas/whatisfas.html).

⁶ Information provided by Andrea Corbett, Health Canada, by telephone.

⁷ Fetal Alcohol Syndrome Surveillance Network, "Fetal Alcohol Syndrome – Alaska, Arizona, Colorado, and New York, 1995–1997," *Morbidity and Mortality Weekly Report* 51, 20 (May 24, 2002), pp. 433–435, Centers for Disease Control and Prevention.



2.2 THE LEGAL SYSTEM

2.2.1 The history of Nunavut's legal system

The Northwest Territories was the traditional homeland of Dene and Inuit, who lived on the land for thousands of years before coming into contact with European civilization. The tree line, running diagonally from the northwest corner on the Beaufort Sea to the southeast corner along Hudson Bay, was a natural division between the land-based culture and economy of the Dene and the marine economy and culture of the Inuit. By the end of the nineteenth century, a remotely administered political and judicial system was in place, based in Ottawa. With the founding of the territorial capital of Yellowknife in 1967, a resident government and justice system was put in place in the north.

As the territorial legislature became more reflective of the people of the north, and with the formation of strong organizations to represent the indigenous peoples of the NWT, there was pressure for more change.

On April 1, 1999, principally as a result of some thirty years of effort on the part of Inuit to finalize a land claim alongside a territory of their own, the NWT was divided. The process began as a negotiation of a land claim agreement between the Inuit and the Federal Government. The vision for change came to fruition in 1993 with the settlement of the land claim and the simultaneous federal commitment to the creation of Nunavut. The change took on the force of law under the *Nunavut Act* (S.C.1993, c.28). The creation of the new territory of Nunavut gave the Inuit a jurisdiction of their own, separate from the population of Dene and Metis to the west whose interests were different from theirs.

The Nunavut Implementation Commission, set up by the *Nunavut Act*, spent two years developing a detailed report on how the new government would be brought into being. An Interim Commissioner was then appointed under the Act and given instructions to implement the recommendations in the report, including making recommendations on new policies and laws that would meet the particular needs of the jurisdiction.

One key principle of the Nunavut Implementation Commission and the subsequent tripartite (federal, territorial and Inuit) process for implementing Nunavut was that the new government would be established on a decentralized model. Thus, government services and related economic benefits would not simply be confined to the capital of Iqaluit, in the southeastern corner of Nunavut, but would also be undertaken and based in 10 (of the 28) other Nunavut communities in the three regions of Nunavut: the Baffin, Kivalliq and Kitikmeot.

Another key underpinning of the new Nunavut government was that the territorial and federal governments were required, through the constitutionally entrenched Nunavut Land Claims Agreement, to meet certain obligations. Article 32 of the agreement requires that Inuit be involved in the design and delivery of social programs and services. This is reflected in the critical role currently played by Inuit in the delivery of legal aid services through their presence on three boards that oversee the operation of regional legal services clinics and the umbrella Nunavut Legal Services Board (NLSB).

The Nunavut Implementation Commission also decided that the legal aid delivery system, which had evolved and was in place in the Northwest Territories, should be continued in Nunavut. The system features a mixed model of full time legal aid lawyers working in regional legal aid clinics, assisted by Native Courtworkers, supplemented by services to legal aid clients from private lawyers retained on a fixed-fee basis.

The Nunavut model therefore features the NLSB, set up under the *Nunavut Legal Services Act* as an independent statutory body with the authority and mandate to fund and approve the

establishment of regional legal services centres and set policies for the delivery of legal aid services. In keeping with the decentralized model for Nunavut, the headquarters of the NLSB is located in Gjoa Haven in the Kitikmeot Region.

2.2.2 The current legal system

In the area of the administration of justice, s. 31 of the Act created a Supreme Court and a Court of Appeal with the same powers and jurisdiction that their counterparts in the Northwest Territories have. During the process leading up to the creation of Nunavut, a new model for delivering superior court services was advocated by representatives of the federal government, and endorsed by the Nunavut Interim Commissioner. It was predicted that a single level trial court would provide speedier trials and better community access, particularly in civil matters. It was also hoped that the Nunavut Court of Justice (NCJ) would be more responsive to the unique needs and cultural values of Nunavut's majority Inuit population.

As a result of these discussions, an amending statute, passed in March 1999 and coming into force on April 1, 1999, created the NCJ. The NCJ is a single-level trial court consisting of three superior court judges based in Iqaluit, together with non-resident appointees. This innovative approach also required extensive amendments to federal and territorial law.

Another statute, the *Nunavut Judicial System Implementation Act*, provided for local justices of the peace (JPs), and repealed the former *Territorial Courts Act* – a necessary step in the process of establishing the single-level court. As of January 2002, there were 81 JPs appointed in 25 Nunavut communities. Nunavut also has its own Law Society.

The three judges of the NCJ provide court services to the entire territory of Nunavut from the NCJ headquarters in Iqaluit. From there, the Court travels to approximately 85 percent of the communities across the territory. The Court travels to these communities every six weeks to two years, depending on the number of charges coming into court from that community. On average, the NCJ has two to three court sittings per week each year, with at least one traveling court circuit and one court sitting in Iqaluit. In 2002, the NCJ scheduled 38 circuits outside Iqaluit. Typically, the court will travel Monday to Friday by scheduled flight or charter, with up to three community visits in one week.

Members of the circuit court include a judge, clerk, court reporter, prosecutor and at least one defence attorney. Courtworkers and Victim Witness Assistants might also travel with the circuit court, depending on the cases to be heard. Interpreters are hired in the communities when possible, but travel with the circuit court when necessary.

Court is held in community halls, school gyms, and in other conference facilities as available. All court proceedings in the communities are interpreted for the public. Elders and JPs sit with the judge in the courtroom and are given the opportunity to speak with the accused, following sentencing submissions and prior to the passing of sentence.

The Nunavut justice system is unique, and challenging in several respects. The effects of these challenges on the NLSB are discussed further in Section 3.1.1.

2.3 NUNAVUT LEGAL SERVICES BOARD (NLSB)

2.3.1 The history of the NLSB

Until the mid 1970s, legal aid services in the Northwest Territories, largely in criminal law, were delivered primarily by Yellowknife private lawyers working with traveling circuit courts. A government official co-ordinated these programs and services, which were also largely based in the far-western capital, Yellowknife.



By 1975, a Native Courtworker Program was established in the western NWT, with support from the federal Department of Justice. That same year, a demonstration project, proposed by the Inuit Tapirisat of Canada and funded jointly by the federal Department of Justice and the Government of the NWT, Department of Justice and Public Services, was established in Frobisher Bay (now Iqaluit). This new model provided for the delivery of a broad range of legal aid and public education services for Inuit in the most remote region of the NWT – the Baffin. A new feature of the model was that the clinic was established as a non-profit society, governed by a local Board of Directors. Over time, the demonstration project was deemed to be a success – and has had a significant influence on changes made in the delivery of legal aid services, shifting the method of delivering legal aid services in communities outside larger centres, from circuit courts to regional clinics.

A major review of legal aid services in the 1980s considered these developments, and made recommendations that resulted in the statutory underpinnings of the present model for the delivery of legal services in the NWT and Nunavut. This is a mixed model of service delivery – with private bar lawyers as well as staff lawyers working closely with Aboriginal Courtworkers through regional clinics. Overseeing these programs was an independent territorial Legal Services Board, established by the *Nunavut Legal Services Act*, with a broad statutory mandate to provide criminal and civil legal aid and public legal education.

Today, legal services in Nunavut are delivered through three regional clinics, located in Nunavut's three regional centres: Cambridge Bay in the Kitikmeot Region, Rankin Inlet in the Kivalliq Region and Iqaluit, with a satellite office in Pond Inlet serving the northern part of the Baffin Region. Private lawyers in Nunavut, all of whom are based in Iqaluit, also provide legal aid services. Occasionally, the services of lawyers based in Yellowknife are enlisted to assist with legal aid work, especially in western regions of Nunavut.

2.3.2 Roles and responsibilities of the NLSB

Section 7 of the *Consolidation of Legal Services Act* (Nunavut) identifies the roles and responsibilities of the NLSB as follows:

The objects of the Board are

- (a) to ensure the provision of legal services to all eligible persons;*
- (b) to ensure that the legal services provided and the various systems for providing those services are the best that circumstances permit; and*
- (c) to develop and co-ordinate territorial or local programs aimed at
 - (i) reducing and preventing the occurrence of legal problems, and*
 - (ii) increasing knowledge of the law, legal processes and the administration of justice.**

In order to meet these objectives, the NLSB is responsible for three different legal services in Nunavut:

1. *The provision of legal aid.* These services are provided through the NLSB's four regional clinics and co-ordinated from the head office in Gjoa Haven.
2. *The management of the Courtworker program.* Courtworkers are currently employed and managed directly by the regional offices. However, once a comprehensive, Nunavut-wide Courtworker training program is in place, responsibility for managing the Courtworkers may shift to the NLSB's head office in Gjoa Haven. For a more in-depth discussion on Courtworkers, see Section 7.0.
3. *Public legal education and information (PLEI).* The NLSB is responsible for PLEI activities in Nunavut. For a more in-depth discussion on PLEI, see Section 8.0.

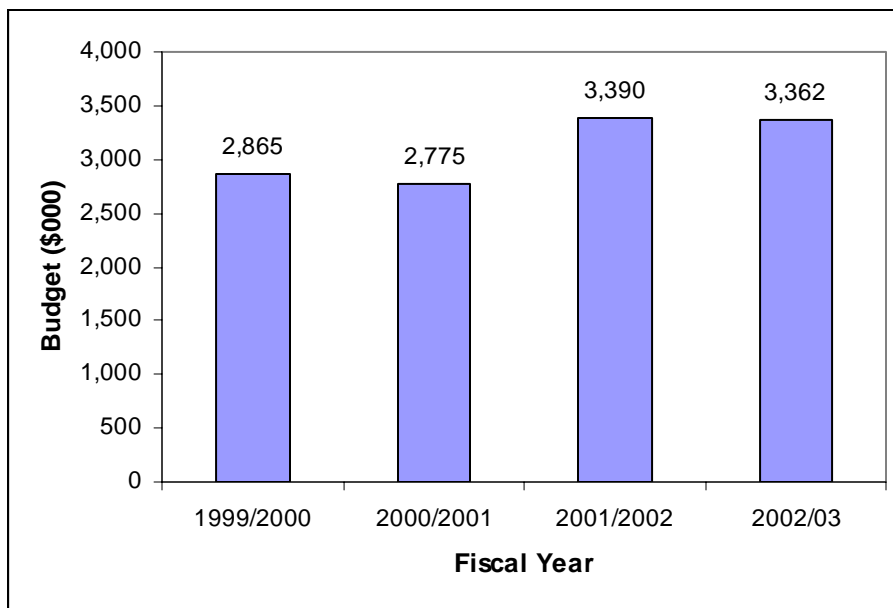
2.3.3 Current resources of the NLSB

The NLSB is provided with both financial and human resources in order to carry out its assigned tasks of providing legal aid, managing the Courtworker program, and providing public legal education and information (PLEI). The NLSB's funding comes from the Government of Nunavut, Department of Justice. The Government of Nunavut (GN) in turn receives a share of its funding for legal aid from the Access to Justice Agreement with the Department of Justice Canada, an agreement that consolidates a number of federal justice programs, allowing the GN some flexibility in determining priorities.

Financial resources

Figure 2.8 shows the budget of the NLSB from 1999/2000 (during which time the division took place) to 2002/2003.

Figure 2.8: NLSB Budget (1999/2000 to 2002/2003)⁸



Note that the figures for 1999/2000, 2000/2001, and 2001/2002 are revised main estimates that reflect the actual amount spent. The figure for 2002/2003 is a main estimate, and does not reflect the actual amount spent.

The NLSB's budget is broken down as shown in Table 2.1, on the following page.

⁸ Budget information provided by the Department of Justice, Government of Nunavut.



Table 2.1: NLSB Budget (2002/2003)

Description	\$000
Compensation & benefits	352
Grants & contributions	890
Travel & transportation	455
Materials & supplies	39
Purchased services	34
Contract services	672
Fees & payments	913
Other	7
TOTAL	3,362

Note: Grants and Contributions refers to monies received from Justice Canada specifically for the funding of the three regional legal services clinics in Nunavut.

Human Resources

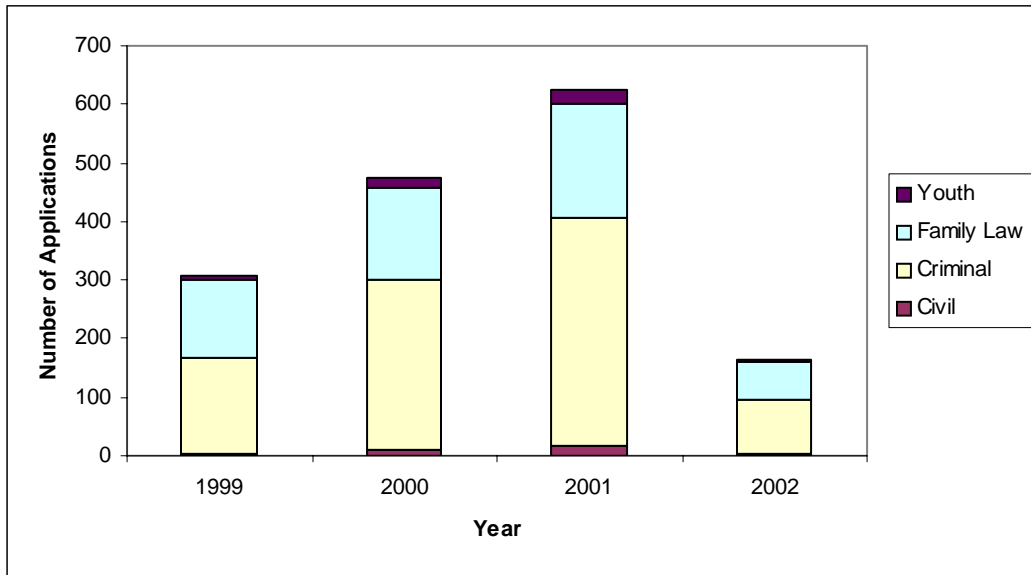
The NLSB's human resource complement consists of staff lawyers, private lawyers and Courtworkers, as well as support staff in the head office in Gjoa Haven and in the regional law clinics. At the time of writing, the NLSB employed eight staff lawyers and was also using the services of four private lawyers, on a contract basis, to supplement staff lawyers as necessary. Fourteen Courtworkers were employed by the regional clinics. Of these, three were full-time (one in each region) and the remainder part-time employees.

2.3.4 Current legal aid service delivery statistics

Since 1999, the demand for the NLSB's services, as indicated by the number of legal aid applications received, has increased steadily. Trends in the number and type of applications received since 1999 are shown in Figure 2.9, below. Of the four types of legal aid one can apply for (civil, criminal, family, and youth), demand for criminal legal aid is increasing the most rapidly, followed by less dramatic increases in demand for family and youth legal aid. Demand for civil legal aid appears to be remaining fairly stable.

It should be noted that a number of respondents expressed concerns with using legal aid applications as a measure of demand for services, although they acknowledged that there were no other quantitative means of measuring demand. Their concerns centred on the fact that individuals will not apply for services they do not believe to be available, even if they need those services. Therefore, the demand for family and other civil law services, which many individuals believe are not available, would be underestimated based on legal aid applications.

Figure 2.9: Number of Legal Aid Applications by Type (1999 – April 2002)

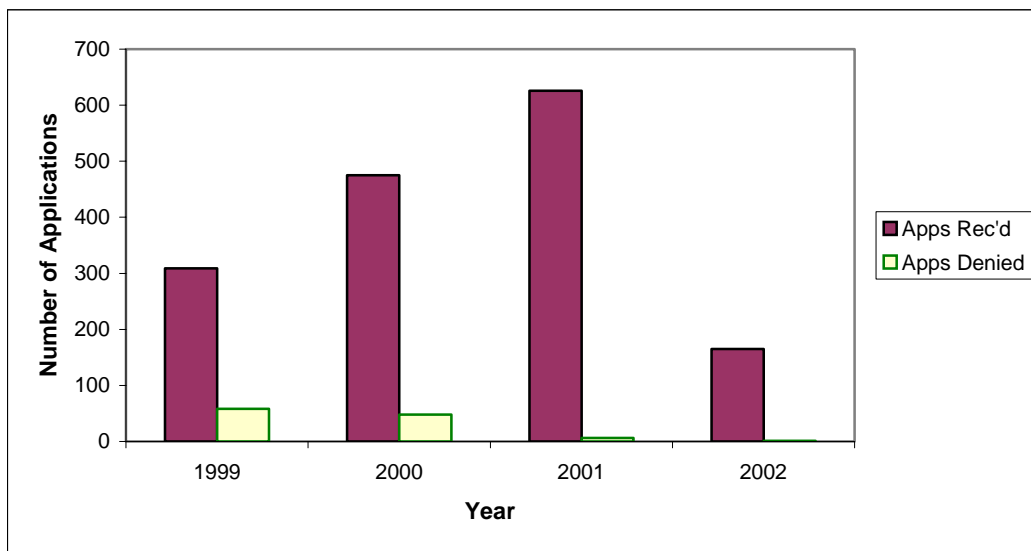


Source: Legal Aid Application files from the Legal Services Board in Yellowknife and Legal Aid Application ledger from the NLSB in Gjoa Haven.

Note: The number of applications recorded for 2002 reflects only applications received before April 2002. As noted in Section 2.0 – Methodology, every attempt was made to avoid double-counting files open during the June 2000 transfer of files from Yellowknife to Gjoa Haven.

Of the applications received by the NLSB, only a small number are denied. In fact, as the number of applications has increased over the years, the number of applications denied has decreased, as is shown in Figure 2.10.

Figure 2.10: Applications Received vs. Applications Denied (1999 – April 2002)



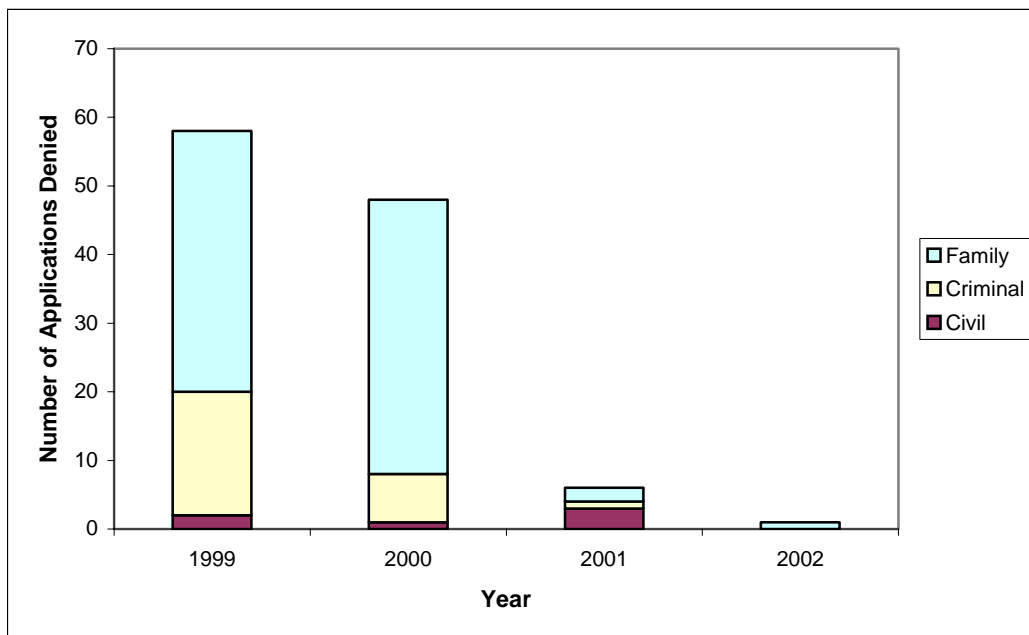
Source: Legal Aid Application files from the Legal Services Board in Yellowknife and Legal Aid Application ledger from the NLSB in Gjoa Haven.



Note: The number of applications received and denied recorded for 2002 reflects only applications received before April 2002. As noted in Section 2.0 – Methodology, every attempt was made to avoid double-counting files open during the June 2000 transfer of files from Yellowknife to Gjoa Haven.

The type of applications that are denied appear to be changing with time, as is shown in Figure 2.11.

Figure 2.11: Applications Denied by Type of Legal Aid Requested (1999 – April 2002)



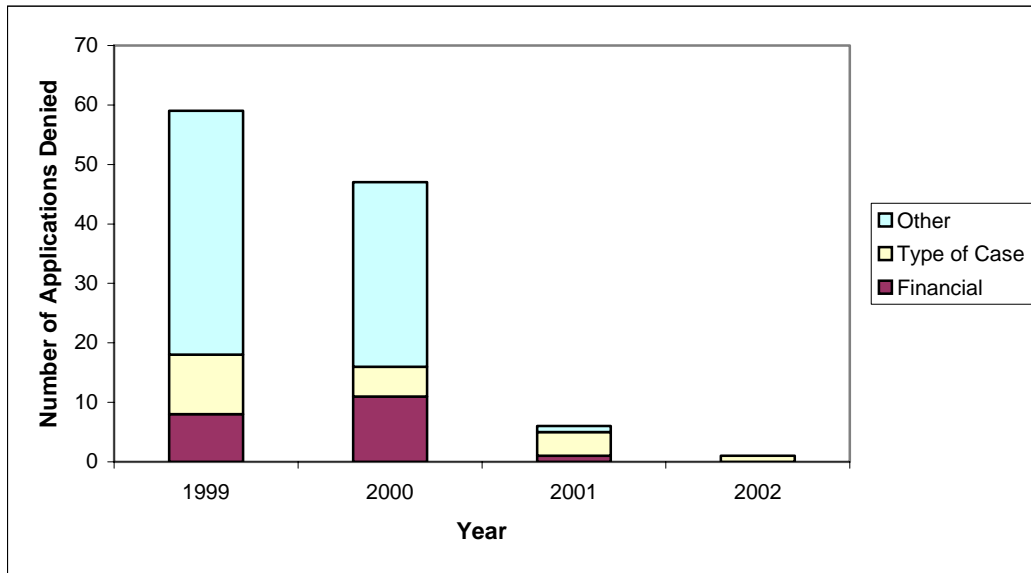
Source: Legal Aid Application files from the Legal Services Board in Yellowknife and Legal Aid Application ledger from the NLSB in Gjoa Haven.

Note: The number of applications received and denied recorded for 2002 reflects only applications received before April 2002. As noted in Section 2.0 – Methodology, every attempt was made to avoid double-counting files open during the June 2000 transfer of files from Yellowknife to Gjoa Haven.

In 1999 and 2000, the majority of applications denied were for family law services, followed by criminal law services and civil law services. However, in 2001, more applications for civil law services were denied than for either family law or criminal law. At first glance, this would appear to indicate that unmet need exists for certain types of legal aid and that the nature of unmet need may be changing over time.

However, the reasons provided for denying legal aid appear to demonstrate that aid is most frequently denied for reasons other than the type of case involved, financial ineligibility or “other” reasons. The two most common “other” reasons for denial of legal aid are failure on the part of the applicant to provide the necessary information and belief, on the part of the NLSB, that the case is unlikely to result in any benefit for the applicant. Therefore, it appears that demand for services outside the scope of the NLSB’s statutory mandate is not the primary cause of denial of legal aid. Figure 2.12 demonstrates the trends in reasons for denial of application.

Figure 2.12: Reasons for Denial of Application (1999 – April 2002)



Source: Legal Aid Application files from the Legal Services Board in Yellowknife and Legal Aid Application ledger from the NLSB in Gjoa Haven.

Note: The number of applications received and denied recorded for 2002 reflects only applications received before April 2002. As noted in Section 2.0 – Methodology, every attempt was made to avoid double-counting files open during the June 2000 transfer of files from Yellowknife to Gjoa Haven.

2.4 SUMMARY OF SECTION 2.0

The following table summarizes the key points relating to Section 2.0.

Table 2.2: Summary of Section 2.0

Social and Demographic Characteristics of Nunavut
<ul style="list-style-type: none"> • The social and economic situation in Nunavut is very different from that of the rest of Canada. • The unique demographic, social, and economic characteristics of Nunavut's population have an impact on the demand for legal services in the territory.
Nunavut's Legal System
<ul style="list-style-type: none"> • Nunavut's legal system is unique in Canada due to the Nunavut Court of Justice, a unified court that replaces the dual court model (Territorial and Supreme) used in the rest of Canada. • The history of Nunavut's creation led to a commitment to decentralization and Inuit involvement in decision-making on all issues. These commitments have an impact on the Nunavut Legal Services Board's costs and on the expectations placed upon it. • Nunavut's legal system is a complex and interdependent entity. All of the system's components interact with and influence one another.



Table 2.2 Continued

The Nunavut Legal Services Board
<ul style="list-style-type: none">• The Nunavut Legal Services Board has three responsibilities: to provide legal aid services, to manage the Courtworkers program, and to provide public legal education and information. As specified in section 7 of the <i>Consolidation of Legal Services Act</i> (Nunavut), the Board is responsible for ensuring that "...the legal services provided and the various systems for providing those services are the best that circumstances permit ..."• The Board has a budget of \$3,362,000 in 2002/03.• Demand for the Board's services, as measured by the number of legal aid applications received, is increasing steadily. In particular, applications for family law legal aid are increasing, as women become more aware of their rights in this area.• Very few applications for legal aid services are denied by the Board. The majority of applications denied are in the areas of family or civil law.• Legal aid services are not usually denied due to financial ineligibility or the type of case involved. Among the common reasons for denial of legal aid are failure on the part of the applicant to provide the necessary information and belief, on the part of the Board, that the case is unlikely to result in any benefit for the applicant.

3.0 Service Delivery: Demand, Pattern, and Quality

The demand for legal services and the pattern and quality of legal services provided in Nunavut are affected by a number of different factors, which are discussed in detail in this section, including:

- court structure (both the NCJ and the JP Court);
- geography;
- culture;
- limited human resources.

3.1 IMPACT OF COURT STRUCTURE

3.1.1 Nunavut Court of Justice

Respondents saw the NCJ as a benefit to Nunavut because it is the territory's own court, with resident judges who are respected for the tremendous efforts they have made to understand and be responsive to the uniqueness of Nunavut. The court and its senior judge are well respected for their arduous travel, knowledge of communities and efforts made to achieve community input and involve elders in court sittings.

However, the general impressions of those directly involved in delivering legal services in the NCJ is that – while it has resulted in a more regularized circuit structure and has the advantage of being able to handle civil and family matters during community court circuits – there are still significant frustrations with the intervals between circuits and the time available to conduct court business during court circuits. There is general agreement among respondents that overall, circuit courts are taking place less frequently in the outlying communities since Nunavut was established, and that the court does not stay for long enough when it is in the community.

The NCJ reports that, in 2001, there were 46 non-jury court circuits outside of Iqaluit, as well as court in Iqaluit for at least two weeks of every month. Fifteen jury trials were also conducted by the NCJ in 2001.⁹

Although, towards the end of this research study, the permanent appointment of a third judge to the NCJ was announced, the court has been scheduling its circuits as if a third judge had been in place, relying on deputy judges from southern Canada to conduct those circuits. The NCJ reports that deputy judges were used 49 times in 2001.¹⁰ It is therefore not likely that circuit courts will be more frequent or have any more time in communities as a result of the appointment. The table below shows the draft circuit schedule for 2002, which assumes the presence of three NCJ judges.

⁹ *Nunavut Court of Justice Annual Report: 2001.*

¹⁰ *Ibid.*

**Table 3.1: Draft Circuit Schedule (2002)¹¹**

WEEK	COMMUNITY	MATTER	WEEK	COMMUNITY	MATTER
January 7–11	Iqaluit/ Pond Inlet/Clyde River	Docket Non-jury	July 2–5	Iqaluit	Docket
January 14–18	Cape Dorset	Non-jury	July 15–19	Iqaluit	Trial Week
January 21–25	Iqaluit	Trial Week	July 22–26	Kitikmeot No. 2	Non-jury
January 28– February 1	Pangnirtung/Qikitarjuaq Kitikmeot No. 1	Non-jury Non-jury	August 6–9	Iqaluit	Docket
February 4–8	Iqaluit	Docket	August 12– 16	Kitikmeot No. 1	Non-jury
February 11–15	Baker Lake/Rankin	Non-jury	August 19– 23	Iqaluit/Kitikmeot	Trial Week
February 18–22	Iqaluit/Kimmitut	Trial Week	August 26– 30	Pond Inlet/Clyde River Coral Harbour/Dorset	Non-jury Non-jury
February 25–March 1	Igloolik/Hall Beach Coral Harbour/Dorset	Non-jury Non-jury	September 3–6	Pangnirtung/ Qikitarjuaq	Non-jury
March 4–8	Iqaluit Kitikmeot No. 2	Docket Non-jury	September 9–13	Iqaluit Inloolik/Hall Beach	Docket Non-jury
March 11– 15	Iqaluit	Trial Week	September 16–20	Arviat/Rankin Inlet	Non-jury
March 25– 28	Sanikiluaq	Non-jury	September 23–27	Iqaluit	Trial Week
April 2–5	Cape Dorset	Non-jury	September 30–October 4	Sanikiluaq	Non-jury
April 8-12	Iqaluit Kitikmeot No. 1	Docket Non-jury	October 7– 11	Iqaluit	Docket
April 22– 26	Iqaluit Pond Inlet/Clyde River	Trial Week Non-jury	October 15–18	Cape Dorset	Non-jury
April 29– May 3	Arctic Bay/RB/GF Arviat/Rankin Inlet	Non-jury Non-jury	October 21–25	Iqaluit Arctic Bay/RB/GF	Trial Week Non-jury
May 6–10	Iqaluit	Docket	October 28– November 1	Kitikmeot No. 2 Baker Lake/Rankin	Non-jury Non-jury
May 13– 17	Pangnirtung/Qikitarjuaq	Non-jury	November 4–8	Iqaluit Kitikmeot No. 1	Docket Non-jury
May 21– 24	Coral Harbour/Dorset	Non-jury	November 18–22	Iqaluit Pond Inlet/Clyde River	Trial Week Non-jury
June 3–7	Iqaluit Kitikmeot No. 1	Docket Non-jury	November 25–29	Coral Harbour/Dorset	Non-jury
June 10– 14	Igloolik/Hall Beach Baker Lake/Rankin Inlet	Non-jury Non-jury	December 2–6	Iqaluit Pangnirtung/Qikitarjuaq	Docket Non-jury
June 17– 21	Iqaluit	Trial Week	December 9–13	Arviat/Rankin Inlet	Non-jury
June 24– 28	Cape Dorset	Non-jury	December 16–20	Iqaluit Igloolik/Hall Beach	Trial Week Non-jury

Kitikmeot No. 1 – Cambridge Bay and Kugluktuk; Kitikmeot No. 2 – Kugaaruk, Gjoa Haven, Taloyoak; RB – Repulse Bay; GF – Grise Fiord.

¹¹ As provided by the NLSB.

The actual schedule of the circuit court can vary considerably from the planned schedule. Demand (in terms of the number of cases to be heard) can significantly change the court schedule, allowing it to leave a community early or, alternatively, forcing it to set cases over until the next scheduled visit. Most often it is family law and civil law cases that are carried over to the next docket, which would likely have a disproportionate effect on women, as they are more likely to be involved in family law cases. Once the court arrives in a community, the docket may also be dramatically reduced as the Crown counsel reviews the charges that have been laid. Although the circuit courts are often reacting to issues beyond their control (e.g., the length of the docket or changes to the docket once the court has arrived in the community), the resulting unpredictability in court visits and duration of visits may be difficult for community members to understand, and contributes to the stresses affecting all members of the legal system.

Respondents attributed the decrease in circuits and time spent in the communities to a number of different factors, including geography and climate issues, and the reduction in the number of scheduled flights into and out of remote Nunavut communities over the years. The fact that the court is based in Iqaluit, and has a policy of maximizing the use of scheduled flights rather than court charters, has meant that two days per week are often taken up by travel time for many court circuits, especially in the Kivalliq and Kitikmeot regions. Several respondents also attributed these time constraints to the court's policy of not traveling on weekends. As a result, the court can only travel to the community on a Monday and begin court on Tuesday (or, perhaps, Monday afternoon). The session often must end on Thursday, so that the court can travel out on Friday. Some respondents indicated that these shorter working weeks as a result of travel time have increased community concerns and frustrations with the justice system, especially outside the Baffin base of the NCJ.

The structure of circuit courts (particularly the time between circuits and the short time the court spends in individual communities) affects clients, the level of legal advice and support, the pattern of service delivery, and the quality of services in a number of ways, including:

- the size of court dockets;
- the use of deputy judges;
- the way in which spousal and sexual assault cases are addressed;
- difficulty gaining access to clients;
- pressure to clear cases from the docket;
- delays in circuit courts;
- discontinuity in defence counsel in circuit courts.

Size of court dockets

Dockets are long because the court does not get to the community very often. The workload is often so heavy that neither the Courtworker nor the defence counsel can address all of the cases, as well as any conflicts that may occur. Judges sometimes assume or even direct that

One time I was doing a workshop in the Arctic Islands Lodge. They processed 80 cases in three days in Cambridge Bay. They were lined up like pork in the hall ...

counsel will interview clients in the evenings or will attend sessions in the evenings. This has a direct impact on the quality of service provided. The length of the docket, combined with the short amount of time spent in the community, results in longer sitting times and, occasionally, night sittings. The court is frequently incapable of addressing all of the cases on the docket within the amount of time allocated to that community. A number of cases are adjourned, which results in frustration. In particular, family law and civil law cases are frequently adjourned, as criminal cases take precedence.



When dockets in busier communities can reach 80 charges or more, including matters set for trial, it makes for extreme time pressures over three days. Respondents indicated that circuit courts often have too many trials scheduled for the available time in the community.

The NCJ reports having dealt with a total of 4427 charges in 2001, of which 717 (16 percent) were youth charges.¹² Based on the NCJ's reported figures for court sessions in Iqaluit, circuits, and jury trials, this works out to approximately 60 charges per session.¹³

I think a big problem is a lack of time. ... I prepare as best I can. Even so, [I'm] carrying 60, 80 files into Kugluktuk for a day and a half ... There are more night sittings ... Judges get tired hearing 30 cases in the day. Sitting until 10 o'clock at night, then 9 o'clock the next morning. On the last circuit, the court sat till 10 in Kugluktuk on the first day. Last circuit before that, the court sat late two nights.

In some cases, the size of the docket and resulting time pressures cause the case to fold and plea-bargaining to take place. Plea-bargaining can have either a positive or negative result for the client (in terms of the sentence received). As a result of longer dockets and less time in the communities, experienced NLSB counsel report that it is arduous and draining to endure months and months of onerous travel, followed by long court days and long nights spent preparing for trials or interviewing clients.

Extensive use of deputy judges

Respondents also gave the general impression that the entire justice system is under-resourced. In particular, the system has been short one judge during the research period and for three years since the establishment of the NCJ. Even though visiting judges

have been appointed to fill this gap (visiting judges were on circuit for 46 weeks in 2001), continuity and familiarity of a judge with the dynamics of Nunavut and particular communities have suffered as a result. Respondents expressed concerns with respect to deputy judges – that they lack local and cultural knowledge, and that they may not be as dedicated as northern resident judges to addressing these issues. In general, respondents agreed that it is desirable that the same judge be assigned to particular communities, increasing knowledge of and sensitivity to the uniqueness of each community. The use of deputy judges will be diminished with the recent appointment of a third resident judge, which will reduce the pressure on Courtworkers and NLSB counsel to provide cultural and local knowledge, as well as legal expertise.

Addressing spousal and sexual assault cases

Some respondents raised concerns relating specifically to circuit courts and spousal and sexual assault cases. They highlighted that Victim Impact Statements are not always made available to the victim or are not used during the hearing. They are also uncomfortable that, in some communities, the RCMP officers – not a Victim Witness Assistant – take the impact statement. Being asked to provide a Victim Impact Statement raises the level of expectation of the victim, and these expectations are not always fulfilled by the legal system. Respondents indicated that these statements are often not referred to in court, and that victims may not even be informed that their cases are being heard. Finally, all cases are heard in public and limited allowances are made for witnesses or victims to testify behind a screen, even if they are intimidated by the thought of confronting their abuser in public.

Respondents also felt that some judges do not appear to have enough training in domestic violence issues. There are also particular concerns with respect to non-Aboriginal people working in the justice system (judges and others). While trying to be culturally sensitive, they

¹² Nunavut Court of Justice Annual Report: 2001.

¹³ 4427 charges / (12 Iqaluit sessions + 46 circuits + 15 jury trials) = 60.6 charges/session.

may be vulnerable to supporting certain contentious attitudes about the role of women and violence against women that may or may not be traditional (see further discussion in Section 3.3 – Impact of culture).

These matters affect the ability of NLSB Courtworkers and legal counsel, as well as Crown counsel and others active in the justice system, to meet the needs of their clients.

Difficulties in getting access to clients

Even though crown and defence counsel often travel ahead of the court party for the purpose of interviewing clients and witnesses, defence counsel report that clients often do not take advantage of the opportunity to see their counsel before they are required to appear. Then, when they do appear, they are often reluctant to wait very long to get an opportunity to meet with counsel. This situation is aggravated in communities where Courtworkers are not present, or are inexperienced. At the moment, 13 of 28 Nunavut communities do not have resident Courtworkers. There is also a current shortage of Courtworkers with adequate training and experience. This reduces the amount of support they are able to provide to legal aid counsel and to clients before, during, and after court circuits, so adding to the workload on already overworked NLSB counsel and contributing to more adjournments or delays.

Defence lawyers also say that there are rarely any consequences when an accused person has apparently not made efforts to meet with a lawyer to prepare for court. As a result, particularly in some communities, even when counsel travel in advance of the court party, it is difficult to locate and meet with people who are scheduled to appear in court, resulting in delays and further compressed preparation time. Judges refuse to go ahead with cases when the accused is unrepresented. Although this reflects an appropriate concern about the right of an accused person to be represented by counsel, it is also based on the reality that lawyers are critical in moving cases rapidly through the system by managing the process for the accused person. In some situations, when accused persons have not made themselves available even when defence counsel has traveled to a community in advance of the court party, defence counsel are expected or even directed to interview accused persons in the evenings, adding to the pressures of short and intense working weeks.

Pressures to clear cases from the docket

Perhaps as a result of expectations that justice in Nunavut would be more accessible, and swifter, respondents reported that the NCJ seems very concerned with clearance rates – i.e., the speed with which a case is dealt with. This puts subtle but strong pressure on all players in the system, which results in a very different way of practising law than is the case in southern Canada: there are fewer trials, shorter trials, pressure to make admissions, and inadequate research and preparation time. These pressures can in turn result in cases being moved back into the JP court system, which some respondents felt is not always appropriate and respectful of the Rule of Law, where personnel are not fully trained.

Also, contrary to expectations prior to its establishment, the experience of the NCJ has been that jury trials cannot be done during busy regular circuit weeks, so jury trials must be dealt with separately. Although, in 2001, Nunavut has had only 15 jury trials compared with 35 jury trials in its neighboring jurisdiction, the Northwest Territories, setting aside this dedicated court time adds to overall time pressures on the court system, and on NLSB service providers in particular.

Delays in the NCJ

Delays during circuit court are attributed to a number of factors:

- Weather problems, particularly during changing seasons, often prevent the court from arriving in a particular community and, therefore, from hearing cases in a timely manner.



-
- Lengthy dockets often mean that the list cannot be dealt with during the time allocated to the community.
 - Defence counsel do not always have time to prepare cases for court, particularly when the court goes beyond the first community on the circuit. (Counsel can travel to the first community ahead of time, but after that point must travel with the court party.) This might result in counsel requesting an adjournment.
 - Frequent delays result when accused persons have not had or have not taken the opportunity to instruct counsel. Even if the lack of representation is the choice of the accused or due to lack of action on the part of the accused, judges will not proceed without counsel being assigned. (Some respondents felt this is a paternalistic approach on the part of the judiciary, which encourages lack of responsibility on the part of clients.)
 - Discontinuity of defence counsel, discussed further below, also causes delays and adjournments.

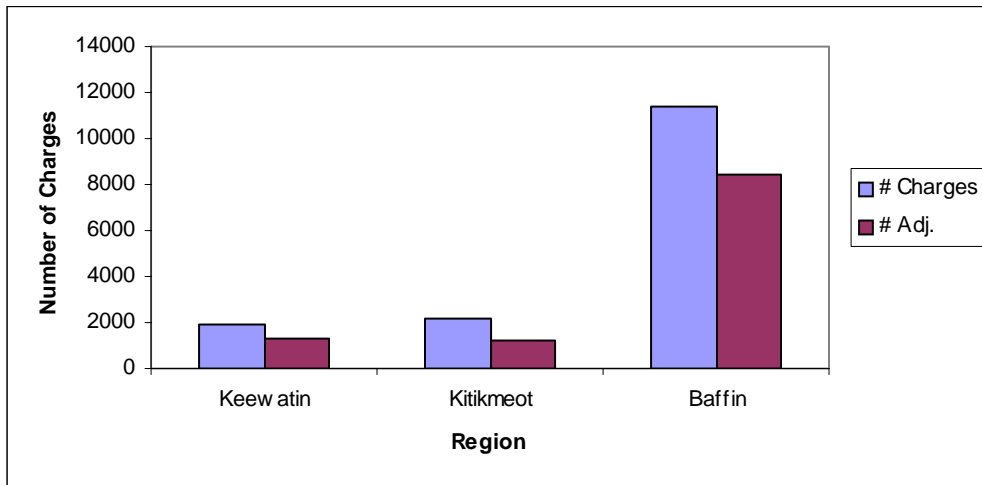
Some respondents and workshop participants reported that they felt delays in circuit courts are too frequent and too long. The general perception of respondents is that family law and civil law matters are more likely to be postponed than criminal matters, because they are often addressed at the end of a busy docket when time has run out. However, most respondents indicated that all types of cases are regularly postponed. For example, one respondent reported that at a recent sitting every single matter on the docket was adjourned, including a preliminary hearing into a sexual assault case, even though the court was in session for two and a half days in that particular community.

I had a lawyer in my office for a family law case in Kugluktuk [counsel was representing the client by telephone]. She waited until midnight for the case to be heard, and then it was adjourned.

Delays affect all players in the legal system, but particularly counsel, who must be available to serve their clients and deal with their client's frustration when delays occur. Family law counsel suffer more than criminal law counsel, as family law cases are always at the end of the docket, and therefore are most frequently delayed. Delays in hearing family law cases may have a disproportionate effect on women, as family law clients are frequently female.

Statistical information on the number of adjournments (delays) occurring during circuit courts was gathered from the final dockets. At first glance, the number of adjourned charges seems high in comparison with the overall number of charges, supporting the concerns of some respondents about the extent of delays on circuit courts (see Figure 3.1 below).

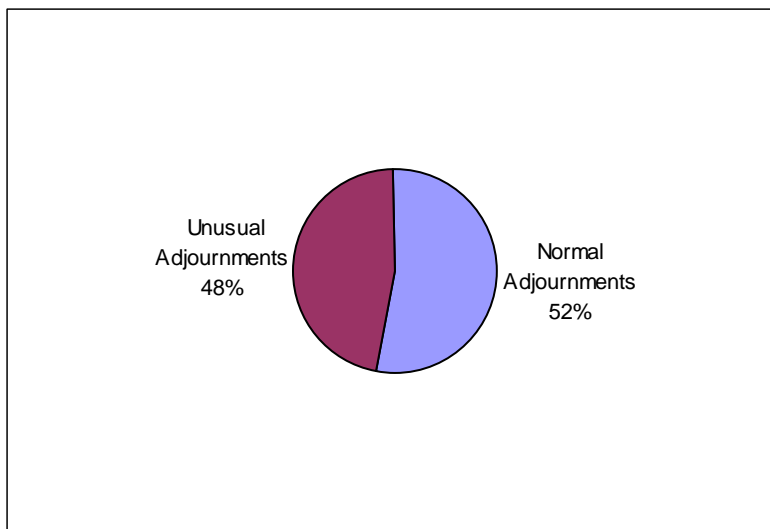
Figure 3.1: Adjourned Charges vs. Overall Charges in Circuit Courts (September 2000 to April 2002)



Source: Concluded Dockets for criminal court from September 2000 to April 2002, as available at the NLSB office in Gjoa Haven.

However, slightly over half of these adjournments occur for normal reasons (i.e., for reasons that would occur in any court, such as to prepare for a jury trial or a preliminary hearing), as shown in Figure 3.2, below. Therefore, the number of unusual adjournments is not as high in relation to overall charges as would first appear to be the case.

Figure 3.2: Ratio of “Normal” to “Unusual” Adjournments (September 2000 to April 2002)



Source: Concluded Dockets for criminal court from September 2000 to April 2002, as available at the NLSB office in Gjoa Haven.

Note: This figure is based on the assumption that certain reasons for appearance reflect normal reasons for adjourning a case, whereas the remaining reasons do not. Reasons considered normal for adjournment were to plead guilty or not guilty (PLEA), to set a date for trial (TST/SDTR), to wait for a pre-disposition or pre-sentencing report (PSR/PDR), preliminary hearing (PRELIM), to go to a jury trial (JURY TRIAL), and for Crown election (CR ELECT/ELECT).



Discontinuity in defence counsel

Discontinuity in defence counsel causes obvious difficulties for clients. It also puts stress on counsel, who must quickly bring themselves up to speed on the cases they were not handling previously; manage the client's frustration at the change in counsel; and deal with their own feelings of lack of closure when they cannot follow a case through to completion.

Respondents were unable to quantify the extent of discontinuity of defence counsel and were generally unable to identify whether discontinuity is more prevalent in circuit courts or in residential courts. Statistical information was not available with respect to discontinuity in defence counsel, due to a general absence of completed case closing reports (see Section 1.2.3 for details).

However, there is a strong belief among respondents that discontinuity in defence counsel most often results in cases which are dealt with according to the NLSB's policy of presumed eligibility. This is of particular importance as by far the majority of services provided by the NLSB are provided under presumed eligibility.

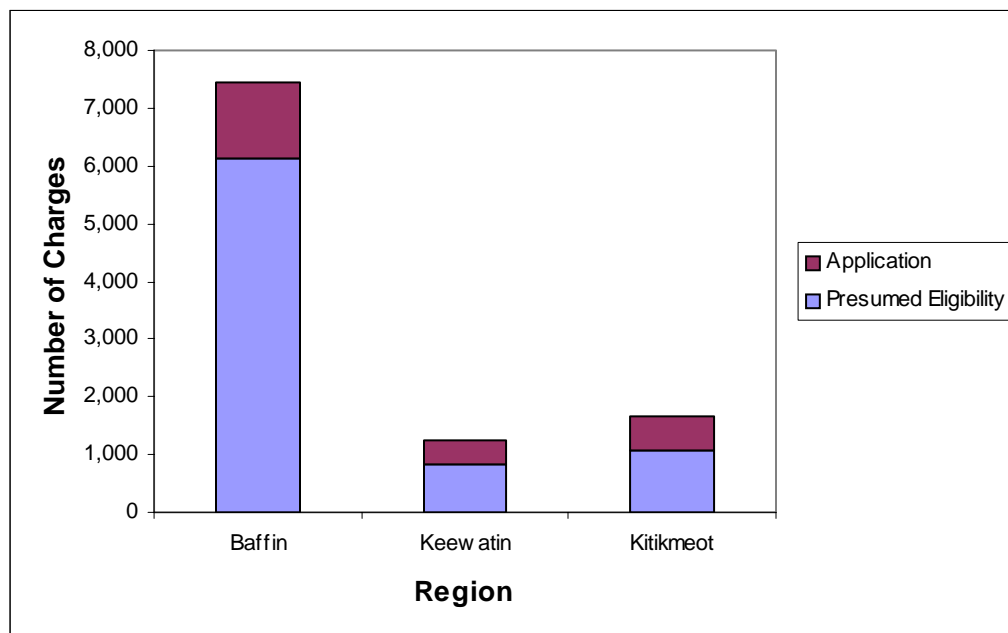
Presumed eligibility was introduced in *Legal Aid Bulletin 97-1* (issued July 25, 1997) and is described as follows:

All persons shall be presumed to be financially eligible for circuit and duty counsel services as of January 1, 1997. Circuit and duty counsel services may be provided without consideration of financial eligibility, i.e., without application and approval for legal aid.

The policy of presumed eligibility is unique to Nunavut and the NWT. In other jurisdictions, legal aid is only available to individuals who can demonstrate financial need through the legal aid application process.

The policy of presumed eligibility calls on duty counsel on circuit court to represent all accused persons who appear in court and seek representation, up until the point where the accused decides to plead not guilty. This is more efficient for all concerned, since it eliminates delays that would be required if it was necessary for every accused to first fill out and be approved for legal aid before they could be represented in court. As shown in Figure 3.3, below, between two and four times as many charges are covered by presumed eligibility than trigger a legal aid application.

Figure 3.3: Charges Covered by Presumed Eligibility vs. Charges Covered by a Legal Aid Application (September 2000 to April 2002)



Source: Final Dockets and Supplementary Dockets for criminal court from September 2000 to April 2002, as available at the NLSB office in Gjoa Haven.

Note: These figures are based on the assumption that all reasons for appearance except for going to trial (TRIAL), preliminary hearings (PRELIM), and conditional sentence hearings (CS-HEAR) are covered under presumed eligibility and, therefore, no legal aid application was filed. The number of charges, reflected in these figures, will be much greater than the number of applications received because most individuals are charged with more than one offence, but only complete one application form that covers all offences.

Some respondents felt that presumed eligibility may be tied to discontinuity in defence counsel for two reasons:

- There is no way to guarantee that the person who served as duty counsel on the last circuit through a particular community will also serve as duty counsel on the next circuit. Therefore, because the majority of clients are seen by duty counsel through the presumed eligibility system and do not have an assigned legal aid counsel, some discontinuity is inherent in the system. This discontinuity is compounded, however, when, usually due to time the pressures of circuit court, cases are adjourned and, therefore, accused persons are required to return to court a second time, likely with a different duty counsel.
- In some cases, due to the excessive workload while on circuit, duty counsel will adjourn the case because they have not had time to prepare or because they know they will not be the duty counsel on the next circuit through that particular community. Some respondents perceived that the practice of requesting an adjournment in order to avoid carrying a case is particularly a problem when some private practitioners are acting as duty counsel.

In contrast, some respondents indicated that presumed eligibility is not or need not be tied to discontinuity in defence counsel. For example, in the Kitikmeot and Kivalliq regions, the same clinic lawyers are always the duty counsel, and, therefore, even if there are adjournments, they will continue to represent the same clients. In one region, a method of reducing the potential for discontinuity was developed whereby the person who served a client as duty



counsel was then responsible for that file until all of the charges were addressed. However, this system eventually broke down because, at a certain point, all the available counsel were responsible for one file or another on every single docket, which was inefficient.

The majority of respondents also strongly emphasized that, although there have been some problems associated with the presumed eligibility system, the system itself is of value in Nunavut. They felt it is far more efficient to have a duty counsel than to have to wait for applications to be filled out, processed and approved. Efficiencies are also gained, for lower volume circuits, by not having to send multiple counsel on circuit.

The effort being made to match two lawyers on each circuit, that's putting a burden on the pool of lawyers, that's putting a strain on the pool of lawyers practising in Nunavut.

The NLSB is currently implementing a plan to attempt to manage the extent of discontinuity in defence counsel on circuit. The plan is to have two NLSB lawyers assigned to busy circuits. One lawyer then deals with new cases, while the other lawyer deals with cases adjourned from the previous circuit. This system works well, provided the human resources are available to the NLSB and there are enough funds in the NLSB budget to cover the added expense of sending two lawyers on circuit.

3.1.2 Justice of the Peace courts

Since Nunavut has been established, a full-time experienced Justice of the Peace Administrator has been supported to make significant efforts towards the appointment and training of local, often Inuit, justices of the peace. Nunavut JPs have taken on significant responsibilities in conducting bail or show cause hearings. However, despite the accelerated training efforts being directed at JPs, only about one third of Nunavut JPs are available to handle sentencing and only about one sixth have a certification level sufficient to undertake trials. Even though JPs with higher qualifications are mostly located in the busier communities, it is clear that JP courts in Nunavut have not yet been able to take up the slack after the elimination of the Territorial Court. Efforts are underway to train JPs to handle Youth Court and family law matters, and there is even speculation that some JPs might undertake preliminary hearings, but certification of significant numbers of JPs in those areas is still several years away.

As a result, the NCJ is dealing with a significantly increased workload in a society where crime rates and related social problems (see Section 2.1) are resulting in longer court dockets and more serious cases. This adds to the pressures on legal aid counsel in trying to represent large numbers of clients in compressed community court sessions.

3.2 IMPACT OF GEOGRAPHY

Respondents identified a number of impacts of geography on legal service provision in Nunavut:

- The distance between communities affects staff counsel's ability to go to the communities in advance of the court in order to prepare with clients. Where there is more than one community on the circuit court's agenda, such preparation is only possible in the first community on the circuit, because after that the counsel must travel with the court party in a chartered airplane. The distances involved in travel in Nunavut, combined with low passenger volumes, have a huge impact on the cost of providing legal aid services.
- Severe Arctic weather often causes delays and cancellations of flights, affecting the court's ability to visit the community and to complete the docket once it arrives.
- Infrequent flights between communities outside of regional centres, and limited frequency of flights to smaller communities, affects the cost of travel and also the

staff counsel's ability to arrive in the community early enough to prepare with clients. It also affects the perceived independence of legal aid service providers, who must sometimes travel on the same chartered aircraft as the rest of the court.

- The heavy workload and tight schedule resulting from these geographic challenges affects the counsel's ability to conduct legal research, or to interview clients and witnesses, which may end up being done hastily and without proper facilities.
- Due to the small population of Nunavut and its 28 widely scattered communities, there is only one correctional centre, in Iqaluit. Community police lockups are small and unsuitable for longer-term incarceration. Therefore, if individuals are not granted bail, they are removed from their community and flown to Iqaluit until the time of the trial, when they are flown back into the community. If they are then found guilty and sentenced to jail time, they are then flown back to Iqaluit to serve that time. The amount of travel involved incurs costs for the system, but also has a negative effect on the clients as they are removed from their community and likely will not be visited by friends or family while they are in Iqaluit.
- It has also been observed that it can become demoralizing for accused persons to be remanded in custody before their first appearance, often having to travel great distances from their home communities in the process. This, in itself, can result in accused persons giving up, and submitting to whatever is required to end the ordeal as quickly as possible, in the hope of returning home.
- The lack of process servers and sheriffs in the average Nunavut community results in special challenges in getting documents served in a timely and appropriate manner.
- The high cost of travel results in physical and emotional disconnects between clients and their representatives. For example, civil clients often have their entire case dealt with without ever meeting their lawyer, criminal clients in show cause hearings are usually interviewed over the telephone (except in the regional centres), and lawyers must often make representations over the telephone. They say there is a distinct disadvantage in not being able to observe facial expressions and body language of participants in a teleconference. The local participants (usually RCMP and the local JP) do not have that disadvantage.

Geographical challenges in Nunavut also lead to infrastructure problems, such as poor telephone lines and limited of Internet access for research and communication purposes. In an editorial in *Nunatsiaq News* recently, the editor observed that:

... only residents of Iqaluit, Rankin Inlet, Baker Lake and the five communities of the Kitikmeot enjoy access to dial-up Internet access. In the 10 communities outside Iqaluit with decentralized Nunavut government functions, government employees put up with a primitive form of satellite access that's so slow it's sometimes unusable. For private users in most of those communities, there's nothing, except for expensive long-distance modem calls to southern Internet service providers. In the year 2002, this is unacceptable.

3.3 IMPACT OF CULTURE

A number of respondents said that the justice system in Nunavut is making efforts to be more culturally sensitive. Examples given included the use of diversion, including Family Group Conferencing, alternative sentencing methods, the involvement of elders in the court system, and the recent Family Mediation Project – *Inuusirmut Aqqusiugtutit*. Several respondents also indicated that they felt the NLSB is handling cultural issues very well, with the guidance of regional clinic Boards.

However, some respondents also identified ways in which culture and cultural differences have a negative impact on legal service provision and the ability to represent clients effectively. The problem areas include:



- language issues;
- cultural disconnects and pressures;
- literacy and education.

Language issues

A high proportion of Inuit do not have English as their first language. Although translation is generally provided, there are often difficulties in translating and understanding the concept at hand, as well as the actual words being used to represent that concept. For example, one experienced defence lawyer said that he rarely encounters clients who really understand the significance of having a trial. A word or concept that is taken for granted in the English language has no easy equivalent in Inuktitut. The language barrier is increased in situations where the lawyer is working with the client over the telephone and/or when a Courtworker is not available to explain both words and meaning to the client in Inuktitut. The need for translation adds time and cost pressures to the system. In some situations, there is an additional problem of limited human resources – there is only one translator, who may become tired and make mistakes.

Of the clients interviewed, eleven (of fourteen) indicated that Inuktitut was their first language. Four of the eleven indicated that they were bilingual and had no preference of working language between Inuktitut and English. The remaining seven indicated that they preferred to work in Inuktitut. The four respondents who were bilingual indicated that they could understand the proceedings, along with three others, one of whom emphasized that the reason they understood was because the Courtworker took the time to explain to them. The remaining three clients surveyed with Inuktitut as a first language indicated that they did not understand what was happening because of language difficulties.

Cultural disconnects and pressures

There are a number of ways in which the Inuit culture differs from southern Canadian culture in such a way as to cause difficulties in using the justice system:

- Some common defence tactics are difficult for Inuit to accept on a cultural level. For example, one lawyer respondent advised a client not to admit to a crime, as there was not a great deal of evidence against him. The client was reportedly insulted that the lawyer suggested that he not take responsibility for his actions.
- Many Inuit are susceptible to even subtle pressure from authority figures, and are often anxious to quickly resolve conflicts with the law, even if it means giving up their rights. Many Inuit are known to have a benign approach to confrontation.
 - Many respondents reported that even their own families often pressure Inuit women not to take action against their husbands, even in situations of extreme violence.
 - Other respondents reported their concerns that certain legislation, such as the no-fault character of the federal *Divorce Act*, is based on premises that are inimical to the Inuit cultural value of confession and accepting responsibility.

There is still an underlying traditional approach to family breakdown that goes counter to what the law says ... the idea of child support, the mother's right to take a child, ... is unheard of in the older generation...

Literacy and education

Although not precisely a cultural issue, some respondents also raised concerns that illiteracy or low levels of literacy in both English and Inuktitut make it more difficult to provide effective services to clients. Literacy is clearly tied to education level and, as shown in Section 2.1, Nunavut's population generally does not have a high level of educational attainment.

3.4 SUMMARY OF SECTION 3.0

The following table summarizes the key points relating to Section 3.0.

Table 3.2: Summary of Section 3.0

Impact of Court Structure
<ul style="list-style-type: none"> • The Nunavut Court of Justice is generally seen as a benefit to Nunavut. Nonetheless, there is a perception that the number of circuits and amount of time spent in communities is decreasing. • Court structure affects clients, the level of legal advice and support, the pattern of service delivery, and the quality of services in a number of ways: <ul style="list-style-type: none"> ○ court dockets are long, resulting in time pressures on all concerned; ○ deputy judges, who may be lacking in local and cultural knowledge, are frequently being used (although this is expected to diminish with the recent appointment of a third NCJ judge); ○ in addressing sensitive cases, such as spousal and sexual assault cases, there are concerns about the attitudes of non-Aboriginal members of the legal system, who may be unwittingly causing difficulties for women in their attempts to be culturally sensitive; ○ counsel experience difficulties in getting access to their clients due to time constraints and lack of facilities; ○ all parties in the system are experiencing pressure to clear cases from the docket, which adds to stress and reduces the time counsel can spend with clients; ○ there is a perception that the number of delays and adjournments in the NCJ is too high, and that delays are too long. Data gathered from the concluded court dockets indicates that this problem is most prevalent in the Baffin region. The concluded dockets also indicate that slightly more than half of these adjournments are for normal reasons, which would occur in any court; ○ discontinuity in defence counsel is also perceived to be high by respondents. Discontinuity is believed to be linked to the practice of presumed eligibility (a practice nonetheless supported by respondents). Between two and four times as many charges are covered by presumed eligibility than trigger a legal aid application; ○ JP courts are not yet able to take on as much of the work of the NCJ as hoped, which contributes to the pressures facing the NCJ and counsel.

Table 3.2 Continued

Impact of Geography
<ul style="list-style-type: none"> • The distances involved in traveling between communities in Nunavut, combined with the difficulties caused by severe weather and the lack of scheduled flights to some communities, affects legal service provision by having an impact on: <ul style="list-style-type: none"> ○ preparation time; ○ access to communities; ○ workload and schedule once in the community; ○ access to appropriate remand facilities (there is only one correctional centre in Nunavut, in Iqaluit); ○ access to other human resources including process servers, sheriffs, and expert witnesses; ○ infrastructure availability, such as telephone lines and Internet access.
Impact of Culture
<ul style="list-style-type: none"> • There is a perception among respondents that the justice system is making efforts



to be more culturally sensitive.

- However, culture and cultural differences continue to have a negative impact on service provision. Issues include: Languages, the role of elders, cultural disconnects and pressures, and low levels of literacy and education.

Impact of Lack of Human Resources

- A lack of resources in one area of the legal system can have an impact on the entire system, and on the NLSB in particular.
- There is a severe shortage of private lawyers available for the Nunavut legal aid panel, particularly in the areas of family and civil law.
- Lack of private lawyers in family and civil law results in the potential for conflicts, as there is only one clinic in each region and a clinic can only represent one party to a dispute.
- Limited human resources at the NLSB (and access to private lawyers) sometimes result in the cancellation of trials at the last minute, causing delays and adjournments.
- Limited human resources on the part of the Crown result in less oversight of RCMP charging than might be desirable, and require time and effort on the part of the Crown and NLSB counsel to resolve charging-related issues during court weeks.

4.0 Cost of Service Provision

This section discusses the factors affecting the cost of legal service provision in Nunavut. Some of these drivers are unique to Nunavut, while others are common to all northern jurisdictions (Nunavut, the NWT, and the Yukon). A separate sub-section details the influence of the federal government on the cost of service provision through legislation, policies, and decisions with respect to resource allocation. Finally, the effect of the Government of Nunavut on the cost of legal service provision is also addressed.

While this section identifies many factors as increasing the cost of legal service provision, it is important to note that the majority of respondents, both interviewees and workshop participants, felt that the current model for service delivery is under-resourced and, particularly, too few NLSB staff lawyers, Courtworkers, and private practitioners. These respondents felt that, if more resources were available, the current method of service delivery would function effectively.

4.1 SIGNIFICANT COST DRIVERS IN NUNAVUT

There are several drivers that have a significant effect on the cost of legal service provision in Nunavut. Some of these drivers may be common to all Northern jurisdictions, and also to the more remote areas of southern jurisdictions. However, respondents identified these drivers as being key matters in the question of adequately resourcing the Nunavut legal system in order to meet local needs.

The cost drivers identified are geographic, socio-economic, political, or relate to difficulties in obtaining resources.

4.1.1 Geographic cost drivers

The geography of Nunavut plays a key role in driving the cost of legal service provision. Communities are far-flung and often only one option for transportation to and from those communities is available. The cost of travel has a serious effect on the cost of service provision, as NLSB counsel must travel to perform their duties in circuit court. Non-court related travel, for example from the NLSB head office in Gjoa Haven to Iqaluit, the capital of Nunavut, is also prohibitively expensive. Table 4.1 provides some examples of the historical cost of travel in Nunavut.

Table 4.1: Sample Historical Travel Costs

Route	Date	Cost	Notes
Gjoa Haven – Rankin Inlet	July 2001	\$1900	
Gjoa Haven – Iqaluit	August 2001	\$5056	
Gjoa Haven – Iqaluit	October 2001	\$2619	Seat sale price
Gjoa Haven – Edmonton	October 2001	\$1878	



4.1.2 Socio-economic cost drivers

Demographic drivers

The population of Nunavut has a number of characteristics¹⁴ that serve to drive demand for legal services and, therefore, the cost of providing these services in the territory. For example, a younger population, a high rate of crime, and a high percentage of the population suffering from Fetal Alcohol Syndrome all contribute to demand for the NLSB's services.

The demographics of Nunavut also have an effect on the amount of time and effort needed to serve individual clients. For example, the majority of people in Nunavut do not speak English as their first language, so there may be communications difficulties and translation services may be required. As well, many people in Nunavut do not have a high level of formal education, so NLSB staff must devote time and energy to building trust with their clients, explaining the legal system, reviewing written information, and ensuring that their clients truly understand what is occurring in court. Cross-cultural training is also required for all NLSB staff recruited from southern Canada.

Economic drivers

Some respondents pointed out that Nunavut's economy and workforce are also unique in Canada. Unlike most other jurisdictions, Nunavut still has a largely public sector economy. Therefore, the government is the largest employer and biggest economic force in Nunavut. Consequently, if a citizen of Nunavut wishes to challenge an institution of the Government of Nunavut where human or civil rights are at issue, it is essential that there be a source of independent legal advice, especially considering the high proportion of persons resident in Nunavut who could not possibly afford private legal services. Respondents observed that it is critical that the independence of the NLSB, which is established as an independent entity by statute, be reflected in all aspects of its operation. In order to maintain this independence, it is necessary that the NLSB's systems, including those for communication and information, not be linked to those of the territorial government. Establishing and maintaining this independence from the territorial government represents an additional cost burden on the NLSB.

Structural drivers

Some respondents also highlighted the effect of lack of basic infrastructure, such as places to hold meetings, on the legal system in Nunavut. As a result, even small programs designed to address local issues require a greater amount of up-front investment if they are to get off the ground. For example, a pilot mediation project was established in Kugluktuk (in the Kitikmeot Region) in the spring of 2002. Until the fall of 2002, the project had not been able to find a permanent space where participants in the program could meet with program staff. The pilot project is to be completed in March 2003. However, this lack of local infrastructure has had a significant effect on the successful completion of the pilot project.

¹⁴ These characteristics are discussed further in Section 2.1.

If you are going to have decentralized administration and a big spider web, you've also got to have an IT system that is going to be effective, or it won't work. The costs if you don't implement that are going to go out of sight. That will cause costs to skyrocket without much corresponding progress to show for it until it's dealt with. ...

4.1.3 Political cost drivers

Nunavut is also unique because its creation was linked to the settlement of the Inuit land claim. The planning and implementation process that emerged from the agreement to settle the land claim and create Nunavut established policies that made the territory unlike any other jurisdiction in Canada. Early on, all three parties involved (territorial, federal, and Inuit) made a first commitment to decentralized government. This decision has had a direct impact on the cost of providing legal services in Nunavut, as the headquarters of the NLSB has been established in Gjoa Haven, a remote community in the Kitikmeot Region, distant from Iqaluit. The decision to implement decentralization by locating the NLSB office in Gjoa Haven has resulted in a number of additional costs for the NLSB, including additional travel costs and increased infrastructure costs (for example, for the establishment of a computer network). Gjoa Haven also presents a challenge for the NLSB in terms of local access to professional expertise, such as accountants or other lawyers, and the ability to recruit and retain specialized staff.

The Inuit land claim agreement further requires that Inuit be involved in the delivery of programs and services in Nunavut (article 32). Respondents cited the three regional clinic boards, composed largely of Inuit, as examples of the necessary involvement of Inuit in the delivery of legal services, and as an important way to make the southern professionals who are presently Directors of regional legal services clinics accountable and responsive to Inuit in their regions. However, there are also administrative, travel, and per diem costs associated with the establishment and maintenance of these boards, which must be borne by the NLSB.

Canada and Nunavut endorsed a decentralized model for government service delivery. Regional boards and decentralized clinics reflect political agreement at the highest levels. This is very effective [but] travel is hugely expensive.

4.1.4 Scarcity of human resources

The difficulty in obtaining and retaining human resources in Nunavut places an additional cost burden on the NLSB. In some ways, this concern is tied to other cost drivers, in particular to Nunavut's geographic situation, which makes it more difficult to attract and retain staff from southern Canada. However, the scarcity of human resources at the NLSB also:

- Makes recruiting more difficult, as the NLSB is not able to offer the same flexibility and benefits as other employers in the legal field, both in Nunavut and in the North. For example, the federal government is able to provide more flexibility in terms of vacations and sabbaticals to its employees because it is not stretched as thin as the NLSB. Crown counsel, for example, obtain the following benefits, in contrast to their NLSB staff lawyer counterparts: two Vacation Travel Assistance trips annually (includes family members), medical and dental benefits, a generous Isolated Post Allowance, and rents of \$600 per month for furnished housing. By contrast, one clinic lawyer in Iqaluit had been forced to live for five months in a local hotel, due to lack of available housing. This, in turn, makes the Crown a more attractive employer, ensuring that it never faces the scarcity of human resources that affects the NLSB.
- Makes retention of employees more difficult, as they are carrying a heavy workload in difficult conditions (particularly those counsel who travel frequently on circuit court to remote communities). The NLSB is not funded sufficiently to be able to offer perks such as subsidized housing, which would make employees' lives easier, and therefore increase retention.



Housing is the single greatest factor in settling people up here. It's so hard to get inexpensive housing that is reasonable ... Legal aid lawyers are fairly far down the line for priority ... There is such an enormous cost of living. Certainly if you want to keep people up here, there's got to be a pension ... With no long-term plan for [the NLSB], compared to Crown everywhere, there is not that incentive to keep someone here for 10 or 20 years.

The cost of recruitment can be significant. One respondent indicated that the most recent recruitment cost they had incurred for one position was \$30,000. This amount covered advertising and flying candidates in for interviews. However, at the end of this costly process, none of the candidates decided to accept the position and it remained unfilled.

The question of human resources is a good example of the way in which the links between the different parts of the legal system in Nunavut are such that limited resources in one area can affect the entire system, and the NLSB in particular.

There are not enough defence counsel and Crown counsel to handle the workload at the NCJ level. The private bar, which has so far been located only in Iqaluit, has eroded markedly since the establishment of Nunavut and the NCJ. In some cases, private lawyers have taken up attractive opportunities within government or with Aboriginal organizations. In other cases, the high costs of office overhead and the intense pressures of circuit court work and travel have resulted in five lawyers leaving Nunavut or not being available for legal aid work.

In criminal law cases, the NLSB can and does request the support of additional counsel from the NWT. However, in family and other civil law cases, the NWT is also suffering a shortage of practitioners, and therefore no one is available to supplement the NLSB's staff counsel in this area.

The resulting severe shortage of private lawyers available for the Nunavut legal aid panel has put additional pressures on the NCJ and NLSB staff lawyers. Since cases cannot proceed without defence lawyers, even with the presence of judges and Crown attorneys, these reductions in the numbers of available private lawyers has put significant additional pressures on the new court and the Nunavut Legal Aid Plan. Also, private lawyers who remain in Nunavut are specializing in criminal law, leaving a very large gap in the family and civil law private bar.

In addition to affecting the NLSB's ability to provide legal aid services, limited human resources also affect's the Board's ability to access financial resources in order to carry out other programs. For example, funding has been made available through Justice Canada to support PLEI activities and training for NLSB staff around the *Youth Criminal Justice Act*. However, the NLSB has only recently been able to assign human resources to developing an application to access some of this funding.

Conflicts also create problems in a jurisdiction with a small private bar and no private lawyers located outside Iqaluit. In family cases, only one party to any dispute can be represented because there is only one clinic in each region. Whoever arrives at the clinic first receives representation and, in cases where there are both criminal and civil issues at stake, conflicts will arise, which may lead to ethical problems or allow the criminal issues to take precedence over the civil. This problem of conflicts has been one reason why two legal aid counsel must be sent on busier court circuits.

Crown counsel complain that, in some cases, trials have had to be cancelled at the last minute because of overworked and unprepared private legal aid lawyers, or circuit lawyers who were asked to take over cases on very short notice. This can result in delays or

adjournments – and money wasted on travel for witnesses, including expert witnesses. These factors add to the overall costs to the justice system.

Also, many defence counsel respondents believed that, since the Crown’s office in Nunavut lacks adequate resources to review charges laid by community RCMP detachments, there are many cases where too many charges, or inappropriate charges, are laid by local RCMP. Although these situations are usually sorted out by the time the matters are dealt with in court, this situation does cost extra time and adds to pressures during busy court weeks.

4.2 IMPACT OF THE FEDERAL GOVERNMENT

Decisions made at the federal government level have a significant impact on the cost of legal service provision in Nunavut. This impact is a result of:

- federal legislation;
- federal policies;
- federal resource allocation decisions.

Each of these cost drivers is discussed in detail below.

4.2.1 Federal legislation

Federal legislation has a number of effects on the cost of legal aid service delivery. Some costs identified by respondents are tied to specific pieces of legislation, either current or upcoming, while others are tied to more general concerns about trends in legislation and its development.

Specific pieces of legislation that raised concerns with some respondents included:

We have promised (in new Youth Justice legislation that) everyone under 18 can have access to a lawyer without regard to budget ... Haven’t thought of the legal aid impact. [The federal government is] not likely to address how Nunavut is going to deal with this in particular ... In an ideal world, every federal law would identify a legal aid impact, and Nunavut would be specifically addressed.

- The *Youth Criminal Justice Act* – The procedures suggested in the Act are very complex and will require increased training for NLSB employees and PLEI for the public. The Act will also allow more children to be “moved up” to the NCJ, which will increase the demands on NLSB counsel. Finally, the Act will also place additional stress on other aspects of the legal system in Nunavut, particularly the Youth Justice Committees, which may have a follow-on effect on the NLSB.
- The new firearms legislation has resulted in a number of seizures of improperly stored weapons, which are not returned to their owners. Some NLSB counsel report being asked to support clients in obtaining the return of their firearms, which are of great importance as much of the population is still at least partially dependent on hunting for food.

Trends in legislation and its development that were seen by some respondents to increase the cost burden on the NLSB included:

- Family law legislation generally results in cases that take longer to complete than criminal law cases and may be part of an ongoing, iterative process as variances are



sought. Therefore, a greater amount of time and costs for the NLSB are associated with family law cases.

- In general, criminal legislation is becoming more complex, with timelines, elections, and new processes, which adds to the preparation requirements, and to the actual time and cost associated with criminal cases. For example, some respondents indicated that *Criminal Code* amendments have put in place a strict time limit on applying for the return of seized cash in drug offences. This process is more complex, paper-intensive, and demanding of an immediate response. All that puts a strain on NLSB resources, especially in cases that arise in remote locations.
- The absence of consultation or delays in consultation associated with new and changed legislation can put valuable local initiatives at risk. For example, recent amendments to the *Criminal Code* intended to prevent laypersons from practising law in traffic and other courts in southern urban areas threatened to jeopardize the Nunavut policy of expanding the role of Courtworkers in JP courts. (Eventually, after significant efforts on the part of the GN, the bill was amended, which resolved the problem.) The NLSB must invest a great deal of time and energy into keeping on top of such issues.

Then there is the war on drugs. ... The belief that the root cause of all evil in the North is not lack of employment, but intoxicants. This leads the system to pursue intoxicants, not the root causes.

Almost all the crime is related to alcohol abuse ...

- Too few internal resources for assessing new and changed legislation and identifying impacts that they might have on the justice system as a whole, including on legal aid service delivery.
- The federal and territorial governments frequently reach an agreement on a new legislative initiative without considering or addressing the associated costs and implementation issues.
- A focus on enforcing the *Liquor Act* and other drug-related acts rather than addressing the root causes of social problems in the territory such as inadequate housing, health care, education, employment, etc.

4.2.2 Federal policies

Respondents and workshop participants identified four ways in which federal policies affect the cost of legal aid service delivery:

- through the actions of the RCMP;
- through the actions of the Crown counsel;
- through the actions of judges;
- through PLEI activities.

Some respondents indicated that the impact of these policies depends a great deal on the individual officers, counsel, or judges involved. They felt that some individuals exercise discretion in applying federal policies while others are inflexible. Some respondents felt that it is this inflexibility that results in stresses on the justice system and a resulting higher cost of legal service delivery.

The actions of the RCMP

Respondents identified several ways in which the actions of the RCMP increase the costs of legal service delivery by increasing the demand for the NLSB's services, including:

- *Failure to make use of alternative justice initiatives.* It should be noted that the RCMP indicate that they do not currently have the capacity to make use of these initiatives as much as they would like to, although they actively support them from the highest

level. They indicate that there is also a capacity issue with respect to the Community Justice Committee and Group Family Conferencing programs that are in place. RCMP also indicate that they expect to encounter difficulties in promoting alternative justice initiatives because they require an admission of responsibility on the part of the accused, which defence counsel are often against.

- *Overpolicing of the North and resultant overcharging.* Nunavut has more police officers per capita than any province or territory, with the exception of the Yukon and the NWT (see the discussion in Section 2.1). Some respondents felt that this results in more charges being laid than would be the case in other jurisdictions. Other respondents believed that overcharging results from the fact that the Nunavut Crown Counsel does not have the capacity to review charges before they are laid in community detachments. The RCMP pointed out that, in busier places, they can barely handle the number of calls they receive. Furthermore, since an RCMP officer was, tragically, shot in Cape Dorset recently, there is a policy in place that there must be two officers in each community, for safety's sake. If overcharging is taking place, then it is a direct cause of increased costs for the NLSB, which must cover the cost of representation and plea-bargaining on each of the charges laid.

However, when considering the effect of the actions of the RCMP, many respondents and workshop participants also indicated that they are aware that individual RCMP officers have very little discretion or latitude in the way in which they perform their duties. Many of these individuals felt that greater discretion for RCMP officers would enable them to uphold the law while meeting the needs of the community and basing their decisions on local knowledge of the situation.

The actions of Crown counsel

Respondents and workshop participants also reported several ways in which the actions of the Crown are contributing to increased legal aid service delivery costs:

- *Lack of prosecutorial oversight.* Several respondents indicated their belief that it is the Crown's responsibility to ensure that the police do not overcharge (see discussion above). Other respondents indicated that the Crown does not have the resources to fulfill this role. The RCMP also indicates that, if overcharging is an issue, it is the Crown's responsibility to educate the police on this issue. This lack of prosecutorial oversight is seen as contributing to increased demand for the NLSB's services.

Breach of undertaking [is a common charge]. Inuit have a tradition of trying to work through disputes together, staying together ... With many of relationship assaults, [the court] will say no contact [between the partners] ... Inevitably they get together and charges result from that. By virtue of cultural differences many Inuit people are getting into serious trouble.

- *Undertakings and conditions in sentencing.* Several respondents indicated that the Crown asks for too many conditions and undertakings in the sentencing process, which sets the stage for a high number of breaches. Many charges of breach of undertaking result from drinking, which is a common and all too predictable problem in the North. Breaches result in the accused returning to court and, therefore, in more costs for the legal aid system. Other respondents pointed to the difficulty in getting orders varied (for example, if the situation has changed, such as a reconciliation in a spousal assault case) as contributing to the high number of breaches. The RCMP disagreed with this perspective and, again, felt that it is the Crown's responsibility to inform them if this is the case in Justice of the Peace courts, where officers are acting as prosecutors.



- *Proceeding by indictment.* Several respondents indicated that the Crown chooses to proceed by indictment more often than is strictly necessary. They reported that the Crown generally argues that it is necessary to proceed by indictment because of the time period limitation (the Crown can only proceed summarily within six months of the charges being laid). However, respondents felt that some of these cases could proceed summarily instead and pointed out that cases that proceed by indictment are a greater drain on NLSB resources than those that proceed summarily. The Crown has a policy of assessing each situation on a case-by-case basis, and uses set criteria such as the seriousness of the case and the accused's record to determine whether to proceed summarily or by indictment.
- *Zero tolerance approach.* Some respondents indicated that the policy of zero tolerance for spousal assault increases the workload for all parties to the system. Other respondents agreed and indicated that they would like this policy to be reviewed to examine whether, in some cases, spousal assault could be addressed in an alternative justice forum. These respondents felt that this approach could still reflect zero tolerance, but would be less resource-intensive for all players in the legal system. Other respondents raised concerns about addressing issues such as spousal assaults through alternative or community-based justice programs, as they felt there are power imbalance issues that would have to be very carefully addressed in these situations.

The actions of judges

Finally, respondents indicated that, in some cases, judges have instituted their own policies, which adds to the workload of NLSB counsel and, therefore, adds costs to legal service delivery. The “report back to court” policy instituted by one judge was singled out as an example. This policy requires the accused to report back to the court after a given period of time, where they are represented for a second time by the duty counsel, adding significantly to the burden on the NLSB duty counsel, as well as on Courtworkers and probation officers.

PLEI activities

PLEI activities undertaken by the federal government at the national level can have a significant impact on the demand faced by the NLSB as people gain a better understanding of their rights under the law. This causes a significant problem when no additional federal funding is made available to help the NLSB meet this demand by hiring more staff or engaging in PLEI activities of its own. A recent example of this impact was the federal government's efforts to educate Canadians on their right to child support after divorce. This resulted in a significant increase in demand for family law legal aid in Nunavut, which the NLSB was unable to manage due to inadequate levels of human resources. A large backlog of family law cases resulted, which is only now being addressed as two new family law practitioners have joined the NLSB staff.

4.2.3 Federal resource allocation decisions

[Crown] capacity is increasing at a faster rate than the defence bar. [They're] sometimes a step ahead of the game ... [They're] ready to start discussions about admissions, to save witnesses from [coming from] outside the territory ... Generally, the reaction [from defence counsel] is “there's no time now.”

Respondents identified a number of resource allocation decisions made by the federal government that affect the cost of legal service delivery. By far the most significant of these is the imbalance in resource allocation between the judiciary, the Crown, and the NLSB, which they believe can be seen in terms of the human resources available to each “group” within the justice system.

Many respondents felt that the NLSB is “out-gunned” by the Crown, which means that:

- The Crown can be more flexible in the allocation of its human resources because it has a greater pool to draw upon (both in Nunavut and in terms of relief counsel from the south).
- The Crown can use its additional human resources to visit communities ahead of the court, and therefore spend more time preparing for trial.
- The Crown can spend less time in court and more time on other duties.
- The Crown can pursue weaker cases, as it has the resources to do so, and therefore is less motivated to settle cases outside of court.

It should also be noted, however, that some respondents felt that the Crown Counsel's office is also under-resourced in the face of its workload. Therefore, they do not wish to see resources reallocated from the Crown to the NLSB. Rather, they wish to see both groups receive adequate funding to fulfill their mandates.

Many respondents, comparing resources allocated to the NLSB with those provided to federally funded Crown offices, observed that legal aid services seem less generously supported. Furthermore, unlike Crown offices, the NLSB, with its headquarters in remote Gjoa Haven, has a presence and visibility in all Nunavut's far-flung regions, as well as a mandate to deliver family and civil legal services, public legal education and information, on top of handling demanding and numerous criminal law cases.

Some other resource allocation decisions raised by respondents included:

- Crown Counsel are not located in the communities where there are regional Legal Service Clinics. If they were, the potential for addressing some issues in advance, and thereby saving time and effort during court sittings, would be greater.
- The NLSB cannot raise any revenues. If they are able to request and receive a contribution from an applicant, it goes directly into the government's general revenues, rather than contributing to the funding of the Legal Aid Plan.
- Funds were set aside for an additional judge in the NCJ, but to date no funding has been made available to hire additional NLSB counsel (or Crown Counsel for that matter) to appear before the new judge.



4.3 SUMMARY OF SECTION 4.0

The following table summarizes the key points relating to Section 4.0.

Table 4.2: Summary of Section 4.0

Significant Cost Drivers in Nunavut
<ul style="list-style-type: none">• The geography of Nunavut affects the cost of legal service provision, as NLSB counsel must travel to perform their duties in circuit court, and staff from NLSB head office in Gjoa Haven must travel frequently to perform administrative duties.• Several socio-economic issues also affect the cost of legal service provision in Nunavut:<ul style="list-style-type: none">◦ the demographic characteristics such as language and level of formal education affect the demand for legal services, as well as the amount of time and effort needed to serve individual clients;◦ the government is the largest employer and biggest economic force in Nunavut. Therefore, it is essential that a source of independent legal advice be available to citizens who wish to challenge a government institution. The NLSB must be completely independent of the government of Nunavut in order to provide such advice;◦ communities in Nunavut often lack basic infrastructure, such as meeting rooms and buildings. Therefore, a greater up-front investment in infrastructure is required to get any new program or project off the ground.• The commitment to decentralization and Inuit involvement in decision-making that lie at the heart of the creation of Nunavut have an impact on the NLSB's costs. Decentralization has caused the NLSB head office to be located in Gjoa Haven. The principle of Inuit involvement results in the need to administer and support three regional clinic boards.• The difficulty in obtaining and retaining adequate human resources places an additional cost burden on the NLSB, which must invest heavily in recruitment and retention activities, while managing the impacts of a chronic lack of human resources.
The Impact of the Federal Government
<ul style="list-style-type: none">• Federal legislation, policies, and resource allocation decisions have a clear impact on the cost of providing legal services in Nunavut.• New legislation, such as the <i>Youth Criminal Justice Act</i> and the new firearms legislation will affect demand for NLSB services and requirements for the training of NLSB staff. While funding is often available from Justice Canada to support training and PLEI activities resulting from new legislation, the NLSB does not always have the human resources available to develop the applications needed to access this funding.• New legislation is generally not developed with adequate consultation on and consideration of its effect on Nunavut, and often ignores the root causes of social problems leading to crime in the territory.• Federal policies, including the actions of the RCMP, the actions of Crown counsel, the actions of judges, and public legal education and information activities, all place additional stress on the Nunavut justice system and on the NLSB in particular.• Federal resource allocation decisions appear to have resulted in an imbalance between the human resource capacity of the NLSB and that of the Crown, which results in the NLSB being "out-gunned."• In general, many parts of the Nunavut justice system, including both the Crown counsel's office and the NLSB, are underfunded.• The NLSB is unable to raise any revenues to support its activities.





5.0 The Extent of Unmet Need for Legal Services

There was unanimous agreement among interviewees and workshop participants that there is unmet need for legal services in Nunavut. The question of unmet need was raised with respect to family and civil law, circuit courts, Justice of the Peace courts, bail or show cause hearings (prior to first appearance) and for prisoners on remand in correctional facilities. In all cases, there were some respondents who felt that unmet need existed in a given situation. It was clear, however, that the extent of unmet need varies from region to region and between the smaller and larger communities in any given region.

In addressing the subject of unmet need, respondents had different understandings of what “unmet need” means. Some respondents defined unmet need as “having no representation,” while others felt that unmet need also encompasses concerns about the *quality* of the representation that is available. Throughout this section, the meaning of “unmet need” with respect to the particular area (e.g., family and civil law, Justice of the Peace courts, etc.) is specified. If respondents felt there is a lack of representation, this is noted. If respondents felt that the quality of the representation available is lacking, this also is noted.

The impact of unmet need on all parties involved in the legal system is discussed in greater detail in Section 6.0.

5.1 UNMET NEEDS IN FAMILY AND CIVIL LAW

Interviewees and workshop participants indicated that, in the case of family and other civil law services, unmet need exists because there are not enough lawyers providing these services in Nunavut. Therefore, in this context, unmet need can be defined as lack of representation.

It should also be noted, when discussing unmet need for legal aid in family and other civil law matters, that the extent of unmet need may be difficult to judge, as many individuals are only beginning to be aware of their rights in these areas. For example, both of the clients interviewed who were accessing family law support from the NLSB became aware of this service through previous contact with the criminal justice side of the practice. In fact, one was advised by her criminal defence counsel to seek the assistance of the NLSB.

5.1.1 The current level of service in family and civil law

Regulations governing service provision

The NLSB was originally intended to provide legal services in the areas of family and civil law (in some circumstances) as well as criminal law. However, in practice, legal services in family and civil law are very limited.

In determining which aspects of family and civil legal services can be funded, the NLSB has been governed by *Legal Aid Bulletin 96-1*, which documents the Legal Services Board of the NWT decision to “...eliminate legal aid coverage for cases of division of property, wrongful dismissal, and claims for injuries/damages.” *Bulletin 96-1* indicates that legal aid will not be available for “...matters involving defamation, wills and estates, incorporations, real estate transactions, realtor or representative actions, arbitration or conciliations, and proceedings relating to elections”. Furthermore, legal aid coverage is not provided for:

- divorce, when there are no associated issues of maintenance, child custody and access or division of property;
- division of property;

- wrongful dismissal;
- claims for injuries or damages, except for disbursement costs;
- coroner's inquests

In early 2002, *Bulletin 96-1* was suspended while the NLSB reviewed its policy on funding family and civil legal services. By the summer of 2002, the NLSB decided that this bulletin would continue to provide the basic structure or outline being used to determine eligibility for family law and civil law legal services in Nunavut.

Services provided

In practice, the strictures associated with *Bulletin 96-1* have less impact on the coverage provided for family law and civil law matters than might be expected, as the NLSB cannot meet the demand for criminal legal aid, and criminal legal aid has taken precedence over other forms of legal services.

It obviously comes down to resources. But when you are seeing a high percentage of people not having their rights protected, there is something wrong with the legal system. We've got to do something. Criminal law is higher profile, more immediate ... Crown, RCMP, even the court is more in tune with criminal practice and procedure. ... Civil matters are way down the priority list.

NLSB staff lawyers reported that no civil law matters are currently being covered by the NLSB, and that only the following family law matters are currently covered by legal services in Nunavut:

- All child protection or child welfare proceedings.
- Divorce, if there are issues relating to custody and support of children.
- Child support and custody agreements (an opinion letter is sought before the agreement itself is covered and legal aid is denied if both applicants are on income support, because there is no beneficial result possible).
- Some change of name or adoption matters, which generally involve administration and paperwork rather than court proceedings (note that legal aid applications are not normally filled out for this service and that it is perceived as anomalous that legal aid will cover these matters, but not an uncontested divorce).

In family law cases, it is the NLSB's practice to allow for three hours of summary advice related to the case upon application for legal aid, and to request a second application should the client require additional support.

Family law practitioners reported that approximately 60 percent of the family law cases currently assigned by NLSB are related to child support, followed by divorce cases with custody issues and child protection cases (representing approximately 20 percent of the case-load each). In many cases, these are applications for the variation of existing orders. Some respondents felt that the demand for variations is due to the current child support guidelines, which were transferred over to Nunavut from the NWT when the territory was created. These guidelines are difficult to implement in Nunavut, particularly with the high number of individuals who are now living with and supporting their second or third families.

Some respondents also felt that demand for family law services has increased as a result of Justice Canada's PLEI program about the right to child support, and the opening of the Maintenance Enforcement Office in Iqaluit. These respondents also pointed out that, now that there are family law practitioners on staff at the NLSB, and these lawyers are traveling to the communities, people will become more aware of the opportunity to exercise their rights in relation to family law and, therefore, demand will increase.



Practical limitations on service provision

There are a number of practical limitations affecting the delivery of family and civil law legal services in Nunavut. Some of these are logistical or administrative issues, while others relate to an overall lack of capacity within the justice system in Nunavut.

Logistical and administrative issues raised by respondents included:

- Affidavits must now be prepared and reviewed by clinic staff (a service which was previously provided by Yellowknife lawyers or the NWT Legal Services Board office). There are also difficulties in finding a secure party to swear the affidavit once it is produced. Fortunately, RCMP officers and other members of the community who are commissioners have been willing to swear affidavits to date.

Language is always an issue. Lawyers say that half their time is spent explaining concepts ... procedures ... Making sure [they] don't use words like custody, access, court order ... What does it mean to have access to a child in an Inuit community? It is a ludicrous concept.

- Getting papers served is a challenge, particularly in smaller, remote communities.
- When new family law lawyers are hired, as recently by legal aid, they must still wait to be admitted to the bar, which may take some time.
- The language barrier, already an issue in criminal cases, becomes more of a concern because family law and civil law issues are generally more sensitive for the client.

These logistical and administrative issues have two major implications. The first is that litigation in family law issues becomes very protracted and, therefore, costly for all parties involved. This is in addition to the fact that family law court applications are generally much more complex than criminal court applications. The second is that the NCJ has to accept the limitations of the process and show flexibility, which, to date, has been the case. The NCJ accepts faxed documents (which is not the case with courts in other jurisdictions); is flexible with respect to the time individuals need to comply with the requirements of the legal system (in recognition of the situation in remote communities); and is willing to consider "Nunavut-specific" criteria and issues when applying the guidelines relating to child support and maintenance.

Problems with the overall capacity within the Nunavut justice system for addressing family law and civil law issues also represents a practical limitation on the delivery of legal services in these areas. In particular:

- The courts often do not have time to address civil and family law issues once they have addressed the criminal cases that are on the docket. Therefore, even when legal services are available in these areas, cases may still not be dealt with expeditiously.
- There is a shortage of family and civil law lawyers in the private bar. There are only four lawyers in Nunavut outside of the government and the NLSB, none of whom take civil or family law legal aid cases. The shortage of family and civil law lawyers in Nunavut is so severe that when family law practitioners did arrive, there was no word in Inuktitut to describe a family law or civil law lawyer, as opposed to the word for criminal lawyer. In addition, the civil and family law lawyers in the NWT are not willing or able to come to Nunavut to do this work. The result is that often there is no one to represent the other party in the matter at hand.
- Conflicts may occur in obtaining representation for both parties. Generally, when a family law practitioner is available, this means that whoever gets to the clinic first gets help. Conflicts may also occur if one of the parties in the family law matter is already being represented by a clinic lawyer on a criminal law matter. This is particularly of

concern when a criminal case results because the family law or civil law need has not been met (see discussion in Section 5.5). In this situation, the accused will receive access to criminal legal aid but the victim cannot have access to civil legal aid or family law legal aid in order to resolve the underlying issue. In an attempt to address this matter, the Rankin Inlet clinic has established a strict separation between the family law and criminal law practices (a so-called “Chinese wall”) in order to avoid conflicts and ensure representation whenever possible.

5.1.2 Unmet need in family and civil law

Unmet need for civil law services

Respondents identified a number of areas in the realm of civil law where they felt there were unmet needs, including:

- *Estate law.* Very few individuals in Nunavut have a will or the resources to access legal support (which must come from outside the territory) in preparing a will. Therefore, most estates are administered by the government. This places a burden on the courts and on the Public Trustee’s Office, as well as reducing the amount of inheritance available. Often, the lack of resources for estate planning is complicated by lack of knowledge of available federal benefits (see below).
- *Civil compensation for victims of crime and personal injury compensation.* Many individuals are unaware that they may be able to be compensated through the legal system if they are injured or are the victims of crime. Of particular concern are cases where the injury is caused by government employees (at the Hamlet or territorial level). In these situations, given the power of the government in Nunavut, people are particularly unwilling to demand compensation.
- *Employment law, including discrimination and wrongful dismissal.* This is particularly of concern because, in Nunavut, the government is by far the main employer and has a great deal of power. Some respondents felt that civil servants abuse this power on occasion.
- *Human rights.* If the Government of Nunavut replaces the *Fair Practices Act* with a *Human Rights Act* it would trigger increased demand for civil legal aid, as well as for public legal education and information.
- *Landlord/tenant issues.* Concerns have been expressed that representation is not provided through the NLSB for persons involved in hearings before the Rentalsman or Fair Practices Officer. It is also noted that Nunavut is a jurisdiction where housing and jobs are in short supply (as demonstrated in Section 2.1), so these hearings can have major consequences for those involved.
- *Medical malpractice.* Respondents have observed that Inuit are usually accepting and non-confrontational. Recently, however, community leaders have expressed concerns in this area, asking about sources of compensation in such situations.
- *Financial issues including foreclosures and debt collection.* Respondents indicated that many people in Nunavut are not aware of their rights in financial matters (for example, bankruptcy).
- *Federal Benefits access and disputes.* Many people in Nunavut are unaware of the federal benefits available or how they may be accessed. In the event of disputes with the federal government over benefits, they are also unaware of the legal recourses available. In many cases, these discrepancies are only discovered once the individual is deceased and the estate is being administered by the Public Trustee’s Office.
- *Poverty law.* Respondents indicated that many people in Nunavut are unaware of poverty law issues, which include matters such as foreclosures, debt collection and landlord/tenant problems (see above). In a territory where the number of people living in poverty (given the very high cost of living) is so high, this is a major concern.



- *Immigration law.* As more people immigrate to Nunavut from other countries, the demand for immigration law services is expected to increase.

Unmet need for family law services

Unmet family law needs identified by respondents included:

- *Child welfare* – The high and rising rate of Inuit children in foster care, adoption of Inuit children by non-Inuit families, and removal of Inuit children to southern communities when they become wards of the state is being attributed by some to too few family law practitioners.¹⁵ There is also a belief among some respondents that some social workers, in some regions, have rarely been challenged and are lax in respecting the rights of parents and the requirements of the statutes in child welfare proceedings. However, it should also be noted that one respondent felt that the child protection system appears to be functioning well, with a solid structure, mandatory meetings, and independent legal advice.
- *Child support* - Many women are not aware that they are eligible for child support.¹⁶
- *Property distribution after divorce* – Many women are not aware of their rights when it comes to property distribution and, in particular, to housing, a key concern in Nunavut.
- *Alternative dispute resolution* – Many respondents raised concerns about the use of mediation and other community-based approaches in family law cases, particularly where violence is an issue, because of the power imbalance felt by the woman involved. They felt that it is important that women have a choice to use the alternative process or the court system.¹⁷
- *Custom adoption and related issues* – Custom adoption is a traditional form of adoption that is unique to Nunavut. In custom adoption, a family member adopts the child of another family member, and agrees to raise it as her or his own. In contrast with “standard” adoption procedures, the birth parent would likely continue to have contact with the child, as the child would be living with the birth parent’s family.

[A woman called in from the Kitikmeot and said] ... I've been separated for nine years, [I've] yet to see maintenance, yet to see dealing with custody. The civil side is really crying [out] in Nunavut right now. If those people committed a crime, we'd be on them like a dirty shirt.

Respondents further identified that the problems of unmet need in family law are exacerbated in Nunavut because:

- There are no family law lawyers practising outside of the NLSB, so if people are denied legal services from the NLSB, they have no alternative service providers.
- There are a number of cross-cultural marriages in Nunavut. Sometimes there can result an imbalance of power in the relationship between the white partner, who has a good knowledge of family law and their rights, and the Inuk partner, who may have

less knowledge and may be unaware of or uncomfortable exercising their rights in family law situations.

¹⁵ *Final Report of the Aboriginal Women's Justice Consultation* (draft), September 26–29, 2001, Ottawa.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

- Nunavut has a high incidence of common-law marriages. Most people are not aware of their rights within these unions or of the family law legislation that applies to common-law couples as well as married couples.

Statistical evidence of unmet need

Unmet need for family law and civil law legal services can be examined from two different perspectives when seeking statistical evidence. The first is to examine the number and type of legal aid applications that were denied in order to identify areas of unmet need. The second is to look at the number of applications that have been received and accepted but are waiting to be assigned to a lawyer.

The analysis of denied applications proved not to be very helpful in improving our understanding of the extent of unmet need for family and civil law legal services. Very few applications for any type of legal aid are denied outright by the NLSB (see figures 2.10 and 2.11), which would seem to imply that there is little unmet need. However, the number of denied applications may not be a reasonable indicator of unmet need for family and civil law services, as most people do not believe that civil or family law legal aid is available – so they do not even submit an application. This hypothesis is supported by the generally low number of applications in the area of civil law and family law, in comparison with criminal law applications (see figure 2.9). As a result, the amount of unmet need in the areas of family and civil law is likely much higher than indicated by the number of denied applications.

The analysis of the number of applications waiting to be assigned to a lawyer, as well as the number of files currently being carried by NLSB family law practitioners, would seem to support the contention that there is a high degree of unmet need for family law and civil law services:

- The report of the Executive Director to the NLSB meeting in February 2002 emphasizes the existing unmet need for family law services. In this report, the Executive Director indicated that 153 family law files were awaiting assignment to counsel prior to the advent of the new family law staff practitioners.
- The present NLSB family lawyers indicated that they are already carrying a large number of files (145 in one case), some of which are extremely old (one is over 12 years old), and the majority of which are one or two years old.
- The NCJ reports that, in 2001, 419 civil files were opened (in this case, civil includes both family and civil law cases).¹⁸

5.1.3 Resources required to improve family and civil law service delivery

Respondents identified financial and human resources and alternative resources that would be required to improve family and civil law service delivery and coverage in Nunavut.

Financial and human resources required

Respondents raised several points with respect to demand for family and civil law services, the time and cost associated with handling family and civil law cases as opposed to criminal law cases, and the human resources that would be required to meet the demand. In some cases, respondents made suggestions as to how these increases in demand and cost could be mitigated.

¹⁸ *Nunavut Court of Justice Annual Report: 2001*



With respect to demand for services in the areas of family and civil law, the following points were made:

- The existing family law practitioners with the NLSB would be unable to take on additional cases as a result of increased coverage and eligibility, given their existing workload.
- Several respondents indicated that demand for services would likely increase with the presence of family law lawyers and Courtworkers in the communities. Their presence gives the public the impression that services are available which previously weren't.

Two family lawyers in the Baffin, one in each of the other regions, should be seen as the minimum level required ... I would hate to think that wouldn't be the minimal family law set up in Nunavut. We'd be taking a big step back.

- Current demand is underestimated because many people do not approach legal aid clinics for help in non-criminal matters, because they simply do not realize that they have rights.
- Current demand is also underestimated because, of those people who do approach the NLSB for assistance, many do not fill out applications once they arrive because they realize that there are no lawyers to provide the service.

With respect to the different level of resources required to address civil and family law cases, as opposed to criminal law cases, some respondents pointed out that these are very litigious areas. Therefore, the cost and time implications of each case will be much greater than those of criminal cases. The example of cases relating to the *Fair Practices Act* was given, where it is estimated that at least half of all cases would go to hearings. Other respondents, however, felt that the increase in resources required to improve access to civil and family law services would be balanced by a reduction in demand for criminal legal services. They felt that, there would be a decrease in incidents of assault and violence that occur because family law issues are not addressed. (See the discussion in Section 5.5 on the linkages between unmet family law and civil law need and increased demand for criminal legal services.)

Some respondents suggested that, in order to meet the increasing demand for family law legal services in Nunavut, the number of family law practitioners would have to be increased. These respondents felt that, preferably, these practitioners should be northern residents who are culturally sensitive and who report to a Board that can ensure that family law is practised in a way that is tempered by community and traditional values. At a minimum, these respondents felt that there should be two NLSB family law lawyers in the Baffin and one each in the other regions, along with one or two civil law practitioners to address non-family civil law and the many related civil issues that arise out of family law, including poverty law issues and housing.

Two suggestions were made as to how these anticipated increases in demand and resource requirements might be mitigated:

- One respondent indicated that the anticipated increase in demand might be manageable if each legal aid clinic had one extra lawyer to cover civil and/or family law cases from the very beginning, in order to avoid building up a backlog of files.
- Another respondent indicated that costs could be somewhat mitigated by instituting eligibility criteria and some type of affordable monthly fee, in order to encourage clients to resolve their issues rather than engage in litigation.

Alternative resources required

A number of alternative resources were also identified that would be required in order to increase coverage of civil and family law matters in Nunavut. These included:

- mediation and counselling programs;
- the Positive Parenting program, which is being used in the NWT, with the support of legal services, in an attempt to reduce the demand for family law legal services that cannot be met;
- expanding the role of Courtworkers to address family law issues as well as criminal law issues.

Although many respondents indicated that alternatives to the traditional justice system were resources that would support better services in family law and civil law situations, a number of respondents also raised concerns with respect to those alternatives. For example:

- Some respondents were concerned (based on experiences in other jurisdictions) that power imbalances between disputing parties might not be taken into account during mediation and counselling activities, which can have a negative effect on participants. Respondents familiar with the current pilot mediation project indicated every effort is made to build sensitivity to these issues into the model in use.
- Other respondents felt that, as family law and civil law are more complex than criminal law, it was inappropriate for Courtworkers to be dealing with cases in these areas without a dramatic improvement in training, infrastructure, recognition, salaries, and degree of professionalism.
- Some respondents raised concerns about importing a southern family law system into Nunavut, and wanted to make the system more culturally appropriate for the people of Nunavut.
- Other respondents found it difficult to envision incorporating more traditional beliefs into the family law system, because these were often seen to be in conflict with the basis of the law. Custom adoption was raised as an example of a conflict between cultural practice and southern law. Although custom adoption is an accepted family law practice in Nunavut (see discussion above), the courts had yet to address the financial implications of the practice (e.g., whether the birth parent should continue to help to support the child financially, which would not be the case in a “standard” adoption). In response to this concern, the NCJ recently identified a third type of adoption, which has been dubbed “opportunistic adoption.” In these cases, the birth parent is considered to be taking advantage of the practice of custom adoption to avoid financial responsibility for the child and, therefore, the court could require that the birth parent make a financial contribution to the child’s well-being. The respondent who raised this example indicated that it may take five to ten years to resolve the issues raised by the NCJ’s decision. Other areas where there appear to be conflicts between traditional practices and southern laws are spousal assault and divorce (these are discussed in greater detail elsewhere in this report). Some respondents believed that, as greater efforts are made to incorporate traditional practices and beliefs into Nunavut’s legal system, the conflicts between these practices and the southern legal system can only increase.
- Some respondents pointed out that the federal government’s funding priorities have a strong impact on the availability of alternative justice for family law situations, since the only options that exist in Nunavut are those funded by the federal government.



5.2 UNMET NEEDS IN CIRCUIT COURTS

5.2.1 Current level of service in circuit courts

On the surface, given the system of presumed eligibility and the Courtworker program, it would seem that there is little unmet need for representation in Nunavut's circuit courts, in that all individuals can be represented in some way. However, the majority of respondents believed that, due to the nature of circuit court work (long hours, difficulty traveling to the communities beforehand, limited Courtworkers in every community, discontinuity in counsel, delays due to adjournments, etc.),¹⁹ the quality of the representation available to clients in circuit courts sometimes suffers and, therefore, there is an unmet need for legal advice and support in circuit courts.

It should be noted that the question of unmet need in circuit courts was an area where the distinctions between different regions became quite apparent, as did the distinctions between the experiences of smaller communities (where there is no legal aid clinic) and larger communities. For example, concerns about the quality of representation on circuit courts were stronger in the Baffin Region than in the Kitikmeot Region and stronger in smaller communities, where the court must fly in together, than in larger communities where NLSB staff are available through the local legal aid clinic.

5.2.2 Resources required to improve service delivery in circuit courts

Respondents made many suggestions as to strategies and resources that could improve the quality of service provision in circuit courts. Their suggestions focused on the training of Courtworkers, increasing the number of circuits and length of stays in communities, and enabling NLSB lawyers to better meet the challenges inherent in the circuit court structure. Given the variation in experience of unmet need in circuit courts (see discussion above), some of these suggestions may be more appropriately implemented in a particular region or community rather than across the board.

With respect to Courtworkers, most respondents believed that Courtworkers require improved training in order to better support NLSB counsel when they arrive in the community with the circuit court. (A more detailed discussion of the role and needs of Courtworkers is provided in Section 7.0).

Although some respondents suggested that filling the vacant NCJ justice position for an additional judge would help to improve the number of circuits and the length of stays in communities, this is unlikely to be the case, because the NCJ has already been operating as if there were three judges, using deputy judges to fill in as necessary. Some respondents felt that bringing the number of NCJ justices up to four might help to resolve the situation. However, other respondents noted that these benefits would not be realized if additional resources are not also provided to other participants in the justice system, particularly the NLSB and the Crown, so as to ensure that there are counsel to appear before the new judges.

With respect to enabling NLSB lawyers to better meet the challenges of circuit court, a number of suggestions were made. Most of these suggestions involve increasing, in some way, either the human or financial resources available to staff counsel and clinic directors, in

¹⁹ The effect of the circuit court structure on quality, demand and pattern of service is discussed in greater detail in Section 3.1.

order to improve efficiency and increase the amount of time that can be spent with clients in the communities. Respondents' suggestions included:

- Resources for NLSB lawyers to visit remote communities more regularly, and prior to the appearance of the circuit court. This might entail a sort of pre-circuit circuit to ensure that all communities are visited in advance, rather than merely the first community on the list. It should be noted that resources would be required not only to cover travel costs but also to cover additional human resources to maintain clinic functions while lawyers are traveling.
- Ensuring that two defence counsel are always sent on circuit. This would ease the workload and allow for more time with clients.
- Developing a system to ensure a smoother hand-off of cases from one duty counsel to another. For example, Counsel A is the primary counsel on the first circuit, with Counsel B as the secondary counsel. On the second circuit, Counsel B becomes primary counsel, Counsel C is secondary counsel, and Counsel A has a break. In this way, the incentive to offload cases on to the following duty counsel would also be reduced, as would discontinuity of counsel.
- Tendering out those circuits that are not regularly covered by staff counsel on a one- or two-year basis. In this way, the primary counsel on the circuit would be permanent, having tendered for the job, while the secondary counsel could be a rotating position, if necessary. This would allow the primary counsel to develop a good knowledge of the communities, community leaders, available resources, etc., and, again, would reduce discontinuity of counsel.
- In communities with a regional clinic, have a "duty counsel day" ahead of docket week, in order to meet with clients and prepare for court.

5.3 UNMET NEEDS IN JUSTICE OF THE PEACE COURTS

5.3.1 Current level of service in Justice of the Peace courts

The situation with respect to representation in JP courts seems to vary across Nunavut:

- Some respondents indicated that Courtworkers provide the majority of representation in JP courts.
- In Iqaluit, law students or interns are sometimes involved in representing clients in JP courts.
- In the Kitikmeot Region, workshop participants reported that some clients elect to represent themselves in JP courts.
- In Cambridge Bay, it was reported that no one is unrepresented in the JP court, because of the presence of Courtworkers and NLSB lawyers in the community.
- Other respondents indicated that, in their experience, representation by NLSB counsel in JP courts is an extremely rare occurrence.

In general, however, respondents believed that most people are represented in some way in JP courts unless they choose otherwise. This conclusion is borne out by JPs themselves, the majority of whom indicated that they feel uncomfortable proceeding if the accused is unrepresented, and would generally choose not to do so. A few JPs indicated that they would proceed with an unrepresented accused if this situation is the accused's choice and not due to a lack of available representation.

5.3.2 Unmet need in Justice of the Peace courts

However, there are a number of issues relating to JP courts and to the form of representation available to the accused that some respondents believed affects the quality of that



representation to the point where an unmet need exists. Concerns expressed by these respondents included:

- Very few Courtworkers are trained to a level where they can represent the accused effectively in JP courts.
- There is an overall lack of Courtworkers, meaning that they are not present in every community and that there may not be enough Courtworkers available to meaningfully represent all of the accused.
- JP courts are not monitored and transcripts or tapes are difficult to obtain, which means that it would be very difficult for the NLSB or the Nunavut Department of Justice to be aware of any problems relating to the quality of representation.

In JP court, we have people untrained in the law, we have a police officer who did the investigation doing the prosecuting, the JP signs things the police put in front of him, and Courtworkers have little or no training.

The concerns expressed by these respondents are made more serious by the perception that charges of increasing seriousness (that would previously have been heard in the NCJ where the accused is generally represented by a lawyer) are now being heard in JP courts. However, it should be noted that there were divergent opinions among respondents on whether the nature of cases being heard in JP courts has changed since the creation of Nunavut, with many respondents indicating that no change has taken place. There were also a number of respondents who believed that, yes, more serious offences are being addressed in JP courts, but that this is appropriate because an enhanced JP court system is a key part of the overall

unified court system. These respondents wondered who, other than respected and adequately trained JPs and Courtworkers, would be able to meet the need for service provision by Inuktitut-speaking, locally knowledgeable practitioners – given that there will never be sufficient lawyers in Nunavut to provide these services (either as Crown counsel or defence counsel).

5.3.3 Resources required to improve service delivery in Justice of the Peace courts

Respondents suggested a number of means through which representation in JP courts could be improved. These included:

- Improving and formalizing Courtworker training in order to improve their capacity to represent the accused in JP courts and to appeal JP court decisions, if necessary.
- Increasing the number of Courtworkers so that there is, at minimum, one Courtworker in each community with a JP court.
- Providing resources for full-time Courtworker positions, as opposed to the part-time positions that are currently funded.
- Allowing for NLSB counsel to travel to communities and represent the accused in JP courts, should this be warranted by the seriousness of the offence.
- Improving the monitoring of JP courts in order to ensure that the accused is being appropriately represented, and that transcripts of the proceedings are available should they be required for the purposes of an appeal.
- Developing a local support network for Courtworkers that would include NLSB staff counsel, but might also include members of the Community Justice Committee, for example.
- Finding ways to include family members in the process so that they can provide support for the client through their presence.

It should be noted that Courtworkers, who bear the brunt of representing clients in JP courts, and who are the subjects of a number of the suggestions provided above, also made it very clear that there are some cases that they would not like to be involved in, regardless of the resources made available to them. These included:

- sexual assaults;
- narcotics cases;
- non-summary offences;
- show cause hearings where the victim might be harmed if the accused is released on bail. (See further discussion of the Courtworkers' role prior to first appearance in Section 5.4.).

5.4 UNMET NEEDS PRIOR TO FIRST APPEARANCE

5.4.1 Current level of service prior to first appearance

The question of an accused's need for representation prior to first appearance usually concerns bail or show cause hearings. In these instances, representation is generally provided either by Courtworkers (most frequently) or by NLSB counsel (duty counsel for that week).

Respondents indicated that Courtworkers are frequently involved in show cause or bail hearings. During these hearings, their duties include:

- explaining the client's rights and the system;
- receiving instructions from the client;
- involving the parents of young offenders in the discussion;
- consulting with the Crown or the legal aid lawyer (by telephone);
- attending the RCMP lockup or JP court to address the issue.

The majority of respondents indicated that duty counsel representation prior to first appearance is very infrequent. This limited involvement was attributed to several factors:

- The duty counsel cannot always be reached by telephone, especially after hours.
- Some duty counsel refuse to do show cause or bail hearings over the telephone.
- Duty counsel may have difficulty contacting clients, particularly those without telephones, or communicating with clients because of the language barrier.
- When duty counsel do agree to take part in a show cause or bail hearing over the telephone, it is very difficult for them to provide adequate advice to the client, as they cannot see the police officer and JP involved. There were several anecdotal reports of apparent collusion between the JP and the RCMP during hearings conducted over the phone.

In one case, a JP reported that, in almost all bail or show cause hearings he oversees, the accused is represented by counsel, either from the NLSB or a private practitioner.

5.4.2 Unmet need prior to first appearance

There were divergent opinions among respondents as to whether unmet need exists for representation prior to first appearance:

- Most JPs felt that very few people are unrepresented in this situation. They reported that accused are only unrepresented if they have made a clear choice to go ahead without waiting for representation. One JP indicated that he is reluctant to proceed in such a situation, because he is uncomfortable with an accused being unrepresented.



- Respondents from the NLSB felt that there must be cases where people are unwillingly unrepresented, because they receive calls requesting representation and are unable to meet that need. One respondent indicated that people from Nunavut are still calling the NWT in search of representation.
- Courtworkers reported that there are cases where clients are unrepresented prior to first appearance. This occurs for a number of reasons, and usually after hours or on the weekend. Some Courtworkers indicated that the counsel who are on call do not answer their phones on Saturday nights. They also indicated that the RCMP does not always call the local Courtworker if the duty counsel is not available. In fact, they felt that the RCMP sometimes convince the accused that they do not need to call the Courtworker if the duty counsel is unavailable.

Respondents identified a number of barriers directly related to the NLSB (either counsel or Courtworkers) that have an impact on the representation of clients prior to first appearance:

- the training and degree of experience of the Courtworker;
- the language barrier between counsel and accused, either in person or over the telephone;
- the difficulty in establishing a trust relationship with the client in such a short time and/or over the telephone;
- limited access to NLSB lawyers for Courtworkers who require advice or assistance;
- the lack of a 1-800 number for clients to call when they need representation;
- out-of-date lists of lawyers provided to clients by the RCMP;
- duty counsel who are not available by phone when they are on call;
- often the lack of a secure place (from the perspective of the Courtworker) to interview clients;
- lack of Courtworkers in some communities.

Finally, one respondent pointed out that bail and show cause hearings are not the only areas where clients go unrepresented prior to first appearance. Peace bonds²⁰ are another area of unmet need. A respondent indicated that, in at least one detachment, RCMP officers were encouraging people to quickly sign peace bonds before a JP without explaining the full implications and without ensuring that the individual had legal representation.

5.4.3 Resources required to improve service delivery prior to first appearance

Respondents suggested a number of ways in which unmet need for representation prior to first appearance can be addressed, including:

- increased training for Courtworkers in the area of bail and show cause hearings, so that they can deliver better services;
- increasing the number of Courtworkers in larger communities, where demand is greater, and ensuring a minimum of one Courtworker in each community;
- a rotating duty counsel list of several individuals for the week, rather than a single 24-hour on-call duty counsel, to improve telephone and in-person access to counsel. Updating the lists used by the RCMP is an important step, as seven of the twelve

²⁰ Someone who is afraid of violence or injury from another person can have that person brought before a judge or JP and, if there is evidence in support, the judge or JP can release the person in question on strict condition not to breach the peace. This is a peace bond. Typical conditions in a peace bond require that the person not go near the other person or other person's residence. Violation of the terms of the peace bond can result in immediate arrest.

clients interviewed who were seeking criminal legal aid contacted their lawyer with the help of a list provided by the RCMP;

- a 24-hour toll-free line for clients to access counsel or a Courtworker. Such a line could also be used by Courtworkers seeking advice or information in order to better represent their clients;
- public legal education and information materials, such as wallet cards outlining the right to remain silent, in simple, plain language and in Inuktitut;
- alternative venues for show cause and bail hearings, rather than the RCMP office (although it should be noted that one JP indicated that it is safer to hold these hearings at the RCMP office because the accused is then in custody).

5.5 UNMET NEEDS FOR PRISONERS ON REMAND

Informants reported that Nunavut's only corrections facility, the Baffin Correctional Centre, is crippled by significant numbers of prisoners who have been remanded in custody at any given time and are waiting to see a lawyer or have their case dealt with in court. According to respondents, the most significant factor in delays that result in large numbers of remand prisoners is that remand prisoners are having difficulties gaining access to lawyers. Although the Baffin Correctional Centre is very willing to allow inmates to see their lawyers, the problem seems to be that there is an overall shortage of criminal lawyers available to see inmates. Inmates have telephone access, but find it difficult to make contact with a lawyer or gain an appointment with a lawyer, given the overall shortage of lawyers. In many cases, remand prisoners wait a long time for a court date, are brought to court with many others in the same situation, and cannot be given adequate time to be interviewed or give instructions to a lawyer. As a result, after the long wait, a short court appearance results in an adjournment, while the accused person remains in custody.

On a typical day in recent months, Nunavut's only correctional facility, the Baffin Correctional Centre, had about 30 remand prisoners. The Baffin Correctional Centre was designed for a maximum prison population of about 60, and has facilities for only about 15 remand prisoners. In recent years, longer terms for remand prisoners has put additional pressure on available space within the BCC, requiring that these additional remand prisoners must be placed with the general population or in a special handling unit. This is an added administrative pressure for corrections staff at the BCC. Even providing exercise for remand prisoners becomes difficult. One of the consequences of these pressures is that the BCC has been forced to shoulder significant expenses – in the order of \$1.5 million or more per annum – transferring remand prisoners to the faraway Yellowknife Correctional Centre.

Remand prisoners cause problems in the corrections system in other ways as well. Since remand prisoners are not eligible for correctional programs, they can end up spending significant periods of time not being helped with the problems that led to them (allegedly) committing a crime in the first place. They are often far away from family and home community, and become dispirited. Informants said that they are aware of accused persons who end up pleading guilty out of frustration with the lengthy process of waiting for legal advice and court appearances. Others endure the long waits because they know that they will get credit for time spent in remand when it comes to sentencing, since remand time is known as “hard time” within the justice system. It should be noted that, if this credit for time served is given, it further reduces the amount of time that the individual is eligible for correctional programs that might address the underlying issues.

The problem –limited capacity at the Yellowknife Correctional Centre and high costs of transfers to Yellowknife – is forcing officials to consider transferring remand prisoners outside the North. This problem is so acute that officials are presently considering the transfer of remand prisoners from Nunavut to the Ottawa Carleton Detention Centre.



Corrections informants reported that the average length of remand time is at least two months and a number of cases are three months or more. In some cases, inmates have been on remand for up to nine or ten months, even a year. Although this also includes time for trial preparation, the most aggravating factor often seems to be the lengthy periods inmates must wait before they can be interviewed and give instructions to a lawyer.

5.5.1 Resources required to improve service for prisoners on remand

Informants involved with corrections were agreed that the reason prisoners seem to lack access to lawyers appears to be the overall pressures being experienced by the small number of available lawyers in Nunavut. There are too few lawyers trying to deal with the demands of busy courts, as well as civil and family law issues. Several informants suggested that the needs of inmates have been overlooked as a result, putting additional pressures on the correctional facilities.

Since the problem is diagnosed to be a shortage of lawyers, informants suggested that the remedy required is simply making more lawyers available. Some suggested that there would be sufficient work within the corrections system to occupy a full-time lawyer. Others suggested that providing increased resources to regional legal services centres could allow staff lawyers and, in Iqaluit, private lawyers to provide adequate services to deal with the needs of inmates from all parts of Nunavut.

5.6 SUMMARY OF SECTION 5.0

The following table summarizes the key points relating to Section 5.0

Table 5.1: Summary of Section 5.0

Unmet Needs in Family and Civil Law
<ul style="list-style-type: none">• Although the NLSB was originally intended to provide legal services in some areas of family and civil law, in practice these services are lacking, so individuals may lack representation in these cases.• There are practical limitations on family and civil law service provision, due to administrative and logistical issues, as well as to the overall lack of capacity for addressing these issues in the Nunavut justice system.• Respondents identified many areas of civil and family law service where they felt there are unmet needs.
Unmet Needs in Circuit Courts
<ul style="list-style-type: none">• Due to the system of presumed eligibility and the Courtworker program, it appears that all individuals can be represented in some way in circuit court.• A number of respondents expressed concern that, due to the nature of circuit court work, the quality of representation available to clients in circuit courts sometimes suffers, to the extent that unmet need exists.• Concerns about quality of representation were expressed more strongly in the Baffin Region than in other regions, and more so in smaller communities than in those communities with a local legal services clinic.

Table 5.1 Continued

<p>Unmet Needs in Justice of the Peace Courts</p> <ul style="list-style-type: none">• Respondents indicated that the extent of unmet need in Justice of the Peace courts varies considerably across Nunavut.• As with circuit courts, a number of respondents believed that the quality of representation available to individuals in Justice of the Peace courts is not sufficient to meet their needs. This concern is made more serious as Justice of the Peace courts increase the scope of offences they are hearing.• Courtworkers, who represent most clients in Justice of the Peace courts, felt a need to be better trained in order to provide better representation, but also expressed hesitation in taking on some types of cases (for example, sexual assaults and narcotics cases).
<p>Unmet Needs Prior to First Appearance</p> <ul style="list-style-type: none">• Courtworkers frequently represent individuals during show cause or bail hearings, prior to first appearance. Duty counsel's role in representing individuals at this level appears to be quite limited.• Most JPs felt that very few people are unrepresented prior to first appearance. This is in contrast with the experience of the NLSB, which continues to receive calls requesting representation that they cannot provide. Courtworkers also reported cases where clients are unrepresented, usually after hours or on the weekend.
<p>Unmet Needs for Prisoners on Remand</p> <ul style="list-style-type: none">• The Baffin Correctional Centre (the only correctional centre in Nunavut) is typically holding 30 prisoners on remand (i.e., individuals who have not yet been convicted of a crime) who are waiting to see a lawyer or to go to court. The centre is built to house a maximum of 15 prisoners on remand.• Lack of access to criminal defence lawyers is the most significant factor contributing to the number of prisoners on remand.• The situation is so extreme that some prisoners on remand are being transferred to the Yellowknife Correctional Centre.• While on remand, prisoners are not eligible to participate in correctional programs that might serve to address the underlying issues that led them to (allegedly) commit a crime. Furthermore, as convicted prisoners generally receive credit for the time they have already served in remand, the amount of time they spend at the correctional centre is reduced, further reducing their access to such programs.



6.0 Impact of Unmet Needs

The unmet need that exists in all of the areas discussed in Section 5.0 has a serious effect on the accused, but also on the victim, the community at large, the staff of the NLSB, and on the legal system in Nunavut as a whole.

6.1 IMPACT ON THE ACCUSED

In my time, I can think of three suicides as a result of people waiting. One case was a young girl in who was waiting for the court to deal with a very simple assault charge. She was 19. The assault was over a boyfriend. There had been a previous charge, she had pled guilty and got probation. Then she was charged again. The Court was weathered out. When the Court finally came, she committed suicide.

Most respondents, and particularly NLSB staff, were able to provide examples of cases where they felt this extreme helplessness and despair contributed to the accused's committing suicide.

The NLSB's inability to meet the needs of the accused in many different situations has a significant impact on that individual's well being. All of these effects combine to increase the accused's sense of helplessness in the face of the legal system. This feeling of helplessness is further exacerbated by the paucity of local support mechanisms for the accused in most communities, the pressures of living in a very small community while accused of a crime, and the emotional traumas that have already been suffered by most individuals.

Another case was in It was a very minor offence involving a young offender who had committed mischief in the school. He had a very tough home life. He waited for Court. When the Court came, the Crown asked for jail. He was given suspended sentence and probation. A week later, he committed suicide. It seemed to me it was a result of the Court ... waiting for the result, then being disappointed in the result.

6.1.1 Unmet need in circuit courts and JP court

At the end of February, the Nunavut Court of Justice came to Igloolik for only seven hours. The defence lawyer had so little time ... All I could do was make appointments. Afterwards, a client claimed he had pleaded guilty to something he didn't do. I felt frustrated and upset.

inappropriate sentences. For example, the accused may be have to give undertakings that they are unable to fulfill (particularly in matters of housing and not returning to the former family home) or be sentenced to house arrest, which may have a negative effect on the rest of the people living there.

In circuit courts, the discontinuity in defence counsel that sometimes results from the circuit court structure affects the quality of service received by the client, because the new counsel may lack knowledge of the case history or of the client's particular needs. Discontinuity in defence counsel may also result in further delays in the processing of the case, as the new counsel may ask for an adjournment if they feel they do not have adequate information to defend the client appropriately. Eventually these delays and the effects of discontinuity in counsel result in frustration on the part of the client and a loss of respect for the justice system as a whole.

Some respondents believed that unmet need in circuit courts and JP courts results in a greater likelihood that the accused will plead guilty to the offence, and in unduly onerous and sometimes

6.1.2 Unmet need prior to first appearance

Lack of representation prior to first appearance also has a number of negative effects on the client, particularly when taken in combination with the lack of remand capacity in smaller communities:

- If there is no Courtworker available and the duty counsel refuses to conduct the hearing over the phone, the accused is often remanded to Iqaluit (removed from the community) and the bail or show cause hearing takes place there, when duty counsel is available. Generally, the RCMP appears to be reluctant to hold the accused in the community for even a 24-hour period, due to the limited availability of appropriate facilities.
- If the bail or show cause hearing does not take place, for whatever reason, and the client remains in jail, or is sent in custody to Iqaluit for a show cause hearing, respondents reported that he or she may eventually give a statement to the RCMP without having representation. They felt that clients are also more likely to admit guilt if they are not represented, as it is a shock and a source of stress to many accused persons to be abruptly removed from their home community. Respondents reported that their clients are often afraid not to give a statement to the RCMP, even if they know they have the right to representation.
- Corrections officials also corroborated views expressed by defence lawyers that it can be very demoralizing for the average accused person, invariably spending significant time in remand at the Baffin Correctional Centre (or even at the Yellowknife Correction Centre, due to overcrowding at the Baffin facility), far away from home and family. As a result, demoralized and despondent accused persons end up pleading guilty as the only way to end the remand.

6.1.3 Unmet need in family and civil law

"I don't know if legal remedies will help, except over time. How do you change the mindset of these [abusive] people? Sooner or later, they're going to die off. But, in a way, this tradition is passed down. The thing that shocks me the most is when a woman is in an abusive situation her own family will not support her. I think it would be really good if these women [were to] have access to a worker in the community [to] refer to ..."

Finally, unmet needs in the areas of family and civil law can also have a negative effect on individuals. Some respondents believed that frustration due to unmet need in these areas can lead the people involved to behave in a criminal manner (e.g., assault their partner) and, therefore, be accused and potentially convicted of a criminal act. There was also a strong concern that, without support and advice available at the community level, people living in violent situations will remain there, rather than seeking divorce.

6.2 ON THE VICTIM OR OTHER PARTY

Clearly, unmet need also has a negative impact on the victim (in criminal cases) or on the other party to the dispute (in family law or civil law cases). For example:

- The delays that sometimes occur in hearing cases in circuit court leave the victim without closure and, in smaller communities, to face the accused on an ongoing basis for several months until the court returns.
- Delays also increase the potential for re-victimization, particularly in cases of assault.
- In family law and civil law cases, the other party to the dispute may become the victim of a criminal act because the underlying issues were not dealt with efficiently.
- The limited availability of family lawyers may result in a situation where one party to the dispute obtains representation but the other party cannot, as the one family



lawyer in the community cannot represent both. There is also the potential for one party to be denied family law legal services because another criminal lawyer at the same clinic is representing the other party in a separate case.

- The way in which family law issues are addressed (through documents in judge's chambers rather than in court) reduces the satisfaction of the parties involved, because they do not get to address the issues personally, and, therefore, it reduces the likelihood that they will comply with the judge's ruling.

The effect of unmet need on the victim is often compounded by the absence of Victim Services workers in many communities.

6.3 ON THE COMMUNITY

Community members are affected by unmet need for legal services in several ways:

- Through frustration and cultural disconnect that occur because of delays and adjournments in circuit courts.
- Emotionally through their ties to the accused and the victim.
- Through the increasing demands on community-level structures to interact with and take over responsibilities from the legal system.

6.3.1 Effects of delays in circuit courts

These delays, which seem inherent in the circuit court system despite the best efforts of all participants, can leave communities as a whole frustrated, particularly if the accused re-offends while waiting for the initial charge to be heard. In some cases, the community may seek to address the situation on its own. Other respondents have observed that, in very difficult and stressful cases, some delay may be healthy, in allowing emotions and anger to cool before a matter comes to court.

Nonetheless, Inuit respondents have observed that promptly dealing with transgressions within a community is an important traditional and cultural value, which often gets displaced by overloaded court circuits. Previous research has shown that

... in discussing how conflicts were traditionally dealt with, ...certain values continue to be important. Traditionally, a confession to wrongdoing was considered very important and in fact, not admitting to wrongdoing was often a more serious crime than the original wrongdoing. ... It was felt that to hide guilt created a sickness in the individual. Within time, this sickness would be felt by others around him or her... and they would become sick or dysfunctional. Then the whole community would be infected with this sickness. ... It is important to deal with issues as soon as possible. To put off an issue was to allow someone to live without confessing and dealing with the issues. To put this off too long brings about feelings of hurt, guilt, fear confusion etc. ... It is therefore expected and familiar that people own up to their actions and share their breaches of rules with others so that the community could remain healthy. This should be done without delay.²¹

²¹ *Towards Justice That Brings Peace*, Nunavut Social Development Council Justice Retreat and Conference, Rankin Inlet, 1998, p. 16.

Even though respondents indicated that delays in circuit courts are typically less than in southern courts, Inuit may be less tolerant and understanding about delays than southern Canadians because of their desire to take the traditional approach and resolve matters quickly and locally.

Some respondents also pointed out that an adjournment in a circuit court has a much greater effect than an adjournment in a residential court. In a residential court, an adjournment might mean waiting a week. In a circuit court, it might mean waiting several months or, in some cases once weather is taken into account, half a year.

6.3.2 Emotional effects

Community members see the effect of unmet need for legal services on the accused and on the victim, or on both parties to a family law or civil law dispute. In small communities, which are the norm in Nunavut, nearly all members of the community have had some personal involvement with the justice system, if not as the accused or the victim, then as the family of someone in either of those positions. Community members are aware first-hand of the impacts of unmet need, which results in a number of community-wide issues:

- Community members are often confused by what has happened during the circuit court hearings or JP court. They may not necessarily understand the reason for a particular ruling or for a delay in processing the case. Eventually, this confusion results in a distrust of the justice system, which appears difficult to understand and irrational.
- The confusion and distrust felt by community members may eventually result in disrespect for the justice system as a whole, and an unwillingness to become involved in this system in any way.
- The limited availability of service in family law and civil law may lead to a perception that the justice system is only about criminality and punishment, rather than as a possible way of solving problems, gaining restitution and restoring peace.

The uncertainties and delays associated with the justice system are difficult to bear for people who have generally experienced a great deal of trauma in their lives already. Nunavut is particularly afflicted with very high rates of suicide, alcohol and drug dependency, assault, and sexual assault. Having to deal with these concerns on a daily basis leaves little community capacity for patience and flexibility in response to a justice system that is not seen to be meeting their needs or reflecting their circumstances.

6.3.3 Increased interaction and responsibilities

Community members are also increasingly being asked to take part in the justice system as elders, members of Community Justice Committees (CJCs), Youth Community Justice Committees (YCJCs), and other alternative justice projects. In general, respondents supported these initiatives and believed they are an important part of developing a justice system that is more responsive to traditional Inuit values and needs. However, many respondents also indicated that taking part in these systems is beginning to take a toll on the community members involved. These respondents felt that, in some cases, community members are being taken advantage of and not being properly remunerated or respected for their efforts.

A good example of the negative effects on community members of trying to bridge some of the gaps in the existing justice system is the case of CJCs and the early release of individuals from jail. When an inmate comes up for early release, the local CJC is sometimes asked for input on whether this would be appropriate. In some cases, being asked to make such a decision makes the members of the CJC uncomfortable, particularly since they must face the victim of the crime every day and may not feel able to explain to that individual why the offender has been given early release. If the offender re-offends, the CJC members feel guilty



because they agreed to the early release. If the CJC recommends denying early release, they must justify this to the offender's family members, who likely also reside in the community. All of these situations place CJC members in uncomfortable positions, which may eventually result in reluctance to take part in any further justice initiatives.

Respected community members also serve as an informal referral service to the NLSB for members of the community who find themselves in trouble with the law. Of the twelve clients interviewed who were seeking criminal representation, three were referred to Maligaanik Tukisiiniakvik by a community member or a relative who was familiar with the NLSB.

6.4 ON NLSB STAFF

NLSB counsel, Courtworkers, and administrators are acutely aware of the extent of unmet need for legal services in Nunavut and are severely affected by the shortfall in service provision.

Both Courtworkers and staff counsel have very heavy workloads and are often unable to provide help to everyone who needs it. Courtworkers provide their services under sub-optimal conditions, particularly with respect to infrastructure (please see further discussion on the needs of Courtworkers in Section 7.0). Staff counsel face punishing travel schedules while on circuit, and often work evenings, nights and weekends in an effort to prepare properly and provide quality representation for their clients.

NLSB staff are also emotionally affected by unmet need. Knowing that they cannot help those in need results in frustration for both Courtworkers and staff counsel. Courtworkers often face an additional burden as the representative of the justice system in the eyes of the community. Resident Courtworkers are required to pick up the pieces when the court leaves the community, and are often asked to justify the court's actions and decisions to family and community members, as well as to the accused and, sometimes, to the victim.

The pressures experienced by NLSB staff as a result of unmet need lead to frequent burnout and a high rate of turnover for both Courtworkers and counsel. This turnover only worsens the situation for the Board's remaining staff, however, as it further reduces the NLSB's capacity to meet existing need.

6.5 ON THE NUNAVUT LEGAL SYSTEM

Unmet need in one part of the legal system can result in a chain reaction that places stress on other aspects of the legal system. Three examples of this are the effect of lack of representation for the accused in Justice of the Peace courts, the effect of lack of representation in circuit courts on probation officers, and the effect of unmet need in family law on demand for criminal representation.

6.5.1 Effect of lack of representation in Justice of the Peace courts

In Justice of the Peace courts, the unwillingness of NLSB counsel to represent the accused over the telephone – combined with the limited availability of Courtworkers in each community – hampers the ability of the court to hear those cases as JPs are often extremely reluctant to proceed with an unrepresented accused. In some of these cases, the case is then moved up to the NCJ. Hearing these cases at the NCJ level is more time-consuming and less efficient than hearing them at the Justice of the Peace court, although it does ensure that the accused is represented by counsel. The costs associated with the additional time required and reduction in efficiency are borne, in part, by the NLSB, which must provide that representation.

6.5.2 Effect of unmet need in circuit courts on probation officers

When the accused is unrepresented in circuit court (either through lack of counsel or through difficulties providing high quality service to clients as a result of the circuit court context), the result may be an inappropriate sentence. Many of these sentences have the effect of increasing the workload of probation officers in the community. For example, probation officers must do follow-up for house arrests and conditional sentences. The requirement to report back to court when the circuit is next in the community also places an additional burden on probation officers to appear in court with the offender and report on their behavior.

6.5.3 Effect of unmet family law needs on demand for criminal representation

With respect to the impact of unmet family law need on demand for criminal representation, some respondents believed that there is a link between the two issues, while others did not.²²

Those who perceived a link argued that individuals become frustrated because they are either unaware that family law remedies exist for their situation or unable to access those remedies. Eventually, their frustration becomes so great that they engage in a criminal act, such as assault. Others argued that, particularly in the case of women in abusive relationships, there is a link because these women are not aware of or able to access their rights under family law and, therefore, remain in a violent situation, which results in criminal charges against their spouse. These respondents provided anecdotal evidence of the link between the two issues, citing:

I believe there is a connection between the criminal and civil spheres in the generation of legal needs. When you don't give people access to services to protect themselves, you put them in positions where they have to defend themselves. If you put a barrier between people and the resources they need ... there are consequences.

- A man who assaulted his former partner after he tried to leave the relationship and take their child with him and she wouldn't let him.
- A man who was charged with assault and uttering threats after trying to prevent his spouse from leaving the community with their child before the issues of custody and visitation rights had been resolved.
- Women who do not have access to family law advice and therefore are not aware that they have a right to remain in their home if they are separating from their partner. These women may stay in the home, even with an abusive partner, rather than leave, because housing is so scarce. The woman is often re-victimized as a result and the spouse is charged with assault.

Some respondents believed that addressing unmet family law and civil law needs would reduce the demand for criminal law services. On the other hand, one respondent indicated that there may be a link between the two issues, but that this does not imply that addressing civil and family law issues will automatically reduce the demand for criminal legal

Take the example of someone who comes home to find his or her spouse in bed with someone else. Even if that person is aware that they can access legal services to get a divorce and address child custody and support issues, they will probably still hit their spouse in the head with a carving in the heat of the moment.

²² Two issues hampered the gathering of statistical evidence on the link between unmet need and demand for criminal representation. The first is that many people do not have support is available from the NLSB and, therefore, they do not apply. The second is that cases are filed and processed by last name, and therefore it is very difficult to draw the link, for example, an application a woman might make for divorce support and a subsequent application for criminal support in an assault case.



aid, because criminal charges are usually the result of a spontaneous response to a problem.

Regardless of their opinion on the reliability of the link between the two issues, none of the respondents were able to estimate the extent of the problem. However, one respondent did indicate that, as 30–40 percent of the criminal charges in his region are spousal assault charges, family violence is a major issue and at least some of that violence must be tied to unresolved family law issues.

6.6 SUMMARY OF SECTION 6.0

The following table summarizes the key points relating to Section 6.0.

Table 6.1: Summary of Section 6.0

Impact of Unmet Needs
<ul style="list-style-type: none">• The inability of the NLSB to meet the needs of accused in many different situations has a significant and negative effect on the accused's well-being. In some cases, the sense of helplessness brought on by unmet need has resulted in the accused committing suicide. Accused being un-representation may also result in a greater tendency to plead guilty and/or in unduly onerous and sometimes inappropriate sentences.• Some respondents believed that unmet need in the area of family and civil law may be resulting in increased demand for criminal legal services, as individuals take matters into their own hands.• Unmet need also has a negative impact on the victim (or other party to the dispute). These individuals are also affected by delays in the justice system and the inability to obtain their own legal representation (due to the overall shortage of lawyers in Nunavut).• Community members are also affected by unmet need. They are frustrated due to the delays and adjournments in circuit courts. They feel culturally disconnected from the justice system. They are affected emotionally, through their ties to both the accused and the victim, especially in small communities. They are also increasingly being asked to interact with and take over responsibilities from the legal system as elders, Justice Committee members, and as participants in alternative justice projects.• NLSB staff are acutely aware of the extent of unmet need and experience a great deal of stress, frustration, and anxiety as a result. These pressures lead to frequent burnout and a high rate of turnover, which in turn has a negative impact on the remaining staff.• Unmet need in one part of the Nunavut justice system also has an effect on service provision in other areas, causing system-wide problems.



7.0 Courtworkers

A strong consensus exists in the Nunavut justice system that Courtworkers are critical linchpins for the Legal Aid Plan to operate effectively in a cross-cultural environment, where the vast majority of clients are Inuit whose first and sometimes only language is Inuktitut. It has been a fundamental premise of the Legal Aid Plan in the Northwest Territories and Nunavut that Inuit Courtworkers are essential for effective communication between lawyers and their clients, case preparation and follow-up. Effective Courtworkers maximize the effectiveness of lawyers, in many ways. Also, Courtworkers working on their own, and having access to appropriate training and support, have been shown to be capable of handling significant responsibilities at the community level. Their services range from delivering legal education and information to the general public, to representing clients in show cause hearings and trials, to providing crucial assistance researching and assisting in family, youth and civil cases. As respected, well known and approachable community members, Courtworkers also give local visibility and credibility to what is still an essentially transient justice system.

Courtworkers, who are employed by the NLSB through regional legal service centres, have suffered from low and inconsistent pay and benefits, spotty training and inadequate numbers, despite their widely acknowledged, crucial role in the justice system. Many communities do not have Courtworker positions. Furthermore, where there are Courtworkers in place, they often are working without adequate or any office space for interviewing clients in safety and confidence, or for storing confidential files, limited communication capacities and supplies. This has led to turnover, burnout and frustration among Courtworkers. Recognizing the importance of remedying this situation, the NLSB is actively preparing an action plan to provide an intense, comprehensive and ongoing tiered process of training and certification. It is deemed critical that once this training program has been launched, there also be concrete recognition of the vital role of Courtworkers in delivering legal aid services, through significantly improved pay and benefits.

7.1 CURRENT ROLES AND RESPONSIBILITIES

Courtworkers' current roles and responsibilities are extremely varied and somewhat tied to factors such as the degree of training the Courtworker has received and the situation in the Courtworker's home community (for example, whether there is a JP in the community and how much responsibility that court takes on). In general, Courtworkers are expected to provide a direct link between clients and legal aid lawyers and are considered a key part of the federal and territorial governments' policy of strengthening the JP courts in Nunavut.

7.1.1 Responsibilities of Nunavut's Courtworkers

The Courtworkers interviewed identified the following responsibilities as part of their day-to-day activities:

- Interviewing clients and ensuring that they understand the process in which they are involved.
- Preparing for lawyers to come through on circuit by interviewing clients and witnesses, and arranging for clients to meet with the incoming lawyers.
- Providing interpretation for the accused and their parents or families (for young offenders) during lawyer/client interviews.
- Assisting visiting lawyers to obtain knowledge and background on the community, individuals involved in cases, and cultural and language issues that may arise in cases.

- Working closely with private and clinic lawyers to provide services prior to first appearance, including ensuring that clients understand their rights and getting instructions from clients on how to proceed.
- Working closely with private and clinic lawyers to provide services to clients in response to a growing number of family and other civil law matters.
- Representing clients in JP courts on sentencing, at trials, or in family or Youth Court matters.
- Ensuring that the parents of young offenders are involved in the process and understand what is happening.
- Working with the local RCMP and court office to obtain particulars or discuss disposition of a case.
- Assisting clients to fill out legal aid application forms.
- Taking part in community and alternative justice efforts, including diversion programs and the RCMP conferencing system (see concerns raised below).
- Representing the interests of the community.

We have to be counsellors. Being a counsellor is very draining. I always try to be positive. Sometimes it's just listening.

- Counselling individuals and explaining the results once the courts have left the community.
- Providing public legal education and information (PLEI) in person and, in some cases, over the radio.
- Referring individuals to other locally available services (e.g., counselling).

Courtworkers reported that the bulk of their time and effort is expended on interviewing clients, assisting in the completion of legal aid application forms, informing clients about the process and the system they are involved with, handling requests for information they receive from family law and criminal lawyers, and providing translation and interpretation services.

Pressures affecting Courtworkers

The pressures affecting Courtworkers can be divided into two categories: pressures to expand their role and the services they provide and pressures that result from their relationships with other players in the justice system.

Courtworkers experience pressure to expand their role and services in the areas of:

- *Translation and interpretation* – They may be asked to provide interpretation services to outside counsel or to the judge or the JP. This detracts from the time they have available to do other work or to provide services to their clients. Furthermore, requests to translate for a judge or JP put the Courtworker in a position of potential conflict.
- *Trials* – Some Courtworkers are being asked to represent accused at trials and feel that they do not have the necessary resources or training to do so.
- *Alternative justice initiatives* – Some Courtworkers report being asked to have a greater involvement in alternative justice initiatives, such as the Community Justice Committees. Such involvement is difficult for them because they see their role as representing the accused, their client, rather than working for the benefit of both sides of the dispute, which is the role of a Community Justice Committee member. The fact that Courtworkers are being asked to take on this role speaks to the limited community resources in Nunavut – no one else in the community is available to take on this responsibility. Nonetheless, it should be noted that Courtworkers generally support community-based justice initiatives.
- *Pre-court services* – Some legal aid lawyers suggested that Courtworkers could be more active in the drafting of materials and the preparation of cases.



- *Post-decision services* – Some respondents suggested that Courtworkers could also be involved in asking the Crown for variations of probation or undertakings.

Some respondents indicated that, overall, there is a pressure for Courtworkers to become more like lawyers. Several respondents raised concerns with this approach (discussed in more depth in the sub-section related to changes in Courtworkers' roles, below).

The primary pressure Courtworkers reported with respect to their relationships with other players in the justice system is a sense of being "looked down on" by the RCMP and the Crown counsel during the proceedings. In some cases, they are made to feel inferior to local JPs. In some communities, Courtworkers reported that the RCMP are unwilling to disclose information about charges. This attitude makes it more difficult for the Courtworkers to fulfill their mandate and serve their clients.

Courtworkers are also on the receiving end of pressure from community members. In some cases, they reported being pressured to breach client confidentiality by disclosing details of crimes, family conflicts, or related events. In other cases, they are challenged for representing accused persons, rather than victims.

Current barriers to effective delivery of Courtworker services

Courtworkers experience a number of barriers to the effective delivery of their services. Some of these barriers are related to infrastructure, others to a lack of resources or to the emotional and mental demands of the work. Barriers that were identified include:

- There is great disparity in the manner in which Courtworkers are compensated in various regions²³ and in available local facilities. Respondents also indicated that compensation for Courtworkers is inadequate.
- The workload is often too great for a part-time Courtworker to manage (the majority of Courtworkers are only part-time). Added to this is the fact that each community does not have its own Courtworker, so occasionally a Courtworker from one community must take on work in another.
 - Courtworkers lack the tools to do the job. In some communities they are required to work from their homes, with little privacy, no dedicated phone lines or fax machines. They experience difficulty in making long-distance phone calls and in finding a place to interview clients that is safe for the Courtworker while still ensuring the security of the client and confidentiality. They often have no secure place to store confidential files.
 - A lack of recognition for their work and their importance from some actors in the court system and from the community.

I need an office. My office is my bedroom. I am very uncomfortable if I have to interview men. I need a [dedicated] phone line. Right now, if I am interviewing someone, I need to kick out any visitors, kids, and turn off the telephone. I don't like keeping confidential files in my house.

These barriers result in a great deal of stress and frustration for individual Courtworkers. The high rate of turnover among Courtworkers can be directly tied to these frustrations, the poor compensation and benefits associated with the position, and the high degree of competition

²³ The budget for Courtworkers is administered at the local clinic level. The NLSB contributes to this budget through a contribution agreement, but the local clinic is free to allocate those funds to Courtworkers or to other resources, as it feels necessary. The NLSB has recognized the need to be more directly involved in the management of the Courtworker program, and has begun to work in tandem with the regional clinic boards and Directors on these issues.

among government and Aboriginal organizations for capable and bilingual staff in communities.

Changes anticipated for Courtworkers

A number of changes are anticipated that will likely affect the roles and responsibilities of Courtworkers and, in turn, will result in changes to Courtworkers' jobs and training needs.

Respondents highlighted the following changes:

- The *Youth Criminal Justice Act* – The Act, which will come into effect on April 1, 2003, includes a conferencing provision that will likely involve Courtworkers both as representatives of clients and as interpreters.
- A pilot project being considered by the Crown and RCMP could result in lay prosecutors in more communities (to replace RCMP prosecutors in Justice of the Peace courts). The crown is also giving consideration to giving these lay prosecutors some of the responsibilities of Victim Witness Assistants. The establishment of lay prosecutors, in conjunction with the significant efforts to train JPs to take on more responsibilities at the community level, will result in increased pressure on Courtworkers.
- The overall push to increase the ability of JPs to take on more complex issues in their courts – such as youth justice, family law, and criminal trials – will put a parallel onus on Courtworkers to have adequate training in these issues. (Currently, Courtworkers have never received any formal training in these areas, except to take legal aid applications and send them to head office.) It will also increase the need for Courtworkers, overall.

Some respondents had concerns with Courtworkers taking on more responsibilities in the areas of criminal law, family law, and civil law. Some respondents felt that Courtworkers should focus on family law and civil law, rather than criminal law, as there is a need in the communities for someone local, with Inuktitut language skills, to address these issues. Others felt that family law and civil law are much more complex than criminal law, and, therefore, that Courtworkers should remain focused on criminal law.

Finally, a number of respondents also indicated that if the role of Courtworkers is to expand and they are to become trained for and involved in activities traditionally reserved for lawyers, there is a need to develop a code of ethics for Courtworkers, similar to that which governs lawyers.

7.2 POTENTIAL TO MEET UNMET NEEDS

The pressure experienced by Courtworkers to take on more roles and responsibilities, in addition to the number of activities that they report being a part of their “unofficial” role, clearly indicates that there is an unmet need for Courtworker services in the communities.

Some areas in which respondents indicated that unmet needs exist are family law issues, youth justice issues, public legal education and information, community justice and alternative justice, and working with elders, who are now being asked to take on a larger role in the justice system as a way of incorporating traditional values and ideas.

Courtworkers and Justice of the Peace courts

A number of changes are anticipated that will likely affect the roles and responsibilities of Courtworkers and of the JP courts. Respondents highlighted the following matters:

- The pilot project being considered by the Crown and RCMP to have lay prosecutors in more communities, to replace the RCMP as prosecutors in local courts. The existence of lay prosecutors might result in increased expectations of Justice of the Peace courts to handle more cases locally. With a local JP and a local prosecutor, it



will be critical that a trained local Courtworker be available to address the needs of the accused.

- Current efforts to increase the training of JPs are resulting in increased expectations for JP courts, both from the JPs and from the NCJ. JPs are being trained so they can be more self-confident and, where necessary, more assertive with respect to local authorities. The JP training program also aims to have the first JPs trained to sit as Youth Court judges (within six months), conduct preliminary hearings where the parties consent (within one year) and do more civil law work – especially child welfare cases (within two years). In all of these matters, there will be a concomitant requirement for improved training for Courtworkers.
- The RCMP's decision with respect to whether a case is sent to NCJ or to JP court. A change in RCMP policy with respect to a particular type of offence could result in a rapidly increased (or decreased) role for JP courts. This discretion can also result in significant differences in the role of JP courts from community to community, depending on decisions made by local RCMP officers.

7.3 RESOURCES REQUIRED TO FULFILL POTENTIAL

Several suggestions were made on ways in which the current pressures on Courtworkers could be alleviated and they could be better prepared to meet the challenges posed by upcoming changes in the role of JP courts:

- JPs must ensure that interpreters and translators are available, separate from Courtworkers, so that Courtworkers can focus on their primary duties.
- Increasing training for Courtworkers, including recognition and tiered certification, so that Courtworkers feel more confident taking on responsibilities at the community level when lawyers cannot be available.
- Increasing the number of lawyers available so that Courtworkers are not required to take on responsibilities that would normally rest with a lawyer.
- Developing a system of lawyer mentors for Courtworkers, along with a full-time Courtworker Administrator and effective communications system, so that Courtworkers can solicit advice when needed from someone they trust. This would also serve to reduce Courtworkers' feelings of isolation.
- Certifying Courtworkers according to established standards and training levels. Certification would clarify Courtworkers' responsibilities. The *Nunavut Legal Services Act* allows for certification and recognition of Courtworkers by regulation.
- Promoting continuity and stability in the pool of Courtworkers by increasing the pay and benefits they receive, reflecting the level of certification they achieve, and providing office space and equipment.
- Clarifying the relationship between Courtworkers and the RCMP so that RCMP members can provide disclosure to Courtworkers and discuss the appropriate disposition of cases that are to be dealt with in the community.

A number of means for removing the barriers experienced by Courtworkers were suggested. These included:

- Improved training (specific areas where training is needed are discussed below).
- Improved compensation, in both salaries and benefits, so that they are consistent with other government workers'. This will result in increased respect for the role of Courtworkers. Although some respondents suggested making Courtworkers public servants (as was done in the NWT and which would ensure consistent pay scales and benefits on a par with other government workers), others pointed out that this option may not be appropriate for Nunavut, given the importance of ensuring that the NLSB is independent from the Government of Nunavut in all respects.

- Improved infrastructure, including offices, fax machines, telephones and phone cards, secure Internet access, paper and other office supplies. A side benefit of dedicated office space and Internet access could be the opportunity for video-conferencing, which would enable closer co-operation between Courtworkers and lawyers and would provide an opportunity for clients to see their lawyers.
- Improved telephone access to lawyers at the legal aid clinics (especially for Courtworkers in communities where there is no clinic).
- Full-time Courtworkers and an increased number of Courtworkers, so that there can be a Courtworker in each community. One respondent suggested that an effective way of recruiting more Courtworkers would be to use experienced Courtworkers as recruiters. They could visit the communities and, during their visit, take part in a local JP court session to demonstrate the attractions of the job to candidates.
- A Legal Aid Courtworker Trainer/Administrator, comparable to the Nunavut JP Administrator, who would be in charge of training and educational activities for Courtworkers – including provision/organization of manuals, mini-seminars in clinics and communities, lectures, practice courts, community justice speakers, etc. This position might initially be filled by a student on placement from the University of Victoria.
- Collaboration between the current JP training program and the new Courtworker Training Program.

Providing adequate training for Courtworkers

There is a consensus that the training that has been provided to Courtworkers to date has not been adequate for their current role. Over the years it has been sporadic, and only available when caseload pressures and budgets have permitted. Most Courtworker training, as a result, has been on-the-job training. The few senior Courtworkers in Nunavut have become qualified through experience. Courtworkers are also looking ahead, and realizing that the increased pressures they will experience, as a result of trends towards greater use of JP courts and other initiatives such as alternative justice, will also result in increased training needs. Specific areas where it was felt Courtworkers would benefit from more training include:

- *Criminal law* – In particular, courtroom procedure, advocacy, plea bargaining, and interviewing techniques.
- *Family law and other civil law* – Understanding statutes and the civil process, learning how to assist lawyers in preparation and follow-up.
- *JP courts* – Bail hearings, how to appeal a JP court decision, and how to obtain a transcript or tape of Justice of the Peace court proceedings.
- *Professional issues* – Maintaining confidentiality in difficult working situations, addressing conflict situations, assertiveness in the face of authority, and other ethical and professional responsibilities.
- *Public legal education and information* – Delivery techniques.

Several respondents indicated the need for a training system that builds on previous training received by Courtworkers, and is tied to an adequate pay and benefits scheme that is common to all Courtworkers across the territory.

As previously mentioned, the NLSB is in the process of developing a systematic and tiered approach to Courtworker training that will address many of the issues raised in this section. A tiered approach is particularly important so that the levels of Courtworker training available can be matched to the three tiers of JP training available, such that the Courtworker and JP working in a particular JP court have a compatible level of expertise and self-confidence. It is also hoped that tiered, formalized training will improve the relationship between Courtworkers and other players in the justice system and will improve the self-esteem and respect accorded to Courtworkers in general.



Finally, some respondents felt that improving Courtworker training, and the follow-on improvements in relationships and working conditions that would result, would be a significant means of retaining Courtworkers once they are trained.

7.4 SUMMARY OF SECTION 7.0

The following table summarizes the key points relating to Section 7.0.

Table 7.1: Summary of Section 7.0

Roles and Responsibilities of Courtworkers
<ul style="list-style-type: none">• Courtworkers are responsible for assisting the client and the client's family to interact meaningfully with the justice system and, where necessary, NLSB counsel. They work closely with counsel to ensure that clients understand their rights and the situation.• Courtworkers also provide an interface between the community and the justice system and counsel community members, provide public legal education and information, and participate in alternative justice programs (where they can do so without compromising their role as the advocate for the accused).• The roles and responsibilities of Courtworkers vary to a great degree from community to community, and are somewhat tied to factors such as the extent of their training and whether there is a Justice of the Peace court in their community.• Courtworkers experience a great deal of pressure to expand their role and services, as well as pressures due to their relationships with the RCMP and Crown counsel during proceedings, and with community members. It is expected that a number of pieces of new legislation and the push to increase the scope of Justice of the Peace Court activities will result in further pressure on Courtworkers.• Current barriers to the effective delivery of Courtworker services include a relative lack of infrastructure and resources, an unfair and inadequate compensation system, and a lack of recognition for their work.
Potential to Meet Unmet Needs and Resources Required to Do So
<ul style="list-style-type: none">• Courtworkers have the potential to meet a number of unmet needs in the justice system in Nunavut, including in the area of family law, youth justice, public legal education and information, community and alternative justice, and Justice of the Peace courts.• In order to provide for these unmet needs, Courtworkers will require improved training, improved compensation, greater support from other members of the justice system (for example, translators and lawyers), and improved infrastructure. There should also be more Courtworkers, and more full-time Courtworkers in the system.• A number of areas were identified for increased Courtworker training. The NLSB is in the process of developing a systematic and tied approach to Courtworker training that will match the three tiers of Justice of the Peace training currently available, and will be tied to a fair and universally applied pay and benefits scheme.

8.0 Public Legal Education and Information

Public Legal Education and Information (PLEI) is one of the three core responsibilities of the NLSB, along with providing of legal aid services and managing the Courtworker program. Support for enhanced PLEI activities was unanimous among respondents, both in the interviews and the workshops. Respondents believed that PLEI serves a number of important purposes, including:

If you know the law and [your] rights, you can avoid confrontation with the law. You can't exercise rights that you don't understand: rights to counsel, the right to remain silent, the right to equality treatment by employers, or in accommodation, or if you have a disability ... You have to be aware for those rights for them to have any meaning whatsoever.

- *Promoting the informed use of legal institutions.* For example, PLEI ensures that individuals understand their rights when they enter into the legal system. In some cases, PLEI diverts people from the legal system altogether by educating them on what is and what is not a legal problem, and by pointing them towards alternative solutions.
- *Encouraging the educated management of the individual's own legal affairs.* For example, PLEI enables people to be more proactive about issues such as estate planning, and empowers them to manage certain administrative processes (such as change of name processes).
- *Supporting educated citizenship.* For example, PLEI enables people to exercise their rights in a meaningful way, based on a clear understanding of what those rights are.
- *Avoiding confrontations with the law.* Through PLEI, people are better informed and can make better choices about their own activities.

Respondents indicated that there are two user groups for PLEI: people who need assistance immediately because they are in trouble with the law; and people who need preventive and preparatory information, to avoid coming into conflict with the law.

PLEI in the NWT and Nunavut was, at one time, delivered through an independent and separate office called Arctic Rim PLEI. Long before division, responsibility for PLEI was moved to the Legal Services Board (then of the NWT, now split into two boards, one for Nunavut and one for the NWT) in an attempt to free up more funding for PLEI activities, as opposed to administrative requirements. However, the change was not successful in freeing up more funding. Instead, the demand for criminal legal aid has led to PLEI funding being diverted into that area. The NLSB is committed to enhancing their PLEI program, but is finding it difficult to do so, given the limited resources they have available.

8.1 CURRENT PLEI INITIATIVES

Despite the lack of dedicated funding for PLEI initiatives in Nunavut, there are some activities currently taking place. These activities include:

- a series of over 40 plain-language, bilingual newspaper articles in *NewsNorth*;
- access to the Law Line in Yellowknife;
- access to firearms information (a key area of PLEI need in Nunavut) through an office in Iqaluit.



Most PLEI programming is being provided by NLSB staff, either lawyers or Courtworkers. Some PLEI is also being provided by groups and individuals not associated with the NLSB, including victim support workers, shelter workers, counsellors, and teachers. The NCJ is also doing some work in the area of PLEI. In particular, it has developed public information literature on various court processes. A booklet on how to appeal summary convictions from JP court to the NCJ has been prepared and will be distributed when new rules for this procedure come into force.²⁴

Most respondents felt that the current method of PLEI delivery is a good beginning, especially given the lack of resources available to the NLSB specifically for this purpose. The series of articles in *NewsNorth* was mentioned numerous times as a positive initiative, particularly because the articles are in plain language and are available in both English and Inuktitut.

However, the majority of respondents also felt that the current method of PLEI delivery is extremely limited and that there is a great deal of room for improvement. In particular, respondents highlighted:

- *Language issues* – Bilingual PLEI services are few and far between in Nunavut. Of the three initiatives mentioned above, only one is bilingual. The Yellowknife Law Line offers service only in English, and the firearms information office has been temporarily closed down and replaced with a toll-free number, which only offers service in English and French.
- *Lack of co-ordination* – There was a general feeling that PLEI services would benefit from greater co-ordination across Nunavut. Co-ordination would improve the quality of PLEI available and would also allow PLEI to be provided in the most cost-effective manner.
- *Unmet need* – Respondents felt that there is a high level of unmet need for PLEI in Nunavut with respect to many different areas of the law. Unmet PLEI needs are discussed in greater detail in Section 8.2 below.
- *Lack of funding* – Most respondents believed that providing bilingual, well-co-ordinated PLEI to the residents of Nunavut will require additional funding.

8.2 UNMET PLEI NEEDS

Respondents indicated a number of areas of the law requiring improved PLEI, including:

- civil law;
- family law matters;
- criminal law;
- rights-based law;
- administrative tasks;
- the functioning of the NLSB.

In the area of civil law, respondents indicated that residents of Nunavut would benefit from PLEI addressing issues such as:

- *Estate planning* – How to write a will, what an executor does, how long does it take to administer an estate, how can an individual best organize their affairs in order to facilitate the administration of the estate, etc.
- *Financial and legal planning* – Establishing a joint bank account for married couples, ensuring joint title to the family home or joint tenancy if the home is rented, appointing

²⁴ *Nunavut Court of Justice Annual Report: 2001.*

beneficiaries for life insurance policies, superannuation benefits, co-op share equity, and filing annual income tax returns.

- *Employment law* – Addressing issues such as wrongful dismissal and Employment Insurance.
- *Housing issues*.

In the area of family law, respondents were particularly interested in PLEI relating to children. The first area of concern was child support, including the right to child support and ways in which individuals can access maintenance support.²⁵ The second area of concern, raised particularly by Inuit community members, was child welfare: what happens when a child is apprehended and/or removed from the community, and what the rights and roles of the parents are in that situation.²⁶

With respect to criminal law, respondents, and particularly defence lawyers, indicated a need for basic information with respect to the functioning of the criminal justice system. They highlighted areas such as:

- Basic rights upon arrest, including the right to remain silent and the right to representation.
- What happens during a bail or show cause hearing and during an individual's first appearance in court. According to one workshop participant, all most people know is that "if they are going to court, they are going to jail."
- What happens after court, including probation, sentencing orders, conditional sentences, undertakings, and how to request a pardon.

The NLSB also highlighted the new *Youth Criminal Justice Act* as an initiative that will require extensive PLEI activity across Nunavut to educate all participants in the legal system.

Rights-based law was another area where respondents felt PLEI was needed, particularly given the intention of the Government of Nunavut to replace the current *Fair Practices Act* with a *Human Rights Act*. Specific issues included basic human rights, Charter rights, Aboriginal rights, and the rights of beneficiaries (under the Nunavut Land Claim Agreement).

[PLEI] potentially enables more do-it-yourself actions, lessens the need for more formal representation. For example, some places have excellent self-help kits [for] landlord and tenant, incorporation of small businesses, small claims court actions you may not need formal representation...

There were also a number of administrative tasks that respondents felt could be managed by the individuals themselves if adequate PLEI were available. This issue was of particular concern to the NLSB staff, which responds to many requests for assistance with administrative tasks, even though this does not necessarily fall within their current mandate. An example of such a request is the changing of a name, an issue that comes up frequently in Nunavut because of spelling differences and the federal government's former practice of giving Inuit a number rather than using their family name.

Finally, a number of workshop participants and respondents felt that there is a need to educate people about the role, responsibility, and processes used by the NLSB in providing legal services. For example, further information should be provided about how to ask for a denied application to be reconsidered when a person's financial situation has changed.

²⁵ *Final Report of the Aboriginal Women's Justice Consultation*, September 26–29, 2001, Ottawa.

²⁶ *Ibid.*



8.3 RESOURCES REQUIRED TO MEET UNMET PLEI NEEDS

8.3.1 Improving PLEI delivery

Most respondents felt that PLEI delivery in Nunavut could and should be improved and expanded. They identified a number of ways in which PLEI needs could be better met, including:

- improving the co-ordination of PLEI activities;
- broadening the definition of PLEI users to include more than just the accused and the victim;
- changing the way in which PLEI is delivered in Nunavut;
- improving the training available to PLEI providers;
- increasing the funding available for PLEI co-ordination, programs, and materials.

Many respondents agreed that a PLEI Co-ordinator position should be established and staffed in order to better manage the development of PLEI programs and materials and the delivery of PLEI across Nunavut. It was felt that improved co-ordination would increase the effectiveness of PLEI activities and would also ensure that these activities are carried out in a cost-effective manner. An important aspect of PLEI delivery that a co-ordinator would be able to oversee is ensuring that PLEI results in a direct hand-off to an individual who can provide the service needed (for example, a Courtworker or other justice services worker). Several respondents indicated that without this direct connection to someone who can help, PLEI activities will not meet their potential.

Several respondents, particularly during the workshops, indicated that there is also a need to broaden the definition of PLEI users to take in more than just the accused and the victim. They felt that PLEI also needs to be delivered to family members, so that they can understand what is happening and what will happen, as well as to shelter workers, counsellors, teachers, and others who may be asked for advice relating to legal issues. PLEI for people in these positions would ensure a common understanding of the law and would give people a common language and terminology for discussing legal issues.

Respondents also provided a number of suggestions for ways in which the style and delivery of PLEI could be improved, beyond simply increasing the overall amount of PLEI available. These suggestions included:

- Moving away from printed material to include visual information, radio broadcasts, and face-to-face provision in the local community. Many people in the North listen to community radio, and CBC North for the morning and afternoon talk shows. Radio is considered to be an inexpensive and effective way of delivering information to northern residents. The Aboriginal People's Television Network (APTN) was also suggested as a way to reach community members.
- Ensuring that information is available in appropriate local languages, such as Inuktitut and Innuinaqtun (Courtworkers were seen as one way that PLEI could be provided face-to-face with clients in their own language) and in plain language that everyone can understand. Written information needs to be available in roman orthography and in syllabics, as well as in English and French.
- Involving Inuit in the design of PLEI information packages. Professionals can ensure factual accuracy, but Inuit know best how to effectively communicate the message.
- Encouraging lawyers to take on PLEI activities, because they have a good knowledge of the system. For example, some respondents would like to see semi-annual community meetings, involving local Courtworkers, prior to the arrival of the circuit court. These meetings would serve to explain what is about to happen to the community members and answer any questions they may have.

- Taking advantage of Courtworkers' existing bilingualism and close community ties to deliver effective, one-on-one PLEI.
- Developing PLEI programming that is local and responsive, and based on a needs assessment and an assessment of appropriate media for communicating with different groups in society.
- Working with community organizations for women, elders, and youth, as well as in the school system.
- Taking advantage of existing delivery systems, such as the post offices and health centres.
- Introducing a bilingual toll-free Law Line for Nunavut.
- Holding legal advice nights once or twice a month out of the regional clinics.

Respondents also indicated that, as they were not aware of any PLEI training being provided to any of the groups currently providing PLEI (either formally or informally), training for PLEI providers should be improved. However, it should be noted that, before such training can be implemented, decisions must be made with respect to the extent of PLEI activities, their co-ordination, and the way in which they will be developed and delivered.

Finally, respondents were very clear that these hoped-for improvements in PLEI activities in Nunavut could not take place without additional funding for the position of a PLEI Co-ordinator, increased program activity, and PLEI materials development.

8.3.2 Concerns about increased PLEI

Without even doing [PLEI], there has been a steady increase in the number of people looking for legal aid [in family law]. This is going to snowball. As soon as we get a working system in place, as people see more and more cases going through ... the numbers are going to increase. There has been such a frustration level. Once we build that trust back, and we see results on wide scale, more people will be asking for our help.

In contrast with the majority view, some respondents raised concerns about increasing the amount of PLEI currently available in Nunavut. It should be emphasized that these respondents were not against improving PLEI in general, but rather concerned about the NLSB's capacity to respond to the increase in demand they felt would follow additional PLEI. They felt that educating people about their legal rights might induce a huge increase in demand for legal services as people attempt to exercise those rights. These respondents were concerned that additional PLEI would merely raise the population's expectations about legal services when the NLSB does not presently have the capacity to respond to existing service demands. In support of their argument, they gave the example of a recent PLEI initiative by the federal government in the area of child support, which resulted in an increase in demand for family law legal aid that the NLSB was ill-equipped to address. One respondent suggested that, in light of these concerns, PLEI should initially be confined to making the public aware of the NLSB's current activities and how they can get help with a legal problem.

8.3.3 Allocating responsibility for PLEI

Some respondents felt that the responsibility for PLEI should be re-allocated. However, they differed on where this responsibility should lie. Suggestions included making Courtworkers primarily responsible for PLEI delivery, and establishing an external, independent agency to provide PLEI. However, many respondents supported the idea of maintaining the NLSB's responsibility for PLEI in Nunavut.



8.4 SUMMARY OF SECTION 8.0

The following table summarizes the key points relating to Section 8.0.

Table 8.1: Summary of Section 8.0

Current PLEI Initiatives
<ul style="list-style-type: none">• PLEI serves a number of important purposes, including promoting the informed use of legal institutions, encouraging the informed management of the individual's legal affairs, supporting educated citizenship, and avoiding confrontation with the law.• There are a small number of PLEI initiatives currently under way in Nunavut, including a very well received series of plain-language, bilingual newspaper articles.• The majority of respondents believed that the current method of PLEI delivery is extremely limited and that greater efforts must be made to address language issues, the lack of co-ordination in PLEI provision, unmet need for PLEI in various areas, and the lack of funding for PLEI activities.
Unmet PLEI Needs and the Resources Required to Meet Them
<ul style="list-style-type: none">• Unmet need exists for PLEI in the areas of civil law, family law, criminal law, rights-based law, administrative tasks, and the functioning of the NLSB.• PLEI delivery could be improved through better co-ordination, a broader definition of PLEI users (to include more than simply the victim and the accused), different methods of delivery, improved training for PLEI providers, and increased funding for PLEI provision.• Some respondents raised concerns about increasing the amount of PLEI currently available in Nunavut, as they felt that educating people about their legal rights might induce an enormous increase in demand that the NLSB would be unable to meet.

9.0 Proposed Solutions

9.1 PROPOSED SOLUTIONS FOR STAKEHOLDERS OF THE NUNAVUT LEGAL SERVICES PLAN

All respondents accepted the present legal aid delivery model, as established under the Nunavut *Legal Services Act*, funded through the Access to Justice Agreement between the Government of Canada and the Government of Nunavut, as an effective and credible delivery mechanism for legal aid services. The key elements of this delivery model are a regionally based delivery system through legal services clinics overseen by local boards of directors with strong Inuit representation, staffed with criminal, family and civil lawyers, supplemented by practitioners in the private bar, all of whom are encouraged to work closely and collegially with Inuit Courtworkers and Inuit support staff. Another key aspect of the delivery model is that the NLSB, which also includes strong Inuit involvement, continues to be an independent, statutory body with the capacity to provide legal aid services to all citizens, even where those citizens may be challenging government departments or agencies. So it seems that key actors in the Legal Aid Plan believe that the delivery model is satisfactory, but that significant improvements are required to ensure that it works as it should.

The following proposed solutions focus on the provision of legal services in Nunavut:

Funders and administrators should ensure the following:

1. *Existing family law and criminal law positions should be built into the core funding formula for the NLSB and an ongoing mechanism established to review the adequacy of staff lawyer positions based on caseloads, legal aid applications and the available private legal aid panel.* These mechanisms should ensure that there are enough lawyers in place:
 - So that lawyers can travel to communities to prepare in advance on busier court circuits.
 - So that the NLSB can prevent discontinuity by allocating two lawyers for busier circuits on a rotating basis – one to deal with new cases and the second to deal with previously adjourned matters, including trials.
 - So that private and clinic lawyers are available, on call, in rotation, to clients who need to speak to a lawyer while in custody, upon arrest or while in custody on remand. The list of available counsel must be provided to the community RCMP detachments and the Baffin Correctional Centre and updated regularly.
2. *Adequate funds should be allocated to provide rough parity of benefits for NLSB lawyers with Crown counsel, including provision of staff housing.*
3. *Adequate funds should be allocated to provide adequate office space for regional legal services clinics.*
4. *A funding base should be established to permit broader coverage of legal aid services in the family law and non-family civil law areas, including developing a mechanism to allow chargebacks, to clients who can afford to contribute to legal services, to be credited to the Legal Aid Plan.* The funding base must also allow the



NLSB to develop a capacity in vital non-family civil law, initially through the hiring of one civil lawyer.

5. *Funds should be provided to continue an intensive and ongoing training program for Courtworkers, including the establishment of a full-time Courtworker training and support person, who would also arrange for mentoring of Courtworkers through staff and private lawyers. This Courtworker training should also closely collaborate with the existing comprehensive training program for justices of the peace in Nunavut. It should also include a system of recognition and certification that could be tied to pay scales as an incentive. The training program would also be an opportunity to develop a code of ethics designed for Courtworkers.*
6. *Funds should be provided to ensure that Courtworkers and office support staff in the Legal Aid Plan have salaries and benefits comparable to other community public servants in Nunavut, as well as support for the necessary office space and related equipment and supplies.*
7. *Funds should be provided to maintain the independent database and communications system now being implemented by the NLSB.*
8. *There must be adequate funds for public legal education and information, including adequate human resources. Many respondents recommended that a position of co-ordinator for PLEI should be established in Nunavut. This office would be encouraged to co-operate actively with other government agencies and departments such as the Workers' Compensation Board, the Maintenance Enforcement Office, the Public Trustees' Office, to work together to improve awareness of rights and responsibilities under the law. Clinic lawyers and Courtworkers can be very effective in delivering public legal education to individuals and groups at the community level. Community radio broadcasts and regular bilingual newspaper articles are also effective.*

9.2 PROPOSED SOLUTIONS FOR THE BROADER NUNAVUT JUSTICE SYSTEM

The following proposed solutions deal with broader aspects of the Nunavut justice system, which nonetheless impact on the NLSB:

1. *The NCJ should consider whether there are ways by which circuit courts and flights could be scheduled so as to utilize more Mondays and Fridays for court sittings, rather than for travel days, especially on busier circuits. At present, there are concerns that, even where Crown and defence counsel travel ahead of the court to consult with clients on a weekend prior to a weekly court sitting, available time for court hearings is compressed to three days or less. This is due to the present travel policy of the Nunavut Court of Justice, which usually sees the court beginning its weekly circuit court travel on Monday and using Friday for return travel.*
2. *The NCJ should continue to review, in consultation with the Crown, and the NLSB, whether circuit courts could be scheduled differently so as to maximize court time available in communities.*
3. *Funds should be provided to encourage appropriate government offices, the NLSB, Aboriginal organizations and private firms to establish articling positions ultimately aimed at increasing the number of resident members of the Nunavut Law Society. The NLSB should actively recruit Akitsiraq Law School graduates to article with staff lawyers and work in legal aid upon graduation.*

4. *A program should be established to develop and train local process servers, who would be available to assist in dealing with process in civil and family law matters.*
5. *The Crown office in Nunavut should be encouraged to develop the capacity to assist RCMP or lay prosecutors to review charges before they are laid at the community level.*
6. *The RCMP should be provided with resources to identify and train lay prosecutors to replace RCMP court officers in communities. This will eliminate the inherent conflict for police officers, whose offices must both investigate and prosecute cases at the community level.*
7. *Resources should be provided to permit the Crown Attorney's office to decentralize prosecutor positions to regions so as to develop more continuity, co-operation and advance work in dealing with caseloads at the regional level along with regional staff lawyers of the Legal Aid Plan. The Crown should also be encouraged to establish and decentralize some Victim Witness Assistant positions to larger communities.*
8. *Alternative justice measures such as the RCMP's successful Group Family Conferencing initiative, the Family Law mediation project, and community justice initiatives should be encouraged and fostered, since they incorporate traditional values and serve to reduce pressures on an already overburdened circuit court as well as JP courts in larger communities.*
9. *In developing and implementing all aspects of alternative justice measures, great care must be taken to ensure that the human rights of women and victims are safeguarded and respected against societal pressures, which are sometimes oppressive.*
10. *The Nunavut Law Society should consider how best to deal with ethical issues raised by potential conflicts existing within a small pool of lawyers, especially in the legal aid context, where family law and criminal law cases sometimes co-exist in the same regional clinic office.*



10.0 Conclusion

The role of the Nunavut Legal Services Board (NLSB) is to:

1. Provide criminal, family, and civil legal aid in Nunavut.
2. Manage the Courtworker program.
3. Provide public legal education and information (PLEI)

The NLSB is mandated to fulfill these roles to the best of its abilities, given the circumstances in which it is working.

The NLSB plays a particularly important role in Nunavut, as compared with the roles of other legal services providers in other provinces and territories. The vast majority of the population of the territory is absolutely dependent on the NLSB for legal representation, due to the shortage of private lawyers. Also, for civil or criminal clients, the overwhelming majority of whom are Inuit, Inuit Courtworkers are vital in ensuring that there is communication and cultural sensitivity in the provision of legal services.

Furthermore, the problem of demand for legal services in Nunavut is compounded by the social and demographic characteristics of the territory's population, which is relatively young, rapidly increasing, undereducated, isolated, and suffering severely from social problems resulting from cultural dislocation.

Based on the interviews, document review, file-based research, workshops, and client interviews conducted by the research team, it is clear that:

- The level of unmet need for legal aid services is very high in Nunavut.
- Unmet need for legal aid is having a significantly negative effect on all parties involved: the accused, the victim, community members, NLSB staff, and the Nunavut legal system as a whole.
- Unmet family and civil law needs are especially critical in Nunavut, where there are few employers (most are public sector), housing is scarce, and there is pressure on victims not to report violence, not to proceed with cases once they have been reported, and/or not to leave potentially violent family situations.
- Demand for legal services will increase in the future as the population becomes more aware of their legal rights (potentially through additional PLEI initiatives) and increasing numbers of children come to an age where they can be charged as young offenders and young offenders move into the young adult age group in which crime rates are highest.
- Courtworkers play a very significant role in the smooth functioning of the Nunavut legal system.
- The role of Courtworkers is likely to expand in tandem with the role of JP courts, as well as through other efforts now under way to make the justice system more responsive, innovative and reflective of traditional values.
- The role of Courtworkers is also likely to change and expand as a result of new legislation and increased focus on community-based justice initiatives and programs.
- Courtworkers are not adequately prepared, either through training or through infrastructure (officers, phone lines, equipment, etc.) to take on this expanded role or, in many cases, to manage the pressures currently being put upon them.
- There is strong support for the existing model for delivery of legal aid services, which has evolved over more than 25 years. Its strengths are its decentralized presence in

- all of Nunavut's regions, including the High Arctic, and its significant involvement of Inuit in governance at the territorial and regional levels.
- PLEI is sorely lacking in Nunavut, despite a well-articulated understanding of the value of such initiatives.

The research also makes it clear that the quality and pattern of legal services delivery in Nunavut, as well as the costs associated with delivering those services, are greatly affected by several factors:

- the structure of the Nunavut legal system (circuit courts, JP courts, and the NCJ);
- geographic concerns (distance, climate, etc.);
- socio-economic issues (educational level, youth of the population, employment issues, and infrastructure issues);
- cultural issues (language, different ways of reacting to authority, etc.);
- political decisions (such as the commitment to decentralize Government of Nunavut departments);
- the scarcity of human resources in Nunavut in general;
- the shortage of private lawyers and staff legal aid lawyers in Nunavut;
- the legislation, policies, and resource allocation decisions of the federal government.

Unfortunately, the effect of these factors is primarily negative: they contribute to increased demand, difficulties in providing high quality services, and to the cost of providing those services. While the current legal services delivery system is effective, it is struggling with inadequate resources.

Therefore, in order to address the high level of unmet need for legal services in Nunavut and the effects of the above factors, the research team has identified proposed solutions.

- The proposed solutions relating to the Nunavut Legal Services Board focus primarily on the need to ensure adequate funding for a wide range of improvements to the NLSB's human resource capacity, in order to address unmet need for services.
- The proposed solutions relating to the broader Nunavut justice system focus on addressing those issues that, while not specifically related to the NLSB, nonetheless have a significant impact on the functioning of that organization as a result of the high degree of interrelatedness between the various parts of the Nunavut justice system.

The Nunavut Legal Services Study has shown the way ahead as to how a rejuvenated legal services system could transform the justice system in Nunavut. Aboriginal Courtworkers, working closely and collegially with adequate numbers of professional lawyers, could become linchpins in maximizing the responsiveness and efficiency of the system. Courtworkers representing clients before Aboriginal Justices of the Peace could also relieve stresses now being felt by the Nunavut justice system – an overworked Nunavut Court of Justice, overworked lawyers and prosecutors and underutilized Justice of the Peace courts. Relieving these day-to-day pressures will also allow the Nunavut justice system to respond to the growing momentum and demand for alternative community-based justice initiatives. Also, with enhanced public legal education and information, the Nunavut public, more aware of their rights, opportunities for self-help, and responsibilities under the justice system, will have more equality and access to justice. With this increased support, the Nunavut legal services system could become a successful model of accessibility, responsiveness and inclusiveness for remote rural and Aboriginal communities in Canada.



Appendix A – Questions from the Terms of Reference

The terms of reference produced by Justice Canada and the territories addressed the issues and questions listed below. The researchers were requested to pay particular attention, wherever possible, to the possible variations in experiences of men, women, young people, and other groups in society.

Issue 1: Impact of court structure, geography and culture on the demand for legal services, the patter of service delivery, and the quality of services

- How many clients received legal aid services, for criminal and civil legal matters for different levels of court, for the last three years for which data is available? How many clients were deemed ineligible for legal aid services?
- What was the nature of legal advice and support provided in these matters?
- What is the proportion of trials by jury and trials by judge only? What factors impact on their relative frequency?
- How have the demand for legal advice and support, the pattern of service delivery and the quality of services changed during the same period? What has contributed to these changes?

Issue 2: Impact of circuit courts on clients

- How does the circuit court structure impact on clients, the level of legal advice and support, the pattern of service delivery and the quality of services?
- What are the nature and extent of delays on circuit courts? What factors contribute to such delays? What is the impact on accused persons, litigants and other stakeholders?
- What types of criminal and civil matters are most frequently postponed?
- What is the number of appearances by case type?
- To what extent is there continuity in defence counsel for accused persons? What factors contribute to discontinuity in defence counsel? What are the dynamics and impacts of presumed eligibility?
- What are the nature, extent and implications of unmet need for legal advice and support on circuit courts? What are the possible strategies and resources required to respond to those needs?

Issue 3: Increased role of Courtworkers

- What are the “official and unofficial” roles of Courtworkers in criminal and civil matters?
- To what extent are there pressures on Courtworkers to expand their roles? If so, in what area(s) of law and for what types of services?
- How many clients received Courtworker support, both in and out of court, during the last three years for which data is available?
- What were the nature and extent of services provided by Courtworkers in criminal and civil matters during the same period?
- What are the current barriers to effective service delivery? What are the possible strategies for overcoming these barriers?
- What are the nature, extent and implications of unmet need for Courtworker services? What are the possible strategies and resources required to respond to those needs?
- Is the training provided the Courtworkers adequate for their current roles? If not, what is the nature and extent of unmet training needs, and possible strategies for addressing those needs?
- Are there any changes anticipated or under development with respect to Courtworkers? If so, what is the nature of and rationale for those changes? What are the proposed timetables and the constraints that may affect the realization of program developments?



Issue 4: Unmet needs for legal representation in Territorial and Justice of the Peace (JP) courts

- What numbers and types of criminal and civil matters were heard in JP and Territorial courts during the last three years for which data is available, by region and/or community?
- Has the nature of criminal and civil matters heard in each setting changed during the same period? If so, how? What has contributed to those changes?
- What are the frequencies of guilty pleas, trials and guilty findings, and the nature of dispositions in each setting?
- In what percentage of cases are clients represented by legal counsel or Courtworkers?
- What are the nature, implications and extent of unmet need for adequate representation in criminal and civil matters? What are the possible strategies and resources required to respond to those needs?
- Are there any changes anticipated or under development with respect to JP courts? If so, what is the nature of and rationale for those changes? What are the proposed timetables and the constraints that may encourage or prevent the realization of program developments?

Issue 5: Unmet needs in family and other civil matters

- What has been the history of funding of civil legal aid in Nunavut, including financial levels and conditions of funding?
- What is the nature of legal advice and support currently covered by statutory mandate in family and other civil matters?
- What are the practical limitations on the delivery of legal aid in family and other civil matters with respect to the availability of training, expertise and other resources, the scheduling of cases and other relevant issues?
- What are the nature, extent and implications of unmet needs? What are the possible strategies and resources required to respond to those needs?

Issue 6: Unmet needs prior to first appearance or first instance

- What is the current scope of legal advice and support provided by duty counsel, Courtworkers and others prior to first appearance in criminal matters, and prior to first instance in family and other civil matters?
- What are the barriers to effective legal advice and support in criminal and civil matters prior to first appearance?
- Are there variations in the advice and support provided that depend on the nature of the matter at hand and other factors such as geographic location or culture?
- What is the number of show cause/bail hearings?
- What is the number of clients served?
- What is the estimated percentage of cases where no lawyer or court worker is available to talk to clients?
- What is the proportion of unrepresented accused detained? What is the estimated percentage of those removed from the community?
- What are the nature, extent and implications of unmet needs for legal advice and support prior to first appearance or first instance in criminal and civil matters? What are the possible strategies and resources required to respond to those needs?

Issue 7: Interplay between the criminal and civil spheres in the generation of legal needs

- What proportion of criminal charges and/or convictions is associated with a demand for civil justice services involving the same individuals or families, or vice versa?
- What are the nature of the legal matters and the characteristics of the clients involved (e.g., age, gender, location)?
- What types of un-addressed civil matters most frequently result in criminal incidents and vice versa?
- What is the possible impact of not addressing civil legal matters in terms of subsequent demand for criminal legal aid?

Issue 8: Public legal education and information (PLEI) needs

- What are the nature, extent and intended purpose of current PLEI activities in Nunavut communities?
- How is PLEI provided and by whom?
- What are the linkages, between legal aid staff, other PLEI providers, and service providers?
- What role, if any, do PLEI providers play in referring clients to other legal and non-legal resources and services?
- What role, if any, does PLEI play in the provision of criminal and civil legal aid?
- What are the nature, extent and implications of unmet PLEI needs? What are the possible strategies and resources required to respond to those needs?
- Is the training given to PLEI providers adequate for their current roles? If not, what are the nature and extent of unmet training needs and possible strategies for addressing those needs?

Issue 9: Factors driving legal representation costs

- What are the approaches to service delivery in Nunavut? What are their advantages and disadvantages?
- What are the factors that contribute to increases in the cost of delivering criminal and civil legal aid in Nunavut?
- Which cost drivers are unique to northern jurisdictions? If so, how?
- How have legal aid and related service providers responded to rising costs and funding constraints?
- What has been the impact of these responses on the level of services, the pattern of service deliver and the quality of services?

Issue 10: Impacts of key federal legislation, policy directions, and resource allocations on cost per case and territorial allocations of legal aid resources

- What are the key federal and territorial drivers of legal aid costs?
- What has been the impact of recent federal legislative, policy and funding decisions (e.g., in areas such as policing, prosecution services, diversion and community-based justice initiatives) on the cost of criminal and civil legal aid?
- How have these changes impacted on the demand for legal advice and support, the pattern of service delivery and the quality of services?
- What has been the impact on cost and time expenditures per case, wages and tariffs, the scheduling of resources, and the capacity to provide the resource specialists or external resources?

Appendix B – List of Interviewees

The following individuals were interviewed during the course of the Nunavut Legal Services Study:

- Candace Alivaktuk, Justice of the Peace, Pangnirtung
- Harry Aknavigak, Justice of the Peace, Cambridge Bay, NU
- Rosemary Akoomalik, Courtworker, Igloodik, Nunavut
- Maggie Amarualik, Courtworker, Rankin Inlet, NU
- Scott Barron, Staff Lawyer and Director, Kitikmeot Law Centre
- Beverly Browne, Senior Judge, Nunavut Court of Justice
- Catherine Carrey, Family Violence Specialist, Pauktuutit National Inuit Womens' Organization
- Mike Chandler, private lawyer, Chair, Nunavut Legal Services Board, Iqaluit
- Susan Cooper, private lawyer, Iqaluit
- Veronica Curley, President, Pauktuutit, (Inuit Women's Association), Rankin Inlet
- Maureen Doherty, Executive Director, Qulliq – Nunavut Status of Women Council, Justice of the Peace, Iqaluit
- Leonie Duffy, Chair, Keewatin Legal Services, Coral Harbour, Nunavut
- Bob Gorin, private lawyer, Yellowknife, NWT
- Judy Hayohok, Courtworker, Kugluktuk, Nunavut
- Trish Hughes-Wieczorek, Executive Director, Qaummarvik Women's Shelter, Iqaluit
- Mary Inuktaluk, Courtworker, Sanikiluaq
- Charlene Johnson, Maintenance Enforcement Officer, Government of Nunavut, Iqaluit
- Zipporah Kalluk-Aronsen, Courtworker, Resolute Bay, Nunavut
- Daphne Kavanna, worker, Wellness Centre, Cambridge Bay
- Arthur Lebsack, Justice of the Peace, Sanikiluaq
- Brad MacIsaac, criminal lawyer, Maliiganik Tukisiiniakvik, Iqaluit
- Jennifer MacIsaac, Office of the Public Trustee, Department of Justice, Nunavut
- Ron McCormick, Chief of Corrections, Department of Justice, Nunavut
- Donald Mearns, Justice of the Peace, Pangnirtung, Nunavut
- Richard Meredith, Regional Director, Crown Counsel's office, federal Department of Justice
- Connie Merkosak, Senior Courtworker, Iqaluit
- Lois Moorcroft, Consultant, Courtworker Training, Nunavut Legal Services Board
- Greg Nearing, Executive Director, NWT Legal Services Board
- Mary Owingayak, Courtworker, Baker Lake, Nunavut
- Mike Penner, Staff Lawyer, Maliiganik Tukisiiniakvik, Baffin Legal Services Centre
- Enook Petaulassie, Courtworker, Cape Dorset, Nunavut
- Cecily Phelan, Social Worker, Baker Lake, Nunavut
- Francis Piugattuk, Member, Nunavut Legal Services Board, long-serving former Courtworker
- Paul Pudlat, Member, Nunavut Legal Services Board, Justice of the Peace, Baker Lake, Nunavut
- Debra Ram, Executive Director, Maliiganik Tukisiiniakvik, Baffin Legal Services Centre, Iqaluit
- Nora Sanders, Deputy Minister of Justice, Government of Nunavut, former member, NWT Legal Services Board
- Neil Sharkey, Justice of the Peace Administrator, Government of Nunavut, Iqaluit
- Patrick Smith, family lawyer, Acting Director, Keewatin Legal Services, Rankin Inlet
- Susan Switch, family lawyer, Kitikmeot Law Centre
- Andrew Tagak, Justice of the Peace, Iqaluit
- John Thompson, criminal lawyer, Director, High Arctic Legal Services Centre, Pond Inlet
- Evelyn Thordarson, Executive Director, Katauyak Society (women's shelter), Rankin Inlet
- Bonnie Tulloch, Executive Director, Nunavut Legal Services Board
- Vern White, Chief Superintendent, RCMP, Nunavut

Appendix C – Workshop Attendance Lists

The following individuals participated in the workshops in Iqaluit (on June 20, 2002) and Cambridge Bay (on July 3, 2002).

Iqaluit Workshop Participants	Cambridge Bay Workshop Participants
<ul style="list-style-type: none"> • Mary Potts, Victim Services Worker • Richard Meredith, Crown counsel, Justice Canada • Bonnie Tulloch (observer), Executive Director, NLSB • Andrew Tagak, Justice of the Peace • Caroline Anawak, Nunavut Tunngavik Inc. • Mary-Lou Sutton-Fennell, Department of Justice, Government of Nunavut • Jay Arnakak, Nunavut Tunngavik Inc. • Francis Piugattuk, Courtworker and member of the Maligaanik Tukisiiniakvik Board • Debra Ram, Director of Maligaanik Tukisiiniakvik • Kaja Robinson, Community Justice, Government of Nunavut 	<ul style="list-style-type: none"> • Anaoyok Alookey, Counsellor • Jean Kuodluak, Courtworker • Judy Hayohok, Courtworker • Gordon Bolduc, Community Justice Committee Member (Kugluktuk) • Moises Koihok, Elder • Bessie Joy, former Courtworker • Mary Rose Maksagak, Counsellor • Jennifer Dionne, Youth Justice Committee Member • Greg Peters, RCMP • Pitseolak Koochiakjoke, Probation Officer • Eva Otokiak, Translator • Scott Barron, Director, Kitikmeot Law Centre • Susan Swift, Counsel, Kitikmeot Law Centre

Appendix D – Client Survey Questions

The following questions were asked of clients of Maliiganik Tukisiiniakvik (the Baffin regional legal services clinic):

1. Introduction:

As a former client of Maliiganik Tukisiiniakvik, you are being asked to help us find out about needs in the legal aid system in Nunavut. You don't have to answer any questions if you don't want to, but what you tell us might help to make the legal aid system better for other people who need help with the law. Your name will not be revealed to anyone. Are you willing to answer some questions about your experiences with the law and with Maliiganik Tukisiiniakvik?

2. Basic Profile:

Age
Gender
Community
First Language
Second Language
Preferred Working Language

3. Why did you need legal help?

4. How did you go about finding a lawyer?

5. How did you know about Maliiganik Tukisiiniakvik?

6. Did you get the result you were after?

7. Were there things that could have been done better?

8. If your first language is not English, was it possible for you to understand what was going on?