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## The Civil Justice System and the Public Justice for Nunavummiut: Partnerships for Solutions

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# ***The Civil Justice System and the Public***

## ***Justice for Nunavummiut: Partnerships for solutions***

**Final Report  
June 2008**



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## ***Who We Are***

### **The Canadian Forum on Civil justice**

The Canadian Forum on Civil justice is an independent organization working to improve the way the civil justice system in Canada meets the needs of the people it is intended to serve. The purpose of the civil justice system is to help people determine rights and peacefully resolve disagreements in non-criminal issues. We believe that the system can be improved and access to justice can be increased for all Canadians. Making positive changes in the way the system communicates with the people that use it, is one way to work towards this goal.

### **The *Civil Justice System and the Public* Project**

The purpose of the *Civil Justice System and the Public* research is to hear about the experiences of people who have been involved in the civil justice system and to involve as many people as possible in making clear recommendations for change. We have used interviews, observations, questionnaires, focus groups, community workshops and case studies of good communication practices to achieve this goal. We visited rural and urban locations in Alberta, Nova Scotia, Ontario, Quebec, Nunavut, and British Columbia, and approximately 400 people have now taken part.

### **Action for Change**

We have many supportive partners in justice community organizations across Canada and we are working with these people to make sure our research findings are known and acted upon. We are not just creating one report, but many papers and presentations to address the interests and needs of different organizations and people. All the details about the *Civil Justice System and the Public* research, as well as our published reports, are available on our web site at [www.cfcj-fcjc.org](http://www.cfcj-fcjc.org).

## ACKNOWLEDGEMENTS

The *Civil Justice System and the Public* is a collaborative project. This report is made possible because of the contributions of many individuals. We wish to thank all of the people who have talked with us about their views and experiences of civil justice in Canada. We also thank our Research Partners; Research Directors Lois Gander, Diana Lowe, Teresa Rose and Barbara Billingsley; and each of the Research Assistants who has contributed to the team. A special 'thank you' is due to: members of the organizing committee for the Nunavut and Ottawa community workshops; the Research Assistants based in Iqaluit, Rankin Inlet and Ottawa, who organized these events locally; and translator and interpreters who assisted us. We are grateful to the Alberta Law Foundation, Social Science and Humanities Research Council of Canada, and the Law Foundation of British Columbia who have provided the funding for this project. Thanks also to the Nunavut Court of Justice and the Ottawa Aboriginal Healing Foundation, who donated space in which to hold the Iqaluit and Ottawa workshops. We continue to collaborate with and learn from people in Nunavut and across Canada as we work to bring about positive change to our systems of civil justice. Partners in Nunavut and Ottawa have given feedback on an earlier version of this report, providing valuable clarifications and updates.

Photographs within this report are provided by Mary Stratton. The cover picture is of an Iqaluit Art Park Sculpture.

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## **BACKGROUND TO THE REPORT**

### ***Civil Justice System and the Public: Research in Nunavut and Ottawa***

As part of the *Civil Justice System and the Public* (CJSP), a national collaborative research project, we first visited Iqaluit in June 2003. At that time the Research Coordinator met with key contacts in the Nunavut justice and social service community to talk about the research and make plans for conducting the field research. As a result of these initial meetings, the CJSP team made contact with Inuit services in Ottawa. In July 2003, during the Ontario phase of the CJSP research, we met Inuit service providers and several Nunavummiut who were at that time living in Ottawa.<sup>1</sup> In September 2003, the CJSP Research Team came to Iqaluit and over a period of two weeks completed 28 in-depth interviews. Eighteen people (eleven women and seven men) worked within the justice community and included members of the judiciary as well as court administration and frontline staff. We also interviewed ten members of the public (two women and eight men) who were either personally involved in court cases at varying stages of resolution, or acting as community advocates to people with legal problems. In order to increase the team's understanding of Nunavut, researchers also compiled observation notes and held many informal conversations with Iqaluit residents as well as key contacts in some other Nunavut communities.

The collaborative action approach to the CJSP included a commitment to seek ways to take back research findings to the participating communities, encourage community research involvement and facilitate collaboration in finding solutions to improve access to civil justice. In keeping with this, the Canadian Forum on Civil Justice (CFCJ) sought funding to return to Nunavut and was successful in receiving a Social Science and Humanities Research Council Northern Research Development Grant for this purpose. This grant allowed us to produce a preliminary report on our initial findings, form a planning committee with partners in Nunavut and arrange a series of community workshops to discuss the research findings. In September 2006, the authors of this report travelled to Rankin Inlet, Iqaluit and Ottawa, holding one workshop in Rankin, two separate events in Iqaluit and (by choice of the local participants) a two-day event in Ottawa. The purposes of the workshops were to:

- Learn more about civil (non-criminal) justice issues, and the needs and experiences of Inuit and non-Inuit residents of Nunavut as well as Nunavut Inuit living outside of the territory.
- Find ways to work together to find solutions to barriers to accessing fair and effective civil justice.
- Help build a solid research base of understanding about justice needs in Nunavut and an action plan to meet those needs.

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<sup>1</sup> In this report we consider Inuit people from Nunavut, who regard Nunavut as their home to be Nunavummiut, and most often 'displaced' Nunavummiut. Our reasons for this are explained in the later sections of this report that discuss the historical, cultural, geographic and jurisdictional issues related to justice in Nunavut.

Nunavut participants who had already taken part in interviews for the CJSP research suggested some important issues for civil justice in Nunavut. Workshop participants were asked what they thought about the following series of issues that emerged from the original interviews and were presented in the preliminary report drafted prior to the workshops:

- Nunavut continues to experience an overall lack of basic physical and social facilities, places, programs and services. This includes lack of housing, limited access to health services and treatments for violence and substance addiction. These are crucial examples that affect the results of a civil justice process.
- Nunavut has a distinct historical, cultural and geographical context that is part of the social reality in Nunavut today. Efforts aimed at providing effective, accessible and equitable civil justice in Nunavut must recognize, respect and respond to these complex issues.
- The need for both social and legal support for people involved in family law matters is particularly crucial. Family disputes often involve both criminal and civil court proceedings related to a family conflict. Property division, child custody, maintenance, wills and estates and bankruptcy are all different areas of civil law that can be part of a family problem. Developing a response that takes all of these into account is essential.
- There is a need for Nunavummiut to know much more about non-criminal laws, rights and responsibilities and how these can benefit them. Different cultural concepts, language, distance and limited finances are all challenges to achieving this. Family law now often appears on the court docket, but other civil (non-criminal) legal cases do not. Does this mean that there is less social justice in these other, non-criminal areas?
- Some members of the Nunavut community are concerned about providing information on legal rights when there are not enough legal services available to respond. There are too few lawyers and other legal professionals in Nunavut, especially those who are familiar with the territory and speak an Inuit language.

The participants in the workshop were asked to consider and discuss six questions:

1. Do you agree that the identified issues are crucial to address?
2. Are there other important issues not yet identified?
3. What needs to be done to address these challenges?
4. How can this be achieved?
5. Who can help meet the need?
6. How can they help?

A total of 38 people attended the workshop series. In Rankin Inlet there were 13 participants, all involved in justice and community services and including six Inuit, three of whom were Elders.<sup>2</sup>

The first workshop in Iqaluit was small, with the researchers meeting three people unable to attend on the second day.<sup>3</sup> Nine people attended the second workshop, most of who were involved in delivering justice and social services. Participants included 5 Inuit one of whom was an Elder.<sup>4</sup>

Over the two days in Ottawa a total 14 participants represented a broad range of groups and cultures including Inuit from Nunavut and Greenland, First Nations and urban Aboriginal peoples and services, Inuit-specific services, Nunavut territorial government, and law and social science students.

At each workshop the two researchers (authors of this report) took notes and the discussion was audio-recorded. Subsequently the notes were checked against the recordings for accuracy and these transcripts were combined with the earlier data to inform this final report of the CJSP research in Nunavut and with Nunavummiut living in Ottawa.

## **OUR APPROACH TO REPORTING**

The Canadian Forum on Civil Justice (CFCJ) is committed to creating a more accessible, effective, fair and efficient civil justice system by working to find solutions, no matter how complex and challenging the task. Our mandate is to work with all stakeholders across Canada and to facilitate an exchange of knowledge that can inform effective changes to the system. The CJSP research focused on the civil justice system specifically, looking at the system and process through the experiences of people who are or had been personally involved.<sup>5</sup> In all of our reporting for this project, the words of the research participants inform and illustrate the points that we make. Participants brought a range of perspectives to the research and sometimes had differing opinions and perceptions about issues. If a contradiction concerning verifiable facts arose, the researchers tried to check the facts. If the disparity is one of perception we have attempted to note that there are differing viewpoints.

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<sup>2</sup> In both Rankin and Iqaluit, one of Inuit participants was employed as the Inuktitut interpreter. However, in both cases the interpreter also contributed to the workshop discussion.

<sup>3</sup> In the end, one of these three participants was able to come on the second day and has only been included in the overall total once.

<sup>4</sup> Two additional people, who were unable to attend either workshop, spoke with the Research Coordinator by telephone and their input was included with the notes from the workshops.

<sup>5</sup> Most previous research on the justice system in Nunavut has concentrated on criminal justice. By civil justice we mean the courts that deal with cases like family law, child welfare, injuries from accidents, property disputes and wills and estates. By “system” we include everyone who has a role in civil court proceedings, such as judges, lawyers, other people who work at the courthouse, Inuit and other support workers, services such as legal aid, government and public legal education groups.



*Justice for Nunavummiut: Partnerships for Solutions* is based on the key findings from the CJSP research in Nunavut and Ottawa. The feedback from the workshops added considerably to our preliminary report. Workshop participants generally agreed with the key issues identified in the preliminary report; however they also updated, elaborated and added to the findings from the interview phase of the research.

During the workshops, participants often found it difficult to find concrete responses to the discussion questions (listed above) that sought ways to address the challenges identified. A core reason for this, as this report discusses, is that many participants felt that providing civil justice for Nunavummiut cannot be meaningfully separated from a broader perspective of social justice. Social justice needs for Nunavummiut are so great, while resources are so inadequate that the challenges to be met can seem overwhelming. These are the realities and it would not be helpful for this report to gloss over them. At the same time, the CJSP research also shows extreme dedication within the Nunavut justice community, and many remarkable achievements since the creation of the territory.

Between January and May 2008, as part of the action research process, drafts of this final report were circulated to project partners and research participants for review and comments. This review process provided important input in the form of updated information and questions about some points made in the draft report. A series of follow-up telephone calls with key stakeholders took place in order to ensure clarification and accuracy in our reporting. In our final report we have endeavoured to incorporate all updated information, verify accuracy of reported findings and still retain the important range of viewpoints and perspectives essential to truly understanding access to justice needs. We have also tried to balance both the seriousness of the challenges still to be met, and the worthiness of what has already been successfully accomplished.

The mandate of the CFCJ concerns civil justice and the CJSP research focussed specifically on the civil and family court systems. However, our research quickly underlined that in daily life people do not experience legal problems in neat compartments related to the way our laws and justice systems are organized, and other international research now supports CJSP findings (Currie, 2007; Pleasance, 2004,2007; Stratton & Anderson, forthcoming). The vast area of administrative law that legislates many basic rights of Canadian citizens is fundamental to social justice every where in Canada. Civil family law about divorce, child custody and property are inseparable from each other and when family violence is involved, also inseparable from the criminal justice process. For many Inuit and Aboriginal people in Canada there are past involvements with criminal, civil and administrative systems that have been experienced as punitive and they continue to experience particular difficulty in accessing non-criminal justice processes that should be available to ensure their basic social rights. For all of these reasons, this report includes discussions related to all areas of law.

As well as the territory of Nunavut, our research also specifically included Inuit people and associated justice and social service community members in Ottawa. Not all Inuit residing in Ottawa are from Nunavut, but the majority are from this territory. Few Inuit living in Ottawa have the resources to choose to return to Nunavut, and as this report will show many did not wish to leave in the first place, but came to access services not available in Nunavut, or support family members doing so. For this reason, which was strongly underlined in interviews with participants in Nunavut and Ottawa, we include Inuit with family and cultural ties to Nunavut as ‘Nunavummiut’ who are displaced from their homeland.<sup>6</sup>

We begin the report by asking, “What *is* justice?” situated in the historical, cultural geographical and jurisdictional contexts of Nunavut. Participants emphasized the importance of keeping the intersections of these contexts in mind when attempting to understand the complex justice issues facing Nunavut. We briefly overview issues of colonial justice versus traditional Inuit customs and values. We consider the geographic realities involved in delivering justice services in this vast territory and the added difficulties of jurisdictional boundaries and divisions.

We reflect on the need to re-define how we conceptualize the delivery of justice in the challenging context of Nunavut before presenting the discussion of issues in family, civil and administrative justice that emerges from the CJSP research in Nunavut and Ottawa. Based on this discussion of the research findings we then offer recommendations for achieving the vision of creative justice participants described. In the concluding section of the report we discuss the role that networks and partnerships can play in finding creative solutions to the challenges Nunavummiut face in establishing access to justice.

## **WHAT IS JUSTICE? Historical, Cultural, Geographical and Jurisdictional Contexts**

The creation of Nunavut made Canadian history and continues to do so, but the territory has existed for less than a decade. As Nunavut moves forward, creative solutions must constantly be found in order to circumvent serious obstacles inherent in the historical, cultural, geographical and jurisdictional contexts of the territory. To understand what is involved in ensuring access to justice for 21<sup>st</sup> century Nunavut, it is necessary to recognize the interrelated nature of the challenges to be met. Many of the contemporary social and justice issues facing Nunavummiut are very closely tied to colonial and territorial history entwined with the geography and geology of Nunavut. Added to this is the jurisdictional complexity of Canada as a whole where justice and social responsibilities are divided between federal, provincial/territorial and municipal levels of government. A system of justice that is accessible, effective, fair and efficient must take into account and confront this complex social context. The input provided by CJSP

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<sup>6</sup> We note that accessing health or treatment programs are the most common reasons that Inuit go to Ottawa. When the Nunavut Department of Justice sends offenders outside of the territory return costs are paid. It is most usually young offenders who are sent elsewhere for specialized programs.

participants suggests that considerations must begin by asking the root question, what *is* justice in the Nunavut context? The research further indicates that ensuring access to justice for Nunavut Inuit must include those who have become displaced from the territory.

As we document what we learned from the CJSP participants in Nunavut and Ottawa, we keep in mind the question of what “justice” is and needs to become for Nunavummiut. In this section of our report we provide an overview of how these important contextual issues are entwined with those of access to justice. We begin by outlining important ways in which colonial history has served to construct Canadian formal justice system as a negative experience for most Inuit. We then consider both the geographical realities and the jurisdictional complexities of the territory today.

### **Colonial ‘Justice’ versus Traditional Inuit Customs**

Inuit people have a long history and contact between Inuit and Europeans extends far back in time. However, it was not until the second half of the 20<sup>th</sup> century that a concerted effort was made by the Canadian government to take an active role in the daily lives of the people of Nunavut. It is now recognized that many colonial policies introduced by the Canadian government have created a negative legacy for Inuit people. The consequences of forced settlement, residential schools, relocation and a policy of assimilation are reflected in many of the current socio-economic problems. Nunavut must confront high rates of substance abuse, suicide, family violence and unemployment, which are all related to the dramatic changes that have occurred in the past fifty years (Royal Commission on Aboriginal Peoples, 1996: V.4, ch.6, pt.4). Southern investment in development, shortcomings in government administration, and an overall lack of sufficient infrastructure resources have now created acute housing shortages in Iqaluit and other communities (Inuit Tapiriit Kanatami, 2004)<sup>7</sup> and continue to exacerbate the rapid change in the daily lives of Inuit (Harding, 2007; Ibbitson, 2007).

Injustices dating back fifty years are remembered not simply as history but as significant events that influence Inuit people and their relations with the justice system and government representatives today. As the following quote from a CJSP participant illustrates, incidents in the past remain unresolved points of tension:

*Back in the sixties, on through to most of the seventies there was, I guess, a concerted effort, either on the government or on the RCMP's part, to slaughter dogs. Back then Inuit were very dependent on dog teams to get around and they*

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<sup>7</sup> In 2004 the government of Nunavut developed the Ten-Year Inuit Housing Action Plan that called upon the federal government to honour its obligations to Inuit in the territory. However, in 2007, a report on the health of Inuit children in Nunavut suggests that much currently available housing is overcrowded and has inadequate ventilation (Orr, 2007). In this context it is not surprising that many participants in the CJSP interviews and Community Workshops pointed to meeting basic human rights, such as adequate shelter, as a primary justice issue for the territory. At the same time it should be noted that other remote and urban areas in Canada subject to rapid development booms face serious infrastructure and social justice inadequacies. Given relative resources, Nunavut often stands out as an example of will and innovation in working to meet these challenges.

*weren't as static as they are today, where they just remain in the community. They mostly survived out on the land in a more or less nomadic way, relying on animal migration.... we're still researching into whether the dog slaughter was somehow tied into trying to get Inuit to settle down and become easier to administer. The other issue is relocation. I don't know if you are aware of the high arctic relocatees back in the fifties. Sixty years ago we had Northern Quebec Inuit relocated from the lower Quebec region to the high arctic - and this was during the Cold War and when areas of the high Arctic were still in dispute over who actually owned the area.... I guess Canada figured, well, you have starving Inuit in northern Quebec. Why don't we transport them here where there is a considerable amount of wildlife, and, at the same time, establish Canadians in the area. It's still an ongoing issue. [Member of the public involved in various roles]*

Many CJSP participants referred to the slaughter of the dogs because it is seen as a direct attempt to destroy traditional Inuit custom.<sup>8</sup> Other past colonial acts such as relocation and approaches to identification are directly tied to territorial disputes and civil justice issues in Nunavut today. As an Inuit participant told us, these past events continue to create daily experiences of systemic injustice for Inuit people:

*Identification problems stem way back to the sixties. I'm not sure if you are aware of the "disc numbers" (I call them dog tags) that Inuit had been pressured to use as I.D.? I know that it was "changed" to last names but not all have been rectified. For instance, I know of a person who was adopted long ago ... who still has problems being recognized as a living, walking human being and to this day she has problems trying to obtain the proper identification. She has been told that she does not exist and yet she was standing [there] a very existing person. Once she finally received a birth certificate it was a totally different first name and her old disc number as a last name, which is very disappointing and discouraging. Another person ... was born ... wherever the medics sent the tuberculosis patients. The building ... burnt down with all the records, so what can this person, or persons of similar circumstances do if she was not born in Nunavut and there are no records? Another case, a man was somehow given two names. How I found out was when he lost his birth certificate I applied for a new one for him and it was a different name that they issued. Why should he pay for a name change if the government made those mistakes in the first place ... [pay] \$100 with the application and wait a year or more for that documentation? [Inuit Community Workshop Participant - Ottawa]<sup>9</sup>*

The purpose of systems of justice should be to protect the rights of all citizens equally. Laws are most often drafted with this purpose in mind; nevertheless, it is an historical

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<sup>8</sup> We note that various efforts are being made to recognize and address past injustices. For example, Inuit Truth Commission has now begun hearings on sled-dog deaths and will travel to 13 communities during 2008 (written communication from Nunavut Department of Justice, March 2008).

<sup>9</sup> Within Nunavut, in recognition of the problem, there has been no charge for making a name change since 1999 and instructions and forms are available on line (<http://www.nucj.ca/changename.htm>). The process is usually much quicker than one year and in 2007 alone 176 name changes were completed free of charge (written communication from Nunavut Department of Justice, March 2008). However, there is a charge for intra provincial/territorial name changes and the charge is \$100 (<http://www.arvic.com/disbursement.asp#Nunavut> ). This compares to the regular Ontario charge of \$137.

fact that Canadian laws and systems of justice have been used to facilitate unjust actions against Inuit, First Nations and Métis people. What Inuit people regard as just has not been reflected in their lived experiences of Canadian justice. This history has created barriers for achieving justice in Nunavut today that must be confronted and negotiated in the process of creating accessible paths to justice for contemporary Nunavummiut.

## The Geographical Realities of Nunavut<sup>10</sup>



Traditional Inuit customs and the culture of Nunavut today are both inseparable from the geographic realities of the territory. Distances in the eastern arctic are vast – Nunavut spans three time zones - and communities are mostly small.<sup>11</sup> Census statistics report the population of Nunavut as 29,474 dispersed across an area of almost two million square kilometres. A population of 6,184 is reported for Iqaluit. The next largest communities are Rankin Inlet with a population of 2,358 and Arviat with 2,060 reported residents. Most communities have only a few hundred residents (Statistics Canada, 2006).<sup>12</sup>

Historically, the vast distances have limited travel between communities, which have developed distinctive local cultures, customs and dialects. Even today, long distance

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<sup>10</sup> Photograph: A tug boat pulls what is likely the last barge of the year (mid-September 2006) out of Rankin Inlet.

<sup>11</sup> An item on the CBC website illustrates the social impact of this: "In a unity effort, Nunavut had converted to one time — central — with the territory's creation April 1, 1999. But the change created confusion rather than unity. Children come home from school in the dark for longer stretches of the year than necessary. Hunters have to disrupt regular schedules. One man says, 'Just because we created Nunavut, the Earth did not stop rotating around the sun.'" [http://archives.cbc.ca/IDC-1-73-108-667/politics\\_economy/nunavut/](http://archives.cbc.ca/IDC-1-73-108-667/politics_economy/nunavut/), broadcast March 31, 2001; accessed October 1, 2007

<sup>12</sup> Nunavut's population is experiencing rapid growth. The territory as a whole has experienced over 10% increase since 2001 and in Iqaluit the growth is reported as 18%.

travel, generally by plane, is expensive and complicated by the polar climate. Temperature extremes produce storms that make travel difficult to impossible for extended periods of time and also disrupt electronic communications. These factors inevitably impact the organization and delivery of justice and social services.

Currently the Nunavut Court of Justice circuits several times a year to provide court services in the various communities of Nunavut. In 2004 the Court travelled a total of 177,824 kilometres to visit 24 communities (Nunavut Court of Justice, 2005). This amount of travel already places exhausting demands on members of the judiciary and associated court and legal service providers. It is, however, still insufficient to meet the legal needs of Nunavut communities, whether these are perceived as court-centered or community based approaches to conflict resolution.<sup>13</sup>

Technological advances provide tools that have potential to assist in managing geographical distances in terms of improving communication options. The Nunavut justice and social service communities employ telephone, e-mail, fax, video, web camera, and web-based information and official forms to facilitate communications. However, technology alone cannot resolve communication and infrastructure barriers. Legal information and materials are difficult to understand even when English is our first language and materials made available electronically need careful design and presentation if they are to be useful. Furthermore, addressing the lack of local health, education and basic social services are also relevant to achieving a culture of justice. Even when community residents are taken to Iqaluit for health or justice reasons, returning to their home community can be an insurmountable challenge. When Inuit Nunavummiut have travelled to Ottawa to access health, addictions, education services or employment opportunities they often wish to return to their home territory but are without the means to do so. Greater dislocation and personal and cultural isolation occur when they are stranded in an unfamiliar culture where they experience overt racism, systemic discrimination and language barriers.<sup>14</sup> Research demonstrates that people in such circumstances have greater access to justice needs. When these needs are not met legal problems tend to multiply and social costs increase (Currie, 2007; Pleasance, 2004,2007; Stratton & Anderson, forthcoming).

## **Jurisdictional complexities**

*[There are] a number of lines and demarcations... I'd recommend that you think about as you do your research, and that has to do with jurisdictions.... So, for Inuit people who do not reside in Nunavut ... [or] who just leave ... they are not the responsibility of the territorial government. For Inuit who are not beneficiaries under the Land Claims Agreement in Nunavut, they do not have the support of that entity.... It [is] important to understand from a territorial government's perspective it's not a jurisdictional responsibility.... And in terms of urban Inuit there are some real issues about residency*

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<sup>13</sup> See footnote #18 for an example of circuit court overload.

<sup>14</sup> This issue was raised at community workshops in Ottawa and Nunavut and with the strong feeling among some participants that Nunavut Inuit were sent to Ottawa, or encouraged to go, but not supported there or provided with the means to return (CJSP; Community Workshop Transcripts; follow-up communications).

*requirements that disqualifies [some Inuit] from Nunavut's programs.... there are family relationships that make people feel like they are Nunavummiut, where in fact, they reside in Ontario ... and are covered by the Ontario health system... but their heart is in Nunavut and ... they're hurt, they cry out Nunavut is not looking after them ... but from a jurisdictional point of view, if we're doing, well, legal research, I think we need to make those demarcations very clearly.*<sup>15</sup> [Community Workshop Participant]

Nunavut became a separate territory in 1999 following the largest land claim settlement in Canadian history. The territory established a unique model of self-governance, including the only single-level trial court system in Canada. As well as the elected territorial legislature, Nunavut Tunngavik Incorporated (NTI) represents the interests of Inuit included under the Nunavut Land Claim Agreement (NLCA). NTI is responsible for the management of all Inuit-owned Lands in Nunavut and acts as the advocate of Inuit interests in Nunavut. (Justice Canada, 1999; Nunavut Planning Commission, 2007: Nunavut Tunngavik Incorporated, 2007).

The NLCA was a triumph for Canadian Inuit and a landmark achievement of indigenous peoples world-wide. Inevitably, bringing the vision into practical being in such a vast, geographically challenging and under-resourced territory has encountered many complex challenges. As a territory within the federation of Canada, Nunavut is subject to federal legislation and the federal government has national jurisdiction in some areas of law and in health care. As CJSP participants pointed out, jurisdictional responsibilities can become blurred and confusing in practice:

*There are things that I hear. First Nations people don't pay taxes and we do. But Inuit are a first nation too.* [Inuit Elder]

*Someone walks into my office, has a complaint about their workplace. I have to determine is it a workplace safety issue?... It may be a public health issue.... Or it could be ... they have to come in all the time, days off ... So, as a frontline person I have to try and know enough ... to steer them right and I also have to essentially diagnose what the core complaint is.* [Community Workshop Participant]

- P1: *People are falling off boats but [Nunavut] Workers Compensation doesn't cover fishing.... but people call the Senate of Canada. Several cases have gone through the Canada Labour Code. So it's like a back door....*
- P2: *It's probably very complicated when you've got jurisdictional [issues] ... and who is aware of that?*

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<sup>15</sup> The authors note the perception of this participant that the CJSP was *legal* research. More accurately, the CJSP is *social* research about the communication experiences of people involved in the civil justice process, both as members of the public and members of the justice community. Social research about legal issues and processes is often referred to as socio-legal research. The CFCJ has identified a need to increase the capacity to conduct such research in Canada, which has led to the *Research in Action* program. Details can be found at: <http://cfcj-fcjc.org/research/>.

- P3: *Are you saying that fishing companies operating out of [Nunavut] don't pay Worker's Compensation Premiums?...*
- P1 *They do pay Workers Compensation Premiums ... [but] Workers Comp itself specifically excludes the fishing crew....*
- P3 *So if I'm working on one of those boats and ... I get hurt, will I be eligible for Workers' Compensation?*
- P1: *No. But yet these companies are still paying premiums. There's a definite problem there.... The reason being because of the definition of what a fisherman is. [Discussion among Community Workshop Participants]<sup>16</sup>*

## RE-DEFINING JUSTICE IN A CHALLENGING CONTEXT

*We are a different culture who are living Inuit ways, and we practice our traditions – our customs – without any idea of breaking a law or not breaking – or not performing as part of the civil law areas. We definitely are not realizing that [we have] done something wrong to you. It's not so in our culture, but it could go against the government.... The system doesn't communicate – they don't educate, they don't try to educate the community. [Inuit Elder]*

*[The civil justice system] is still too adversarial in my opinion and it's totally foreign up here – the people aren't as adversarial as in the south. Where law takes the precedence – here they go by honesty. [Member of the public, social service worker]*

The intersections of Inuit colonial history, culture, Canadian geography and political jurisdictions have significant social consequences for Nunavummiut and major implications for creating viable access to justice. Traditionally, Inuit people have resolved conflicts within their small communities. The emphasis has been on finding a resolution that restores harmony within the community so that people can continue to live together peacefully.<sup>17</sup> The adversarial approach of the Canadian legal system stands in stark contrast to traditional Inuit methods of dispute resolution that stress social cohesion and community stability. As we illustrated earlier, historically Inuit experience of law enforcement, both criminal and non-criminal has been highly punitive and not within Inuit conceptualization of justice. One participant contrasted the two approaches:<sup>18</sup>

<sup>16</sup> CFCJ researchers later confirmed that the wording of Nunavut Workers' Compensation legislation places fisherman in a contractual relationship with fishing boat owners, which appears to exclude them from coverage and therefore from compensation. This example serves to underline just how difficult legal jurisdictional responsibilities can be to understand – even for lawyers.

<sup>17</sup> It is outside of the scope of this paper to explore Inuit traditions of justice in any depth. Work on this is on-going in Nunavut and we also note important discussions from Greenland, where the development of contemporary legal systems has taken a different course (Craig & Freeland, 1998; Jensen & Agersnap, 1996; Loukacheva, 2007).

<sup>18</sup> The same issues are raised by Aboriginal participants across Canada (Stratton, 2006) and many justice community members as well as the public raised the adversarial legal culture as problematic. National CJSP participants, as well as other Canadian and international research, also emphasize that people do not experience legal problems in discrete areas of law. Taken together, this growing body of research underlines the need to consider access to justice in a holistic way (for examples Billingsley et al, 2006; Currie, 2007; Pleasance, 2007, Stratton, 2006, 2007a, 2007b).



*Well you go into court, you've got a lawyer, you've got a defence, and you've got a judge. The judge decides which way to go depending on who has represented who well. Whereas in Inuit justice – you've got the person that has done the wrong, the person that's been hurt, the people supporting them, and you've got the Elders, and they lead to try to resolve – okay what are the issues, what can [be done] – and the healing happens there too. And they try to figure out what's going to happen from here on in.... And it's got to be resolved because it affects even their animals – like when there's a conflict, or if someone's done something bad – and they've kept it a secret – it comes out in wildlife. They could starve [if it's not resolved]. It's a little more difficult here to see because we've got modern food, and all this stuff now. But it always was important to resolve something within the family because it affects the community at large ... And until that person repents for what they've done – it'll continue that way. [Social services worker]*

The vision statement of the Nunavut Department of Justice recognizes that the task of political and legal development in Nunavut cannot be accomplished by replicating the systems of the south, stating:

*To serve the public by promoting and protecting a peaceful society and by adhering to the principles of Inuit Qaujimajatuqangit. To build public confidence in the justice system by respecting the role of community members in maintaining harmony. To promote the rule of law by providing a full range of legal services to the Government of Nunavut and designated boards and agencies, and access to justice for Nunavummiut. [Nunavut Department of Justice, 2008, p.8]<sup>19</sup>*

The road to achieving this vision is not, however, an easy one. History cannot be undone and the contemporary reality of Nunavut is that the social fabric of traditional Inuit communities has been harmed. Addiction to alcohol, and now increasingly drugs as well, is a problem affecting many Inuit communities. There is a critical lack of treatment and support programs. Crimes involving alcohol and violence dominate court dockets and still take precedence over civil law matters (Gallagher-Mackay, 2003).<sup>20</sup> As one Inuit participant explained:

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<sup>19</sup> *Inuit Qaujimajatuqangit*, often referred to as “IQ” means traditional Inuit knowledge, or more literally, “that which has long been known by Inuit” (Wikipedia [http://en.wikipedia.org/wiki/Inuit\\_Qaujimajatuqangit](http://en.wikipedia.org/wiki/Inuit_Qaujimajatuqangit)). The vision statement quoted is the updated version from the 2008 Nunavut Justice Business Plan. It more specifically identifies commitments to involve community members and to provide a range of legal services, than in earlier versions.

<sup>20</sup> The number of family and civil matters appearing on the Iqaluit court docket has steadily increased during the last four years but participants and other sources of information indicate that circuit court dockets remain focussed on criminal matters. For example, a parole officer reports on a blog that in April 2007 there were 75 people (6% of the population) facing 220 charges on the Kugluktuk circuit court docket. Inevitably many cases had to be adjourned until the next circuit and various others resulted in trial dates ([http://kugluktuk.blogspot.com/2007\\_04\\_01\\_archive.html](http://kugluktuk.blogspot.com/2007_04_01_archive.html)). As we noted previously, court staff already spend many, many hours travelling the territory and the solution to this problem is not a simple one of more court time. Later in the report we discuss initiatives now underway to increase access to civil justice in Nunavut communities.

*You have to remember that Nunavut was only created in 1999. People from the land came into the communities 50 years ago and...were just getting used to living in community settings.... [And now] we've got people living in great big houses they can't afford. It's a whole bunch of things all lumped into one and it's made it really, really hard for people.... Nunavut has changed in a short time. Like alcohol just got into Inuit bodies 50 years ago ... [we] had our first little drink and it's showing today with the people that are going through the court system. [Justice community member]*

When an accused person is found guilty, justice system process combines with the geography of Nunavut to complicate post-trial resolution. Once sentenced, Inuit are frequently removed from their communities and incarcerated far from home. None of the underlying social relationships are repaired and family and community lose a member whose economic contributions may have been vital. As an Inuit Elder explained, everyone suffers in the process and the social costs are high:<sup>21</sup>

*[The punishment is high] for the wife and children of a spouse who is charged and the hearing is not right away – if one spouse is behind bars. [Decisions] need clarification from each person in the family, whether it is the man or the woman – each one can go through a hard time. Struggling with the children. Even the smallest thing [can help]. Speaking with them (counselling over the phone even). People get away with sending them to a court instead of an Elder speaking with a couple on how to live together and deal with quarrels. We don't know what is happening if we don't talk with them. It would be best if the couple speak to Elders before someone is charged. This is how it was in the past and you can do it today as well. [Inuit Elder]*

The Nunavut justice community works hard to bring about positive change to justice in Nunavut, however many CJSP participants still viewed the courts as an external force disconnected from the community. For Inuit in Ottawa as well as Nunavut, there are still very few shared concepts and often little understanding of the roles within, or the reasoning behind justice system processes, as participants' perceptions illustrate:

*Well they're pleading guilty to crimes they didn't commit because they're told by their lawyer who's come in the night before that, "if you plead not guilty and you're found guilty, your sentence is going to be much longer than if you plead guilty and you get a commuted sentence and blah, blah, blah, I've already talked to my buddy the prosecutor over there so, let's do it", and this person's going, "Am I going to have to do time?" "No, no, no, ... it will go away". "Oh, ok" And they never bother asking whether [they will] have a criminal record.... In many instances it doesn't matter, whether they do have a criminal record or not, but in a lot of instances it does later on. [Member of the public]<sup>22</sup>*

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<sup>21</sup> For further discussion of issues related to the incarceration of Inuit offenders see Johnston (1994).

<sup>22</sup> Many lawyers go to great lengths to assist clients, but lack of local lawyers for criminal and non-criminal cases is a problem that affects many small and remote communities across Canada (for additional examples see also Stratton, 2006, 2007b). The problem of Aboriginal clients making guilty pleas not in their best interests was repeatedly raised in the CJSP research. Participants suggested that lack of cultural understanding on the part of legal professionals was a factor in this as well as lack of time to slow down and ensure that there were no misunderstandings. On reviewing an earlier draft of this report a participant also noted that "Inuit in Ottawa often are unclear about what lawyers say to them, even if they speak English very well. Having an Inuit community support worker attend meetings with them helps them

*They don't understand that law governs our lives. ... They think it's because you don't like them. What people don't understand is that it ... has more to do with the ... evidence that you've presented in court. They take everything personal. I think things are improving now that we have Legal Aid here. That has gone a long way to educate them – it is two opposing sides. [We try to make things as] friendly and amicable as possible – but they are still two opposing sides. I think they've seen over the years – lawyers talking with the judge or talking with police officers, talking with social workers. I still don't think they distinguish that we are professionals in our own rights, but we're still friendly with each other. It's like "Oh, your selling me out, you're not my side because you're talking with the other side now." [Member of the public, social service worker]*

As Inuit Elder quoted earlier suggests, and the Nunavut Department of Justice vision statement reflects, achieving justice in Nunavut requires creative approaches that combine Inuit traditions with the more formal legal system approach. Merely replicating civil and administrative legal systems from the rest of Canada is not the answer. While the issues in Nunavut are acute, problems and complaints are not unique to the territory. For the past 20 years civil justice systems in Canada and internationally have been repeatedly criticized as having an overly adversarial culture (Task Force on Systems of Civil Justice, 1996; Woolf, 1996; Parker, 1998). Across Canada, participants in the CJSP often experienced the outcomes of their civil cases as “punitive”.

The Nunavut justice community is working hard to meet the challenges of providing justice in the contemporary context. In finding ways to be informed by and act in accordance with Inuit values and culture, Nunavut has the potential to embrace the question, “What is justice?” and create a new approach that can lead civil justice reforms not only in Nunavut but in the rest of Canada as well. Overcoming the negative colonial legacy has to involve fundamental change in the how justice is conceived by both Inuit and the justice community. Policies, processes and programs must foster a sense of ownership and meaningful participation among all users of the justice system. Achieving the Nunavut Department of Justice vision requires strong partnerships within Nunavut and between Nunavut and other Canadian governments and justice communities. Throughout the following discussion of CJSP findings we refer to many impressive justice programs and initiatives already achieved during the short history of Nunavut. In the concluding sections of this report we return to a consideration of strengthening effective networks and partnerships that can assist Nunavut in fully achieving the vision of a justice system that is trusted and understood because it promotes fairness, equality and a safe society (Nunavut Department of Justice, 2006). We begin by presenting some more specific findings concerning current issues of family, civil and administrative law in Nunavut and for Nunavummiut living in Ottawa.

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to sort out what is being said and what it means to them.” (Stratton, 2006; written communication Ottawa workshop Participant, April 2008). Later in the report we talk about initiatives underway in Nunavut to respond to these issues.

## ISSUES IN FAMILY, CIVIL AND ADMINISTRATIVE JUSTICE

In this section of the report we present findings from the CJSP research in Nunavut that identify barriers to access to justice in family, civil and administrative areas of law.<sup>23</sup> Our discussion is divided into eight parts:

1. Access to public legal education and information
2. Access to legal services and legal professionals
3. Litigants with unequal power
4. Enforcement of court rulings, laws and entitlements
5. Issues specific to Family Law
6. Issues specific to Civil Law
7. Issues specific to Administrative Law
8. Geographic parallels and variations

Throughout this discussion of the research findings, the quotations from CJSP participants reveal the linkages that occur across all areas of law and repeatedly illustrate the current insufficiency of Nunavut infrastructure and resources to meet identified justice needs. The combined effects of history, culture, geography and jurisdiction that we have already described are also strong themes present in participants' comments.

### 1. Providing public legal information and education

*Up here I would say, people don't know what their basic rights are. More so than almost anywhere else I've ever been in Canada. I think they need to know what their rights are to establish what is fair and what is not fair. ... Like legal aid for instance will explain their role to a person, and give them options about what is likely to happen in court. But I think it's more basic than that. I don't think the person really understands how they got in that position in the first place. I don't think they have a clue about our more southern way of conducting courts, the structure, who gives the courts the authority. They know the judge is there. They know the judge has the power. But they don't know where that power came from. [Member of the public, social services]*

The CJSP research found that Canadians in general lack knowledge about the civil justice system, how it works and what matters fall within it. Few people clearly understand the separation between the criminal and civil justice systems and even highly educated members of the public complained that legal terms are hard to understand and that legal processes and court forms are difficult or impossible to follow. There is a national need for PLEI programs and materials that are readily available and easy to understand. Justice processes are even more alien and confusing for Inuit

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<sup>23</sup> These first four points listed below are among the major themes identified in the CJSP research nationally. Each of these issues was noted as an area where improved communication about the civil justice system and related laws and processes would help to improve access to justice for Canadians. Some of the challenges the Nunavut justice community face in these areas are similar to those elsewhere, but exacerbated by a lack of local resources. Other related issues are unique to Nunavut.

people who do not share many western concepts of justice, speak Inuktitut as their first language, and may have past experiences of the justice system which were more damaging than helpful.

Participants noted that to be successful in Nunavut, PLEI must tap into traditional means of education and communication:

*I think people's experiences with the law in Nunavut have mostly been through their interface with the criminal justice system. When you have a seminar – or a meeting, on administrative law – they bring with them the baggage of criminal law.... I think that's changing a little bit, and I think that people are beginning to now understand that there is a civil responsibility that people have – to behave in an ethical and proper way towards each other. When this doesn't happen, more and more people are beginning to understand that there are some avenues that they can go through. [Justice community member]*

*I asked whether people would like to see the Wills Act changed. ... Some people didn't know that there was a Wills Act to begin with. So they said "How can we tell you how we would like it to change [if] we do not know what it's like now?" That's a very good point. One lady asked me what is the date of this Wills Act and ... I told her the date. And she said "well how come I've never heard about this act after all these years?" ... We did get some ideas of how to change the Wills Act, but what we realized is that we really should advise the public about the current laws. [Justice community member]*

*And the ideal way of [educating the public] is to have the Elders involved – let the Elders invite people, and have the Elders sit in with you, because they're the ones that are looked up to and respected. They're the ones who meted out justice before we came on the scene ... They're the ones people are going to listen to ... [Justice community member]*

Nunavut legal service providers do the best they can in impossible circumstances to meet the exceptionally high need for legal information and advice, and as the above comments show, good work is being done in Nunavut. For example, Nunavut justice has now developed a “Wills Kit” and simplified the estate rules and process to file a will<sup>24</sup>

The number of Inuit people working within the justice and social services communities is steadily increasing. Translators and interpreters are becoming increasingly skilled in the difficult task of conveying new concepts in Inuktitut.<sup>25</sup> There is still a need for increased translating and interpreting resources that will allow the use of Inuktitut throughout the process from legal information to proceedings in the courtroom. Translating legal concepts into information in Inuktitut is, nevertheless, extremely challenging and requires time and monetary resources. Participants stressed that when people take initiative and attempt to create positive change, their effectiveness is frequently limited

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<sup>24</sup> A copy of this kit is available through the Nunavut Department of Justice and also by request from CFCJ or from the clearinghouse at <http://clearinghouse.law.ualberta.ca/cfcj/showpub.do?id=22036>.

<sup>25</sup> This was ably demonstrated in connection with the CJSP Community Workshops. Both written translation and workshop interpretation were praised by bi-lingual Inuktitut-English speaking participants.

by what they have to work with. For the optimum benefit to be gained from the work that is done, the created resources must be effectively shared.<sup>26</sup> Legal and social service advocates also welcomed any informative public legal information and education (PLEI) materials and programs in English as they can use these to inform themselves and explain orally to other Inuit community members. They felt that innovative examples from across Canada would be helpful in developing effective PLEI tools in Nunavut. However, the CJSP findings revealed that many members of the Nunavut justice community were not well informed about available PLEI resources.<sup>27</sup> Participants also indicated a need for improved understanding of PLEI responsibilities and funding structures within the territory. Many justice community participants were uncertain how to access funding or existing PLEI resources. The Nunavut department of Justice has made development and access to PLEI a current priority and are currently in the process of building PLEI databases and access mechanisms.<sup>28</sup>

Although justice community members emphasized the need to inform and educate Nunavummiut about their legal rights and responsibilities, many also expressed concerns about raising awareness when there were no services in place to provide access to legal resolutions.

*On an administrative level, public legal education remains a high priority. In execution it hasn't been happening to the extent that anyone wants. People all want it to happen more than it does. But it is very difficult for the practitioners to commit to it when you barely have enough time to deal with the pressing issues. I've never got a sense that there are any impediments at the administrative level that say "no we need to sort of filter the information that's going out to the public [so we don't] create too big of a demand", I've never had a sense of that. ... [The] fundamental principal of legal aid is that everybody is entitled to have an understanding of their legal rights and obligations.*  
[Justice community member]

The comments above were made in an interview conducted in 2003. Discussions during the 2006 workshops suggest that the concerns have grown about raising awareness of legal rights but being unable to meet related demand for legal services.

## **2. Accessing legal professionals and legal services**

*[Previous education efforts have] raised expectations and then what happened is the educators got many, many calls and [they] had no place to refer people to. So in a way I think that before you provide the information you want to build up the infrastructure so that the resources are there. Because once you tell people*

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<sup>26</sup> Our partners have informed us that at one point 60 articles providing basic legal information about a wide range of topics was developed, translated into Inuktitut and published in local newspapers. Such efforts are important and commendable and deserved to be preserved and promoted. We understand that these articles have been archived in electronic format with the Nunavut department of Justice and plans are underway that will allow this valuable resource to be of further use (written and telephone follow-up communications with CJSP participants and partners).

<sup>27</sup> We note that the Quebec PLEI organization, Éducaloi, provides some PLEI resources in Inuktitut, both written and oral. The information is designed for Inuit women. It is available at: [http://www.educaloi.qc.ca/en/arnait/inuit\\_info/](http://www.educaloi.qc.ca/en/arnait/inuit_info/).

<sup>28</sup> Partner E-mail communication, May28, 2008.

*they have the right to go after their spouse for support for instance, you have to have the ability to provide them with the tools needed to follow through and get that help. And if you don't, all you're doing is you're just saying to people, "Well you have that right, but it doesn't mean a darn thing because you can't exercise it." I think that's the same with all aspects of the civil justice system. Particularly because legal aid doesn't cover it at this point in time – I know the Board would love to expand their services so that they could – but again, we don't have enough money to provide the services we're already providing ... so how can you provide all these other services without that funding that's necessary? [Justice community member]*

*An informed public can be demanding but it is the only way changes can be brought into being. Inuit have a right to know and not continue to be kept in the dark – especially if it raises awareness and empowers individuals and communities to take action. Creative solutions that work for Inuit need to be found. Keeping the population ignorant of its rights is just wrong and continues to promulgate a colonialist mentality. [Inuit Services Worker]*

Since the formation of the territory of Nunavut, access to legal services has increased. Previously even Iqaluit did not have full court services. Legal Aid services have also grown, especially in the area of family law.<sup>29</sup> Nevertheless, Nunavut does not currently have sufficient legal services to provide residents with access to legal resolutions. Participants in the CJSP recognized the need for more lawyers, court services, legal aid, community-based legal workers and alternative dispute resolution options.

### Accessing lawyers

Nunavut has an insufficient number of lawyers. The majority of lawyers practising in the territory are engaged with criminal matters, but even so prosecutors and defence lawyers are often brought in from outside of the territory to meet the needs. There are few family law lawyers and even fewer practicing civil law. We are not aware of any lawyer currently in Nunavut with expertise in administrative law. As development encourages increasing migration to the territory the need for private bar lawyers is also increasing. Some participants, however, pointed out the tensions and difficulties involved in bringing southern lawyers to Nunavut:

*If the community had to choose who it wanted – a lawyer or a mechanic – they would choose the mechanic. Because, if your vehicle ... was to break down, you've got to have the person right there with the expertise to be hands on to fix it. Where as, you know, for most civil matters, besides family – like buying and selling homes, or creating a company or something – the lawyer doesn't specifically have to be here. You get a lawyer from Ottawa, the paperwork goes back and forth...so that's one of the real challenges that we have got to get a lawyer living here, because a lot of the civil lawyers say, "I don't have to live up here to do it." But the disappointing part about that is because you don't live here, you don't understand the place and get to understand the people. I think they would be able to offer better services if they do that. [Community workshop participant]*

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<sup>29</sup> See details in the subsequent discussion of Accessing Legal Aid.

*There were two lawyers who came to town to work and didn't have housing for almost six months until after they got here. You can't attract lawyers unless you've got housing for them. That's number one. Number two - it's a rough place to work ... Nunavut doesn't have the resources to really attract lawyers. I don't know what to do about that. No housing, no benefits, ... huge, huge chunks of travel that a person has to do, being away from home. [Judges] for instance – travel two or three times a month. They are away for three or four days at a time. If there's a snowstorm, they might be away for two weeks. This is a very difficult place for any lawyers ... I think what we need is, mature lawyers. Now I don't know, maybe through the Canadian Association for retired executives or something like that. Maybe they could send lawyers up to help them a little better. [Justice community member]*

Available legal counsel when needed is an essential component of access to justice, and the need for more lawyers in Nunavut is clear. The establishment of the Akitsiraq Law School is seen as a highly positive step in developing legal representation in Inuktitut:

*I think [the law school is] the greatest thing that could happen here. The only thing is –they're all just getting exposure to criminal and family – but I'm hoping... [some students will look] more at civil.... I don't know ... [what will happen with the students] but it would be interesting to see what the percentages are. What they want to do – if they want to go into government, If they want to actually practice, if they want to practice civil. That'd be a good question to find out from them. [Justice community member]*

Eleven students graduated from this program and proceeded to articling placements. Some Akitsiraq graduates are now practising law in Nunavut. It is too soon to evaluate the impact these young lawyers will ultimately have on the practice of law in Nunavut, especially in terms of increasing access to civil and administrative justice. Regardless of their eventual areas of practice, they increase the number of lawyers in the territory and bring personal understanding of the social and cultural context of Nunavut. Currently, however, these graduates are very new lawyers who will need continued mentoring and support. It remains important to attract experienced lawyers to the territory.

### Accessing Legal Aid

Most Inuit in Nunavut cannot afford a private lawyer and are eligible for available legal aid. The Legal Services Board of Nunavut (LSB) has three regional offices and during the period of the CJSP research dedicated staff have managed to steadily increase both awareness and services. There are currently 4.5 staff family lawyers; one in Iqaluit, two in Rankin Inlet, and 1.5 in Cambridge Bay.<sup>30</sup> Increase in staff lawyers has been accompanied by an increase in awareness and requests for family law services as one legal aid lawyer described:

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<sup>30</sup> The half-time lawyer is the court worker coordinator for the remaining .5 of that position (updated information provided by justice community partners, April 2008).



*The profile of family law has increased dramatically since we've been here. And that isn't so much from any efforts to really advertise ourselves but it's really just a matter of having a single client in a small community who we were able to assist. That client and their friends and colleagues and family members all of a sudden become aware of their own legal rights and then they have contact with legal aid and get resolution to their problems. So, the growth as far as demand on legal aid has been exponential, and not only in numbers but in scope of work. Somebody will come in and say "all I want is custody," and then as they sit down and we have a talk with them then they become more informed of their legal position and they feel like "I'm entitled to custody, I'm entitled to child support, I'm entitled to property division," all of a sudden their expectations increase. And they convey that information to their peers and then those people come walking in the door not just saying "I want custody," they're saying "I want those three things plus I want spousal support".... So, that's translated into more comprehensive claims being filed, and more complicated cases being heard.... Our case loads for ... [family] are growing like crazy. [Justice community member]*

The above comments are a testimony to the power of legal practice that is effective in meeting the needs of Nunavummiut and to the power of oral traditions in sharing information and knowledge. A poverty law program, first started on a part-time basis in 2004, now has a full-time staff lawyer who handles a range of civil and administrative law matters. However, LSB now has a backlog of 500 family files and our most recent information indicates that the number of poverty law clients warrants a second full-time lawyer.<sup>31</sup> The demands on the legal aid lawyers are excessive and work overload leads to stress, burnout and frequent staff turnover.

As well as limiting capacity to provide access to legal representation, the small number of available lawyers, either through legal aid or private practice, can also result in practice complications. When both parties in a case are eligible for legal aid, the same lawyer or office cannot represent both. LSB must therefore retain a lawyer from another legal aid office or a private law firm. If one party in a case is eligible for legal aid and one is not, the latter must retain a private lawyer, usually from outside the territory. The cost of this is prohibitive for most Nunavummiut. Without a lawyer the options are to attempt to self-represent, or withdraw from the dispute altogether. The situation is especially dire where legal aid for civil matters is concerned. The one poverty lawyer based in Iqaluit does not currently undertake actual litigation and there are no civil or administrative lawyers living and practicing inside the territory. Legal Aid is further limited by restrictions on what legal matters are covered and ultimately legal aid resources are limited and may have to prioritize the most serious cases. This leaves many legal problems unresolved and prevents people from obtaining their full legal entitlements (Focus Consultants, 2006).

Even so, the poverty law program has brought about a significant improvement to access to legal assistance with civil and administrative matters. In most of Canada,

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<sup>31</sup> Personal communications with justice community members, June 4, 2008.

where legal aid for civil matters exists at all, the application process is cumbersome.<sup>32</sup> This was the case in Nunavut at the time of the CJSP interviews as one participant outlined:

*In civil procedures there's no way that a poor person can really get counsel except to go through a very awkward and difficult process. The process is, first of all I have to catch on that they need it [and] suggest that they apply. They have to go down [to the office], they have to apply ... for legal aid – automatically they will get rejected because it's a civil matter, not a criminal matter. Then they have to appeal that decision, and then when they appeal the decision, often they will get legal aid – but they have to go through that convoluted process. If there was a legal aid clinic locally that was like a street front clinic, that could give people legal advice, to advocate on their behalf – then that would make the process much smoother. [Justice community member]*

The poverty law program allows legal aid applications by toll-free telephone, computer and fax. Court and community legal workers can assist with applications and all applications are considered. Part of the program is to assist the applicant in assessing the legal merits of the case and the various options for resolution. The poverty lawyer reports a willingness to negotiate out of court settlements and a high right of success in finding solutions agreeable to the parties.<sup>33</sup> This is a remarkable achievement since the October 2006 and we suggest that this program can offer a model for poverty law and civil legal aid application processes in other Canadian jurisdictions.

### Accessing Court Services

Iqaluit now has full civil as well as criminal court services and the regional Legal Aid offices offer additional ways to connect with the court process. Despite the shortage of lawyers within Nunavut, 734 civil (including family) files were opened during 2006. The Iqaluit court will also arrange to hear matters by telephone link if possible and recently a custody hearing was conducted entirely by video conference. Judges now also case manage family law files and a process is in place to make it easier to obtain a court date for family matters.<sup>34</sup>

The number of Inuit staff involved in court and legal services is steadily increasing as participants noted:

*P2: We try to send Inuit staff out on circuits, because Iqaluit is a little bit more city like.... The rest are very much traditional based communities, and when they go to the communities – southern courts are very scary, even for southerners and so in our circuits we have Elders – Inuit Elders that sit with the court.*

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<sup>32</sup> Legal Aid coverage varies among provinces and territories. The complexity of the process to obtain legal aid for non-criminal matters is a general problem and the CJSP findings suggest that on a national basis many members of the public and some members of the justice community are unaware that it is even possible to obtain legal aid for civil matters.

<sup>33</sup> Personal communication June 4, 2008.

<sup>34</sup> CJSP researchers observed the use of telephone connections in the court in Iqaluit and the respectful conduct of cases. Updated information on the use of video links and case management are provided by the Annual Report of the Nunavut Court of Justice (2007) and communications with project partners.

*P2: And Inuit staff that read the orders to them and explain them to them in their own language. ... Almost every circuit has two interpreters unless it's very, very, small. So it's a simultaneous translation in their own language, and it makes it a little bit easier on the community itself, when court comes. [Justice community member]*

The involvement of Inuit community members in all parts of the justice process is of great cultural importance and helps to foster ownership and legitimacy as the system evolves to reflect Inuit values. It also helps to remove the reputation of court as something to be afraid of, which is not easy to accomplish given the experience of southern justice in Nunavut. One participant described some of the court circuit strategies to achieve this:

*What we do is we try to get as many people from the community [as possible] involved in court ... so that they understand it, and so that it's not such an intimidating thing. Because, ... especially in small communities, you'll see the plane come in, and people know it's the court plane ... they know the court is coming in. It can be very stressful for people, especially ... if someone goes to jail. The people see the person removed from the community – it's a very scary thing. ... It's not Inuit way to have someone who's done something wrong thrown in jail. Usually there's other cultural things that happened in the past, rather than being sent off to a southern jail, or to an Iqaluit jail. ... [We also] hire high school students on the advice of their teachers ... They come to court and they help with the photocopying and they sit with the court. We hire equipment monitors - every extra person that we need - the bailiffs, the people that serve documents, they're all hired from the community. ... We want them to participate with the court, so that when the court gets there, it's part of the community ... It has much more meaning, and ... it seems to work. [Justice community member]*

Public participants in CJSP research invariably commented on how intimidating court appearances could be, especially if a litigant was attempting to self-represent. It is not surprising that the arrival of the court plane in a Nunavut community remains a stressful event, which intensifies if the community does not have any access to lawyers, paralegal or community legal clinic services ahead of the court arrival. In response to this need, arrangements are now made for lawyers to arrive in communities ahead of the court party.

We reported previously that the Nunavut court circuit is already very demanding on members of the judiciary and court services personnel. Court dockets are overloaded and dominated by criminal matters, but most participants did not feel that increasing court service structure was the solution to this problem. Rather, suggestions were more for community-based solutions, such as local justice committees and legal workers (paralegals) in every community.

### Accessing a community-based legal process

Establishing a way to initially address legal issues within communities would seem to be a sensible option in Nunavut. As well as being in keeping with traditional Inuit

approaches to justice, local justice committees can address the inevitable delays that occur with a circuiting court process. Participants commented:

*It would certainly create more balance by implementing some of Inuit traditional laws into the system. That would create a better balance and those people would be better. For example, the judges should consult, should learn, should take training – however it may be – however it may happen on Inuit tradition. They should know about Inuit traditions, learn them and return it. [Inuit Elder]*

*[For] the people that are educated – there are types of cases that the community should be able to ... undertake. If that was the case, there wouldn't be this ... gap that we face, that we need to educate. [There] are types of cases that are easily manageable at the community level ... I also think ... it's very difficult to distinguish the difference between criminal and civil, because I don't think you can break the laws in both areas because if they are not living up to - lets say a child custody order.... According to the justice system, civil cases are not criminal cases, [this is not so] in Inuit culture. [Inuit Elder]*

Many participants advocated community justice committees and several referred to the system of justice in Greenland as an example of this approach to blending traditional Inuit and Western systems of justice. In Greenland, criminal and non-criminal legal matters are first heard in a local magistrates court overseen by a lay judge (similar to a Justice of the Peace)<sup>35</sup> who is assisted by two lay assessors from the local community. The lay judge is chosen by the community and the assessors are selected based on knowledge relevant to the case. This approach is considered to have raised confidence in the administration of justice (Brøndsted, 1996; Craig & Freeland, 1998).<sup>36</sup>

Nunavut has now established Justice of the Peace Courts designed to be a community court in Iqaluit and some communities. This court sits prior to the arrival of the Nunavut Court circuit and deals with adjournments, sets trial dates and delivers summary conviction sentencing, thus providing more space on the circuit court docket for serious criminal, family and civil matters.<sup>37</sup> Special training has been provided for the Justice of the Peace and also for community Elders. Court workers are increasingly available in communities to provide assistance to people who must appear in court.

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<sup>35</sup> For a discussion of the role of the Justice of the Peace in Canada see Peter Bowal (2004)

<sup>36</sup> An in-depth exploration of parallels, differences and potentials is beyond the scope of this report.

However, the Greenlandic system is also subject to critique and transition. There are suggestions that the exploration of natural resources in Greenland and the associated development are generating problems similar to those faced in Nunavut at this time (Craig & Freeland, 1998; Jensen & Agersnap, 1996). We also note a very recent work that may be of interest: Natalia Loukacheva (2007). *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut*. University of Toronto Press. It must also be kept in mind that the colonial relations, geography, current governance structure and the associated evolution of law are quite different for Greenland and Nunavut.

<sup>37</sup> We have received conflicting accounts of the degree to which circuit dockets make room for family and civil matters to be heard. We do not currently have any statistics concerning actual numbers of family and civil cases appearing on court dockets in Iqaluit or on circuit.

Continuing to find ways to move toward community-based legal resolutions is essential. These initiatives must be available for civil, family and administrative law matters as well as for criminal. Nunavut Inuit communities are not, however, as they once were and it will be necessary to blend the valuable Inuit traditions with the best of the objective structure of western legal systems. It will also be important to carefully evaluate the success of these new ventures. Much healing may need to take place before all communities are able to ensure equitable resolutions. The realities of Nunavut communities will require very careful consideration when determining committee members. The social health of the community must be a factor in deciding if it is possible to form local committees that can make balanced and fair decisions in all cases, most especially those involving family violence and sexual abuse. It will be important to ensure that all committee members are respected throughout the communities and it may be necessary to have a trained Inuit Justice of the Peace from outside the community oversee a locally appointed justice committee.<sup>38</sup>

### Accessing community-based legal workers

Most of the CJSP participants identified community-based legal workers as the priority service to establish in Nunavut. The majority opinion was that having a bi-lingual, properly trained and supported community legal worker in each Nunavut community would be a most effective tool in increasing both awareness of legal rights and access to justice. The CJSP and other research supports this opinion, reporting very positive feedback concerning community legal workers in other communities across Canada.<sup>39</sup> Since the completion of the CJSP research in Nunavut, the Nunavut Department of Justice has provided funding for a full-time Community Justice Outreach Worker in all 25 communities, with 18 positions already filled and the remainder expected to be hired shortly. This initiative moved forward specifically in response to the enactment of the *Family Abuse Intervention Act* (FAIA) and the workers will have responsibility for victim services, family abuse intervention, community justice coordination, and public legal education. They will also be able to assist with related civil matters.<sup>40</sup> The Department of

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<sup>38</sup> Inuit tradition of respect for Elders, which entails doing as an Elder suggests, means that Inuit will not readily voice any criticism of those placed in authoritative positions. Private communications to the CJSP researchers suggest this can sometimes be problematic to ensuring justice and healthy community decisions particularly in situations where the Elder is someone who is personally involved in domestic violence, alcohol or other behaviours which will be the subject of matters being considered by the committee. This point was also made by one young Inuk from Kugluktuk in a CBC news feature that aired October 22, 2007 ([http://www.cbc.ca/national/blog/video/aboriginal\\_issues/battling\\_the\\_bottle.html](http://www.cbc.ca/national/blog/video/aboriginal_issues/battling_the_bottle.html)). The follow-up to this story, which concerned youth action to have an alcohol committee established, can be found at: <http://www.cbc.ca/canada/north/story/2007/10/23/kugl-vote.html?ref=rss>.

<sup>39</sup> The *Alberta Self-Represented Litigants Mapping Project*, documented high praise for Native Counselling Services community and legal workers. In that research and the CJSP, both justice community and public participants spoke highly of the effectiveness of court worker and duty counsel programs. Having such a worker based in remote communities was also the preferred solution for First Nations participants. A similar role is equally useful in urban settings, such as Ottawa.

<sup>40</sup> This updated information was provided in a written communication from the Nunavut Department of Justice, March 2008).

Justice and Legal Services Board are also continuing efforts to increase funding for court workers in Nunavut communities.<sup>41</sup>

In Ottawa, Tungasuvvingat Inuit (TI) currently has two Community Support Workers who provide accompaniment to legal appointments and to court, also assisting with language translation for Inuit who need this. However, a TI representative noted that a properly trained legal worker for Inuit in Ottawa would be very beneficial to the community.

Community legal workers having knowledge of the community and speaking Inuktitut as well as English, can provide a readily available and recognized source of information to remove serious access to justice barriers described by CJSP participants.

*My grandson is in the middle of a custody dispute. I tried to get information on how to contact people who deal with child custody. My son received a notice and wasn't sure what it was. He lives in a small community 30 minutes flight from Rankin. There is no Legal Aid Office and no other resources. He was given a 1-800 number to call but no one answers and no one calls back. He isn't sure which court he is waiting for and doesn't understand what is going on.... I am well educated and aware of the systems, but I am still having problems. Assistance should be available in every community. [Inuit community workshop participant]*

*[There is the] language issue. Even if you have everything written in Inuktitut.... if you can't read the English language, you're going to have a very difficult time understanding the concept. I mean, yes you may have it in the Inuktitut language but the concept thing and the culture is completely different from how it's written in English. I mean how do you explain to someone that's never been exposed to the court system - what is a judge? Can you explain it in the cultural sense where a judge is a person that sits and is trying to weigh both sides, and trying to see the fairest resolution to the dispute within the laws of Canada. I mean how do you say that in our language and bring it about? [Member of the public involved in various roles]*

### **3. Power differences between litigants**

The important issue of power differences between litigants was raised repeatedly among CJSP participants nationally. In Nunavut, participants made these following observations about this problem:

*The blocks to [accessing the courts] are still there.... there is no competent advocacy for these people when they have to face large corporations or the government. [When they are self represented and have to] face the lawyers for these [organizations] ... it's just like a massacre.... [It's] based on the adversarial system despite the values of Nunavut [which] are to restore harmony to the community. As soon as you initiate a complaint – the respondent – if it's a government or a large corporation – immediately shuts down and becomes adversarial. And there's no bloody way of working your way out of that. If you*

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<sup>41</sup> As of June 2008, NLS reports that approximately 50% of Nunavut communities now have a court worker

*open up communication with that system and try to establish a trust with that system, they still feel accused. ... They're going to protect the system. And if they don't protect the system they get fired. And if you get fired here, you're out of town in seven days. You lose your housing. And it's as simple as that ... The consequences are very serious. So you're immediately into an adversarial situation, and over time it's possible to break some of those barriers down. But it takes a lot of effort and a lot of time. You're looking at a systemic issue. [Member of the justice community]*

Despite the problems, it was agreed among the Nunavut workshop participants, that the civil courts could also play a positive role in equalizing relationships between businesses and local people. A civil justice system that is accessible, effective, fair and efficient must provide a way to equalize differential power between litigants.

#### **4. Enforcement of court rulings laws and entitlements**

The CJSP research found that concerns about the enforceability of family and other civil court decisions and orders were common across Canada. There are many complex issues affecting enforcement. In family cases it has been suggested that better case management and continuity of the judge overseeing a case would help. This is an area where the small size of the Nunavut justice community may be helpful to ensuring hearings come before the same judge and family case management initiatives are now in place. In Nunavut, geography of distance and jurisdiction also creates major barriers to enforcing family and civil orders once they are obtained. Child support is a notable example of this. In addition to the ongoing problem of obtaining legal services, the individual owing support is frequently hard to locate if out on the land, residing in a remote Nunavut community, or outside of the territory. In January 2001, early in the history of the territory, there was \$1,690,416.90 in unpaid child support, an average of \$10,200 on each of the 166 files where support has been ordered in Nunavut.<sup>42</sup> To a large extent, the arrears were contributed to the inability to pay, and changes were recommended to the way orders were assessed (Gallagher-Mackay, 2003, p.59). Current statistics than can be directly compared with those reported in 2003 are not available. The Maintenance Enforcement Program now has over 300 files and as of December 31, 2007, collections for the children totalled \$1,097,113. It is also notable that approximately half of these files are registered for enforcement by Canadian jurisdictions outside of Nunavut because the payors have moved to Nunavut to live and work.

Finding a solution to enforcement problems is a challenge for justice systems across Canada and there are no easy answers. However, without effective avenues for enforcement, just and equitable resolutions to legal problems are not achieved. Recognizing this, Nunavut is now working towards a new *Maintenance Enforcement Act* with creative solutions unique to the territory. Extensive consultations were conducted in 2006 and 2007 in a number of communities towards generating policy options for enforcement of child support orders.

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<sup>42</sup> Gallagher-Mackay notes that even this figure already represented improvement of almost \$300,000 over the situation inherited by Nunavut at inception.

## 5. Issues Specific to Family Law

Family law contains elements of criminal, divorce, child welfare, maintenance, custody and property law. The consequences of having unresolved family legal issues are serious and far-reaching and affect the economic, physical and mental well-being of family members. The need for legal processes that are more effective in dealing with family law issues was a prominent finding in all jurisdictions we visited across Canada and bringing about family procedural law reform is recognized as a national priority.<sup>43</sup> Most jurisdictions are now engaged in reviews and reforms aimed at improving the family law process in Canada. Nunavut has also identified family law as a priority area affecting a large number of Nunavut residents (Gallagher-Mackay, 2003).

In addition to the issues outlined above, two concerns specific to family law have been identified as particularly problematic for Nunavummiut: a high rate of family violence and child protection laws.

### High rate of family violence

Nunavut has a rate of family violence much higher than the national average. In 2004 the rate for all assaults was almost nine times higher than the national average. The rate of sexual assault was almost thirteen times the national average. The majority of assaults involve family matters (Gallagher-Mackay, 2003; Statistics Canada, 2005).<sup>44</sup> The social context factors we discussed earlier (personal experience of abuse, lack of adequate shelter, unemployment, substance abuse, depression) are all known to increase the risk of family violence occurring.

The high rates of domestic violence and sexual assault lead to criminal charges for the offender, who is most often male. Victims suffer physical and emotional anguish, and when the abuser is the family provider, also economic harm. Civil justice matters (such as custody, support payments, guardianship, adoptions, divorce, property division and peace bonds) can all arise out of incidents resulting in criminal charges. Frequently, however, both the underlying social problems and the civil legal issues remain unresolved.

In December 2006, as part of a comprehensive, culturally appropriate strategy to address these issues the *Nunavut Family Abuse Intervention Act* was introduced. Extensive collaboration has produced an Act built on the principles of Inuit

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<sup>43</sup> The CJSP report *Family Court Coast to Coast*, documents the observations of researchers as they sat inside and outside of Family courtrooms across Canada (<http://cfcj-fcjc.org/publications/cjsp-en.php>). The CFCJ publication, *News & Views on Civil Justice Reform Issue 10* is a special issue devoted to family law reform initiatives in Canada and internationally (<http://cfcj-fcjc.org/publications/newsviews-en.php#issue10>).

<sup>44</sup> According to Statistics Canada, in 2004 the national rate of assault and sexual assault per 100,000 people was 731.8 and 73.7 respectively. In Nunavut these numbers were 6628.7 for assault and 941.2 for sexual assault.



Qaujimaqatungit. Among the principles formally included in the Act, it is stated that all Nunavummiut are entitled to be treated with respect, that the views of Elders deserve careful consideration and respect, and that members of the extended family should be given the opportunity to be heard and their opinions should be considered when decisions affecting their interests are being made (Kenneally, 2007).<sup>45</sup> CJSP community workshop participants discussed the newly introduced Act, pointing to significant challenges that must be surmounted if it is to be successful in practice:

- P1: *It would help if the court worked more with Elders.*
- P2: *That this should happen and in a timely way so that the issues are addressed during the delay waiting for the court. This could avoid all kinds of confusing Orders.*
- P3: *How does a 'no contact' Order work in a small community?*
- P2: *Well it will be breached. There will be more charges.*
- P4: *It's setting them up.*
- P2: *Yes. And in places with no housing, no one to help with the children, no one to bring fish*
- P4: *Nowhere to shop without breaking the Order.*
- P5: *And often for very simplistic reasons. The alternative home, if there is one, is half a block away. They're bound to breach. It's incredibly punishing if the person is innocent! Of course they will go ballistic.*
- P2: *When children are apprehended, children over seven are told they can't have contact with the parents. Kids leave school and go home. The parents are in trouble. A child hugs Dad in the store – he's in trouble. The simple geography of the communities does not permit the standard remedies. The southern timelines mean nothing. The system here is moving as fast as it is able but the timelines don't work here.*
- P1: *The delays again. And when the date is close people are very sad. Then another delay. Some even commit suicide just before [because] they are so afraid. The delay can cause suicide. [Conversation among Community Workshop Participants]*

An educated non-Inuit Nunavummiut told researchers of her experience of spousal assault and subsequent involvement in the court process, underlining how impossible the situation would be for an Inuit woman in a small community:<sup>46</sup>

*I was assaulted by my partner and that was the end of our relationship.... He was charged with assault and was released pending his court date and over that period of time there was a no contact order. He qualified for legal aid. I did not and ended up hiring a lawyer. In Nunavut, as I'm sure you've heard already, almost everybody knows everybody else, so local lawyers have to declare a conflict repeatedly and I was unable to get a local lawyer privately and had to get my legal services out of Yellowknife. [The lawyer] charges 250 bucks an hour. My ex-partner of course, paid nothing for his legal services and as a result of that I would prepare an affidavit and try and go through the separation process and he could go back to his lawyer again and again and again and again and again,*

<sup>45</sup> Kenneally discusses the *Nunavut Family Abuse Intervention Act* in "Creating the *Nunavut Family Abuse Intervention Act*" in *News and Views on Civil Justice Reform* 10, pp.22 -23).

<sup>46</sup> Iqaluit and other regional centres do have crisis centres for women and children, but travel from small communities is often difficult or impossible.

*and each time I picked up the phone to talk to my lawyer, it cost me, 100 bucks.... There are no lawyers, and for women the situation is just terrible and it's hopeless. Can you imagine having like a grade eight education, five children, your husband beats the 'shit' out of you and you finally decide to boot him out and he's the one with the social housing lease and you're out...he did hunting, was the only wage earner ... and let's say you weren't born in the community. So now you're out of your house, you're starving, you've been just vilified by everyone around you, no place to live and you can't get on a plane with your five children to go back to the community you're from originally. There's no lawyer in town. Court isn't going to come around for god knows when. What are your choices and what are you going to do? You are going to go crawling back to that clown and just say, "Ok, well, if you're going to beat me up you know, maybe you can do it outside of my face ok", or whatever. It's a hopeless, hopeless situation. [Member of the public involved in various family law matters]*

This participant underlines the social and cultural fall-out that may occur as a result of a “standard” southern approach to applying the rule of law in family cases. It is interesting to note that despite the history of animosity and violence in this situation, she would still be willing to explore innovative non-adversarial options in resolving her legal issues:

*[Because of the costs] I was real reluctant to go through a whole court [process].... and I think that most of the stuff really we could have resolved in mediation very, very quickly and it should have been ordered. It should have been, finding someone that both [my ex] and I could have agreed upon as a mediator and just negotiate the stuff ... even if both had to be in separate rooms and we're in the same building, we just go back and forth and back and forth and spend a day and a half working on something like that - just get it done.*

The above comments suggest that the justice system can play a more positive role in resolving conflicts for Inuit and other residents of Nunavut. The intent of the *Nunavut Family Abuse Intervention Act* is to allow room for flexibility and culturally appropriate solutions.<sup>47</sup> Developing solutions requires intimate knowledge of Nunavut communities, delicate management of local power dynamics and adequate resources to provide necessary programs and supports. A number of initiatives have already evolved in support of these goals. We have already mentioned the Justice of the Peace Courts, the hiring of Community Justice Outreach Workers and the availability of trained Elders in the communities. In addition, a Community Intervention Order is now in place that allows a Justice of the Peace to refer a family applicant and respondent to traditional counselling. Also set up is the Inuusirmut Aqqusiuqtiit Mediation Program for innovative dispute resolution, counselling and information. This program combines southern-based mediation techniques with traditional Inuit approaches to problem solving (Nunavut Court of Justice, 2007). A senior counsellor in Iqaluit now supervises mediators in Cambridge Bay, Pond Inlet, Rankin Inlet and Cape Dorset.

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<sup>47</sup> For example, Gallagher-Mackay (2003), noted problems inherent in awarding cash entitlements in a mixed wage-labour and subsistence based economy. It has been suggested that the court assist in setting up more culturally appropriate arrangements, such as allowing the provision of meat to be part of a support order. These kinds of options were also emphasized in CJSP interviews and workshop discussions.

### Inuit children and child protection laws

As is the case for Aboriginal peoples across Canada (Stratton, 2007a, 2006), the historical experience Inuit have had with family law has primarily involved the removal of children from their families and communities. As participants in the CJSP explained, this history continues to influence perceptions about justice and child protection intervention:

*There are lots of issues around [what] social services has the right to and what the individual has the right to in situations of child apprehension....And trying to explain that ... I represent the parent in an apprehension matter – but I'm still one of the lawyers and the other lawyer is trying to take the kids - because I'm part of the system I can't really be trusted either. So, you don't have those basic concepts [about roles] as a common ground to start, you know. [Community Workshop Participants]*

*I was working in [a Community that] never had a family lawyer before....One older woman was very angry one day... . What surprised me is that she didn't understand the role of the lawyer – she thought I worked for the Department of Health and Social Services. And this is after a child is apprehended. Like it never occurred to me that they wouldn't understand that I was working for them.... [But] why wouldn't they think that? ... Just one more of those social workers coming in on the plane, or a nurse, or a teacher – and they're all sort of telling them what to do. [Member of the justice community]*

Within the territory, considerable progress has been made in recognizing custom adoption procedures. Violence or substance abuse in the home and the lack of local treatment and support programs are, however, factors that continue to attract the involvement of child protection authorities. For Inuit in Ottawa, negative interactions with child protection agencies continue to be a primary cause of involvement with the court system. An Ottawa workshop participant notes that there is now an attempt in Ontario to provide an alternative dispute resolution process in child protection matters that is respectful of Aboriginal cultures. However, Inuit service workers express concerns that the needs of Inuit differ to those of First Nations.<sup>48</sup>

## **6. Issues Specific to Civil Law**

*[Most people have a] poor to fair understanding [of the civil justice system]. And that's just because they don't want to be involved. If I'm not served with a notice - or if I haven't been charged for any criminal action - then why should I even have any concerns? .... [People] don't want to have anything to do with it. ... If they loan their friend a thousand or two thousand dollars - they'll ignore the debt just to avoid the whole court system. I think it's just sort of the thought of the public that, "oh, you know, if I'm involved in the courts, then I've done something*

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<sup>48</sup> Written communication, community workshop participant, April 2008.

*wrong." And that's not necessarily the case - especially with civil law. [Justice community member]*

The points raised by the participant quoted above remain factors in establishing an effective civil justice system in Nunavut. However, the CJSP research shows that awareness about civil justice has increased in Nunavut over the period of the project. There is growing recognition of the positive potential that civil procedures can have in protecting rights and peacefully resolving conflicts. As pointed out in the discussion of family law issues, other legal problems related to civil law are often connected to family problems and the increased involvement with civil family law has played a significant part in increasing awareness of legal rights in general. At the same time, there is awareness of the limitations of an adversarial court-focused system to address deep-rooted social injustice in a context of scarce resources:

*Everybody talks about it but...it always comes down to we have nothing in Nunavut: no infrastructure; no buildings; we have no housing; we have no programs or treatment centres.... Then it comes to, what are we offering to fix? [Community Workshop Participant]*

The delivery of effective civil justice in Nunavut requires grappling with social context issues for which the justice community is not directly responsible and the courts alone cannot address. Other government departments and service providers (such as health, education and housing) must also be involved in raising awareness about rights and entitlements and ensuring that remedies are available. Some CJSP participants underlined the paradox inherent in considering court-based civil justice solutions for people who lack access to basic necessities and questioned devoting resources to a court-driven process before basic social rights were established. The underlying and fundamental question raised is: "Can there be civil justice if there is no social justice?"

*How broad a scope are we taking on civil justice? Is it just access to court? Or is it about social justice? For legal aid clients, access to social justice is a much bigger concern than access to court. Civil justice can be one tool – a blunt one – for gaining [social justice]. But even if we had a working civil court system it wouldn't solve the social justice issues, which are largely issues of politics and resource allocation. What is the scope of this [research project]? [Community Workshop Participant]<sup>49</sup>*

One workshop participant further pointed out that the adversarial court process was seldom an effective way to solve disputes in small communities:

*Living here, people must work problems out within the community. They must continue to live with each other. In the South, the civil courts are for problems between people who do not know each other. Civil justice is not for poor people anywhere. The civil justice docket expands in Iqaluit as businesses use it. [Community Workshop Participant]<sup>50</sup>*

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<sup>49</sup> It is interesting to contrast this participant's comments on the CJSP research scope with those of the participant quoted in our earlier discussion of jurisdictional complexities.

<sup>50</sup> Tensions and difficulties faced by litigants and witnesses in small communities is an issue repeatedly raised by CJSP participants living outside of major urban cities everywhere in Canada. Even in large

CJSP findings show that there are many tensions to be negotiated in establishing effective civil justice processes in Nunavut. They also show that there is a significant need for resolutions to legal problems in the civil law area. During the Community Workshop sessions in 2006, a legal services participant provided the following list of non-criminal law inquiries from all over Nunavut (in order of frequency of inquiry):

1. Family Law<sup>51</sup>
  - Child protection
  - Child maintenance
  - Custody and access
  - Divorce
2. Small Claims issues (At the time of the workshop, simplified small claims rules were not in place but are now established).
3. Wills and estates (people want to ensure items/property is left to a specific person but don't know how to go about it and problems arise when no Will is in place).
4. Wrongful dismissal (as mining employment is increasing these inquiries are also growing).
5. Wrongful eviction (there is a serious housing shortage and people are evicted so that rents can be increased)
6. Foreclosure (as people buy increasingly expensive houses mortgage and foreclosure inquiries have increased. This latter area is very complicated for Inuit to understand and foreclosures happen a lot).
7. Contract disputes (banks and credit cards).
8. Human rights and civil liberties.
9. Immigration (this is administrative law and legal aid does not cover it. However, Nunavut has a significant workforce from outside of Canada. Inquiries are made concerning promises that people feel were made to them concerning family members, and documents).

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cities, litigants often have personal connections that precede the dispute. However, large cities make it much easier to discontinue contact after a dispute is settled via the courts.

<sup>51</sup> This participant commented that family law inquiries may be highest because these are the most frequent problems, but the rate of inquiry may also be attributable to growing knowledge that legal aid coverage may be available. The number of inquiries to the Poverty law Program, support the latter possibility. It is also important to recognize that the number of inquiries in all listed areas does not necessarily correspond to growing understanding of civil justice among Inuit. Since 2003, Nunavut has experienced a sharp rise in workers from outside of the territory, who may already have had some awareness of legal rights.

10. Nunavut land claims (these have increased as the mining has taken off. There are many basic questions regarding how beneficiaries can access their entitlement).
11. Medical malpractice and wrongful death (about six inquiries have been received. Based on previous experience elsewhere in Canada, this participant considered this to be extremely high).

This list shows that Nunavut already has the same range of civil justice needs as the rest of Canada and it is expected that the need for civil justice resolutions will increase as Inuit residents receive residential school settlements.<sup>52</sup>

With a simplified process for small claims introduced in October 2007, it is hoped that this process will allow for mediated resolutions to disputes that are grounded in realistic compensation and more in keeping with Inuit traditions. One participant offered an example:

*It would be good if the Justice of the Peace knew about and could handle small claims issues. In Nunavut the process should use reciprocity as well as monetary awards. JPs should be able to address matters quite informally. So if someone broke my TV and had no funds to replace it, but had a TV of their own, then they should give that TV to me.*  
[Justice Community member]<sup>53</sup>

Despite the recognition of the challenges involved, participants generally agreed that appropriate civil justice mechanisms would be helpful to ensuring rights and fair resolutions for Nunavummiut. To achieve this, the civil court process must develop in conjunction with resources to establish an effective system of administrative law. Both systems of law are fundamentally concerned with establishing and upholding basic rights that are essential to ensuring social justice for citizens.

## **7. Administrative Law<sup>54</sup>**

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<sup>52</sup> Concerns about the impact of residential school settlements were also raised by other Aboriginal participants, particularly in the context of consumer rights and financial contracts (Stratton, 2006). Although consumer issues are not on the list of inquiries provided above, workshop participants did note that there is little price control in Nunavut, monopolies of grocery providers in some communities, unequal access to credit and shipping alternatives and considerable potential for consumer exploitation.

<sup>53</sup> The provision of meat instead of monetary child maintenance was raised by a number of participants as another possibility. Actual physical restitution of damage was a suggestion made repeatedly by Aboriginal participants across Canada. However, we also note that consultations conducted by the Nunavut Department of Justice suggest that most individuals would prefer monetary settlements (written Communication, April 2008).

<sup>54</sup> The focus of the CJSP research was on family and civil law issues. However, findings from the CJSP and *Alberta Self-Represented Litigants Mapping* underline the importance of the administrative body of law in maintaining citizens' basic legal rights. This recognition is reflected in the reporting of these projects and our subsequent research proposals.

CJSP participants in Nunavut and Ottawa repeatedly emphasized access to justice issues arising from inadequate enforcement of administrative law and the lack of accessible process to remedy this situation.

There is a strong link between a lack of knowledge about rights under the law, lack of access to legal information and services and a corresponding lack of justice in many areas of life. Many of the legal rights and social benefits to which Canadian citizens are entitled are governed by a system of law overseen by administrative tribunals. In most of Canada there is a mechanism for a judicial review of tribunal decisions that involves the civil court system. The legal responsibility for some areas of law, such as employment and tenancy matters, can be very confusing with responsibility divided between tribunals and the courts. Some areas of administrative law are within provincial/territorial jurisdiction, while others are a federal responsibility. Shared jurisdictional responsibilities for overseeing the various areas of law governing these issues creates confusion and encourages inaction. The social cost of this to Nunavummiut is high.<sup>55</sup>

In Nunavut, territorial legal matters - including administrative law - come under the jurisdiction of the unified court. At the time the territory was established, Nunavut had a *Fair Practices Act* focused on finding a remedy for the affront to human dignity. The Act provided for a punitive prosecutorial remedy but prosecutions could only proceed with the written consent of the Commissioner. At the time of the CJSP interviews, a Fair Practice Office with one officer was located in Iqaluit. This office investigated, mediated and adjudicated all areas of complaints of discrimination made by residents of Nunavut including issues related to employment, accommodations, services and facilities. In 2003, a *Human Rights Act* replaced the *Fair Practices Act* and a Human Rights Tribunal was created, with an office located in Coral Harbour. This tribunal is a direct access model (members of the public contact and make a complaint directly to the tribunal and not via a commission, which is the most common Canadian model) (Nunavut Human Rights Tribunal, 2007).

There are, however, many aspects of administrative law that do not fall under the human rights mandate. According to the Tribunal's Annual Report (2007), 66% of inquiries to the Coral Harbour office were either not covered under the *Act* or could not explain the grounds of their inquiry.<sup>56</sup> Administrative law in Canada is typically overseen by a bewildering number of tribunals and Nunavut has a number of tribunals in place.

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<sup>55</sup> In our earlier discussion of "Jurisdictional Complexities," the conversation among workshop participants (concerning fishing, employment related injury and Workers Compensation) is an example of how difficult administrative regulations and entitlements can be to understand.

<sup>56</sup> Prior to receiving updated information from our partners in Nunavut, we attempted to research Administrative Law in Nunavut via Internet searches. We note that information on the Government of Canada website still speaks of "Fair Practices in Nunavut" and a *Fair Practices Act* (October 10, 2007). Contact information for the Fair Practices Officer remains listed on the Nunavut Court of Justice website, but we could not find any description of the activities of this office or the Human Rights Tribunal on the Nunavut court, legal aid or government websites. Nor could any information or directions concerning administrative law questions and concerns for Nunavut be located by CFCJ researchers. After we were aware of the Human Rights office, we were able to locate a declaration of the *Act*, but no additional information via web searches.

During the process of reviewing this report, participants suggested that there was a need for increased understanding about the role of tribunals, including better training for the tribunal members.

Housing and employment were repeatedly raised by CJSP participants in Nunavut and Ottawa as matters of critical concern. Both issues involve multiple jurisdictions and legal areas, including administrative and we address them specifically at this point.

### Housing

The Former Fair Practices office - and officer - located in Iqaluit now concentrates on residential tenancy matters. The mandate is to resolve disputes between landlords and tenants including the provincial government, which is a landlord with a variety of rental agreements. The Federal government is also a landlord, but is exempt from the territorial act, leaving federal employees in government housing without legal protection.

The problems caused by the lack of housing in Nunavut have, however, been a recurring theme throughout this report. The housing shortage affects court decisions and the impact those decisions have on individuals and communities. Even the ability of the territory to attract and retain legal service professionals is negatively affected. Participants were confused about the legal responsibilities, critical of social and government housing regulations and policies, and concerned about the practises of private landlords. These problems involve civil, administrative and legislative aspects of justice:

*I don't know if it's civil law, but we have a shortage of housing. So, if someone is kicked out of their house, they often don't have an alternative ... And I know that we have a larger organization that is a landlord ... that has a whole property management team and they're very, very effective.... But, I feel very sorry for the person that they are kicking out.... I think we really need to have some advocates for those that are getting kicked out. [Community Workshop Participant]*

*What would be nice is.... like a cap on rent.... We never know what could go up again. I mean, is there a cap on rent? [Community Workshop Participant]*

*There is a [rental officer] in Iqaluit and for one person he does a good job of servicing the whole territory. But there are issues that overlap here ... it is hazy. When [social] housing decides to [evict], or [tenants] have been in a unit [before] and still owe money, they can't have another unit. They may have lost work or whatever.... I could talk for a week about homeless people.... A lot of small communities have no shelters of any kind. [Community Workshop Participant]*

Other participants said that the social housing calculations for rent were based on gross income assessments and work patterns that were not suited to Nunavut where work is often seasonal or based on the intermittent sale of art.

In Ottawa, Inuit are the smallest Aboriginal group (estimated at around 1,500), but the most frequent users of services for the homeless, a problem that is inseparable with



their difficulties in finding employment in the city.<sup>57</sup> Rents are high, vacancy rates low, and discrimination against people on social benefits is common.<sup>58</sup>

### Employment:

During both the interview and workshop phases of the CJSP research, participants often raised legal problems related to employment. As is the case with housing, these concerns criss-cross between civil and administrative areas of law:

*People do not understand, I guess, what's called the administrative law aspect. Compliance with regulations whether it's environmental regulations, public health regulations and employment standards.... Employees do not understand their rights as workers ... There are three things that a worker has protected by law: the right to a safe workplace (which also means the right to refuse unsafe work without penalty); the right to participate in decisions about safety in the workplace; and the third one I forget of the top of my head. [Community Workshop Participant]*

*I walk onto a job site. I am someone from the south who just appears ... maybe once a year. I tell them to do things. The past history is there will be another person that comes in six months to a year, who tells them the same things and never actually gets anything done. This is the perception I've heard ... The turnover up here for safety inspectors is such that you could always wait and start over with the next one. So why worry about obeying administrative law? [Community Workshop Participant]*

Lack of compliance with administrative law leads to unsafe workplaces and practices, and increases the potential for various claims for compensation, including civil actions for accident and injury:

*[It's] quite common here that people don't necessarily know that they have entitlements, that they can proceed through a court. I have this sense that there's been a lot of situations where [an employer may be] negligent in the operation of equipment, paving equipment, or people are ripped off by their landlords, or get shoddy services, or a whole variety of things, where ... they could have gone through the courts – and people don't do it. It's partly a cultural thing, not having information, and perhaps more because there isn't a functioning legal aid system here..... [They do] family law, and they do criminal law – but ... they're on a certificate system, and you can't retain somebody to do property law. So, the flip side of that is people will also know what the courts can't do. [Member of the justice community]*

*And one of the things about here of course is ... there's nobody in legal aid to do civil cases.... There have been a number of people who've been killed by various trucks or whatever in the communities and there's nobody to ... help them out*

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<sup>57</sup> Written communication from community workshop participant, April 2007.

<sup>58</sup> Stratton lived and worked in Ottawa between 1994 and 2001. These observations are based on her knowledge of these issues and the experiences of personal contacts. The Ontario *Residential Tenancy Act* has prohibitions disallowing rental discrimination on many grounds, but a tight rental market provides landlords with the option of taking multiple applications and making choices about tenants. It is almost impossible to prove these are discriminatory.

*with that. So, I think that would be really important.* [Member of the justice community]

The poverty law program is now addressing a range of employment issues, and the presence of this lawyer is likely to increase general awareness and compliance with regulations.

Another issue in both Nunavut and Ottawa was that of criminal records and the need for pardons in order to facilitate employment for Inuit. In Ottawa language, cultural difference, lack of southern work experience and education are also significant barriers to employment.

## **8. Parallels and Variances**

Providing legal services that are effective requires careful consideration of the local social context. Inuit culture is distinct and Nunavut is a unique young territory with a severe resource deficit. Even so, analysis of the CJSP data identifies a number of legal service needs in Nunavut that, at the basic level, mirror those reported by CJSP participants across Canada. These can be summarized as follows:

- Easy access to clear, straightforward information about legal rights, options and processes provided with written, visual and oral options.
- Available and affordable access to legal counsel when necessary.
- Adequate legal aid coverage in terms of both financial eligibility and scope of coverage.
- Alternative dispute resolution options for solving non-criminal legal problems in less adversarial ways (such as mediation, arbitration, judicial dispute resolution). In this regard recent initiatives in Nunavut have the potential to provide groundbreaking models for other jurisdictions.
- 'Unbundled' legal assistance, advice and representation when full legal counsel is either unavailable, unaffordable or unnecessary (such as, duty counsel, legal service centres paralegal assistance, community legal workers, court workers).<sup>59</sup>
- Changes to legislation, rules of procedure, or other court and legal processes that are identified as not effective in bringing about equitable resolutions.

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<sup>59</sup> Traditionally, lawyers have expected that a client will engage them to perform all legal services connected to the matter and this is called "full service." The term 'unbundling' is widely used to refer to a process that allows lawyers to offer discrete or partial legal services. Clients are then able to select which tasks they will pay a lawyer to perform and which task they can manage themselves. Increased discussion of providing unbundled services is associated with the recognition that most people cannot afford the cost of full services from a lawyer.

- The presence of, and liaison with, social service resources to address underlying social problems associated with legal matters.<sup>60</sup>

Canada is too diverse a country for there to be “one-size-fits-all” access to justice solutions, but identifying common ground where knowledge, and possibly resources, can be shared can still be beneficial. In the concluding section of this report we make specific suggestions about networks and partnerships with the potential to work together to meet the access to justice needs of Nunavummiut and all Canadians.

At the same time, we also underline the importance of differences among communities within and outside of Nunavut that must be recognized in order to create meaningful justice solutions. Development within the territory is varied and local needs and customs differ. The circumstances for Inuit in Ottawa and other urban centres must also be addressed.

The CJSP researchers have only been able to briefly visit Nunavut’s two largest communities and Ottawa, the largest Inuit community outside of the territory. We do not have in-depth knowledge of Nunavut communities or Inuit culture. Our visits, nevertheless, allowed us to make some observations about distinct conditions in Rankin Inlet, Iqaluit, and Ottawa, which we now offer.

Rankin Inlet.<sup>61</sup>



<sup>60</sup> The CJSP study focussed on the experience of communication throughout the process of a civil justice case. The service elements listed here are reflected in participants’ accounts of their experiences. These same basic service needs are also findings of the *Alberta Self-Represented Litigants Project*, and have frequently been identified in other Canadian and international reviews of civil justice.

<sup>61</sup> Photographs: left, a view of the Rankin Inlet community; right, the Rankin Department of Justice building.

Like most of Nunavut, Rankin is experiencing fast growth. It, nevertheless, retains the atmosphere of a small and close community. Inuit and non-Inuit (comprised of a range of nationalities) work closely together as equals and friends in justice, health and other services. The researchers met members of several young families from the south who had chosen to make Rankin their permanent home. Although Rankin participants identified many social and justice challenges common to Nunavut generally, they did so with optimism and a belief that Rankin was a relatively healthy community.<sup>62</sup> Distance from Iqaluit and the small communities for which Rankin is the regional centre where underlined as problematic. In particular, a need to improve the lines of communication and exchange of information between workers in Rankin and headquarters elsewhere was identified.

### Iqaluit

As the territorial capital and only city in Nunavut, Iqaluit has experienced a population growth of over 18% in the past five years. Prior to becoming a new territory, the area had little infrastructure and very few resources. The majority of the population of Nunavut are Inuit, but in Iqaluit the residents are about equally divided between Inuit and non-Inuit. Non-Inuit residents come from across Canada and abroad to work in the territory, mostly for relatively short two to five year periods.

Iqaluit is a city with many extraordinarily committed and energetic individuals devoted to finding solutions to the challenges that face the city and territory as a whole. Members of the justice community in Iqaluit are dedicated people who struggle daily to create a viable system of justice.<sup>63</sup>



<sup>62</sup> CJSP participants conveyed all of these views to researchers during their visit to Rankin, and the personal observations of both researchers concurred with the perspectives offered by the participants. It is worth noting that the families settling in Rankin specifically said that they would not live in Iqaluit.

<sup>63</sup> Photographs: left, the Arnakallak Building in 2003 when it was the courthouse; right, the new Nunavut Justice Centre.

Nevertheless, the strain on the infrastructure of the city is sometimes experienced as overwhelming. During both the interview stage of the research and the follow up workshops, participants repeatedly told researchers that Iqaluit lacked community cohesion and that they had difficulty successfully mediating community silos and cultural tensions. Some participants felt that Iqaluit “has no heart”:

*Issues of culture language and poverty all combine for a very complicated situation in Iqaluit. A vehicle for communication is missing in the community...: there is no community radio station like those broadcasting in most Nunavut communities ... CBC is only local a few hours a day. There is no real community-based newspaper. There is nothing that is about the heart of the issues that concern the community.... There is no place in Iqaluit to go to meet people. The possibilities are either a bar or a church.... When Iqaluit was smaller there was an original circle of agencies and a physical route of interaction which included legal Aid, Adult Education, North Mart and Social services. Now all are dispersed. This has had an obvious impact.... There used to be interagency meetings and these worked for a while. But then, instead of being a vehicle for problem solving they became more about bragging what their agency had done. [Community Workshop Participant]<sup>64</sup>*

In further discussion about the networking and communication issues Community Workshop participants agreed that it was hard to get people in Iqaluit to attend public meetings.<sup>65</sup> Unrelenting work demands are one major reason for this. Participants also suggested other contributing factors related to the large number of transient residents in Iqaluit:

*Visiting southerners on short-term contracts have an attitude and language of ‘doing time’. Their mentality is they are there for résumé building. Or, alternatively, are just putting in time until their pension. They talk about when they are ‘getting out.’ .... Even among Inuit residents in Iqaluit, they are all from other communities. They tend to come to Iqaluit for periods of time. They are not willing to mix into a new community and hang out with others from their [home] community or region. [Community Workshop participant]<sup>66</sup>*

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<sup>64</sup> The researchers consider the views reflected in the quote from this participant to be very important. We feel that it represents the lived experience in Iqaluit of attempting to cope with a fast-changing culture and very inadequate resources. Our observation is that communication networks are not functioning particularly well and we speak to this later in this report when we address initiatives for change. The old courthouse shared a very crowded but centrally located Arnakallak Building with legal aid and other services. The new courthouse provides much needed space but is removed, in both appearance and location, from the central “route of interaction” this participant mentions. We must also note, however, that the Nunatsiaq News is based in Iqaluit and appears to be a local paper that addresses local issues, even controversial ones at times. Iqaluit CBC radio showed interest in the CJSP research visits.

<sup>65</sup> The researchers found organizing the research in Iqaluit, especially the community workshops, extremely difficult, especially from a distance.

<sup>66</sup> The researchers note that they were made welcome and included in social get-togethers during all three visits to Iqaluit. On arrival in Rankin Inlet they were greeted at the airport, and made extremely welcome in the community.

## Ottawa

Compared to Nunavut, Ontario is a very wealthy province. Ottawa has a full range of legal and social services and in theory, access to justice should be easier for Inuit residing in Ottawa. There is no evidence that this is the case.<sup>67</sup>



Inuit people form a small percentage of the Ottawa's total population, but they are a group that experience very significant barriers to accessing justice and social services. While not all Inuit residing in Ottawa are originally from Nunavut, Ottawa service providers reported that most are. Although some Nunavummiut choose to go to Ottawa to seek employment or higher education, many are sent to that city for health, treatment or justice services that are not available in Nunavut. When a Nunavut resident is sent outside of the territory by the Department of Justice, costs of return to the province are paid. However, CJSP participants explained that when one family member must come to Ottawa for services others often follow to remain close. Furthermore, choosing to go to Ottawa is often a constrained choice between having or not having an opportunity.<sup>68</sup>

Inuit participants and service providers in Ottawa expressed many access to justice concerns, most especially those related to access to basic social rights and entitlements such as to housing, health services, and social benefits. For Nunavut Inuit sent to Ottawa for services, the cultural and language barriers are insurmountable without assistance.

For an Inuk who has not previously travelled outside of Nunavut, everything about Ottawa is bewildering and alien. Inuktitut is frequently the only language spoken by Inuit who are sent to Ottawa to access services not available in Nunavut. Interpreters in Ottawa are few and often restricted as to who they may assist. It must be strongly

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<sup>67</sup> Photograph: South-central Ottawa.

<sup>68</sup> Even in the case of higher education, there is very limited choice within Nunavut. Arctic College is the only post secondary institution so residents must leave the territory to attend university. There is also the issue of Nunavut residents helping their own people outside of the territory as one young man explained: "I moved from Nunavut for school four years ago. I was a Nunavut resident until I finished school, then I stayed for this job and now I'm an official resident of Ontario. NTI needs to step in. The organization is....supposed to serve Nunavummiut."

emphasized that Inuit in Ottawa are subjected to virulent overt racism.<sup>69</sup> Furthermore, most Ottawa service providers are unfamiliar with Inuit customs, and too often lack even basic knowledge about Nunavut. Even when discrimination is not intended, a lack of basic knowledge of Canadian geography and culture frequently leads to systemic discrimination and insult:

*According to Employment Canada, my uncle is an immigrant because they don't have Inuktitut on their list of languages. [Community Workshop participant]*

*I came to Ottawa with my Inuit children and was told they were so difficult and different I should put them in an English as a Second Language program and that we had to go to 'welcome' programs for New Canadians. I had the children's school reports from Nunavut. [Community Workshop participant]*

As well as the barriers of language and culture, jurisdictional issues and restrictions have a strong and negative influence on access to justice and other services for Inuit living in Ottawa. As participants outlined, strict adherence to jurisdictional rules and regulations leads to situations that should not be considered acceptable anywhere in Canada:

*There is a general lack of services in the north which forces people to come to Ottawa... Then, the Nunavut government says, "It's not our responsibility – it is Ontario's." But Ontario feels it is Nunavut's responsibility – that the Nunavut government is dumping people it cannot treat. [Community Workshop participant]*

*Urban Inuit are left out of all of the services and entitlements available to Inuit in Nunavut and to First Nations peoples. A unilingual Elder was left in an Ottawa hospital for days with no translation services because she lived in Ottawa and had not come from the territories. So the interpreters who were in the hospital walked right by her bed and were not allowed to translate for her. When an Inuit person dies in the city there is no help for the family to bring that person home. An Inuit child who grows up in the city and graduates from high school and wants to go to university cannot access any post-secondary funds. They are rejected because they are a non-resident of the territory. And they are not eligible as an Aboriginal person either. Inuit people in the south are there for many reasons: They have fled violence; they came for health reasons; they are not welcome home because of biases in the communities against such things as having AIDS or being homosexual. There is no support in the Nunavut Land Claims Agreement, nor from the Nunavut government for urban Inuit. Sometimes individual cases are considered, but it depends how much pressure someone can bring. Many Inuit people are homeless, living with addictions, not entitled to income support. [Inuit Participant working in Ottawa and Nunavut communities].*

*A young Inuit woman was lost in Ottawa for six hours. A high school principal brought her to my office. She was trying to find her way back to her boarding house. She had*

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<sup>69</sup> Inuit participants and service providers in Ottawa repeatedly made this point and Stratton personally experienced the prevailing attitudes. Leaving an Inuit service location in a taxi, the driver actually asked her, "What is a nice white woman like you doing at a place like that, full of Eskimo drug addicts and prostitutes?"



*been to the hospital – we can't even get a person back from the hospital to where she is sleeping. It would be traumatic being lost for six hours, not knowing where you were and not being able to make yourself understood to get help. [First nations Community participant, Workshop participant]*

When legal matters cross jurisdictional boundaries they too become more complicated to process and enforce, but at present, jurisdictional boundary considerations result in an absence of responsibility for ensuring access to basic rights or to civil justice resolutions when required. This situation is unacceptable anywhere in Canada. Cross-jurisdictional arrangements must be made to ensure that Inuit and all Canadians, regardless of their origins, can access services that provide and protect social and legal rights and ensure just resolutions to disputes.

## **CREATIVE JUSTICE FOR NUNAVUMMIUT Recommendations for Achieving the Vision**

*Philosophically speaking, the driving force behind Nunavut is to be able to develop programs that are based on Inuit philosophy. It has only been just recently that there seems to be a consensus developing about what that means.... And there are some principles of justice ... that are beginning to evolve.... They're wonderful principles ... that [are] not inconsistent with the principles of what the rest of Canada would like. ... One of the main components of the principle of justice of Inuit culture is to restore harmony within the community. Well, if you resolve an issue through mediation - and if people are happy with that result – then that is Inuit cultural philosophy. ... [to] see if there's some way that harmony is restored within the community, to see if this restores the relationship between the two people that are combating with each other - so that they can live in the same community together ... To see if there is some way in which the person – who in a sense was wronged – believes that whatever has happened has helped that person to heal a bit. And the person who has done the wrong – if there is such a thing – that that person understands what's happened and has an opportunity to rehabilitate so they don't do it again, and that the general values of society – of respect, of harmony and peace – are reinforced. ... Well who in Canada wouldn't like those values? (Justice community member]*

As the quote above eloquently illustrates, *Inuit Qaujimaqatunqit* philosophy of justice captures an inspirational vision of what justice should be. All Canadians would welcome a process that generates respect, harmony, peace and rehabilitation. This is the vision of justice for Nunavut. The young territory has a lot of challenges and breaking new ground is hard. Inevitably there will be roadblocks along the way. Some innovations will prove to be imperfect, or even a mistake. What is important is that the knowledge gained from the attempt is applied to developing change that is successful.

Nunavut also has much to be proud of. Inuit people have a rich cultural history on which to build success. Creating a culturally appropriate system of justice is a vital part of building an overall system of governance that corresponds with *Inuit Qaujimaqatunqit* values. The project is, however, a massive undertaking and CJSP Participants were



acutely aware of the obstacles that must be overcome. It would not be helpful for this report to minimize or gloss over the challenging context in which Nunavummiut live and work. The CJSP findings, nevertheless, reveal inspiring dedication to improving the legal services in Nunavut. Many justice community members work tirelessly to increase access to justice for Nunavummiut in Nunavut and Ottawa. Since the first visit to Nunavut in spring 2003, the CJSP researchers have been privileged to observe the evolving Nunavut system of justice put in place the foundational steps on which further successes can be built. Particularly inspiring is the amount achieved since the community workshops took place in September 2006. Several of the draft report recommendations required revision because initiatives addressing the issues are already in place. The following list summarizes some of these remarkable achievements:<sup>70</sup>

- Prior to the formation of the territory of Nunavut, any civil action had to be filed with the superior court in Yellowknife. Now there are full court services in Iqaluit and court workers in many communities.
- Simplified civil small claims rules, forms and a self-help manual were established in October 2007.
- The Nunavut *Human Rights Act* was put in place in 2003. A Human Rights Tribunal is now active and based in Coral Harbour, one of only two Canadian tribunals utilizing a direct access model.
- The new Nunavut Justice Centre is designed to be a facility that will provide much needed community meeting space, with the main courtroom also accommodating ceremonies, lectures and council meetings (Daley, 2004). Although the location is removed from the central area of the city, it is now located in a developing area close to Nunavut Arctic College.
- Court and legal services are steadily increasing bilingual Inuit personnel.
- The unique Akitsiraq Law School Program has graduated a cohort of Inuit law students, who have now completed articling and are beginning their careers as lawyers.
- Much progress has been made in the area of family law, both to bring attention to the issues of violence and to increase access to civil legal rights related to family disputes. The introduction of the *Family Abuse Intervention Act* in 2006 is associated with a variety of initiatives to increase community-based access to justice, including a mediation program that combines Inuit and Canadian traditions and experience.

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<sup>70</sup> This list is not all-inclusive. We have listed important achievements that we have been made aware of, but there may well be others that are equally remarkable. As well, new initiatives are constantly evolving.

- Funding has been dedicated to the employment of Community Justice Outreach Workers in 25 Nunavut communities, with the majority of these positions already filled.
- The recognition in Nunavut law of custom adoption is unique in Canada.
- Civil and family legal aid programs and services have grown. The service of dedicated legal aid staff to the community has been a major factor in increasing knowledge among Inuit about their rights under the law. This has been achieved in spite of uncertain funding and high staff turnover.
- The Poverty Law Program has addressed barriers to accessing legal aid for civil and administrative legal matters in a groundbreaking way that can provide a model for other Canadian jurisdictions.
- Despite limited resources, justice community workers have created innovative PLEI materials (such as the *Wills Kit*).

CJSP participants were well aware that there is much more work to accomplish and of what will be needed to achieve this. Primary is the need for more resources – not just to create legal services, but most importantly to build social infrastructure. We are aware of this as we now offer recommendations that flow from the CJSP data concerning the key issues presented in the previous section of the report.

We are also sensitive to the fact that the CJSP researchers are ‘outsiders’ who made only three brief visits to Nunavut. We do not claim any expert knowledge. The power of the CJSP research is that it captures the lived experiences of the people who do have the relevant knowledge. Even in this we recognize the limitations in Nunavut. We were only able to visit two territorial communities plus Ottawa and we were only sometimes able to provide interpretation, thus reducing the number of Inuit who could participate. We have, however, continued to receive input from our Nunavut partners and participants and we hope that the information, recommendations and networking suggestions in this report will prove useful to achieving the Nunavut vision of justice.

With this in mind we present recommendations for the following key issues:

1. Access to public legal education and information
2. Access to legal services and legal professionals
3. Litigants with unequal power
4. Enforcement of court rulings, laws and entitlements
5. Specific issues related to Family, Civil and Administrative Law
6. Geographic parallels and variations
7. Creating an evidence base – A recommendation for research

## **1. Access to public legal education and information (PLEI)**

CJSP participants in Nunavut rightly expressed concerns about raising awareness of legal rights ahead of ensuring access to services and processes to ensure those rights. However, citizens who are unaware of their rights under the law cannot raise their voices to insist that appropriate services are available. Furthermore, PLEI is an important tool for educating people working within justice and social service sectors, who are in a position to assist others in accessing justice in the broadest sense. It is therefore recommended that:

1. An inter-agency working committee on PLEI is formed to:
  - a) Undertake, or commission the undertaking of, an inventory of PLEI materials and programs currently available in Nunavut.
  - b) Liaise with national justice community to identify PLEI innovations and research on effective forms of PLEI, that can be helpful in the development of PLEI for Nunavummiut.
  - c) Assess the current PLEI resources and responsibilities within Nunavut and ensure all justice community members are familiar with these.
  - d) Seek funding for research to evaluate the effectiveness of PLEI media and approaches.
  - e) Establish a central, publicly accessible depository for all PLEI materials for both electronic and hard copies, and ensure widespread knowledge of this location.<sup>71</sup>
  - f) Identify needed PLEI materials and programs and, in so far as it is possible to do so, prioritize these needs along with timelines for developing each resource.
  - g) Actively seek funding from within Nunavut and across Canada to create needed PLEI resources and to translate materials into Inuktitut, French and English as appropriate.
  - h) Establish a communication network with justice and social service providers in Ottawa and other urban centres known to have Inuit populations, for the purpose of sharing with them PLEI materials in Inuktitut, French and English.

## **2. Access to legal services and legal professionals**

There are many issues to be considered in providing effective access to legal services. New services are constantly evolving in Nunavut. However, the existence of a service does not ultimately translate into accessibility – as is demonstrated by the inaccessibility of services to Inuit in Ottawa. Prejudiced or uninformed attitudes are a significant barrier to access to legal services and legal professionals. CJSP participants were convinced

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<sup>71</sup> We suggest that the Law Library located in the Nunavut Justice Centre would likely be a viable location to house hard copies of PLEI materials and to host the electronic depository. Improvements to the current site would be needed for this to be effective and we understand that there are plans to redesign the site.

that locally based access to information and assistance, provided by dedicated Inuit and non-Inuit Nunavummiut, is critical. In response to this recognition, 25 Community Justice Outreach Worker positions have now been created.

Without question, a high turn over of non-Inuit staff from outside of Nunavut hampers the development of a culturally appropriate justice system. Culturally aware and skilled legal service professionals from the south will nevertheless be essential to the development of Nunavut for some time to come. Gaining, training and retaining new Nunavummiut is vital. A mutually positive experience – even if short-term – can go a long way to spreading cultural awareness and understanding about Nunavut across Canada. Increased general awareness will assist in providing appropriate services to Inuit living in Ottawa and other Canadian cities.

We have already reported the degree of cultural ignorance and prejudice Inuit people encounter and we underline that 21<sup>st</sup> century information media leave no excuse for ‘southerners’ to arrive in Nunavut without a basic understanding of the climate, geography and colonial history. The same is true for legal and social service workers in Canadian urban centres, who have a responsibility to educate themselves about the territory and Inuit culture. At the same time, Nunavummiut – especially those who understand both cultures – have an equal responsibility to provide a welcoming and mentoring atmosphere that encourages people with valuable skills to make Nunavut their permanent home. One Nunavut participant who had come from the south reflected that “mutual communication” is needed:

*A lot of what happens for people like us ... is that you come up here from the city, you get plunked into a very different environment, nobody ever really explains much to you, and you sort of have to pick it up on your own. And you know things like IQ ... People from the south need to understand about that as well before you can really understand what it is you're doing here.... In some senses you have these two systems sitting here sort of looking at each other, not really understanding what the other person is about. And I think there needs to be a lot more explaining ... I mean the cultures have different values, but we also have a lot of common values. If people could find more common values, if they were to communicate and to understand what those values are. ... It's a very interesting experience when you put yourselves into a different culture because it [challenges] your own value system. You start to think about where your values come from. And even though we think that we're individuals and whatever, we're like generations of family history that have made you be who you are. Even though you like to think that's not the case sometimes. But it's true. I mean you have how many generations of paying mortgages right. Most of our families have been paying mortgages since the 17th century, [but] in this culture, this is the first generation. How can they be expected to know how to do all of those things that we do? And I'm sure that they feel the same way about us. [Justice community member]*

Effective access to justice requires good communication among a mosaic of appropriate services designed to meet public need. Legal representation, court services, Legal Aid

and community-based programs are all important parts of that mosaic. It is therefore recommended that:

1. The newly established Community Justice Outreach Worker program continue to be supported and evaluated to ensure effectiveness and appropriate and sufficient training and support for the workers.
2. Resources are found to establish court worker positions in all communities
3. All initiatives already in place to establish community-based justice programs be supported and evaluated with a view to coordinating, strengthening these programs and fostering collaboration that maximizes the effectiveness of program resources and personnel.
4. Effective Justice Committees be established in all Nunavut communities by building on initiatives and knowledge already locally available.<sup>72</sup> We suggest that consideration be given to ensuring that:
  - a) Committees are headed by a Justice of the Peace and include at least one male and one female Elder.
  - b) Hear preliminary minor criminal matters and reach restitution and rehabilitation solutions that are agreeable to the community as a whole.
  - c) Hear civil small claims and administrative matters with the aim of finding local mediated resolutions.<sup>73</sup>
  - d) Assist in forwarding the spirit of the *Family Abuse Intervention Act* to mediate family disputes in ways that ensure the safety of all family members, whether or not it is possible for all members to remain in the community.
  - e) Assist in making suitable arrangements when family members must be protected and ensuring that any related court orders and rulings are in fact viable in the context of the community.
  - f) Assist in providing PLEI materials and programs to the community.
  - g) Provide local knowledge and ongoing feedback to the Nunavut Department of Justice and other justice-related organizations.
5. Court Services continue to recruit, train and involve Inuit and non-Inuit community members in the delivery of court services throughout Nunavut, with particular

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<sup>72</sup> Many Nunavut participants suggested the need for community justice committees. We are aware, however, that the recommendation is much easier to make than to bring into being. The process of establishing community committees must take into account the overall health of the community and internal lines of power and abuse of power. This will be extremely important when determining methods for selecting/appointing committee members. We suggest that it might be necessary to specially train Justices of Peace (JPs) for their role on the committee and to purposefully assign a JP to a community other than their community of origin. The JP would need to review the appropriateness of committee members to hear each case and a process that allows a community member to request a hearing outside of their community would probably be necessary.

<sup>73</sup> Mandatory mediation is part of the newly established small claims process. The emphasis we suggest is on ensuring locally appropriate and effective solutions.

consideration to increasing the provision of personnel who visit communities between and immediately before circuit dates to provide:

- a) Information about court services, court processes and other legal services.
  - b) Assistance with the completion and filing of legal forms and other documents.
  - c) Support to local Community legal workers or other community advocates.<sup>74</sup>
  - d) Support to Community Justice Committees when these are established.
6. Efforts to train and/or recruit private practice and legal aid lawyers to work in Nunavut, especially lawyers practicing in non-criminal areas, are continued and enhanced by a combination of the following activities:
- a) Continued mentoring, support and further professional development opportunities for the Akitsiraq Law School graduates.
  - b) A second cohort of the Akitsiraq Law School is resourced and commenced.
  - c) Lawyers from outside of Nunavut are actively recruited for long-term service in specific legal areas within a campaign that: accurately presents the challenges and benefits of work in the territory; includes pre and post re-location cultural education and mentoring; provides opportunities, encouragement and reward for the acquisition of functional Inuktitut.
  - d) Possibilities for lawyers with Nunavut Justice to provide *pro bono* services are explored, including reviewing current contract wording and ensuring that government lawyers are covered by law society insurance.<sup>75</sup>
5. Nunavut Legal Services, in partnership with other Nunavut justice community stakeholders, continues to review its current mandate with the intent of creating a ground-breaking and innovative vision of service that is broader and more comprehensive than that traditionally undertaken by legal aid in Canada. There is growing national recognition that traditional legal aid boundaries are inadequate and Nunavut has begun to develop a revolutionary legal aid program that can become a national model. This vision should include plans to develop the following services:
- a) Expansion (along with ongoing evaluation) of the Poverty Law Programs to ensure adequate provision of legal advice and representation for a broad range of legal problems within the areas of civil and administrative law. Ideally, this would include multiple access points involving legal workers in every community and poverty clinic services in regional centres, with electronic access from outlying communities.<sup>76</sup>

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<sup>74</sup> The recommendation for additional court service workers should occur as a supplementary effort to establishing community-based legal workers and not as a substitute for that initiative.

<sup>75</sup> We note that Pro Bono law Alberta is encouraging the involvement of government lawyers in *pro bono* activities and the law Society does insure such activities. Alberta and BC are also reviewing conflict rules relating to unbundled services. This work may be useful to Nunavut in considering this possibility.

<sup>76</sup> There are a several approaches to this kind of service across Canada. Currently in BC the Legal Services society has outreach workers and access booths in courthouses and in partnership with the BC Attorney General is establishing family and civil service hubs across the province. In Alberta, Legal Information Centres (LInCs) are being opened in regional centres as central information and referral points with in-person and telephone services and a mandate to facilitate the coordinated delivery of

- b) The creation of NLS website that is comprehensive, easy to find, easy to navigate and well-linked to other legal resources and information.
- c) One clear and simple process to apply for legal aid that is consistent regardless of the access point and the area of law involved.

### **3. Litigants with unequal power**

Differential access to legal representation and other legal support translates into a justice process that is not equal and fair. Litigants with more social, educational and/or economic power are better able to use justice system to address legal problems. Both the financial and material costs of civil legal action are high (Currie, 2007; Pleasance, 2004; Stratton & Anderson, forthcoming). The issue of litigants with unequal power is a problem across Canada and internationally, and not one that Nunavut can be expected to solve alone. A strong national recognition and response are required. However, Nunavut has the potential to lead the way as the territory evolves a unique and innovative system of justice that continues to ask “What *is* justice and how do we achieve it?” It is recommended that:

1. Effort is made to engage with a network of national and international stakeholders concerned with ensuring effective and egalitarian justice processes.
2. The evolving Rules of procedure, administrative processes and application mechanisms in Nunavut are created to be clear, simple and readily accessible.
3. Continuing to develop a comprehensive poverty law program is made a top, inter-organizational priority.

### **4. Enforcement of court rulings, laws and entitlements**

Ineffective enforcement of court rulings, laws and entitlements was also an issue raised by CJSP participants across Canada. Enforcement is another aspect of justice that is strongly influenced by the power of the litigant. If legal rules and decisions are not enforced, then justice is not served and our legal systems become ineffective. Even well-resourced regions of Canada have considerable room to improve in the area of enforcement. In geographically vast and under resourced areas enforcement is inevitably difficult and the problems are not easily overcome. There are, however strategies that can help and it is recommended that:

1. Comprehensive categories for the collection of statistics are developed concerning orders and enforcement. Statistical categories should be

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regional legal services. Ontario has a well-established system of Legal Aid clinics. Both Alberta and BC legal Aid organizations have a province-wide law line providing information and advice and some additional legal services.

- consistent so as to allow comparability over time as well as analysis that can inform a nuanced understanding of issues in compliance.
2. Available resources are dedicated to supporting local and appropriate solutions that can realistically be enforced whether they be monetary or in-kind payment or restitution in the form of sustenance, labour or material goods. This approach is in keeping with *Inuit Qaujimaqatuqangit* and could be greatly facilitated by local justice committees.<sup>77</sup>
  3. Strong inter-jurisdictional, inter-ministry relations are established that can assist in enforcing orders across jurisdictional boundaries.

## 5. Specific Issues related to Family, Civil and Administrative Law

The CJSP findings make it very clear that access to civil, administrative and criminal justice for Nunavummiut must be considered within the broader social context. Participants repeatedly pointed out that many of the issues of injustice to be addressed are rooted in the combination of history, culture and geography that have brought about the current social conditions. This is the context in which participants asked, “What is justice?” and questioned in particular how effective the introduction of a civil court process could be in addressing social justice issues.<sup>78</sup>

International research now demonstrates that social problems (such as inadequate housing and lack of health and social support services) tend to promote entanglement with the legal system, which in turn exacerbates pre-existing social problems (Currie, 2007; Focus Consultants, 2006; Pleasance, 2004; Stratton & Anderson, forthcoming). A Nunavut justice community member described what this means for legal practice:

*Courses and training, like specific counselling training, would be nice ... you know, an ability to communicate with people at some sort of fundamental level so that you can make compelling points. I mean it's, it's not my job to diagnose anybody's mental problems, it's not my job to solve their mental problems, it's just my job to be able to explain to them what I can help them with in the legal arena.*

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<sup>77</sup> The Nunavut Department of Justice has conducted consultations that indicate most litigants prefer monetary settlements. However, the CJSP research in Nunavut and nationally (and not only in Aboriginal communities) has repeatedly indicated public interest in alternative solutions, especially where a defendant does not have the means to provide monetary compensation. We therefore continue to make this recommendation. Earlier we quoted a Participants' illustration of this process using an example of a television. Often mentioned in relation to spousal and child support was the need to accommodate payment in terms of meat and skins. Another example is that if someone damages property, the 'sentence' issued is that they must provide the labour or materials to repair that damage. Other CJSP participants have pointed out that considerable criminal justice resources are often spent to bring an accused person from a remote location, when those same resources could have been more effectively applied to supporting a community-based solution.

<sup>78</sup> We note that to a lesser extent this criticism is made across Canada. An imperative for civil justice reform arises, in part, because the system is continually faced with legal matters that have their root in social problems that are not being addressed.



*And to convince them to seek other help to solve the other problems. And sometimes that's hard because there is no one to refer them to. When you have such a lack of resources up here, you know, when somebody comes in with a fairly apparent alcohol or substance abuse problem, and wants custody of their kids, I can explain to them why a custody battle is going to be difficult. I can tell them, you know, "look, you are going to have to address you're drinking or you're going to have to address your drug abuse." But that's where it stops because we have no local alcohol treatment facility. We have no detox centre at the local level. And if they are not able to afford to go elsewhere to do that, then that's where, you have a problem - I can't tell you, "you'll get some custody" while the problem still exists. [Justice community member]<sup>79</sup>*

Currently, Nunavut simply does not have the resources required to address its critical infrastructure needs but finding a way to do so is imperative and inseparable from ensuring access to family, civil and administrative justice rights and resolutions. Effective non-criminal systems of justice have an important role to play in creating and ensuring social as well as legal justice in all democratic societies. While court rulings alone cannot bring about successful resolutions to disputes that arise from social problems, one of the functions of the rule of law in democratic countries is to ensure citizens *do not* need to go to court to assert legislated rights. At the philosophical root, the court and administrative law systems exist to underline the expectation that laws will be obeyed. These systems must be established and their rulings must be enforceable if there is to be meaningful access to alternative out of court resolutions to disputes about social and legal rights.

The principles of *Inuit Qaujimaqatunqangit* and traditional Inuit approaches to justice differ from the western 'rule of law' approach, but at their roots they share a desire to achieve social justice and maintain peaceful communities. Therefore, the primary issue for access to family, civil and administrative law in Nunavut is to continue to find ways to blend both approaches into a system that ensures social and legal justice. Recognizing the limitations on what can be achieved by a formal system of justice when the root problems are not legal but social, the following recommendations are offered, with numbers one, two, three and five also applicable to justice initiatives in Ottawa:

1. Interagency, inter-ministry and inter-jurisdictional networks are established with effective communication and a strong mandate to jointly devise strategies that address both social and legal justice issues and develop coordinated resources and programs to meet identified needs.
2. Local and representative community involvement is ensured on all networks, committees, other working groups and in development of all justice-related processes, procedures and programs.

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<sup>79</sup> In Ottawa Tungasuvvingat Inuit operates the Mamisarvik Healing Centre, which has provided treatment services for over 100 Inuit sent down from Nunavut. However, the demand for treatment exceeds available resources. Of particular need in Ottawa are treatment services specifically for Inuit youth (Written communication from Tungasuvvingat Inuit, April 2008).

3. All family, civil and administrative law initiatives are developed and implemented with the understanding that in the everyday lives of citizens these areas of law are not discrete but interrelated and cannot be meaningfully separated from a concern with social justice.
4. The critical importance of establishing a fully functioning, accessible and enforceable system of administrative law throughout Nunavut is recognized, prioritized and adequately resourced. In order to bring this about it is suggested that:
  - a) All levels of government and all agencies funded by governments review current employment and operational practices to ensure that these are conducted according to administrative and civil law.
  - b) A coordinated and concerted campaign is launched to recruit and retain personnel to ensure consistent compliance with federal, territorial and municipal administrative law regulations
  - c) Information about existing administrative law services, both federal and territorial, be more effectively coordinated and disseminated, especially in terms of Internet access. This activity should include increased information and training for members of administrative tribunals.
  - d) The mandates of the Human Rights Tribunal, the Residential Tenancies Office and the Poverty Law Program are reviewed to identify any areas of administrative law and/or any groups of people for which assistance continues to be unavailable.
  - e) The mandates and resources of these offices be increased to allow officers to adequately meet an expanded mandate of providing access to justice throughout Nunavut, and that this expansion include, at a minimum, the provision of officers in all three major regions of the territory.
  - f) Multiple access points are established for access to information and assistance about rights under administrative law, including those under federal jurisdiction (access points should be in-person when possible and by electronic means otherwise).
  - g) Collaboration and coordination is established among the various services addressing administrative law issues.
  - h) Evaluation is conducted concerning:
    - o How effectively existing offices and programs (such as the Human Rights Tribunal, the Residential Tenancies Office and the Poverty Law Program) are meeting administrative law needs.
    - o How the current system of administrative laws and related services can be approved.<sup>80</sup>

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<sup>80</sup> As we have stated earlier, the system of Administrative law and the complexity of tribunals is problematic even for most lawyers and this is true in Australia, Canada and elsewhere. There are many questions about whether direct or tribunal human rights access is the best choice that should be investigated. A useful source of research on these questions is the Australian Law and Justice Foundation at: <http://www.lawfoundation.net.au/report/eot> . Some jurisdictions have an administrative procedures Act (for example, the *Ontario Statutory Powers Procedure Act*, RSO 1990, c. S22 is available on CANLII at:

eExisting and new initiatives to increase access to justice, change legal processes and enact new legislation be systematically evaluated to ascertain their success in meeting the justice needs of Nunavummiut.

## **6. Parallels and variances**

The justice needs of Nunavummiut, and the practicalities involved in meeting these needs, vary according to locality. It is therefore recommended that:

1. All justice initiatives are assessed to ensure that they make local as well as legal sense.
2. A way is found to form partnerships and networks that can break through jurisdictional boundaries. The IQ vision of justice transcends these artificial barriers and recognizes that the current lack of social and legal services in Nunavut also leads directly to the displacement of Nunavummiut from their home communities. Rather than resolving problems, this disruption of social connections often results in additional legal issues and may exacerbate pre-existing problems.
3. Where parallels across jurisdictions are identified partnerships are formed to shared knowledge and resources for optimum effectively in meeting identified needs.

## **7. Creating an evidence base – A recommendation for research**

Justice community stakeholders across Canada and internationally are increasingly convinced of the value of research evidence to creating informed and effective policy reform and program development. CJSP participants in Nunavut were very aware of the need for evidence-based research in justice and other areas. As a young territory, Nunavut has very little social or policy research that is specific and current. When a community is involved in generating knowledge about itself, it is more accepting of identified need for change and is best able to identify existing strengths along with the most effective ways of introducing change by building from these strengths. It will inevitably take time to build a solid research base specific to Nunavut, and we hope that this report can make a useful contribution. A database/ repository of research about Nunavut has been established by the Nunavut Wildlife Resource Centres Coalition

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<http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=Ontario&path=/on/laws/sta/s-22/20080318/whole.html>

and the *Administrative Procedures and Jurisdiction Act*, RSA 200 c.A-3 available on CANLii at: <http://www.canlii.org/eliisa/highlight.do?language=en&searchTitle=Alberta&path=/ab/laws/sta/a-3/20080314/whole.html> . It may be valuable to research the effectiveness of such *Acts* to determine if such an approach would be helpful in Nunavut.

([www.nwrcc.ca](http://www.nwrcc.ca)) and expanded to include research on a wide range of topics in addition to wildlife.<sup>81</sup> We offer the following suggestions for building that research base:

1. We recommend that the efforts to construct this database and repository of research are supported and built upon by a strong and active collaboration of all organizations conducting and drawing on research about Nunavut to create a resource that:
  - a) Uses a broad definition of 'research' to determine the scope of the collection, allow a wide range of research related materials, and encourage innovative research approaches that allow the inclusion of:
    - o policy and program documents from other jurisdictions that have similar issues and concerns (such as Greenland, Labrador and other remote northern locations with Aboriginal or Inuit populations);
    - o needs assessments, community mapping reports and evaluation research related to justice initiatives that can provide examples of useful research approaches, even if the issues or context of these projects is not directly relevant to Nunavut; and
    - o oral histories and discussions with Inuit people, especially Elders, even if these have been collected informally and exist only as untranscribed audio-recordings.
  - b) Is well-known and easily accessible. This can be achieved if all contributors to the database create electronic links to the host and to the items they deposit and if host and depositors consult and collaborate on the taxonomy and search criteria employed in the database.
  
2. Research networks and alliances are strengthened within Nunavut and between Nunavut and culturally aware researchers outside of the territory.<sup>82</sup> We suggest that there are opportunities to obtain funding and form partnerships to accomplish research important to Nunavummiut, such as:
  - a) Designing and conducting appropriate evaluations of current and future justice processes, rule changes and access to justice programs.
  - b) Conducting systematic oral history research to record the important knowledge Inuit Elders have to offer future generations.
  - c) Critical reviews of pre-existing research concerning social and justice issues relevant to Nunavut and Nunavummiut outside of the territory.
  - d) Mining existing organizational records, draft reports, observational notes and staff experiences.
  - e) Other specific issues identified by Nunavummiut

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<sup>81</sup> There is a subject heading for 'Justice' in the database. The only current entry, however, is for our preliminary report provided prior to the community workshops. There are also headings for 'law' and 'legislation' although current entries are mostly related to wildlife concerns.

<sup>82</sup> In our following discussion of "Networks and Partnerships for Creative Solutions" we talk about ways that the CFCJ can potentially assist the Nunavut Justice Community to achieve its goals. Facilitating research is one way. We have begun a program, *Research in Action: Developing Networks for Evidence Based Socio-Legal Research* that includes a database of socio-legal researchers and justice community members with an interest in collaborating in relevant research initiatives (<http://cfcj-fcjc.org/directory>).

- f) Assessments of available research funding and the development of proposals to attain that funding for identified research priorities.<sup>83</sup>
3. Efforts are made to systematically collect statistics about all aspects of court and legal services. Lack of such statistics was identified as a concern by the Task Force on Systems of Civil Justice (1996).<sup>84</sup> Collecting these statistics provides an important component of an evidence based approach to policy and program development. It is recommended that:
- a) All Nunavut justice community stakeholders collaborate in identifying basic common categories for the collection of statistics. This allows maximum comparability.
  - b) Nunavut justice community stakeholders consult with justice community jurisdictions elsewhere to determine the most useful and consistent way to record statistics.
  - c) Nunavut consider becoming a pilot jurisdiction in the development of a national justice index.

## NETWORKS AND PARTNERSHIPS FOR CREATIVE SOLUTIONS

The mandate of the Canadian Forum on Civil Justice is founded on the belief that collaborative networks and partnerships for action are essential to bringing about meaningful social change. We know from experience how effective these alliances can be for creating innovative solutions that dissolve barriers to meeting access to justice needs – collectively we have the power to bring about meaningful change. Flourishing collaborative networks are essential to achieving the ideal of a system of justice that promotes harmonious communities – not just in Nunavut, but all across Canada.

From our own experience at the CFCJ and literature reporting other collaborations we have identified several important features necessary to facilitate successful alliances for change:<sup>85</sup>

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<sup>83</sup> For example, the Social Sciences and Humanities Council of Canada has special funding for both Northern and Indigenous/Aboriginal issues. The Federal Department of Justice sometimes has research funds for justice related issues as do Law and other Foundations across Canada. Identifying available sources can sometimes be difficult and writing proposals is a time-consuming art. Research partnerships are an excellent way to share the work and increase the cultural usefulness and appropriateness of the research approach and outcomes.

<sup>84</sup> Little progress has been made in this area in the last decade. Establishing a national justice index is one of the CFCJ identified research priorities (Stratton, 2008).

<sup>85</sup> There are many challenges involved in facilitating successful collaborations and it is not possible to discuss all of the issues in this report. The CFCJ is currently developing a “living document”, *Creating Collaborative Alliances for Change*, as part of an on-going project funded by the Law Foundation of British Columbia. This report is expected to be completed in 2008 and once reviewed by our BC partners will be made available on our website.

- Effective networks must be situated locally, regionally, territorially and nationally and interconnected to ensure that this situated knowledge and experience is fully shared at all levels of decision making.<sup>86</sup>
- Each network must be representative by ensuring the inclusion of knowledge and experience from all groups of people who have a stake in accessing peaceful, fair and effective resolutions to legal problems. In practice this means that such committees must cross over the boundaries instituted by government and service jurisdictions.
- Individual networks sharing a common goal (such as access to justice) must be interconnected to ensure full information-sharing and collaborative action plans.
- Successful alliances must identify good communication practices that can challenge and resolve cultural barriers, bureaucratic boundaries, differing goals and individual personalities in order to arrive at agreed goals and action strategies.
- Networks must have a clear purpose and articulated action goals and strategies
- Maintaining alliances takes time and can be demanding work. This work of maintaining networks must be resourced.

Many alliances of varying kinds are already established in Nunavut. As is the case everywhere, these networks and partnerships vary in strength and effectiveness. In this final section of the report we look at the contribution that effective local, regional, territorial and national alliances can make to achieving the Nunavut vision for a justice system that promotes fairness and is to be trusted because it is “respectful of and responsive to diversity, individual and collective rights and community needs” (Nunavut Department of Justice, 2006, p.E-1). We also consider how the work of maintaining dynamic networks can be recognized, supported and resourced, paying particular attention to how electronic communication technologies can be optimized to reduce geographic barriers. We close the report with suggestions about the specific support the CFCJ can offer to our partners in Nunavut and Ottawa. While our focus remains on justice for Nunavummiut, most of the basic ideas presented in this concluding section are relevant to achieving justice system reform in every region of Canada.

## Local Networks

*Well the beauty of Nunavut is that, we're so small that always, invariably we know the decision makers personally, and you have enough opportunity to simply just go and talk to them about whatever issue is at hand.... It's quite unique in that if you have an issue that you think deserves attention you can talk to the people who will make the ultimate decision.... It's unheard of in lot of other jurisdictions ... it's almost ridiculous. ... If I go out for lunch on Sunday I'll probably see half of the movers and shakers in town and it would be no problem for me to sit down at any one of their tables, introduce myself and start a conversation. ... You don't get the sense that there's a powerful elite that is untouchable [when] you're standing next to them in the line in the grocery store. [Justice community member]*

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<sup>86</sup> The CFCJ also has international networks and alliances that contribute to our knowledge and we do not rule out the possibility of useful international contacts to Nunavut.

As the participant quoted above suggests, the relatively small population of Nunavut and the close interactions in each community have considerable positive potential for effective networks and direct communications. Local networks maximize the opportunity for in-person spoken interaction, which is not only Inuit tradition of communication, but also the preferred form of communication among all CJSP research participants.

Local networks are vital to organizing local knowledge and ensuring it is transferred to decision makers at regional, territorial and national centres where funding, policy and program decisions are made. Without the inclusion of local knowledge, policies and programs are unlikely to succeed in meeting the needs of communities. Some Nunavut communities have flourishing local networks, however, participants in both Rankin Inlet and Iqaluit indicated that there was room for improvement. As one Elder commented:

*I like to hear at this kind of meeting. We don't get to meet on this kind of basis. Too much they just charge people and don't find the cause behind it. [Community workshop participant]*

### Recommendations

- Resources are provided to facilitate and support local Justice Advisory Committees that will discuss local justice issues, make recommendations for local access to justice initiatives, and represent local needs and concerns at regional and territorial levels.
- Each Nunavut community should have a local committee that is developed by maximizing coordination and sharing knowledge of justice resources currently available (for example cross training and resource sharing between community court workers and Community Justice Outreach Workers). Optimal success for local committees will require collaboration at the territorial level as well.

### **Regional Networks**

The minimal resources currently available to meet access to justice needs across the vast area of Nunavut inevitably means that, at least in the short term, some justice services will only be available at regional centres. Regional networks should bring together representatives from the local communities within that region for the purpose of identifying common issues across the region, developing regional priorities and unified strategies for action. Representatives from the regions should be included in territorial and national networks in order to ensure direct transfer of knowledge. For Nunavut, strong regional coordination and implementation strategies are pivotal to achieving access to justice goals.

Electronic audio-visual communication technology should be employed to optimize communications among the regional network. Efforts should be made to bring regional representatives together for in-person dialogue at minimum once a year.

## Recommendations

- Regional Justice Advisory Committees are established to discuss regional justice issues, make recommendations about regional justice priorities, suggest coordinated strategies for access to justice actions, and represent local and regional needs and concerns at territorial levels.
- Regional Justice Advisory Committees include representatives from each community within that region and select regional representatives to territorial committees.
- Regional Justice Advisory Committees are developed from any pre-existing regional networks concerned with justice issues of all kinds.
- Resources are found to support the work of organizing and maintaining these regional networks.
- Effort is made to organize additional regional committees in Ottawa and any other centres known to have significant populations of displaced Nunavummiut with the purpose of sharing relevant knowledge and concerns and of removing jurisdictional road-blocks to access to justice for Nunavummiut. These regional committees should include representation from local criminal, civil and administrative justice stakeholders.
- Inuit representatives in southern cities have additional issues to manage. Working together with other Aboriginal groups is important and can strengthen overall impact on policy. At the same time it may serve to weaken the focus and understanding of Inuit-specific concerns.
- Furthermore, both Inuit and other Aboriginal representatives feel over-extended as many southern committees request their representation. Establishing a strong committee focused on social and formal justice concerns could alleviate some of these pressures by allowing Inuit and other Aboriginal communities to bring policy and program representatives to them on a range of broadly related issues.

## **Territorial Networks**

Many decisions affecting access to justice, including ensuring basic social justice rights, are made at the territorial level by the government and other large institutions and organizations. To be effective, decisions about funding priorities, resource allocations, policies and program development and delivery need to be well-informed, ideally by evidence-based research and minimally by systematically obtained local knowledge. Local and regional Justice Advisory Committees can play a strong role in providing a sound base of information on which to base decisions. Territorial networks must, however, be inter-ministerial and inter-governmental in order to address access to justice in the social context of Nunavut discussed throughout this report. The CJSP research findings suggest that residents of Iqaluit already feel over-extended. There is frustration that current networks, partnerships and alliances concerned with justice and broader social context issues lack concrete goals and action-oriented agenda. Even so, some justice community members reported strong collaboration among key stakeholders, especially in the context of negotiating fair resolutions to disputes without resorting to court action. It is important to nurture these successful collaborations and



use them as models to activate, coordinate and consolidate territorial networks that can collaborate to further the Nunavut vision of justice.

### Recommendations

- Resources are devoted to reviewing existing networks that have a territorial mission with the goal of strengthening, streamlining and integrating these networks around a shared agenda for meaningful change that will improve access to social and legal justice. This process should include the identification and application of successful collaboration strategies
- It is ensured that territorial justice networks include representation from all groups of Nunavummiut, representation from the various jurisdictions involved in the protection of citizens' rights and the provision of justice and social services for the territory, and are cognisant of local and regional knowledge and priorities.
- There is interaction between territorial networks concerned with justice and overlapping and interrelated social and economic issues with the intent to find ways to collaborate to maximize the use of resources and influence on strategies for change.
- That justice networks at the territorial level actively seek out opportunities to interact with national networks that share similar interests and mandates, in order to maximize power and influence for action that can further access to justice.<sup>87</sup>

### **National Networks**

Flourishing, interconnected local, regional and territorial networks within Nunavut will be able to maximize what is achieved with the resources currently available to the territory. However, as CJSP participants made clear, Nunavut does not currently have sufficient resources to meet its critical infrastructure needs. To address these issues, Nunavut must gain understanding and concrete resource support at a national level.

Canada professes a commitment to access to justice for all citizens. The lack of access to viable systems of administrative and civil legal process in Nunavut (and to Nunavummiut outside of the territory) raises questions about the rule of law as described in the Canadian Constitution. If entire areas of law are inaccessible because of place of residence, then it cannot be said that the rule of law is applied equally across Canada. If people are unable to access legislated rights and entitlements, the courts, or alternative legal processes, then their options for resolving disputes are limited.

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<sup>87</sup> There are many national networks within the Canadian justice community of which our partners in Nunavut are already members (such as the Association of Canadian Court Workers, Judicial associations, the Canadian Bar Association, and the Public Legal Education Association of Canada. The CFCJ also partners with many of these organizations. It is a question of finding ways to best use and coordinate membership in these networks.

There are signs that the federal climate may now be conducive to providing additional infrastructure support to Nunavut.<sup>88</sup> In the October 2007 Throne Speech, the Prime Minister pledged:

*[The] North needs new attention. New opportunities are emerging across the Arctic, and new challenges from other shores. Our Government will bring forward an integrated northern strategy focused on strengthening Canada's sovereignty, protecting our environment and heritage, promoting economic and social development, and improving devolving governance, so that northerners have greater control over their destinies. To take advantage of the North's vast opportunities, northerners must be able to meet their basic needs. Our Government will work to continue to improve living conditions in the North for First Nations and Inuit through better housing [Government of Canada, 2007, p.3]*

We suggest this commitment can provide the opportunity to gain Federal funding for both social infrastructure and additional supports to ensure a culturally appropriate system of justice that protects the right of northerners to meet their basic needs and participate equitably in economic development and employment. Making the case for Nunavut will require strong, unified liaisons for collaborative planning and resource building within and outside of Nunavut.

Another constitutional issue raised by CJSP participants was a need to evaluate the adequacy of the Nunavut Land Claims Agreement. The NCLA was unquestionably an outstanding achievement. Nevertheless, some participants tentatively suggested that perhaps it was time to revisit the NCLA and negotiate additional federal support for structural development and the assurance of citizens' rights under the Canadian constitution.<sup>89</sup> As one participant put it:

*I'm sort of reluctant to talk about this at all, but I do wonder if perhaps the Land Claims deal wasn't perfect? Perhaps mistakes were made and Nunavummiut must explore this for the future. See if it is possible for local leaders to ask if the deal is working or if it needs to be re-negotiated. [Community Workshop Participant]*

Whether the course of action is to actually renegotiate the NLCA, or to work out another form of agreement, collaborative alliances among key Nunavummiut working for justice in the broadest sense will be a necessary and powerful part of a successful process.

At a more everyday level, the participation of Nunavummiut in national justice related networks raises awareness and cultural understanding across Canada. It promotes an

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<sup>88</sup> We note here the report of the Newfoundland Labrador Government (2006), *The future of our land. A future for our children, a northern strategic plan for Labrador*. Many of the issues and goals in this plan mirror those in Nunavut and this document may be a useful resource and may also indicate ground for inter-provincial/territorial collaboration.

<sup>89</sup> The Nunavut Lands Claims Agreement is a constitutional document currently before the courts for interpretation. These issues were raised by CJSP participants and it is important therefore that we record these views, which were expressed both by lay persons and justice community members. Differences among agreements and laws governing different Aboriginal groups impacts equal access to justice and may result in inequitable outcomes. This point was also raised by other Aboriginal participants in the CJSP.

exchange of knowledge about justice reforms and program initiatives that can be of benefit across Canadian jurisdictions. Increased understanding about Nunavut and the needs of Nunavummiut in Ottawa and other urban centres will hopefully also promote resource partnerships that can benefit the development of access to justice for Nunavummiut,

## **Resourcing and Nurturing Networks**

Forming and maintaining flourishing networks that collaborate effectively requires work that can be time consuming. Convening a group of people and keeping them in touch and fully informed is a demanding task. CJSP participants, in Nunavut and elsewhere, recognized that partnerships and collaborations are necessary to achieving social change, effective policy and successful programs. It is our observation, however, that the amount of work this takes in practice is seldom recognized in the form of material resources. At a minimal level, it must be part of someone's specific job description to provide the convening support that all networks require. Assigning network maintenance as an important part of an existing staff position can be achieved within currently existing resources, but it does mean re-evaluating current workloads and duty priorities. Opportunities might be sought to create a network coordinator for an organization, or perhaps for the territory.

For Nunavut, providing opportunities for Inuit to give oral input into the development of legislation, policy, and programs at local regional and territorial levels is costly as it frequently requires interpretation and travel costs. The same is true for providing opportunities for members of the justice and social services community to come together regionally and territorially. We are convinced that these are necessary investments in the creation of culturally appropriate justice but recognize that the resources to put this into practice may be lacking. The CFCJ now ensures that new applications for funding include strong arguments for resources to support successful collaboration as an essential component of all projects and programs. We have been successful in making our case and recommend this strategy.

We also recommend seeking ways in which more affluent national justice community network members and partners can assist in providing the network development and maintenance resources essential to reaching the Nunavut vision of justice.

## **Optimizing Electronic Communication to overcome Geographical Dispersion**

While direct in-person oral communication may be the ideal, it is clearly not always possible in a country as vast as Canada. Electronic communication media continues to increase our ability to exchange information in a variety of ways, most particularly to virtually access information and to communicate instantly across a distance.

Without telephone, fax and e-mail, organizing the CJSP research in Nunavut would have been much more difficult. During our visits, we observed that Nunavummiut make

good use of any available communication technology, and that these technologies improved across the four-year research period. In some ways the Nunavut justice community, especially the Court of Justice, take the lead in the application of available technology. Chambers applications and some court proceedings are routinely conducted by telephone. Video conferencing for witness testimony is now frequently utilized and this equipment is also being applied to administrative tribunal hearings and staff training initiatives.<sup>90</sup> Nevertheless, Nunavut communications technology faces some challenges that are more difficult to address than is the case in most of Canada. In part, this is tied to the general shortage of infrastructure resources in Nunavut and geographical issues that make satellite connections precarious. The latest reports from the Nunavut justice community suggest that access to computers is high throughout the territory and as new technology and equipment become available it is well utilized. However, this research has identified potential to improve the application of current resources and to add recent and inexpensive web-based communication options.

The CSP research in Nunavut, including input during the report review, also points to a need to increase communication and information sharing among justice community members and most especially between the regional centres where legal services offices are located. This particular barrier to communication was a key finding of the CJSP research nationally. Nunavut has vast distance to address, but the advantage of a relatively small justice community that can work together to establish strong communication exchanges.

Our primary recommendation is that one of the Nunavut justice sites (agreed upon by all stakeholders) becomes the gateway to all justice related information relevant to Nunavummiut, both justice community members and lay people. We further identify as two key related areas, improvements to current websites and options for real-time audio-visual communication.

### Enhancing websites

A well-designed website can be a very efficient means of sharing information. One site can offer pages that provide PLEI for the public; access to actual court documents and forms – including the ability to file electronically; access to information restricted to legal professionals; a format for posting of news and comments; direct links to depositories of documents and direct links to other information on the Internet. The use of legal information websites by the justice community and members of the public was, however, a much-debated issue in the CJSP findings nationally. On the whole, members of the justice community tend to over-emphasize the advantages and overlook the limitations of existing websites. Based on their experience of trying to use these sites, the public were quick to point out the latter, as one Nunavut participant illustrated:

*I would have been very inclined to go to a website and just go through [and see] what needs to be done, what process exists. But let [the website] be done in a way that I'm*

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<sup>90</sup> Written communication, justice community partner, April 2008.

*going to understand. Like the words 'writ of execution', it sounded to me like the sheriff walking out of town with a lasso, it just doesn't make any sense. But if you say, well, we're just going to transfer the file from one place to another and you're going to get your money, oh, ok, I get that.* [Member of the public involved in various family law issues]

The point this participant makes is relevant to all PLEI, whether on websites, in pamphlets or delivered orally. But, when it comes to websites there is an additional factor of organization to consider. Our participant said she would have liked to “just go through” and find out what she needed to know and to do, but our research shows that many websites are extremely dense and difficult to navigate. Furthermore, participants told us that what they wanted was one site to go to that provided all the information needed, or at least clear and direct links to other sources if necessary.<sup>91</sup> One of the most common problems with justice community sites, including those in Nunavut, is that they require users to know exactly what it is they are looking for from the start and the public seldom have this advantage.<sup>92</sup> As is the case in most of Canada, there is room for the Nunavut justice community to improve the PLEI function of their websites by including plain language explanations of the legal system and associated processes and by creating more accurate links to related information and services.

Justice websites can also play an important role in informing all members of the justice community, by posting justice news, links to resources and an opportunity for dialogue via comments posted about news items. We suggest that this is an area where present resources can be better utilized and shared.<sup>93</sup> Well-designed websites are invaluable. We are aware that several major stakeholders in Nunavut currently wish to improve their sites. We recommend that:

- The effective organization and design of justice and legal service websites is made a priority.

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<sup>91</sup> Both of these findings were present in the CJSP research nationally. However, the problem of confusing and/or inaccurate websites was heavily underlined in the *Alberta Self-Represented Litigants Mapping Project*, when trained researchers with university education had many difficulties using these sites.

<sup>92</sup> To illustrate this point: the Nunavut Court of Justice site provides Rules of Court in three languages, but there is no explanation for the public about what these rules are and why a litigant might need to understand them. The Department of Justice site provides a menu of divisions within that department, but no explanation of what each division does. The site makes a lot of legislation and Bills available, but there is no lay explanation of what people would need to look for to find out their rights - for example, residency or employment. The Legal Services page is not currently operational ( June 4, 2008) and was previously very basic. As we note earlier in our report, there are information materials such as the “Wills Kit” available, but our researchers were unable to find it via the justice community web pages. Our trained researchers could not find information on the Human Rights Tribunal.

<sup>93</sup> The CFCJ has found the use of blogs associated with its regular website to be very successful. The site now includes a blog restricted to staff and Board members and a public access blog that allows for regular posting of civil justice news. The public news page acts as the website home page. See <http://cfjc-fcjc.org/news/?cat=2> . While we expect that there are still ways in which our site can improve, we have received excellent feedback to the changes that we have made in the past year. We offer our site as an example that is up-to-date, easy to find and navigate, very accessible and informative. We welcome suggestions on further improvements!

- Organizations begin researching site effectiveness by attempting to locate their own from an 'outsider' perspective, by conducting Google searches, by organization name, legal problem, and type of service required (in lay language).
- An inter-organizational web access committee is formed, that also includes lay people, to ensure the websites are all accessible and interlinked (there can never be enough points of entry as long as they all have clear pathways to the required information).
- Technological expertise is sought to ensure website design is easy to use and effective.<sup>94</sup> There are a number of options for accomplishing this: hiring an outside technician to carry out tasks at a distance (including site maintenance); contracting an expert to come to Nunavut, create the websites and train local personnel to maintain them; sending local personnel for special training to create and maintain local websites.

### Virtual communications in real-time

Electronic communication equipment can now provide a range of possibilities for interactive communications across distance, from almost anywhere. The Nunavut Court of Justice has recently increased its capacity for video conferencing. Cell phones have become a standard piece of business equipment, making it far easier to keep in touch when travelling. The latest versions allow us to access e-mail, Internet and instant messaging services as well. Our lap-top computers come equipped with telephone, messaging and webcam capabilities. Some of this technology offers an inexpensive option for video-linked interactions.

Although interacting electronically is inferior to meeting in person, being able to see each other as we speak is an improvement on mere telephone or e-mail connections. The combination of telephone service, webcam connection and instant messaging is easy to install on most computers.<sup>95</sup> People with physical disabilities are also much assisted by technologies that enable them to connect and communicate through virtual networks. These types of interactive technology open up several inexpensive possibilities for justice service delivery in remote areas. For example:

- Community legal workers and individual litigants can connect in real-time with lawyers, court services and other professionals to receive help, legal advice and supervision.
- Some preliminary court hearings can be held via web-cam links, thus reducing congestion on circuit court dockets.<sup>96</sup>
- Senior civil and administrative lawyers located in the south can provide expert assistance and mentoring to lawyers and articling students working in Nunavut.<sup>97</sup>

<sup>94</sup> Software to create and manage websites has become increasingly sophisticated in performance but also simpler to use and maintain. The CFCJ librarian and webmaster is available to consult on the possibilities.

<sup>95</sup> Windows packages include MSN messenger. Skype is a free and popular long distance phone software that includes an instant messaging option and is webcam compatible ([www.skype.com](http://www.skype.com)). There are various other options available. A reliable Internet or cell phone network connection is necessary, and this may still limit the use of these media in some areas of Nunavut.

<sup>96</sup> Webcam connections to community halls are a much less expensive option to full-scale video links.

- Justice community members can use instant messenger for real-time communications, which can be particularly useful when on circuit.<sup>98</sup>

In-person oral communication may continue to be the preferred and most effective communication choice. Increasingly, however, electronic communication technologies offer viable and inexpensive ways to communicate across distances and to establish effective knowledge-sharing networks.

### **What can the Canadian Forum on Civil Justice contribute?**

The CFCJ mission is to bring together “the public, the courts, the legal profession and government in order to promote a civil justice system that is accessible, effective, fair and efficient.” Networking and collaboration are key to this mission and the CJSP project is a strong example of the power of stakeholder collaboration at every level of the Canadian civil justice system. The project involved partners and participants from senior government administrators and chief Justices to courthouse counter clerks and security officers across Canada. The research could not have taken place without the support of key stakeholders and the findings would not have resonated with the justice community without the willing participation of a wide range of members. As the CJSP research unfolded, the network of collaborators grew, and this continuing partnership is critical to action flowing from the research findings. Members of that collaboration remain dedicated to building local and national alliances with the power to bring about constructive change to Canadian justice systems. Members of the Nunavut justice community are among those partners.

Our mandate and our national network of justice community partners facilitates the following potential contributions from the CFCJ:

- *The ability to circulate this report within Nunavut, and among the national justice community and other relevant stakeholders.* Previous reports drawn from the CJSP findings have received strong attention and have contributed to a growing recognition within the justice community of the importance of research to informing policy and program decisions. In the case of *Balancing the Scales: Understanding Aboriginal Perspectives on Civil Justice*, we were able to attract attention from other relevant ministries such as those overseeing child and family matters. Several national stakeholders have already requested this report be provided to them as soon as it is released.
- *The ability to inform and support action to improve access to justice.* Findings and recommendations contained in previous CJSP reports have encouraged justice community stakeholders in British Columbia and Alberta to form alliances

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<sup>97</sup> The medical profession has utilized these kinds of electronic connections to provide medical consultations and supervision.

<sup>98</sup> Staff at the CFCJ find messenger communications very useful in and out of the office for passing or requesting urgent information. There is no delay as can be the case with e-mail servers and documents can be transferred this way.

around shared goals and resources to achieve access to justice goals.<sup>99</sup> It is hoped that this report focussing on Nunavut can have an equally positive role.

- *Help with website development.* Website development and maintenance takes time and resources that are often in short supply within Nunavut. The CFCJ and some of our national justice partners have in-house capacity for developing user-friendly websites that provide easy navigation and extensive information storage and retrieval. The CFCJ could offer some direct assistance with website design and management or encourage similar *pro bono* contributions from other justice community partners. Depending on what is most useful for Nunavut, assistance might involve the management of Nunavut websites from a distance, and /or the provision of training for justice community staff in Nunavut.
- *Electronic storage and access to information.* The CFCJ website already hosts a number of information databases, such as our Clearinghouse, the Inventory of Reforms and the Directory of Socio-Legal Researchers. There is also a page offering many links to justice organizations. We now regularly post news about civil justice, including the release of reports, the launch of new programs and other events or information-sources of interest. We would be willing to use our resources to assist our Nunavut partners with sharing information in ways that they identify as useful.
- *Facilitate network and partnership development.* As part of our overall mandate we can assist in identifying concrete ways in which the national justice community can unite in partnerships to assist colleagues in Nunavut and across the country to achieve the shared goal of a respectful civil justice system that promotes peace and harmony.

Most importantly, the action research and review process that has informed this report has begun a dialogue with Nunavummiut about how we can best support justice system stakeholders in Nunavut and Ottawa to reach their inspiring vision of justice. *Inuit Qaujimaqatuqangit* provides an answer to the question “What is Justice” – not only for Nunavummiut but for all Canadians. We ask our partners to continue to help us identify concrete ways in which we can support their efforts to make this vision a reality.

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<sup>99</sup> In British Columbia see the Supreme Court Self-Help Information Centre (<http://www.supremecourtselfhelp.bc.ca/>). British Columbia is now developing ‘Hub’ justice service centres with a broad and integrated service access focus (<http://www.ag.gov.bc.ca/justice-reform-initiatives/publications/pdf/CivilJusticeHub.pdf> ; <http://cfcj-fcjc.org/inventory/detail.php?lang=en&id=54> ). In Alberta three Legal Information Centres have been opened (<http://cfcj-fcjc.org/publications/srl-en.php> ; <http://www.albertacourts.ab.ca/CourtServices/LInCLawInformationCentres/tabid/275/Default.aspx> ).



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