



LEGAL AID
RESEARCH SERIES

LEGAL AID COURTWORKER, AND
PUBLIC LEGAL EDUCATION AND
INFORMATION NEEDS IN THE
NORTHWEST TERRITORIES
Final Report



Legal Aid, Courtworker, and Public Legal Education and Information Needs in the Northwest Territories

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Focus Consultants



Programs Branch



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

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Executive Summary

Background

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

Methodology

The study involved 87 key respondent interviews with deliverers of legal aid, Courtworker services and PLEI services, as well as other criminal justice and social service respondents familiar with those services. In addition, statistical data were gathered from the Department of Justice of the Government of the Northwest Territories (GNWT), the Legal Services Board (LSB) and the GNWT Bureau of Statistics. A focus group was held in Yellowknife in August 2002 to reflect on the priority, rationale and strategies for needs that had been defined to date.

Impacts of Court Structure, Geography and Culture on Legal Aid

Defined key macro-characteristics impacting legal aid delivery are:

- The Aboriginal population is 48 percent of the territorial population, and forms a majority in 28 of the 31 communities outside of Yellowknife.
- There are resident courts in Yellowknife, Hay River and Inuvik, with all other communities served by circuit courts.
- Access to communities in the north of the territory is predominantly by plane.
- A significant role is played by Justice of the Peace (JP) Court, which deals with territorial offences and many summary criminal matters, especially on guilty pleas.

Thus, to a significant degree, the legal aid delivery is adapted to the rhythm of the circuit system. Furthermore, the role of Courtworkers is critical in bridging between the court system and Aboriginal populations, and in filling needs in the JP courts.

Legal aid, both through the system of “presumed eligibility” and actual legal aid representation, serves approximately 70–75 percent of criminal cases in the territories, and this total is augmented by Courtworker services. The volumes of both criminal legal aid approvals and of criminal cases in Territorial Court have remained relatively constant in the past three years, although, by both measures, youth matters have increased.

A high proportion of Supreme Court trials by jury (as opposed to judge alone) is a driver of legal aid costs.

Private bar respondents who do legal aid work stated that fees on tariff are inadequate. In general, there is a small pool of northern lawyers to draw upon for tariff work, and it is difficult to recruit skilled practitioners for staff positions.

The percentages of denials of civil and family legal aid applications (averaging 61 percent and 40 percent respectively over the past three years) are significantly higher than for criminal matters (approximately 11 percent for adults and 8 percent for youth over the past three years).

Federal contributions to the delivery of legal aid have remained close to 40.5 percent of total costs over the past five years.

Circuit Courts

The primary feature of circuit courts that affects legal aid delivery to clients is the speed at which all processes occur. The main impact is that lawyers have less time to talk to clients and prepare their cases. For the most part, respondents felt that this does not significantly impact the quality of representation, but did feel that clients receive less support and explanation, and that their experience is often one of alienation and lack of confidence in a system they can't understand. The main recommendations for addressing the compressed time schedule, all of which involve expenditures for legal aid, are:

- Have the Courtworker and lawyer arrive in town the day before the rest of the court party.
- Have a part-time Courtworker resident in some of the smaller communities.
- Have a second lawyer on the circuit.

Delays are not a significant factor in court cases on circuit. In fact, adult cases on circuit have generally been completed faster than in resident courts. Continuity of counsel is also seen to be handled well, as defence counsel are assigned to prescribed circuits.

Justice of the Peace (JP) Court

Since Courtworkers are the primary defence resource in JP courts, it is important to gauge the types of impacts dispositions in these courts have on offenders. Over the past two and a half years:

- Approximately 11 percent of dispositions have involved jail sentences, the majority between two days and four months.
- Eight percent involved probation sentences, the vast majority of which were four months or more.
- Thirty percent involved a fine (not including municipal fines).

The level of lawyers' concern about the ability of Courtworkers to adequately represent clients in JP courts was related to their confidence in the capabilities of the JPs. If both JPs and Courtworkers were perceived as lacking skills, there was serious concern about the adequacy of justice in JP court and the ability of Courtworkers to protect the rights of accused persons.

Courtworkers

In the criminal sphere, Courtworkers play out-of-court roles (contacting and interviewing clients, reviewing allegations, discussing plea) and, to a lesser but still significant extent, in-court roles (discussions with Crown, plea, sentencing and some trial activities). Civil cases involve primarily out-of-court roles (legal aid applications, helping clients to gather information).

The largest single area of increase in demand for Courtworker services has been in relation to JP court, where, because legal aid lawyers are not usually present, there has been more pressure for Courtworkers to do active court work. There was a considerable division of opinion among respondents over the advisability of and/or extent to which Courtworkers should be undertaking active in-court roles. Regardless of how respondents felt on this issue, there was a strong consensus on the need for more Courtworker training. Concerns addressed by respondents in regard to training included the purpose of Courtworkers' roles, screening of Courtworkers, the need for a certification system, substantive focus, format and location.

Unmet Needs in Family and Other Civil Matters

Legal aid is involved in the vast majority of child welfare cases that come before the courts. A rough estimate is that 50–75 percent of custody, client support and access cases heard in Supreme Court are handled by legal aid.

There was an overwhelming consensus among respondents that there is a drastic shortage of lawyers in the NWT willing to practise family law, and that the environment in which family law is practised is acrimonious and emotional. Unlike with criminal work, it is difficult to sustain a family law practice from an in-home office, because of the secretarial demands, and this adds to the existing shortage.

The result of these limitations is major delays in clients finding a lawyer, if they are able to find one at all. The backlog of family cases handled by the Legal Services Branch is estimated at eight months. In this context, where the civil legal aid system is severely under-resourced, social agency respondents claimed that clients often feel that lawyers do not care about their cases or do not have their interests at heart.

Strategies within the LSB's power to respond to those needs include more outreach to clients in clinic or social service settings, increasing the family law tariff or having an additional staff lawyer, and directing more PLEI to family law matters.

Unmet Needs Prior to First Appearance

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

- The majority of clients do not contact a lawyer or Courtworker. Information about contacting Legal Aid should be provided by the RCMP.
- Charged persons in Yellowknife are often transient and often lack telephones.
- Even when released by a JP, accused persons often agree to conditions that defence counsel would likely find unreasonable.

- RCMP personnel have considerable difficulties contacting a lawyer in the evening or at night.
- Most lawyers find it difficult to assess a client's ability to understand instructions or procedures on the phone, either in calls from a cell, or in a telephone show cause hearing. Some defence lawyers refuse to participate in a telephone bail hearing.

Interplay between Criminal and Civil Issues

In exploring the interconnections between criminal and civil matters, respondents identified two frequent patterns:

- Spousal assaults leading to a demand for custody and/or access assistance.
- Family matters being settled very slowly, and degenerating into criminal matters such as mischief, impaired driving or abduction.

The most useful approaches to deal with these patterns were seen to be:

- Speedier access to legal aid and courts to resolve custody and access issues.
- A more holistic approach involving access to treatment and/or intensive counselling around family violence, family relations, and/or alcohol abuse.

Public Legal Education and Information (PLEI)

In general terms, many respondents felt there was a major need for more PLEI. Many respondents felt that when the Arctic Public Legal Education Association existed (prior to 1996) there was more coherent and extensive provision of legal information than exists presently.

The main PLEI program at present is the Law Line, a call-in information line staffed by local lawyers that operates two evenings per week. A slight majority of callers are women, 80 percent of calls pertain to civil or family matters, and 40–44 percent of calls are from outside Yellowknife.

The main areas of need for PLEI were considered to be:

- Basic justice system and process information.
- Family law information.
- The zero tolerance policy related to spousal assault and family violence.
- Legal aid coverage and application procedures.

In terms of delivery methods, respondents emphasized the need for more PLEI outreach (e.g., in community service centres), using Courtworkers as vehicles of PLEI, more oral rather than written communication, and the use of plain language.

Cost Drivers

The major drivers of legal aid costs that respondents identified as unique to or felt disproportionately in the NWT compared to southern jurisdictions are:

- The large number of small communities in a large territory, often accessible only by plane, which results in high travel costs and time usage both for staff, private lawyers on tariff, and expert witnesses from outside the jurisdiction.
- High rates of alcohol abuse, and fetal alcohol syndrome (FAS) or fetal alcohol effect (FAE), which drive many criminal and civil incidents.
- Residential school syndrome, which is seen to drive much family dysfunction and violence.
- The high level of financial need among persons charged with criminal offences.
- High rates of crime and high rates of clearance of criminal incidents.
- The high rate of jury trials in Supreme Court.
- The high costs of running legal practices in the NWT (estimated as 25–30 percent higher than in southern jurisdictions), and the difficulty of recruiting lawyers.
- The lack of non-litigated options for resolution of family matters.

Federal and Territorial Drivers of Costs

The following federal and territorial legislation and policies were identified as the main drivers of costs in the NWT:

- As a result of increased staffing and resources provided to the Crown office in Yellowknife, there is a greater capacity for Crown to pursue and support prosecution of cases that might not have proceeded in the 1990s. This puts pressure on the LSB to support the defence process in equal measure.
- The zero tolerance/mandatory charge policy in spousal assaults.
- Territorial policy (with federal encouragement) that courts should be held in communities rather than in centralized, resident locations.
- Federal/territorial policy encouraging community-based alternative justice processes. Although many cases are diverted, in other cases there may be increased preparation required to develop appropriate sentencing plans.
- The *Charter of Rights* under the *Constitution Act* has contributed to dramatic increases in applications such as challenges to the admissibility of evidence.

Conclusions

From one perspective, the Legal Services Board can be seen as having done an admirable job of meeting basic legal needs in the NWT, despite severely constrained resources. From another perspective, the legal aid system is in crisis, with the fault lines most strongly evident in the major backlog of family cases; the demands on Courtworkers for training to work more effectively in the JP court system; and in the inability of the LSB to devote significant time and resources to effective PLEI outreach.

These stresses have particular impacts on women, as the major consumers of family law services, and on Aboriginals, who form the majority of the population in the many smaller communities JP courts are intended to serve.

On the one hand it is unlikely that the LSB can address these problem areas without a significant infusion of funds from either or both the territorial and federal governments. On the other hand, to make more effective use of the additional funds, the LSB will need to explore alternatives such as family outreach clinics, joint developments with other departments or agencies, and (again as a joint venture) technological possibilities such as video-conferencing facilities.



1.0 Introduction

This is the final report of a study of the needs of the legal aid system in the Northwest Territories. It addresses needs concerning not only formal legal aid delivery (i.e., legal representation and duty counsel), but also the services of Courtworkers and public legal education activities. All three components of the overall system are funded under the Access to Justice Agreement between the federal Department of Justice and the Government of the Northwest Territories (GNWT).

1.1. Background

The federal Department of Justice has initiated a range of research initiatives to determine legal aid needs across the country. This research will form a foundation for the process of renewing legal aid agreements with the provinces and the Access to Justice Agreements with the three northern territories. At a federal/provincial/territorial working group meeting in early 2001, territorial representatives requested that research be undertaken in each of the three jurisdictions to address themes that were specific to the northern context for the delivery of legal aid. This request was followed up in a two-day meeting in July 2001, in which territorial representatives identified 10 themes that should be researched to describe the dynamics, processes and needs in their jurisdictions.

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

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

1.2. Methodology

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

1.2.1. Key Respondent Interviews

The central element in the methodology was 87 interviews conducted with a range of key respondents involved in the delivery of legal aid, Courtworker services and PLEI, as well as other workers in the criminal justice system and social service agencies in the communities who had had direct contact with the legal aid system themselves or through clients, and were therefore able to comment on the aspects of the legal aid system under examination. The respondent groupings are shown in Table 1:

Table 1: Interview Respondents

Respondent Type	# of Interviews
Staff lawyers of the Legal Services Board	5
Private bar lawyers	11
Legal Services Board members	5
Judges	3
Justices of the Peace	13
RCMP	11
Courtworkers	8
Social agency representatives, Aboriginal organizations, and community justice coordinators	24
Crown Counsel	5
Department of Justice officials (GNWT)	2
Total	87

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

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



1.2.2. Statistical Data

During the information needs analysis stage, several sources of statistical data were explored, including the Legal Services Board database, Law Line database, Access to Justice Agreement reports, Court Services data, and federal financial contribution data. Data from these sources are found in the tables throughout this report. For the most part the data have been useful general indicators of need or demand rather than specific answers to research questions. In many instances the data had to be compiled manually (e.g., from monthly statistical sheets or from data lists) or condensed from a larger data set.

1.2.3. Document Review

A number of Legal Services Board internal documents were reviewed to facilitate understanding of procedures relevant to the research.

1.2.4. Focus Group

A focus group was held on August 12 to identify the priority, rationales and strategies which should be assigned to a number of legal aid needs that had been identified in the research to date. The focus group report is contained in Appendix 1; strategies to address needs are also reflected in Sections 2–11 of the current report.

1.3. Methodological Limitations

The two primary methodological limitations of the study are:

- Inherent limitations of statistical data
 - As noted above, there are few instances in which quantitative data are available to answer specific research questions. Data sets were in some instances incomplete. Court Services data were only available from January 2000, both because of a new data system and because of the need to separate NWT data from Nunavut data. Legal Services Board data for 1999–2000 necessarily included Nunavut data.
- Lack of direct client interviews
 - It was known that there were insufficient funds for direct interviews with clients, so the primary way of attempting to reflect client opinion was to interview key respondents in social agencies and Aboriginal organizations who might be advocates or intermediaries for clients. Nonetheless, the lack of direct client interviews makes it more difficult to explore Aboriginal or gender issues with greater specificity.

It should also be noted that the study was an examination of unmet needs and primary pressure points rather than a systematic evaluation of the strengths and weaknesses of the system per se. The primary implication of this orientation is that, although there are numerous positive observations about the legal aid system in this report, it does not consistently address respondents' opinions of what legal aid lawyers or Courtworkers are doing well.

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

This research was defined initially in the July 2001 meeting of territorial legal aid representatives (see Section 1.1) in relation to possible impacts of the single-level Nunavut Court of Justice. However, it was felt that in each of the three territories there were defining characteristics at the nexus of geography, culture and court structure that established the parameters of legal aid delivery. In the Northwest Territories these characteristics appear to be:

- A large territory with one moderately sized town (Yellowknife, with a population of 17,195, according to the 1996 Census) and 31 small communities. While, in the south and west, most communities are connected by road, access to many communities in the north is predominantly by plane. Of these smaller communities, five ranged in population from 1255 to 3555, according to the 1996 census. The rest were under 1000, and five were under 100.
- Although there is a minority Aboriginal population in Yellowknife (20 percent), in three other communities and in the NWT as a whole (48 percent), there is a majority Aboriginal population in the remaining 28 communities (1996 Census).
- There are resident courts in Yellowknife, Hay River and Inuvik. The rest of the territory is served by circuit courts.
- An expanding role for Justice of the Peace Court, dealing with territorial offences and many summary criminal matters, especially on guilty pleas. This is seen as a way of making the courts accessible to smaller communities throughout the territory, and of ensuring timely processing of cases.

Some of the impacts of these issues are addressed in greater detail in Section 3 (circuit court issues), Section 4 (JP courts), Section 6 (civil law) and Section 10 (cost drivers).

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

Tables 2 and 3 present data on criminal charges in territorial courts from January 2000 to June 30, 2002. Table 4 shows criminal legal aid applications approved by the Legal Services Board (LSB). In addition to representation of clients where applications have been approved, the LSB provides duty counsel who also serve clients by way of presumed eligibility, as shown in Table 3.

The tables should be considered in relationship to each other to develop a sense of the reach or impact of legal aid within the territorial court system. However, there are several limitations in doing so:

- Court data are for two and a half calendar years, whereas Legal Services Board (LSB) data are for three fiscal years.



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- Court data in Table 3 are for charges, whereas LSB data in Table 4 are for cases. However, court data in Table 2 are for cases.
 - Presumed eligibility statistics may involve repeat contacts with clients assisted on successive appearances.
 - The categories for court and LSB data are not identical.
 - 1999–2000 LSB data include Nunavut cases.
 - Three years of data (or two and a half years for courts) are insufficient to establish trends.

Despite these caveats, some broad observations are possible:

- If one adds the 441 legal aid clients (Table 4) and approximately 2620 criminal presumed eligibility clients (Table 5) for 2000–2001, and compares the total (e.g., approximately 2700, since presumed eligibility and legal aid clients may not be mutually exclusive) with the 3500 criminal court cases for calendar year 2001 (Table 2), the legal aid system is servicing approximately 70–75 percent of criminal cases in the territories. The client activities of Courtworkers (reported in Section 4) would augment this total, as Courtworkers in some instances assist clients not helped by legal aid lawyers or duty counsel.
- The percentage of youth cases among total criminal cases in the courts is 14–16 percent (Table 2) and youth cases represent 8–10 percent of approved criminal legal aid applications (footnote 6 in Table 4). In addition, between 28 and 30 percent of presumed eligibility services in criminal matters are directed toward youth (Table 5).
- The overall volume of criminal cases in the territorial courts has remained fairly constant in the two-and-a-half-year period reported in Table 2, although youth cases rose significantly in 2001 over the previous year. This pattern is mirrored in relatively constant numbers of criminal legal aid approvals over the three-year period in Table 4 (adjusting for Nunavut cases in the first year), and a slightly higher proportion of youth legal aid approvals.
- Offences against the person comprise approximately 62–64 percent of legal aid client cases, versus 32–36 percent of overall charges in territorial courts. This is a clear reflection of the fact that these offences are likely to involve greater consequences for accused persons than other offence categories, thus making the accused eligible for legal aid.

Table 2: Total Adult and Youth Criminal Cases, by Registry

Registry/ Type of Accused	Calendar Year					
	2000		2001		Jan 1 – June 30, 2002	
	# of cases	% adult or youth in each location	# of cases	% adult or youth in each location	# of cases	% adult or youth in each location
Territorial Court						
Yellowknife Adult	1167	92%	1306	89%	670	91%
Yellowknife Youth	108	8%	167	11%	69	9%
Hay River Adult	855	87%	810	79%	404	76%
Hay River Youth	126	13%	214	21%	131	24%
Inuvik Adult	800	77%	677	68%	409	82%
Inuvik Youth	236	23%	325	32%	91	18%
Total Adult	2822	86%	2793	80%	1483	84%
Total Youth	470	14%	706	20%	291	16%
Total Combined	3292	100%	3499	100%	1774	100%
Supreme Court	37	-	81	-	27	-

Notes:

1. Source: Court Services, Department of Justice, GNWT.
2. Frequency counts include all cases that were filed on the basis of an information (i.e., *Criminal Code, Controlled Drugs and Substances Act* and other federal offences, and some territorial offences). Frequency counts of cases do not include Summary Offence Ticket Informations (SOTIs) such as liquor violations, municipal bylaws and fishing regulations.

Table 3: Criminal Charge Types in Territorial Courts

Type of Charge	2000		2001		Jan 1 – June 30, 2002	
	#	%	#	%	#	%
Administration of Justice Charges	936	21%	1400	23%	722	24%
Drugs	210	5%	165	3%	108	4%
Offences Against the Person	1422	32%	2088	35%	1054	36%
Property Offences	822	19%	1188	20%	586	20%
Territorial and Municipal Offences	695	16%	836	14%	345	12%
Other Offences	312	7%	342	6%	148	5%
Total	4397	100%	6019	101%	2963	101%

Notes:

Source: Court Services, Department of Justice, GNWT.

Includes filings for *all* cases. This is different from Table 2, which does not include summary offence ticket violations.



Table 4: Criminal Legal Aid Clients Served, by Case Type

Offence	1999 – 2000		2000 – 2001		2001 – 2002	
	# of Approved Cases	% of Total	# of Approved Cases	% of Total	# of Approved Cases	% of Total
Offences against the Person						
Murder/Attempted Murder/Manslaughter	5	1%	2	0%	4	1%
Sexual Offences	107	16%	74	17%	49	11%
Robbery	12	2%	12	3%	11	2%
Kidnapping	7	1%	3	1%	0	0%
Assault	296	44%	179	41%	181	39%
Offences Against Property						
Theft over \$5000	10	2%	2	0%	2	0%
Theft under \$5000	7	1%	9	2%	9	2%
B & E	46	7%	34	8%	48	10%
Possession of Stolen Property	3	1%	5	1%	8	2%
Justice Administration Offences						
Escaped Custody	8	1%	2	0%	1	0%
Breach of Probation	7	1%	4	1%	8	2%
Other CCC Offences						
Weapons	25	4%	19	4%	25	5%
Fraud	6	1%	3	1%	5	1%
Mischief	15	2%	9	2%	16	4%
MV Offences	20	3%	16	4%	26	6%
Other CC offences	50	8%	23	5%	35	8%
Other Statutes						
Territorial/Federal	2	0%	8	2%	20	4%
Narcotics/F&D Act	44	7%	37	8%	13	3%
Total	670	101%	441	100%	461	100%

Notes:

1. Source: Legal Services Access to Justice claims.
2. “Approved cases” is the total of “approved,” “pending” and “concluded” cases.
3. Percentages do not necessarily total 100% due to rounding.
4. This table does not include clients served by duty counsel lawyers under presumed eligibility.
5. Data for 1999–2000 include clients from what is now Nunavut.
6. Youth cases as percentage of total cases are 8% in 1999–2000, 10% in 2000–2001, and 8% in 2001–2002.

Table 5: Presumed Eligibility Statistics, by Case Type

Case Type	1999 – 2000	2000 – 2001	2001 – 2002
Adult Criminal	2007	1816	1827
Youth Criminal	769	737	793
Family	23	12	60
Other Civil	2	0	1
Show Cause	119	67	11
Total	2920	2632	2692

Notes:

1. Source: Legal Services Board Access to Justice Claims.
2. Data for 1999–2000 include services to what is now Nunavut.

Other patterns of change that have been noted anecdotally by respondents include:

- There are more spousal assault cases because of mandatory charge policies for spousal assault. A “robust” defence is necessary because penalties on second or third conviction can be very severe.
- There has been an increase in the number and size of drug cases, due to *Controlled Drugs and Substances Act* changes.

There was generally little comment or complaint about the effectiveness of the system of presumed eligibility. One respondent stated that clients tend to show less responsibility under the system, by simply turning up in court and “feeling entitled” to service, rather than contacting the Legal Services Board in advance. However, this was an isolated comment.

2.2. Judge Alone vs. Judge and Jury Trials

A legal aid cost driver identified by many legal professional respondents was the high proportion of elections for jury trials in Supreme Court. Preparation for jury trials is more demanding than for judge alone trials, and trials tend to be longer, so cost is commensurately greater. Table 6 shows that, from January 1, 2000 to June 30, 2002, almost three quarters of elections have been for jury trials.

Reasons advanced for this high frequency of jury trials are:

- A perception among defence counsel that juries are more likely to acquit accused persons.
- A perception that Crown counsel, for policy reasons, proceed with “weak” cases (especially in the area of sexual assault and/or spousal assault) and proceed by indictment rather than summary conviction. In this situation, defence tends to elect trial by jury.
- A perception that judges convict readily.



Table 6: Supreme Court Criminal Trials, by Trial Type

	Calendar Year				
	2000	2001	Jan 1 – June 30, 2002	Total Period	
	Frequency	Frequency	Frequency	Frequency	% of Total
Judge Alone	7	6	4	17	27%
Judge and Jury	9	28	10	47	73%
Total	16	34	14	64	100%

Notes:

1. Source: Court Services, Department of Justice, GNWT.
2. Trials type determined by accused election.
3. Data do not include sentencing hearings.

2.3. Needs in Territorial Court

Several needs at the Territorial Court level were identified. In all instances these points were raised by a minority of respondents, even within particular categories of respondents. Concerns include the following:

- Several respondents noted that there is too small a pool of lawyers to draw from. This applies to criminal matters also, but is especially serious in relation to family law (see Section 6.0). There is a constantly increasing potential for conflict of interest when serving small communities. This situation requires that the LSB be able to draw from a larger pool of lawyers to act as second counsel on circuit. Legal aid work is fast-paced, especially on circuits, and requires experienced practitioners. A second staff criminal lawyer is required in Inuvik, but, despite three separate posting procedures, the clinic has not been able to find an appropriate candidate (see also Section 10.1).
- Some respondents felt there is a problem with legal aid coverage for the working poor. They felt that individuals often do not qualify for legal aid financially but still cannot afford to hire a lawyer when living in a remote community. The rate of unrepresented litigants was felt to be increasing. Table 7 shows that denials of adult criminal applications have ranged between 10 percent and 13 percent, and between 6 percent and 10 percent for youth. These figures, while low, do not take into account the extent to which public knowledge of financial eligibility cut-off points may “dry up” demand for legal aid, i.e., potential clients do not apply because they think they will be rejected. However, the fact that civil and family denial rates are considerably higher than criminal would suggest that the prospect of rejection does not play a large role in the decision to apply, i.e., people still apply even if they think they might be rejected. At the same time, the higher denial rates for family and civil are in themselves noteworthy and underscore that meeting family and civil needs is a major problem in the NWT (see Section 6).
- Several lawyers felt that fees under the tariff are inadequate in comparison with rates that are charged for private clients.

- Three respondents felt there are insufficient funds to cover expert witness review time if case records are extensive. However, another specifically stated that there are ample funds for expert witnesses. This difference in opinion likely stems from the fact that this type of approval is made upon review by the executive director of the LSB, depending on the merits of the case.

Table 7: Legal Aid Application Denials

	1999 – 2000	2000 – 2001	2001 – 2002
Criminal Adult			
Total Applications	804	500	479
Total Denied	92	50	62
Percentage Denied	11%	10%	13%
Criminal Youth			
Total Applications	63	48	57
Total Denied	4	5	4
Percentage Denied	6%	10%	7%
Civil			
Total Applications	42	50	41
Total Denied	26	31	24
Percentage Denied	62%	62%	59%
Family			
Total Applications	803	676	569
Total Denied	329	316	188
Percentage Denied	41%	47%	33%
Combined			
Total Applications	1712	1277	1146
Total Denied	451	402	278
Percentage Denied	26%	31%	24%

Notes:

1. Source: compiled from Access to Justice Claims.
2. 1999–2000 data include applications and denials from what is now Nunavut.
 - The legal aid tariff only covers 10 hours for appeals. The necessary review of transcripts, witness statements and judges’ charges cannot be done in that time. Again, the executive director has the discretion to increase the time covered.
 - There are inconsistencies in legal aid coverage, e.g., one respondent noted that consumption of alcohol by youth is covered, but issues of greater seriousness under the *Motor Vehicle Act* are not.



2.4. Federal and Territorial Contributions to the Delivery of Legal Aid

Table 8 provides data on federal and territorial contributions for the operation of legal aid, Courtworkers and PLEI. Actual funding for the NWT only can be reliably determined for the past three years because, prior to fiscal 1999–2000, the federal and territorial contributions included funds for what is now Nunavut. (Even though Nunavut was created in April 2000, the budget for the previous year was calculated for both territories.)

The table does not show GNWT contributions for each of the three parts of the program because, in the past four years, the GNWT portion has simply made up the difference between the federal contribution and overall expenditures. Even though the pre-1999–2000 figures include present-day Nunavut, it is readily apparent that federal contribution to overall costs in the past five years has remained, with the help of “one-time” injections, consistently between 39 and 42 percent.

Table 8: Federal and Territorial Contributions to Legal Aid, Native Courtworkers and PLEI

Year	Federal Contribution					GNWT Contribution	Total	Federal Share
	Legal Aid	Courtworkers	PLEI	One time only Adjustments	Total Federal Contribution			
1989 – 1990	1,625,500	286,180	70,000		1,981,680			
1990 – 1991	1,625,500	327,448	70,000		2,022,948			
1991 – 1992	1,625,500	394,891	70,000		2,090,391			
1992 – 1993	1,641,755	419,000	70,000		2,130,755			
1993 – 1994	1,658,172	408,525	70,000		2,136,697			
1994 – 1995	1,658,172	419,000	70,000		2,147,172			
1995 – 1996	1,658,172	379,195	70,000		2,107,367			
1996 – 1997	1,658,172	379,195	70,000		2,107,367			
1997 – 1998	1,650,172	356,150	70,000	23,045	2,107,367	3,123,973	5,231,340	40.3%
1998 – 1999	1,658,172	356,150	70,000	-	2,084,322	3,226,594	5,310,916	39.2%
1999 – 2000	1,199,947	164,218	70,000	159,781	1,274,384	1,850,932	3,125,316	40.8%
2000 – 2001	1,199,947	164,218	70,000	-	1,434,165	2,157,482	3,591,647	39.9%
2001 – 2002	1,199,947	164,218	70,000	222,669	1,656,834	2,235,834	3,892,668	42.6%

Notes:

1. Source: Compiled from Department of Justice, GNWT document and Access to Justice Claims.
2. Data prior to 1999–2000 include the present territory of Nunavut. Historical expenditures suggest that, prior to the division of the territory, 60% of expenditures were for what is now the NWT, and 40% for Nunavut.
3. Integrated funding of legal aid, Courtworkers and PLEI began under the Access to Justice Agreement in fiscal year 1997/98. Prior to that year the three components were funded separately.

3.0 Circuit Courts

Thus far, themes concerning circuit courts have emerged with considerable consistency compared to other issues.

3.1. Quality of Service to Clients

The primary feature of circuit courts that affects legal aid delivery to clients is the speed at which all processes occur. Lawyers described dockets in small communities of 20–30 cases, many of which included trials, that had to be completed in one day. The main impact of such a compressed schedule is that lawyers have less time to talk with clients and prepare their cases. While some respondents felt that this seriously compromises the quality of representation, the impact articulated by more respondents is that clients receive less support and explanation about the process, and their experience is often one of alienation and loss of confidence in a system they can't understand. This can be exacerbated by the perception that the legal aid lawyer and Courtworker, arriving in the community at the same time as the rest of the court party, are simply all part of the same foreign system that has no intrinsic interest in their welfare.

One respondent specifically stated that confidence in the justice system would be increased if there were more Aboriginal representatives in the legal system (as lawyers or judges), but also felt that, for the most part, Courtworkers and translators can bridge the gap between Aboriginal clients and the non-Aboriginal delivery system. Most respondents, however, felt that the main cause of a lack of confidence in the justice system is the lack of time its representatives spend in the communities. As one respondent noted, spending time in the community is “not just to *do* court, but to build familiarity with and respect for the court.”

A JP also emphasized the need for advance preparation by Courtworkers and legal aid lawyers in order to make the court-sitting as non-intrusive and as comfortable as possible for all parties: “Embarrassment is the single biggest cause of facts not being relayed to the court. When everyone is prepared, on time and comfortable with each other, much more information is relayed to the court and adversarial situations avoided, with sentencing solutions agreeable to all.” At the same time, some respondents noted that, even if the Courtworker and/or lawyer arrive early, the client is sometimes not available. It is not uncommon for clients simply to appear in court on the court date, having made no attempt to contact the lawyer or Courtworker after being charged.

Courtworkers play an important role in locating and interviewing the accused and witnesses, and in helping with explanations that lawyers have no time to give. However, the Courtworkers are also under significant time constraints themselves. On circuit, they often have no privacy in which to interview clients and, in some instances, have used their hotel rooms, where it was feasible. In other respects, circuit is easier for Courtworkers because there is less of a requirement to do work in court on behalf of the client, as a lawyer is always present.



The main recommendations for addressing the compressed time schedule are:

- Have the Courtworker and lawyer arrive in town the day before the rest of the party.
- Have a part-time Courtworker resident in some of the smaller communities.
- Have a second lawyer on the circuit.

These recommendations would involve increased expenditures for legal aid. There are also logistical difficulties in flying lawyers or Courtworkers into a community a day early if the circuit comprises several communities on consecutive days and only one lawyer. That is, the lawyer could only go early to the first community. Furthermore, most of the flights are by a charter that carries the entire court party. It is a significant expense to charter a flight for only one person. Nonetheless, the Legal Services Board has flown a lawyer into a small community one day in advance to prepare for a significant case. In one example, the respondent said, “It cost an extra \$1000, but it avoided a frustrated judge, a poorly served client, and one or more adjournments.”

In one way, quality of service may be superior on circuits compared to resident court. Defence usually receives disclosure information in advance of the circuit, whereas in resident courts it is usually not available until just before first appearance.

A small number, in several categories of respondents, suggested that some private lawyers “play the system” by asking for (unnecessary) adjournments, and/or by charging to the case cap even if not all time is used. Clearly, to the extent that such practices exist, clients receive a lesser quality of service.

3.2. Delays

In general, respondents felt that delays are not a significant factor in circuit cases. Even though, when clients plead not guilty in a circuit court, the case is usually adjourned to the next circuit date, most respondents felt that the court’s policy is to minimize adjournments. In fact, this policy can also create significant pressure on the lawyers and Courtworkers to complete the case in one sitting (or, where a trial is involved, two sittings). Respondents did not speak to the possibility that this could also create pressure on the accused to plead guilty. Several lawyers stated that Courtworkers are reluctant to undertake representation on behalf of clients in the pressured context of circuit courts because of what some respondents felt were impatient attitudes of some judges toward Courtworkers. These attitudes were considered, in part, to be related to the judges’ desire to avoid adjournments in circuit communities.

It was widely perceived that there are more adjournments and appearances in resident courts, simply because they have less impact on case delay (e.g., a few days or a week) compared to circuit courts (six or seven weeks).

Table 9 lends support to these perceptions, especially in regard to adult cases in Territorial Court. It shows that:

- Adult cases on circuit have generally been completed faster than cases in resident court, and their average completion time has always been shorter than those in the resident court in Yellowknife.

- Youth cases tend, on average, to take only slightly longer in circuit courts than in resident courts (by only as much as 20 percent longer in the current year). This is likely explained by the requirement for pre-disposition reports for youth in some cases, which would delay sentencing until the next circuit.
- In Supreme Court cases there is more of a delay problem for circuit cases than in Territorial Court. Although circuit court cases were, on average, only two days longer than resident court cases in 2000, they were 41 days longer in 2001, and 16 days longer in 2002.

Table 9: Average Time from Case Initiation to Final Disposition in Territorial and Supreme Courts: Resident vs Circuit Courts

Type and Location of Court	Young Offenders			Adults			Combined		
	2000	2001	Jan 1 – June 30 2002	2000	2001	Jan 1 – June 30 2002	2000	2001	Jan 1 – June 30 2002
Supreme									
Resident Courts	Not Applicable			95	130	119	Not Applicable		
Circuit Courts	Not Applicable			97	171	135	Not Applicable		
Territorial									
Yellowknife	36	49	57	61	80	82	59	77	79
Hay River	11	53	49	29	65	70	26	62	64
Inuvik	37	47	66	54	49	66	47	48	66
Resident Courts Combined	34	50	55	57	72	76	53	68	72
Circuit Courts	33	54	67	60	65	64	54	62	64

Note:

1. Source: Adapted from Court Services data, Department of Justice, GNWT.
2. The number in the columns represents the average number of days from the initiation of the case to its final disposition.
3. Circuit courts operating out of Yellowknife, Hay River and Inuvik serve 21 communities.
4. The averages for Hay River and Inuvik Supreme Court cases are based on too few cases to provide meaningful comparisons, so have been combined with Yellowknife cases.

3.3. Continuity of Case

In general, continuity of counsel was seen to be handled well under current arrangements. That is, either staff counsel act as defence for prescribed circuits, or contracts for circuits are held by private counsel on an extended basis. When second counsel is necessary, for reasons of conflict or volume of cases, there is less continuity.



Continuity of counsel is seen as a benefit to the communities and clients, as defence counsel come to know the communities, local issues, families and even clients themselves. A small minority of respondents felt that this familiarity may also breed cynicism because of the frequency of repeat offending.

3.4. Other Issues

Occasional mention was made of the following points:

- The RCMP have influenced in subtle ways – by, for example, picking up the circuit party at the plane. In one instance, the RCMP refused to give the defence counsel a lift back to the plane because of the dynamics in the court.
- Extra costs can be incurred, for example, if an individual is incarcerated in Yellowknife and has to be flown back to a circuit community to enter plea on a second offence.

4.0 Justice of the Peace (JP) Court

4.1 Statistical Data

Tables 10–13 provide background data on plea, disposition and sentences in JP court. This is a necessary context for understanding the role of Courtworkers who, as will be discussed in Section 5.2, are the primary resource in the JP courts which they attend.

Table 10 shows that there is a considerable variation in the rate of guilty pleas. In the Yellowknife JP court registry the rate has varied from 67 percent to 44 percent, while, in the Inuvik and Hay River registry areas, the rate has been between 88 percent and 100 percent. Ironically, the overall conviction rate (not shown in the table) is similar in all three registries, i.e., the lower guilty plea rate in Yellowknife does not result in a significantly higher proportion of acquittals. This would suggest that Courtworkers may be able to play a stronger role in helping clients determine the reason for plea, the type of evidence required, and likely outcomes. Clearly this would not be to encourage more guilty pleas, but to provide more information to clients about the implications and reasonability of a particular plea.

Table 10: Plea in JP Courts, by Court Registry

Registry	2000					2001					Jan 1 – June 30, 2002				
	Plea					Plea					Plea				
	Guilty		Not Guilty		Total	Guilty		Not Guilty		Total	Guilty		Not Guilty		Total
	#	%	#	%		#	%	#	%		#	%	#	%	
Yellowknife	248	67%	121	33%	369	324	65%	172	35%	496	136	44%	170	56%	306
Inuvik	247	92%	21	8%	268	215	97%	6	3%	221	95	100%	0	0%	95
Hay River	251	88%	33	12%	284	245	96%	10	4%	255	114	96%	5	4%	119
Total charges	746	81%	175	19%	921	784	81%	188	19%	972	345	66%	175	34%	520

Note:

1. Source: Adapted from Court Services data, Department of Justice, GNWT.
2. These data only include charges for which a plea was recorded. An entry of “no plea” was made in the criminal information system for 29% to 37% of charges in the years presented in this table. These usually represent cases in which the accused is not present in court and is convicted ex parte by the JP.
3. This table does *not* include summary offence ticket informations such as liquor violations, municipal by-laws, and fishing regulations.

Table 11 shows that the main offence type category with a high not guilty plea rate is territorial offences (the table does not include territorial offences based on summary offence ticket informations). Nonetheless, Table 12 shows that these offences have one of the highest conviction rates (83 percent) among the categories listed. Again, this would suggest that there is a role for Courtworkers to help clients sort out the basis for a plea. It is also noteworthy that 32 percent of charges disposed of in JP court (i.e., 1198 out of 3695 charges) in the two-and-a-half-year period were for offences against the person. However, a further breakdown of this category to assess seriousness of the offences was not possible.



Table 11: Plea in Justice of Peace Courts, by Charge Type

Type of Charge	2000			2001			Jan 1 – June 30, 2002			Combined		
	Plea			Plea			Plea			Plea		
	Guilty	Not Guilty	Total	Guilty	Not Guilty	Total	Guilty	Not Guilty	Total	Guilty	Not Guilty	Total
Administration of Justice Charges	145	9	154	141	2	143	80	0	80	366	11	377
	94%	6%	100%	99%	1%	100%	100%	0%	100%	97%	3%	100%
Drugs	28	1	29	29	7	36	17	1	18	74	9	83
	97%	3%	100%	81%	19%	100%	94%	6%	100%	89%	11%	100%
Offence Against the Person	276	37	313	306	14	320	139	3	142	721	54	775
	88%	12%	100%	96%	4%	100%	98%	2%	100%	93%	7%	100%
Property Offences	122	10	132	122	2	124	55	1	56	299	13	312
	92%	8%	100%	98%	2%	100%	98%	2%	100%	96%	4%	100%
Territorial Offences	146	116	262	124	168	292	51	170	221	321	454	775
	56%	44%	100%	42%	58%	100%	23%	77%	100%	41%	59%	100%
Other Offences	31	3	34	63	2	65	43	1	44	137	6	143
	91%	9%	100%	97%	3%	100%	98%	2%	100%	96%	4%	100%
Total	748	176	924	785	195	980	385	176	561	1918	547	2465
	81%	19%	100%	80%	20%	100%	69%	31%	100%	78%	22%	100%

Notes:

1. Source: Adapted from Court Services data, Department of Justice, GNWT.
2. These data only include charges for which a plea was recorded. An entry of “no plea” was made in the criminal justice system for 29% to 37% of charges in the years presented in this table. These usually represent cases in which the accused is not present in court and is convicted *ex parte* by the JP.
3. This table does *not* include summary offence ticket informations such as liquor violations, municipal by-laws, and fishing regulations.
4. Total charges vary slightly from the previous table because of incomplete data capture for individual categories within either table. Given overall volumes, these discrepancies are not significant.

Table 12: Dispositions in Justice of the Peace Court

Type of Case Matter of Charge	2000			2001			Jan 1 – June 30, 2002			Combined		
	Disposition	Disposition	Disposition	Disposition	Disposition	Disposition	Disposition	Disposition	Disposition	Disposition	Disposition	
	Con- victed	Aquit- ted	Total	Con- victed	Aquit- ted	Total	Con- victed	Aquit- ted	Total	Con- victed	Aquit- ted	Total
Administration of Justice	157	78	235	153	83	236	80	56	136	390	217	607
	67%	33%	100%	65%	35%	100%	59%	41%	100%	64%	36%	100%
Drugs	32	10	42	32	4	36	19	2	21	83	16	99
	76%	24%	100%	89%	11%	100%	90%	10%	100%	84%	16%	100%
Offences against the Person	320	162	482	330	157	487	139	90	229	789	409	1198
	66%	34%	100%	68%	32%	100%	61%	39%	100%	66%	34%	100%
Property Offences	145	39	184	132	43	175	57	25	82	334	107	441
	79%	21%	100%	75%	25%	100%	70%	30%	100%	76%	24%	100%
Territorial Offences	369	100	469	374	50	424	220	44	264	963	194	1157
	79%	21%	100%	88%	12%	100%	83%	17%	100%	83%	17%	100%
Other Offences	33	22	55	64	20	84	42	12	54	139	54	193
	60%	40%	100%	76%	24%	100%	78%	22%	100%	72%	28%	100%
Total	1056	411	1467	1085	357	1442	557	229	786	2698	997	3695
	72%	28%	100%	75%	25%	100%	71%	29%	100%	73%	27%	100%

Notes:

1. Source: Adapted from Court Services data, Department of Justice, GNWT.
2. This table does *not* include summary offence ticket informations such as liquor violations, municipal by-laws and fishing regulations.
3. Overall volumes of charges in this table are approximately 30% higher than in tables 10 and 11 because this table includes dispositions of charges where there was no plea recorded in the information system.

Table 13 shows the sentences ordered by JP courts. Several derived statistics from this table can be seen as indicators of how serious the impacts might be on individual lives:

- Approximately 11 percent of dispositions involve jail sentences, the majority of which are between two days and four months.
- Approximately 8 percent of dispositions involve probation sentences, the vast majority of which are four months or more.
- Approximately 30 percent of dispositions involve a fine (*not* including municipal fines). There are no data on the size of fines.



Table 13: Sentences Ordered by JP Courts

Sentence	2000	2001	Jan 1 – June 30, 2002
Prison			
1 day	20	17	8
2 days to 3+ months	119	143	69
4 to 6+ months	45	28	4
7 to 12+ months	6	1	3
13 to 18+ months	-	2	-
19 months or more	3	1	-
Total Prison Sentences	193	192	84
Community Service	107	155	76
Fine	497	508	230
Victim Fine Surcharge	392	370	205
Restitution	56	45	20
Municipal Fine	227	293	181
Other	1	5	-
Probation			
2 days to 3+ months	12	22	5
4 to 6+ months	70	54	20
7 to 12+ months	59	60	21
13 to 18+ months	4	7	1
19 to 24 months	2	-	-
Over 24 months	1	2	5
Total Probation Sentences	148	145	52
Conditional Discharge	32	26	13

Notes:

1. Source: Adapted from Court Services data, Department of Justice, GNWT.
2. Includes both adults and young offenders.
3. Sentences are not mutually exclusive; i.e., there can be more than one sentence per charge.

Although the data in these four tables give a preliminary sense of seriousness of cases, they, in turn, raise more questions that could be the basis of more focused research on the JP courts. For example:

- What are the impacts of these types of sentences on the lives of the offenders?
- What are the factors influencing the rate of guilty pleas?

- What factors lead to a high rate of *ex parte* convictions (see notes to Tables 10 and 11)?
- In what percentage of the cases represented by Table 13 did the accused person receive assistance?

JPs themselves were another source of background data on the operations of the court. In general, JPs said that case volume and patterns in JP court vary from community to community, depending on RCMP activity, economic conditions and a variety of local conditions. One JP in a small community said charges have increased tenfold in the last 12 years. Another, in a larger centre, said JP presiding time has increased almost fivefold in the last 8–10 years, largely because 90 percent of the cases Crown counsel would formerly have proceeded on summarily in Territorial Court now are heard in JP courts. The most commonly mentioned increases, by case type, in JP courts were in drug and alcohol-related cases (including bootlegging), impaired driving and assaults.

4.2. Impacts on Courtworkers

The impacts and implications of increased activity in JP courts for Courtworkers will be addressed in Section 5.2 and Section 5.3.

4.3. Assessments of the Adequacy of Representation in JP Courts

The majority of RCMP respondents felt that Courtworkers were doing an effective job on behalf of their clients. However, some felt that Courtworkers' skill deficits were extremely serious, and one advocated for lawyer involvement in JP courts.

In general, lawyer respondents expressed a higher level of concern than other respondents about the adequacy of representation of accused persons in JP courts. In part, this is because, in the vast majority of situations, legal aid lawyers represent clients in JP courts only in show cause hearings.¹ For all other matters, which can include pleas, sentencing and occasionally trials, only Courtworkers are available to assist the accused. Two respondents stated that Courtworkers are not always able to attend JP courts in their community, so accused persons are, at times, without any support. One respondent said that legal counsel had been assigned to a JP court for criminal matters for a brief period. Several lawyers mentioned difficulties in locating JPs for show cause hearings.

The level of concern of lawyers about the ability of Courtworkers to adequately represent clients in JP courts was related to their confidence in the capabilities of the JPs. If JPs were seen as skilled – and some were seen as highly skilled – there was somewhat less concern about the performance of the Courtworkers. If both JPs and Courtworkers were perceived as lacking skills, there was serious concern about the adequacy of justice in JP court, and the ability of Courtworkers to protect the rights of accused persons. Although it was acknowledged that both Crown and the Legal Services Board review JP courts' case decisions, there was a concern that this may not be a sufficient safeguard in

¹ See note 3, Section 5.2.



and of itself.²In general, lawyers felt that the serious nature of some criminal cases heard in JP courts warrants concern about the skills of Courtworkers to adequately protect clients. They felt, for example, that:

- Courtworkers might not foresee the implication of a guilty plea (e.g., in an impaired case) on sentence in the event of future impaired cases. Some respondents felt that accused persons sometimes plead guilty in JP court just “to get it over with” and because it is “faster and easier,” even if they should have representation.
- Courtworkers might not discern if a JP has a conflict of interest.
- Courtworkers might not understand the concept of reasonable doubt.
- Courtworkers might not object if rules of evidence are not being followed.
- Courtworkers might not be aware that a sentence is too high. One respondent felt that JP sentences in smaller, outlying communities are often too harsh. In some communities, justice committees (or what one community calls an elders “senate”) make recommendations for sentence in JP courts, so the role of the Courtworker is made more complex by this community dynamic.

For some lawyers, the level of concern was high enough to recommend that lawyers be used in JP courts. For most, it was felt that Courtworkers need significantly more training to handle the expansion of their role as a resource for a lawyer to include representation of clients and dealing with substantive legal issues.

² These observations appear to be based on the assumption that the JP Court should meet strict legal standards much like those of the Territorial Court. A competing perspective is that JP courts should be seen as “people’s courts,” in which community standards play a role alongside legal standards. It is not the mandate of this report to address how the court should function, but rather to report respondents’ views of the responsibilities of Legal Aid and Courtworkers in the JP Court context.

5.0 Courtworkers

5.1 Roles

Table 14 provides a statistical overview of Courtworker services over the past three years. Several generalizations can be made about the data in the table:

- The out-of-court role of Courtworkers involves approximately twice the number of client contacts as the in-court roles.
- There is a significant level of contact with young offenders. In the first two years shown, approximately 25 percent of Courtworker contacts in criminal matters is with young offenders, although in 2001–2002 this proportion falls to 15–18%. This is similar to the proportion of presumed eligibility contacts (28–30 percent) discussed in Section 2.1, and is significantly higher than the 8–10 percent of approved criminal legal aid applications involving youth.
- The out-of-court role of Courtworkers involves significant involvement in civil/family matters (38 percent of total out-of-court contacts in 1999–2000, 40 percent in 2000–2001, and 46 percent in 2001–2002).

Legal Services Board documents and Courtworkers themselves also described Courtworker roles in the following terms:

- In the criminal sphere, the role relates to the initial contacting and interviewing of accused persons, reviewing allegations and statements, discussing pleas and, when appropriate, discussing witnesses. Other smaller, but nonetheless significant, activities include plea discussions with Crown, and sentencing-related functions. In JP courts some Courtworkers have also done some trial work on behalf of clients. There is no difference in the roles of the Courtworker, as between adult and young offenders.
- The primary focus of civil activity is to take legal aid applications in family matters, including helping the client gather the necessary financial information to support his/her application. Some Courtworkers also have provided clients with assistance in completing government forms, in landlord/tenant matters, for example, and in family matters when swearing affidavits. In the latter case, the Courtworker has developed skills under the close supervision of the staff lawyer.



Table 14: Courtworker Services

Type of Service	1999 – 2000		2000 – 2001		2001 – 2002	
	In Court	Not in Court	In Court	Not in Court	In Court	Not in Court
Adult Criminal						
Criminal Code	795	1408	1138	1675	920	1915
Territorial/Bylaw	220	268	415	306	260	268
PLEI	211	499	43	65	0	16
Community Justice	78	317	111	280	117	181
Other	239	438	54	517	25	304
Legal Aid Applications	-	-	-	-	9	20
Referrals	-	-	-	-	18	7
Total	1543	2930	1761	2843	1349	2711
Youth Criminal						
Criminal Code	226	401	295	419	142	194
Territorial/Bylaw	107	168	230	188	105	131
PLEI	53	121	0	5	0	4
Community Justice	41	87	73	74	32	34
Other	54	136	14	156	1	5
Legal Aid Applications	-	-	-	-	4	17
Referrals	-	-	-	-	20	77
Total	481	913	612	842	304	462
Civil						
Family	46	997	64	1312	24	995
Child Welfare	5	88	52	239	15	333
Change of Name	2	29	1	57	3	42
Landlord Tenant	-	44	3	93	1	67
Community Justice	-	-	-	-	2	160
Referrals	-	-	-	-	1	180
Social Assistance	-	-	-	-	0	14
WCB Matter	-	-	-	-	0	5
Mental Health	-	-	-	-	0	10
Debtor/Creditor/Bankruptcy	-	-	-	-	0	12
CPP and Employment Ins.	-	-	-	-	0	13
Legal Aid Applications	-	-	-	-	1	264
Employment/Labour Standards	-	-	-	-	0	32
Other Civil	35	1161	41	762	28	549
Total	88	2319	161	2463	75	2676
Combined Total	2112	6162	2534	6148	1728	5849

Notes:

1. Source: Adapted from Legal Services Access to Justice claims.
2. New civil and criminal categories were created in the 2001–2002 Access to Justice Claim. In the two previous years these categories were included in the category “other civil” or, for criminal matters, in “other.”

5.2. Pressure to Expand Roles

The largest single area of increase in demand for Courtworker services has been in relation to JP courts. Because, under most circumstances, lawyers do not appear in JP courts,³ there has been more pressure for Courtworkers to do active court work (appear at show cause hearings, enter pleas, act for the client in trials, and speak to sentence) as opposed to simply being a resource for lawyers. There is a considerable division of opinion, across a range of respondents, over the advisability of and/or extent to which Courtworkers should be undertaking active in-court roles; their competence in carrying them out; and (among Courtworkers themselves) their confidence in doing so. (See also Section 4.)

5.3. Strengths, Barriers and/or Difficulties

The major strength identified by almost all respondents is the Courtworker’s role as a cultural and social bridge between client, lawyer and court. This function includes such activities as locating and maintaining contact with clients and witnesses so that they can talk to a lawyer and appear in court; interpreting cultural, community and/or family dynamics that are pertinent to the case; assisting clients to complete legal aid applications; helping the client gather necessary financial information; helping clients develop statements; and picking up clients and bringing them to court. One respondent noted that while these activities are important in all cases, they are especially important in instances where the client pleads not guilty, because of the need to gather and interview witnesses.

In terms of other roles, survey respondents’ confidence in Courtworkers varied, depending on the individual Courtworker’s experience, knowledge and perceived practical effectiveness. For example, a JP in a small community that has been covered by various Courtworkers said, “I have had Courtworkers who would attempt minor trials with clients, do sentencing hearings, and make determined efforts on the client’s behalf. I have also had Courtworkers who, by their obvious attitudes, had no desire to have anything dealt with by the JP court system, would automatically request that all matters be sent to Territorial Court, and, in some cases, prolonged matters for a client that could easily have been dealt with by the lower court.” The court-related role that respondents felt most confident Courtworkers could manage was speaking to sentence, but there was less confidence in their skills and knowledge to undertake pleas and trials. A large majority of JPs felt that Courtworkers were meeting the needs of clients in JP courts.

Some respondents felt that turnover in Courtworker jobs was affected by some of the positions being only part-time, while full-time is desired. Qualified persons tend to move on to full-time jobs.⁴

³ Lawyers appear in show cause hearings, and very occasionally in trials in smaller communities if a matter is relatively serious and is not being raised to the Territorial Court.

⁴ Although not raised by any respondent in the main phase of this study, it was mentioned in the review of the draft of this report that Courtworkers in the Beaufort/Delta clinic receive a lower salary than the other Courtworkers. This is because they are clinic employees, whereas the other Courtworkers are paid as public servants. Equalization of salaries for identical work can be seen as a need that is relevant to any initiative to raise skill levels of Courtworkers across the territory. It should also be seen in the context of corporate stability, i.e., of ensuring salaries that are competitive with comparable civil service roles or with private sector employment possibilities (e.g., in the oil industry).



Courtworkers tended to identify barriers, difficulties and concerns most strongly in relation to JP courts where, as noted above, they are under more pressure. Three areas of concern are:

- Dealing with clients effectively on an interpersonal basis (e.g., if clients are not able to accept responsibility, if they appear to be lying, if they are irate or agitated, or have fetal alcohol syndrome – FAS – or fetal alcohol effect – FAE – and/or some other disability).
- Substantive legal issues and/or procedural issues for which they do not feel adequately trained.
- Dealing with RCMP and Crown about disclosure or plea.

Almost all respondents – including Courtworkers themselves – emphasized the need for more Courtworker training. There was a general perception that training should be in smaller, more frequent sessions, rather than only once a year. In general terms, training issues raised by respondents include:

- Purpose. Several respondents felt that the roles of the Courtworker should be more clearly defined and delimited, so that training could be developed to support the Courtworker in those roles.
- Certification. That is, whether Courtworkers should be certified for various levels of activity. In the focus group one participant cited the training in the NWT of Ophthalmic Medical Assistants (OMAs), who carry out diagnostic and therapeutic procedures under the direction and supervision of a qualified ophthalmologist. Training of OMAs involves a well-defined curriculum and rigid assessment program.

Certification provides a clear focus on the development of specific skills and competencies and can increase the confidence and pride of individual workers. It can also involve a certain amount of inflexibility (i.e., Courtworkers could only undertake activities for which they are certified) and a perception on the part of clients that a worker is being bureaucratic if he/she is unable to assist them with certain problems.

- Screening. There is a need for more careful screening of new Courtworker applicants, to assess character, education and language abilities. To date, screening has not allowed for uniform minimum standards, because the quality of candidates varies significantly from community to community.
- Initial training. There is need for an automatic initial training period of 4–6 weeks for any newly hired Courtworker. (One respondent raised the concern that LSB may invest time and money in training a new Courtworker, only to have him/her leave a few months later.)

- Substantive focus. There was a wide range of suggestions for the substantive focus of Courtworker training, with only three areas mentioned by more than two respondents: family law, general “paralegal-type” training, and trial procedures in JP court. This range and relative lack of specificity suggests a lack of consensus about the role the Courtworkers should be playing, as noted in the first point above. A recommendation of the focus group was that Courtworker training also include discussion and development of a code of conduct.
- Format. That is, whether the emphasis should be on large group settings and/or on an individual mentoring or hands-on approach, and, if the latter, how it can best be facilitated.
- Location. Whether training would be better provided centrally (usually Yellowknife) or closer to the Courtworkers’ home communities.



6.0 Unmet Needs in Family and Other Civil Matters

6.1 Historical and Current Family and Civil Legal Aid Coverage

Since June 1996 the Legal Services Branch has provided coverage to financially eligible persons for any civil or family matter *except in the following instances or matters*:

- Defamation, wills, estates, incorporations, real estate transactions, realtor or representative actions, arbitrations or conciliations, and proceedings relating to elections.
- Family matters where a lawyer does not provide a written opinion stating it is reasonable in the circumstances to proceed.
- Divorce and/or division of property, if there are no associated issues of child/spousal support, custody or access.
- Wrongful dismissal.
- Claims for injuries or damages, except for disbursement costs where approved by the executive director.
- Claims for injuries or damages where the expected recovery is less than \$2000.

6.2 Statistical Data

Table 15 presents data on civil and family legal aid cases approved, while Table 16 summarizes civil and family cases in Territorial Court and Supreme Court. The tables can only loosely be compared because case categories are different; LSB cases may involve more than one application by the same person; and because court data is on a calendar basis totalling two and a half years, while legal aid data is based on three fiscal years. Nonetheless, the following general observations can be made:

- Civil matters (as opposed to family) comprise only 4–5 percent of legal aid civil/family cases, while in Territorial Court they comprise 45–65 percent, and in Supreme Court 20–25 percent of such cases. This small proportion of civil cases flows from the exclusionary policies described in Section 6.1.
- Legal aid would appear to be involved in the vast majority of child welfare cases that come before the courts.
- Although family matter categories are exceedingly difficult to compare, a very rough estimate suggests that legal aid deals with approximately 50–75 percent of custody, child support and access cases heard in Supreme Court.

Table 15: Civil and Family Legal Aid Clients Served, by Case Type

Case Type	1999 – 2000		2000 – 2001		2001 - 2002	
	# of Approved Cases	% of Total	# of Approved Cases	% of Total	# of Approved Cases	% of Total
Civil						
Claim for Damages	0	0%	0	0%	0	0%
Claim for Injuries	0	0%	0	0%	0	0%
Wrongful Dismissal	0	0%	1	6%	3	19%
Administrative Law	6	43%	8	45%	8	50%
Other Civil	8	57%	9	50%	5	31%
Total	14	100%	18	101%	16	100%
Family						
Divorce	1	0%	0	0%	2	1%
Separation Agreement	0	0%	0	0%	0	0%
Spousal Support	5	1%	3	1%	2	1%
Child Support	79	21%	64	19%	69	19%
Custody	241	63%	198	60%	226	61%
Access	4	1%	7	2%	4	1%
Restraining Order	1	0%	0	0%	1	0%
Division of Property	7	2%	3	1%	4	1%
Possession of Matrimonial Home	0	0%	1	0%	0	0%
Child Welfare	42	11%	51	16%	62	17%
Other Family	5	1%	3	1%	1	0%
Total	385	100%	330	100%	371	101%

Notes:

1. Source: Legal Services, Access to Justice claims.
2. “Approved cases” is the total of “approved,” “pending” and “concluded” cases.
3. Percentages do not necessarily total 100% due to rounding.
4. This table does not include clients served by duty counsel lawyers under presumed eligibility.
5. Data for 1999–2000 include clients from what is now Nunavut.

6.3. Practical Limitations in the Delivery of Family and Civil Legal Aid

There is an overwhelming consensus that there is a drastic shortage of lawyers in the Northwest Territories who are willing to practise family law. The few family law lawyers live and practise in Yellowknife, except for one staff lawyer in Inuvik. This lack of family law lawyers sends ripple effects throughout the system that seriously impact the quality of service. The lack of family law lawyers is general to the justice system in the Northwest Territories, not specific to the legal aid system. However, coupled with the significantly lower fees that the Legal Services Board can



afford to pay (approximately half that charged by lawyers in private practice), this lack of supply is disproportionately felt by the legal aid system.

Table 16: Civil and Family Cases by Year in all NWT Courts

Court Level and Location	Case Type	Year		
		2000	2001	Jan 1 – June 30, 2002
Territorial				
Yellowknife	Civil	142	119	61
	Child Welfare	18	32	14
	Maintenance Enforcement	76	114	59
	Total Yellowknife	236	265	134
Hay River	Civil	62	61	12
	Child Welfare	5	12	4
	Maintenance Enforcement	11	2	0
	Total Hay River	78	75	16
Inuvik	Civil	5	17	17
	Child Welfare	3	12	11
	Maintenance Enforcement	4	25	0
	Total Inuvik	12	54	28
All Sites	Civil	209	197	90
	Child Welfare	26	56	29
	Maintenance Enforcement	91	141	59
	Total All Sites	326	394	178
Supreme Court (only sites in Yellowknife)	<i>Bank Act</i> , Bankruptcy, Estates	116	104	27
	Other Civil	266	364	58
	Adoption	57	60	42
	Divorce	33	75	9
	Total	472	603	136
Court of Appeal	Appeals	16	26	11

Notes:

1. Source: Court Services, Department of Justice, GNWT.
2. Supreme Court “other civil” includes child support, custody, and access cases.

A large majority of respondents in the legal profession stated that family law in the Northwest Territories is perceived as an unrewarding type of practice because of the emotional, “messy” and acrimonious nature of the cases, which not only embroils the parties themselves but threatens relations between counsel, and even between bench and counsel. While this dynamic may also exist in some measure in southern jurisdictions, the impacts are felt even more strongly in a small legal community such as Yellowknife.

The fact that family cases are driven by affidavits and applications increases overhead costs for word-processing staff and, consequently, for office space. Unlike private lawyers who are able to do criminal law from an in-home office using a part-time secretary, family law lawyers generally require a full-time secretary and separate office space. In legal aid cases, criminal work is thus more remunerative for the private bar than civil.

Clients often don't keep records necessary for their case, thus requiring more contact time on the part of the lawyer simply to gather information. Furthermore, communications with clients are often complicated. The language of affidavits and other documents used in family matters is often difficult for clients to understand, and requires more time for lawyers to explain.

The fact that family cases are driven by affidavits and applications also tends to prolong family law cases, especially in circuit communities. Clients are required to sign documents, which is often delayed until the lawyer is in town on circuit. Some documents require waiting periods (e.g., an originating notice for child support entails a 30-day notice period). If the required waiting period does not coincide with the circuit court dates, delays are prolonged.

6.4. Resulting Unmet Needs

The main results of these practical limitations are perceived to be:

- Major delays for clients in finding a lawyer, if they are able to find one at all. This has a variety of subsidiary impacts. For example, transition house respondents said that they often could not offer support to clients in relation to their case because the client had not found a lawyer by the time the client's six-week maximum stay was over. Several examples were given of litigants appearing unrepresented in court because they could not find a family lawyer, even after more than 20 attempts. In child protection cases, Aboriginal clients will often just give up because they do not believe they will get help. Many respondents said that the impact on people's lives in civil cases is just as significant as potential incarceration in criminal cases, but the system is felt to be far less responsive.
- The backlog of family cases handled by the Legal Services Board in Yellowknife is estimated to be eight months long. In the focus group, addressing this backlog was identified as the highest rated need.
- The perception among many clients is that lawyers don't care about the client's case or have their interests fully at heart. These perceptions were usually articulated by social agency advocates for clients. Many respondents acknowledged that the civil legal aid system is seriously under-resourced and that lawyers are thus overworked. Because of that, they did not blame the lawyers for their attitudes, but felt that, because of their workload, they had become desensitized to clients; did not have adequate time to prepare their case and/or listen to the client; and were unwilling to mount serious challenges in child protection or child custody cases. This may have particular implications for women, to the extent that they are the primary caretakers and parties in such cases.



6.5. Strategies to Respond to Needs

Several strategies were advanced, the first two of which are beyond the direct purview of the Legal Services Board:

- Explore more fully a collaborative family law approach. A workshop on this topic was recently held in Yellowknife and attracted reasonable interest. Apart from what are perceived as the intrinsic merits of a more collaborative approach for clients, some respondents felt that the approach might make family law more attractive to practitioners and, thus, increase the pool of lawyers available for civil legal aid work. Other respondents simply suggested mediation as an approach. Two respondents stated that Aboriginal clients are culturally more oriented toward collective than individual rights and are less likely to engage in a process of litigating resolution of family cases. Although they did not specifically make a connection between this observation and collaborative family law, there may be a more comfortable fit for Aboriginal clients with this orientation to resolution of family law matters. All collaborative or mediated approaches would need to be highly cognizant of power relations between the parties.
- Develop a Family Court. This would (1) help ensure that family cases receive more immediate and full attention and not be “bumped” by criminal cases; (2) develop expertise on the bench and among Crown and defence counsel; and (3) likely lead to the development of forms, procedures and innovations that would more effectively deal with the volatility and emotional context of family cases.
- More outreach to assist clients. Criminal cases necessarily bring clients to court and to the attention of legal aid. Civil/family cases depend to a greater extent on the knowledge and initiative of the client and are, therefore, more dependent on the client’s comfort level with initiating contact. Many of the social agency respondents felt that more effective service could be provided in settings less intimidating than the formal office building in which the Legal Services Board operates. Outreach to social service settings, both for Aboriginals and non-Aboriginals, could provide information to clients in civil and family matters. Another respondent felt that the Yellowknife office should move to a storefront location that would be less intimidating to Aboriginal clients. Two respondents noted that Aboriginal clients tend not to resort to anger and a “fighting stance” when they lose their children in protection cases, so an accessible setting is essential to provide a margin of comfort in which they can begin to explore and assert their legal rights.

In the focus group it was emphasized that in order to do effective community outreach, the LSB may have to take a more activist role in urging collaborative arrangements with other government departments or community agencies. For example, an effective clinic approach to family law issues might involve social workers or social work paralegals working together with Courtworkers and/or legal aid lawyers.

- Increase the tariff for family law cases.
- Hire an additional staff lawyer.
- Simplify billing procedures for family law cases, which several respondents claimed were unnecessarily bureaucratic and time-consuming compared to criminal case invoicing.
- Increase PLEI directed to family law matters.
- Contract with family law lawyers from outside the NWT. This is currently being done by the LSB on a trial basis.



7.0 Unmet Needs Prior to First Appearance

7.1 Data on Frequency of Show Cause Hearings

Court Services does not record data on the frequency of show-cause hearings. The Legal Services Board only reflects show cause activity in presumed eligibility activity statistics recorded by legal aid lawyers. These data are shown in Table 5 (Section 2.1): 119 show causes hearings were recorded for 1999–2000, 67 for 2000–2001, and only 11 for 2001–2002. Unfortunately, no show cause hearing data are recorded for Courtworkers or for lawyers other than duty counsel. It is not possible, therefore, to determine if this major decline means clients are increasingly unrepresented in these hearings.

7.2 Barriers

There was considerable variance in practices, experiences and identification of the extent of problems from respondent to respondent, and from community to community. For persons who are released after arrest and charge, the main barriers to effective legal advice and support, as perceived by respondents, are:

- The majority of clients do not contact a lawyer or Courtworker. Respondents felt that RCMP should routinely provide charged persons with information about Legal Aid and whom to contact.
- Charged persons are often transient (especially in Yellowknife) and many lack telephones. It can be difficult to prepare for the case, and these results in long docket days.
- Several lawyers felt that even if individuals are released by a JP, many frequently agree to conditions that are unreasonable, from a legal standpoint, and that would not likely be imposed, or would be more flexible, if the person were represented. One respondent noted that the danger of agreeing to unrealistic conditions (e.g., an alcoholic agreeing not to drink) is that it sets the accused up for a likely breach of the conditions.

The main barriers for persons detained after arrest are:

- Two thirds of the RCMP respondents said it is extremely difficult to contact a lawyer in the evenings or at night. Estimates of non-availability ranged from 5 percent to 40 percent of cases. Some lawyers and JPs corroborated this viewpoint, and many in both respondent groups felt there should be a 1-800 “hotline” for detained persons to reach counsel after working hours. The LSB regularly updates and distributes a list of lawyers who are willing to be contacted “collect” by persons detained in cells. LSB also gives a cell phone number for an on-call staff lawyer, but detained individuals still complain of not being able to get through to the lawyer(s).
- Most lawyers agreed that it is difficult to assess a client’s ability to understand instructions on the phone. Frequently, clients are intoxicated, thus exacerbating communication problems. A third of the JPs said that cultural factors also exacerbate problems in effectively using the phone, i.e., that accused are wary of opening up to a stranger on the

other end of the line and may be bewildered by the justice system. Language barriers were seen as a less prevalent problem (one RCMP respondent estimated 10 percent of cases) but, nonetheless, regardless of language, one RCMP officer estimated that 50 percent of individuals don't really understand what the lawyer is trying to communicate to them by phone.

- Courtworkers appear to field fewer calls from detained persons (estimates ranged from one per month to 10 per month), but several respondents felt that Courtworkers could play a useful role at this stage because of their knowledge of the community and the reliability of the accused if released.

In terms of show cause hearings, the vast majority are held in JP courts, unless a Territorial Court is sitting on circuit and it would be more expeditious to hear the matter before a judge. Although the intent of JP courts is to have more matters heard in local communities, all show cause hearings for the Beaufort Delta area are held in Inuvik to ensure more effective representation for clients. Bail hearings are held in JP court in Hay River, and cases may be referred from other communities if there would be a time delay without such a transfer. Similarly, show cause hearings originating in other regions may be referred to Yellowknife. The main reasons are that the local community may lack a JP who can hear the case, the proximity of the community to Yellowknife, and the refusal by some defence lawyers to participate in a bail hearing by phone.

The main issues in regard to show causes hearings are:

- Lawyers feel they (and their clients) are at a disadvantage in telephone show cause hearings because they are unable to consult with clients; unable to assess their circumstance and capacity; lack any advance notice (they are sometimes called by RCMP on less than an hour's notice); and are unable to get contextual clues (e.g., by reading the body language of the client, the JP and the RCMP).

Several respondents felt that video-conferencing, if technically feasible, would be an improvement. One respondent said video-conferencing is technically feasible in two communities. In the focus group, participants put the concept of videoconferencing in a wider perspective, urging the LSB to explore and embrace technological approaches to a number of issues. This would likely require collaboration with other departments or agencies that could be multi-purpose users. It was also emphasized that the main value of a technology such as video-conferencing would be in the many small communities without a resident court rather than in the larger sub-centres such as Inuvik or Hay River.

- Approximately half the Courtworkers felt reasonably confident appearing for a client in a show cause hearing. Others felt less confident because of the infrequency with which they are required to do it, or because they lacked training.



8.0 Interplay between Criminal and Civil Issues

The original intent here was to explore whether criminal and civil matters are interconnected, and if more adequate coverage or earlier response to either type of issue might forestall the need for coverage or response to the other. This issue could not be examined in a useful way through file reviews – to explore the impacts of non-coverage in one or other area – because, by definition, if there was no coverage there was no file to be reviewed. Nonetheless, the following patterns were described anecdotally:

- One lawyer estimated that 20 percent of clients are involved in both the family/civil and criminal streams of legal aid. Several other lawyers said that the connection is “predictable,” or a “routine” occurrence.
- Two predominant cross-over patterns were identified:
 - Spousal assaults leading to a demand for custody and/or access assistance. In this pattern, legal aid was usually available for both sets of matters.
 - Family matters (custody, access) being settled very slowly and degenerating into criminal offences such as mischief, impaired driving, or abduction. These secondary offences were seen as acts of frustration, despair or even misguided attempts to bring attention to the family matter. Another form of degeneration from family problems into criminal matters was on an intergenerational basis, i.e., traumatized children turning to drugs and alcohol to ease their pain.
- In both of these sets of patterns the most useful approaches were seen to be:
 - Speedier access to legal aid and courts to resolve custody and access issues.
 - A more holistic approach that involves access to treatment and/or intensive counselling around family violence and/or family relations.
 - Referral to treatment and/or counselling for alcohol abuse, which was seen by several respondents as a common connecting link between family issues and criminal acts.
 - A recognition that, to a greater degree than in criminal matters, legal representation in family matters can play a preventative role in establishing some sort of stability in the family relationships.
- Other connections that were described were between spousal assaults, family dysfunction, alcohol and child welfare matters, and between unresolved workplace issues and either family matters or minor criminal offences. The first issue spoke again to the need for more holistic approaches involving referral to treatment and/or counselling. The second could be addressed by increased legal aid coverage for certain workplace issues.

9.0 Public Legal Education and Information (PLEI)

In general terms, most respondents felt there is a major need for more PLEI. Many respondents felt that when the Arctic Public Legal Education Association existed there was more coherent and extensive provision of legal information than exists presently.

9.1. Current PLEI Activities of the Legal Services Board

In April 1996, the Legal Service Board (LSB) assumed responsibility for PLEI in the Northwest Territories. Its main PLEI program is the Law Line, a call-in information line staffed by local lawyers. It operates on Tuesday and Thursday evenings and is available toll-free to residents of the Northwest Territories. It focuses on basic legal information rather than legal advice.

Legal information is also provided routinely by lawyers and staff in the legal aid clinics on an ongoing basis as part of their contacts with clients. Some Courtworkers do no PLEI, whereas others do occasional outreach in transition houses, colleges and/or schools, and distribute pamphlets about legal aid eligibility. The LSB also publishes a variety of pamphlets on individual rights and remedies, court proceedings and local resources. In March 2001, the LSB organized a justice symposium for delegates from communities across the north in regard to needs facing northern communities.

Tables 17–20 provide statistics on the operation of the Law Line over the past three years. Several observations can be made:

- 52–55 percent of callers are women (Table 17). Insofar as criminal legal aid tends to serve a predominantly male population, the Law Line represents a modest contribution to filling the gaps in providing for women’s needs in the NWT.
- 42 percent of Law Line calls pertain to family matters, and 38 percent to civil matters, versus only 13 percent to criminal matters (Table 18). Thus the Law Line gives support in some of the areas less emphasized by formal legal aid coverage.
- The sources of referral to the Law Line are predominantly justice system organizations (Table 19).
- Where the actual community within the NWT has been identified by callers, 40–44 percent are from outside Yellowknife (Table 20). Thus, the Law Line has managed to achieve a reasonable representation of callers from smaller communities.

Table 17: Law Line Statistics: Gender of Caller

Gender of Caller	1999 – 2000		2000 – 2001		2001 - 2002	
	#	%	#	%	#	%
Male	190	47%	170	45%	138	48%
Female	215	53%	206	55%	149	52%
Total	405	100%	376	100%	287	100%



Notes:

1. Source: compiled from Law Line database.
2. The number of callers for whom gender was not recorded was 30 in 1999–2000, 31 in 2000–2001, and 4 in 2001–2002. The above totals are only for callers of known gender.
3. Data for 1999–2000 include service to what is now Nunavut.

Table 18: Law Line Statistics: Type of Inquiry

Type of Inquiry	1999 – 2000	2000 – 2001	2001 – 2002	All Three Years	
				Total	%
Family					
Access	3	13	5	21	2
Maintenance	18	22	25	65	6
Divorce	43	56	42	141	13
Property	13	11	7	31	3
Custody	29	35	34	98	9
Child Welfare	0	4	7	11	1
Other	10	9	13	32	3
Unspecified	40	13	0	53	5
Civil					
Debtor/Creditor	39	23	15	77	7
Employment	37	37	19	93	8
Wills	11	6	7	24	2
Small Claims	35	25	20	80	7
Landlord/Tenant	13	13	10	36	3
Personal Injury	11	15	4	30	3
Other	36	41	14	91	8
Criminal	55	58	32	145	13
Police Matters	9	2	3	14	1
Motor Vehicle	12	5	6	23	2
Other	17	12	28	57	5
Total Inquiries	431	400	291	1122	101%

Notes:

1. Source: Compiled from Law Line database.
2. The number of calls for which the type of inquiry was not recorded was 4 in 1999–2000, 7 in 2000–2001, and 0 in 2001–2001. The above totals are only for cases in which the type of inquiry was recorded.
3. Data for 1999–2000 include services to what is now Nunavut.

Table 19: Law Line Statistics: Source of Referral

Source of Referral for Caller	1999 – 2000		2000 – 2001		2001 – 2002	
	#	% of total	#	% of total	#	% of total
Legal Aid	119	27%	116	28%	85	29%
Law Firm/private lawyer	128	29%	122	30%	98	34%
Courts (Registry, Librarian, Clerk, etc.)	15	3%	19	5%	10	3%
Courtworker	10	2%	6	1%	7	2%
RCMP	10	2%	6	1%	1	0%
Government Office	8	8%	33	8%	18	6%
None/self	101	23%	88	22%	54	19%
Other	19	4%	17	4%	18	6%
Total	435	98%	407	99%	291	99%

Notes:

1. Source: compiled from Law Line database.
2. Percentages do not necessarily total 100% due to rounding.
3. Data for 1999–2000 include formal service to what is now Nunavut.
4. Callers frequently mentioned more than one source of referral. The first one was recorded for purposes of this table.

Table 20: Law Line Statistics: Location of Caller

Location of Caller	1999 – 2000	2000 – 2001	2001 – 2002
Yellowknife	188	166	118
Other NWT communities (total)	125	126	77
Aklavik	2	2	1
Arctic Red River	-	-	1
BHP Diamond Mine	1	1	-
Deline	6	1	-
Dettah	1	-	-
Edzo	1	-	-
Enterprise	1	-	-
Fort Good Hope	4	6	2
Fort Liard	4	2	2
Fort McPherson	-	2	2
Fort Providence	5	4	1
Fort Resolution	7	5	1
Fort Simpson	6	13	8
Fort Smith	14	16	14
Hay River	33	32	21



Location of Caller	1999 – 2000	2000 – 2001	2001 – 2002
Holman Island	1	-	-
Inuvik	23	23	11
Jean Marie River	-	-	1
Lutsel k'e	-	1	-
Norman Wells	2	7	5
Rae	7	2	4
Rae Edzo	-	2	-
Rae Lakes	-	1	-
Tsiigehtchic	-	1	-
Tuktoyaktuk	5	1	1
Tulita	1	1	1
Wha Ti	1	3	-
Wrigley	-	-	1
NWT unspecified	71	74	78
Nunavut	30	22	6
Other jurisdictions	9	14	12
Total	423	402	291

Notes:

1. Source: Compiled from Law Line database.
2. The number of callers for whom location was not recorded was 12 in 1999–2000, 5 in 2000–2001, and 0 in 2001–2002. The above totals are only for calls of known location.
3. Data for 1999–2000 include formal service to what is now Nunavut. Nunavut now has its own Law Line, but the NWT line is sometimes used by Nunavut callers.

9.2. PLEI Activities of Other Parties

Respondents identified being engaged in PLEI as follows:

- Private lawyers participate as Law Line volunteers, occasionally are involved in college or high school business classes, and routinely provide general information to their clients about the operation of the court process.
- In a few cases, social agencies provide a venue for outreach activities of lawyers or Courtworkers, and a few provide basic information about court process to their own clients. Some have collaborated in the production of pamphlets (e.g., on peace bonds), and one or two identified individual PLEI activities (information provision on fines and on restorative justice). Many distribute pamphlets to clients (e.g., on child support, peace bonds, legal aid, support services for women). Victim service workers help clients complete victim impact statements.
- RCMP personnel usually are active in school classes (e.g., DARE classes and family violence discussions) six or seven times per year, as well as more occasional information

sessions with band/council meetings. Several respondents also mentioned one-on-one information and advice activities.

- All JPs who were interviewed said they do not engage in PLEI activities. This appears to be a matter of policy, so that they are not misinterpreted and their objectivity is not brought into question.
- Respondents most commonly said that they refer clients to the Law Line or to the Legal Services Board itself to obtain legal information. Other less frequent mentioned referrals are to Victim Services, the Internet (for pardon applications), Courtworkers, the Fine Option Program, and Social Services.

9.3. Effects of PLEI

The main benefits or effects of PLEI perceived by respondents are:

- Knowledge and empowerment. PLEI helps enable individuals to own their own problems, to identify resources, in some cases to prevent problems through stronger knowledge of their rights or the governing law, and to know what was happening to them. Knowledge of alternatives to legal aid, such as diversion programs, was also seen as a potential benefit of PLEI.
- Access. PLEI helps people know where to go. PLEI is seen in part as a conduit to more effective use of legal aid.

9.4. Needs

The four main areas of need for PLEI were considered to be:

- Basic justice system and process information. There was a strong feeling that, especially in smaller communities, individuals do not understand the courts or the overall system of justice. This lack heightens the sense of victimization and cultural alienation that many Aboriginals feel towards the system. As noted in Section 3.1, this feeling is exacerbated by the speed at which processes occur in circuit communities.
- Family law information (custody, access, child support guidelines, maintenance, common-law relationships, peace bonds, restraining orders). Some respondents felt that there is little interest in criminal law information unless a person is actually charged, but that individuals and communities are much more receptive to family law information because the nature of problems tends to be slower in developing and more protracted in resolution.
- The zero tolerance policy toward spousal assault/family violence.
- Basic information on legal aid coverage and application procedures.

Other areas of need for PLEI identified by respondents are:

- Workplace issues.
- Child apprehension.
- Human rights/racism.
- Individual rights within the context of Aboriginal structures.
- Victims issues, generally.



- Various civil remedies.
- Crime and alcohol.
- Broader issues related to sexual conduct (e.g., appropriate touching in schools and at workplaces).
- Gun laws, wildlife laws.
- Legal component to post-separation counseling.

9.5. Appropriate PLEI Delivery Methods

Several themes were addressed in regard to delivery methods:

- More emphasis on outreach.
 - Individuals may be intimidated about phoning a lawyer but will speak to one if they attend at some local community service centre.
 - Several agencies said they either had offered, currently offer, or would like to offer the opportunity for clients to talk to lawyers or Courtworkers in their settings.
 - Several respondents emphasized that Courtworkers should be major vehicles for providing PLEI in the community, especially as a means to reach the Aboriginal population.
 - In the focus group, the concept of increasing PLEI done by community groups through collaboration with the LSB was discussed. It was felt that diversifying delivery of PLEI through a wider community network, to which Aboriginal individuals are connected, would increase the impact of information.
- More emphasis on oral communication.
 - Many clients are not functionally literate, so oral communication such as radio, television, community meetings, band meetings, justice committees, youth gatherings, or personal contacts are more effective.
- Need for plain language.
 - Written material needs to be expressed in less technical language.
 - Paralegals (e.g., Courtworkers) are seen by some as more effective intermediaries than lawyers.
 - Instruction of intermediaries should be done by lawyers who are good communicators.
- Other simple measures.
 - Stapling to every charge an information sheet about legal aid services and/or court procedures.

10.0 Cost Drivers

This section focuses on factors that drive costs of providing legal aid in the Northwest Territories. One component of these factors – federal and territorial legislation and policies – is dealt with separately in Section 11.

10.1. Factors

The following factors were identified repeatedly by respondents. Except where noted, almost all factors are either unique to, or affect the Northwest Territories disproportionately compared to southern jurisdictions.

- **Geography.**
Service delivery involves Yellowknife and 31 small communities in an area approximately one eighth the overall size of Canada. Since the policy of the Territorial and Supreme Courts is to bring justice and the courts to the community, overhead costs of travel and accommodation are enormous. For example, the non-fee expenditures for circuits alone amounted to 18 percent of the overall legal aid budget in fiscal 1999/2000. Witnesses in trials may have to be flown in from distant communities in the Northwest Territories, and medical or expert witnesses may be from outside the jurisdiction.
- **Alcohol consumption and abuse.**
Respondents consistently identified alcohol abuse as a major factor that impacts crime and criminal justice costs. A March 2000 release by GNWT Health and Social Services cited a 1996 Alcohol and Drug Survey by the GNWT Bureau of Statistics that showed an indicator of heavy alcohol consumption in the Northwest Territories to be three times that of Canada as a whole.

Canadian Community Health Survey data from September 2000 to November 2001 reveals that, on two primary alcohol consumption indicators, NWT residents are highest of all Canadian jurisdictions. The Canadian average daily alcohol consumption is 0.52 drinks. The NWT average is 0.70, or 133.8 percent of the Canadian average. The Canadian average for number of drinks consumed in the past week (when the survey was taken) is 3.88. The NWT average is 5.03, or 129.7 percent of the Canadian average.

The incidence of FAS/FAE is considered anecdotally as being extremely high. One lawyer estimated that alcohol drives 95 percent of the criminal caseload; another estimated that one half of any given docket comprises individuals with FAS or FAE. In a CBC interview on April 11, 2002, an RCMP staff sergeant said that, in Yellowknife alone, RCMP deal with 100 drunks each night. It is estimated that as much as 40 percent of the adult population displays some symptoms of FAS, and the proportion of inmates in the correction system similarly affected is 65 percent.



- Other social factors
Residential school syndrome is also seen as a factor that has driven a high rate of family violence and dysfunction.

There is an extremely high level of financial need among persons charged with criminal acts. This fact led in large part to the implementation in 1996 of the system of presumed eligibility. Employment rates among Aboriginals are low (48 percent, compared to 80 percent for non-Aboriginals in 1999), and this is also reflected in lower employment in communities compared to Yellowknife. Unadjusted unemployment rates were high in December 2001 at 9.4 percent, compared to Canada as a whole at 7.6 percent. However, rates improved in the spring and summer months, and stood at only 5.7 percent in August 2002, compared to 7.7 percent for Canada as a whole.

- Crime and detection.
According to the RCMP report cited above, the rate of sexual assaults in 1999 (49 per 10,000) is over six times the national average (8 per 10,000).

Statistics Canada crime rate data for 1995–2000 (based on a compilation by the Yukon Bureau of Statistics, but including all Canadian jurisdictions) show that:

- The NWT led all Canadian jurisdictions in overall reported crime rate, ranging from 24 to 29 incidents per 100 residents. The Yukon ranged from 20 to 25 incidents, and the next closest, BC and Saskatchewan, ranged between only 12 and 15 incidents. The NWT's clearance rate for these incidents, at approximately 59 percent, was the highest in Canada for the five-year period. Nunavut clearance rates, recorded only for the last two years of the period, were only slightly higher.
- The NWT led all Canadian jurisdictions except Nunavut in the rate of reported violent incidents (at approximately 5 incidents per 100 residents, compared to a range of 1 to 1.7 per 100 residents for the provinces). The NWT average clearance rate for those incidents, 68–85 percent, was comparable to that of most provinces and territories.
- The NWT was third after the Yukon and B.C. in rates of reported property incidents, ranging from approximately 5.8 to 7.7 per 100 residents, compared to less than 6 for most jurisdictions. Clearance rates, averaging approximately 36 percent, were higher on average than all Canadian jurisdictions except Nunavut.
- The NWT was third after the Yukon and Saskatchewan in the rate of reported *Criminal Code* traffic incidents, at approximately 1.05 per 100 residents, compared to less than 0.7 for the remaining jurisdictions.
- The NWT led all jurisdictions in reported “other *Criminal Code*” incident rates, ranging from 10 to 17 incidents per 100 residents, compared to less than 5 incidents for all jurisdictions except Nunavut and Yukon. Clearance rates for these incidents were higher than for all other jurisdictions.

Insofar as these incident rates and (in most cases) high clearance rates lead to charges and possible jail sentences, there are increased demands on the legal aid system. Respondents in this study felt that the higher detection and clearance rates in the NWT (and Yukon and Nunavut) are in large part due to the high policing ratios relative to population in smaller

communities. One respondent also felt that the turnover rate of RCMP officers in smaller communities impacts charge rates, as inexperienced constables tend to charge more until they acquire more knowledge of community dynamics.

- **Jury trials.**
As reported in Section 2.2, there is a high rate of jury trials, unique to the Northwest Territories. Jury trials are more expensive for legal aid than judge alone trials because they are longer and more complex.
- **Corporate factors.**
The costs of running a law practice in the Northwest Territories were estimated by one respondent as being 25–30 percent higher than in a southern jurisdiction. It is difficult for a private lawyer to run a predominantly legal aid practice without operating from home. As noted in Section 6.0, there is a serious shortage of family law lawyers. Private lawyers can earn approximately twice as much on a private retainer as they can on a legal aid funded family case. There is thus increasing pressure within larger firms for lawyers *not* to take legal aid cases. Recruitment costs are approximately \$20,000 to panel a prospective lawyer. The Inuvik clinic attempted three times to fill a vacancy, but the position remains unfilled. Thus, the Legal Services Board is caught in the squeeze between the relative lack of profitability for tariff cases, ongoing difficulty in recruiting new skilled staff lawyers, and unabated caseload pressures.

It is important to maintain a skilled bar not only in terms of the quality of representation for clients, but also in terms of containing costs. Cases are more likely to be appealed and incur further costs if the quality of either the staff or private bar is not high.

- **Lack of options in family law.**
Several respondents emphasized that the current model for resolution of family law matters in the Northwest Territories lacks any of the alternative resolution procedures commonly available in some southern jurisdictions. An orientation based on litigation is generally more expensive than alternative models.



11.0 Federal and Territorial Drivers of Cost

11.1. Legislative Drivers

There is general agreement that cumulative changes to federal legislation over the past two decades have had a dramatic impact on the time required by defence counsel in criminal cases. In most instances, the impacts are similar to those in southern jurisdictions.

The principal changes cited by respondents pertain to Charter rights under the *Constitution Act*. These have heightened awareness of individual rights and led to a significant increase in applications such as challenges to the admissibility of evidence. The case law to handle these challenges is complicated and time-consuming to digest. One respondent estimated that jury trials take twice as long as they did 20 years ago.

Examples of change that have impacted criminal defence preparation and trial time are:

- Strengthened provision for interception of private communications and procedures for obtaining search warrants in drug cases. These changes have increased enforcement capacities in relation to drug operations, and, therefore, the number and size of cases brought to trial.
- Increased penalties for marijuana cultivation.
- Uttering threats (cc 264.1) is now a separate charge, often as an additional charge in assault-related cases.
- Provisions for confiscation of funds suspected of being obtained through “laundering” of the proceeds of drug-dealing. The onus is on the accused to prove the legitimacy of the revenue.
- The new *Youth Criminal Justice Act* is anticipated to result in some jury trials, higher maximum penalties, and more conditional sentencing, all of which will put increased demands on defence counsel.

11.2. Policy Drivers

Changes that have been implemented by federal and territorial policy have placed equally significant demands on legal aid costs. Key policies or decisions identified by respondents include:

- Zero tolerance/mandatory charge policy in spousal assault.
This policy is seen by many respondents to result in charges that have little chance of success. Since the charge is often by way of indictment and the election in communities is usually for jury trial, the cost implications of this policy for legal aid are significant.
- Territorial policy (with federal encouragement) that courts should be held in communities rather than only a central resident court.
The impacts of this policy are discussed in Section 3 (circuit courts) and Section 4 (JP courts).

- The shared federal/territorial policy to encourage community-based alternative justice processes and more creative conditional sentencing. This requires more up-front and preparatory work for defence counsel to ensure an appropriate sentencing plan is presented. Although some of these cases will be diverted and not involve legal aid expenditures, others require more time in relation to sentencing. The net time demand on legal aid staff cannot reliably be determined.
- Increase in Crown staff and resources.
As a result of the increase in staffing implemented by the Crown office in Yellowknife, there is a greater capacity for Crown to pursue and support prosecution of cases that, in the 1990s, would not have proceeded. The capacity also involves access to DNA and blood/hair experts. This greater prosecutorial capacity has put some pressure on the Legal Services Board to support the defence process in equal measure, but without equal resources. One respondent felt that Crown Counsel have pursued dangerous offender applications with extra vigour, again putting more pressure on legal aid budgets.
- Territorial policy in regard to traffic offences.
One respondent noted that individuals are convicted if they do not show up in court for traffic offences. A warrant is issued, a show cause hearing may ensue, and legal aid resources become necessary for subsequent proceedings, even though the original offence is relatively minor.



12.0 Conclusions

From one perspective it can be stated that the Legal Services Board has done an admirable job, despite severely constrained resources, of meeting basic legal needs in the NWT. It provides legal services to citizens in 32 communities, widely dispersed across an enormous territory, through a mix of legal aid staff lawyers, private lawyers on contract or on a tariff basis, Courtworkers, and the Law Line. The Beaufort/ Delta clinic provides considerably greater access for northern clients, and the system of presumed eligibility ensures at least front-end assistance for almost any citizen in the territory facing criminal charges.

From another perspective, the legal aid system is in crisis. The main fault lines are most evident in three areas. On the civil side, there is an eight-month backlog of family cases and a serious lack of private lawyers willing or able to take family cases. On the criminal side, there are major pressures on Courtworkers to do in-court work in an increasingly active JP Court system; a division of opinion within the legal profession as to whether Courtworkers can or should undertake this work; and the need for a major and sustained training initiative. The LSB has also been unable to devote the time and resources to mount significant PLEI outreach activities beyond limited (but helpful) Law Line service two evenings per week.

These three areas have particular impacts both for women and Aboriginal persons. Women tend to comprise a higher proportion of family cases and, as seen in Section 9.1, of Law Line callers. To the extent that JP courts are a mechanism for accessing smaller communities, the quality of justice in these courts most directly impacts the lives of Aboriginals, because they form the majority of the population in these communities. By the same rationale, pressures limiting time that can be spent with clients in the smaller communities served by circuit courts primarily impact Aboriginal clients. Similarly, the vast majority of Courtworker clients are Aboriginal persons – and the quality of training of the Courtworkers will directly affect those clients. Both gender and Aboriginal considerations are at play in the recommendation that family and civil services in Yellowknife should be delivered through an outreach clinic and/or through community agencies. This method of delivery is more appropriate for persons who are not automatically “delivered” to the legal aid system by the necessity of a court appearance and who, for reasons of culture, language, power relations and/or knowledge of systems, may be reluctant, embarrassed or afraid to ask for assistance. A more dynamic, outreaching PLEI delivery arm can also help such individuals achieve the basic knowledge and comfort levels necessary to approach the legal aid system.

It is unlikely that the LSB can address these major issues without a significant infusion of funds by either or both the territorial and federal governments. The drivers of costs in delivering legal services in the NWT have been documented in Section 10 and Section 11 of this report. Although the business case that was made by the federal Department of Justice to justify increases in prosecution staffing and resources was not available for this study, it is likely that it addressed many of the same realities.

To make the most effective use of any additional funds, the LSB will need to be more proactive in working with other departments or agencies with complementary objectives. Examples have been given of an outreach clinic that combines social workers, legal aid staff, Courtworkers and/or agency staff, or of developing technological capacities such as video-conferencing facilities throughout the territory, and of pursuing PLEI in tandem with social service deliverers. Similarly, Courtworker training could be considered in conjunction with parts of JP training. In a limited fiscal environment, creative solutions using a variety of partners and shared resources can optimize the quality of service delivery.



Appendix 1: Summary of Legal Aid Focus Group* Yellowknife, Northwest Territories, August 12, 2002

1.0 Purpose

The purpose of the focus group was to reflect on the priorities that should be assigned, and the rationales and strategies that should be applied to 35 legal aid needs in the NWT. These needs had been identified through 87 key respondent interviews and were listed in the document distributed to participants. This list was drawn from a summary of a July 4 document entitled “Study of Legal Aid: A Point Summary of Findings to Date on Ten Research Issues” and submitted to the Department of Justice. The needs list, the summary document and an agenda were sent to participants a week in advance of the meeting.

2.0 Participants

Twelve participants were invited to the meeting. Nine attended in person, one by teleconference, and two could not attend. They were selected with several principles in mind:

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

The participants were:

- Acting Executive Director of the Legal Services Board.
- Director, Court Services (and former director of Legal Services Board).
- Former Director of Corporate Services, NWT Department of Justice.

* Note: This appendix is a slightly adapted version of the report of the focus group sent to the Department of Justice in mid-August 2002. Several appendices to the original report have not been included in this report.

- Chairman, Legal Services Board (also a JP and representative from the South Slave region).
- Courtworker servicing Rae, Whati, Klut'se, Rae Lake and Snare Lake.
- Staff lawyer for civil matters and PLEI.
- Crown counsel (and former staff lawyer in Inuvik).
- Executive Director, NWT Status of Women.
- Director, Yellowknife Women's Centre.
- Private lawyer serving Sahtu region (Fort Good Hope, Norman Wells, Kulita, Deliné, Colville Lake).

3.0 Meeting Format

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

Part One:

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

Part Two:

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

4.0 Results of the Focus Group

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



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

Sections describing issue in report		Need/Issue	Average on 7 pt scale: 1 = not important 7 = extremely important	Number of Respondents	Range of Rating
6	1	Address backlog of family cases.	6.5	10	2-7
3	2	Increase time that Courtworkers and/or lawyers have with clients on circuit.	6.2	10	4-7
4	3	Increase frequency of Courtworker training.	6.1	10	5-7
4	4	Emphasize mentoring in Courtworker training.	6.1	10	4-7
4	5	Develop a code of conduct for Courtworkers.	6.0	6	4-7
4	6	Develop consensus around appropriate roles for Courtworkers.	5.9	10	4-7
6	7	Establish storefront location to enhance visibility and increase comfort level of Aboriginal clients.	5.8	8	4-7
2	8	Enhance relationships with government departments and community agencies that are involved in the justice system.	5.8	8	4-7
2	9	Embrace distance communications technology.	5.8	6	5-7
9	10	Increase family law PLEI.	5.6	9	4-7
2	11	Need for more than 10 hours preparation and review time for appeals in legal aid cases.	5.4	8	3-7
2, 6	12	Strengthen private bar participation in civil (family) legal aid.	5.3	10	1-7
2	13	Increase Aboriginal presence in administrative and legal aid delivery systems.	5.1	9	3-7
6	14	Increase legal aid tariff for civil cases.	5.1	9	1-7
4	15	Certify Courtworkers for different levels of activity.	5.1	10	1-7
6	16	Increase legal aid community outreach in civil/family matters.	5.1	9	4-7
7	17	Explore means other than telephone to assist clients who have been detained.	5.1	7	1-7
Focus Group	18	Provide cross-cultural training for legal aid delivery staff.	5.0	8	3-7

Sections describing issue in report		Need/Issue	Average on 7 pt scale: 1 = not important 7 = extremely important	Number of Respondents	Range of Rating
Focus Group	19	Provide consistent translation and interpretation opportunities.	5.0	8	4-7
9	20	Increase PLEI outreach activities.	4.9	9	2-7
10	21	Develop procedures that more fully take into account the needs of FAS/FAE clients.	4.8	9	2-7
9	22	Increase PLEI about basic justice system and court procedures.	4.7	9	4.7
7	23	Improve telephone availability of lawyers for persons who have been arrested and detained, especially at night.	4.7	9	1-7
2, 11	24	Need for increased funds for expert witnesses' review time in legal aid cases.	4.2	9	1-7
2	25	Strengthen private bar participation in criminal legal aid.	4.1	9	1-7
6	26	Simplify billing procedures in family cases.	4.0	7	1-7
7	27	Improve Courtworker training for show cause hearings.	4.0	10	1-7
Focus Group	28	Increase requirements for recipient contributions.	4.0	7	1-6
Focus Group	29	Extend coverage for civil (non-family) legal aid.	3.9	8	1-6
2	30	Increase legal aid tariff for criminal cases.	3.9	9	1-6
3	31	Improve relationships between bench and Courtworkers.	3.8	8	2-6
9	32	Increase PLEI on legal aid coverage and application procedures.	3.8	9	2-7
9	33	Increase PLEI related to family violence/spousal assault.	3.7	9	3-7
5	34	Increase lawyer involvement in JP courts, over and above show cause hearings.	3.3	9	1-5
2	35	Raise financial eligibility cut-off points for receiving legal aid.	2.8	8	1-5



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

- To concentrate rigorously on the development of the role and skills of the Courtworker (items 2, 3, 4, 5, 6 and 15). This springs from the significant roles that many Courtworkers are already playing in JP courts, and the fact that, in many cases, they are the only permanent on-the-ground resource in smaller communities.
- To attend urgently to the 6–8- month backlog of family cases, and to provide increased support in various ways in the family/client area (items 1, 10, 12, 14, 16).
- To increase accessibility for Aboriginal populations (items 7 and 13), a matter that would also be addressed in part through increased focus on the Courtworker role.
- Two additional needs were identified by the focus group members and – although with a low number of respondents – given high level of importance.. The first (item 8) was that the Legal Services Board play a more activist role in seeking joint solutions to problems with other government departments or community agencies (e.g., with Social Services to deal with alternate approaches to wardship cases). The second was to explore a variety of technological approaches that could help the delivery of legal aid in remote communities. The most immediate instance of this type of technology was the use of video-conferencing for show cause hearings in remote communities, as a superior mechanism to teleconferencing. As with item 8, this might require a more activist role for the Legal Services Board in terms of collaboration with other government departments and agencies.

4.1 Rationale for Priorities

Participants were asked to describe the main principles, philosophy or rationale that guided them in rating items. This was done for two reasons: (1) to foster discussion that might encourage participants to revise their rating (somewhat like a mini-Delphi exercise), and (2) to suggest principles that should be considered if the federal government directs and targets new expenditures in the area of legal aid.

The following rationales were described by participants:

- Courtworkers are a critical component of the delivery system, given the large Aboriginal population, the remoteness and small size of many of the NWT's communities, the increased role of JP courts, and the need for a greater legal aid presence in communities between circuits.
- Family law (and child welfare) matters are currently undersupported compared to criminal matters. The current backlog of family cases is seen as a critical and urgent matter.
- Accessibility is a critical aspect of service delivery, and needs to be improved on a variety of fronts.
- Alternative and innovative approaches to service delivery must be considered, given the crisis environment of legal aid funding.
- Private bar participation in the delivery of legal aid needs to be encouraged and increased.

4.2 Strategies for Addressing Priority Issues.

Various strategies, related to the five sets of priority issues identified earlier in section 4.0, are presented in Table 22.

Table 22: Strategies for High Priority Needs

Need	Strategies/Resources	Related Comments
Courtworker Development.	<ul style="list-style-type: none"> • Certified training to give skills and competencies allowing Courtworkers to undertake specified activities. 	<ul style="list-style-type: none"> • comparisons were made with Ophthalmic Medical Assistants (OMA) who carry out diagnostic and therapeutic procedures under the direction and supervision of a qualified ophthalmologist. Training involves a well-defined curriculum and rigid assessment program.
	<ul style="list-style-type: none"> • Mentoring with a specific assigned lawyer. 	<ul style="list-style-type: none"> • although Courtworkers are centrally supervised, either from Yellowknife or Inuvik, this suggestion envisages a more consistently developmental role with either a staff or private lawyer.
	<ul style="list-style-type: none"> • Development of code of conduct. 	<ul style="list-style-type: none"> • This was a need suggested in the focus group rather than through surveys, and was seen as an essential component of Courtworker development.
Reduction of backlog in family law cases.	<ul style="list-style-type: none"> • Contract with lawyers from outside the NWT. 	<ul style="list-style-type: none"> • This is currently being done on a trial basis. It is costly and, due to frequent adjournments of cases, may not prove cost efficient.
	<ul style="list-style-type: none"> • Hire an additional family law lawyer. 	
	<ul style="list-style-type: none"> • Raise family tariff. 	<ul style="list-style-type: none"> • May need to be looked at in relation to an overall review of the tariff. Also may not be sufficient to compensate for the current negative environment in family law.
	<ul style="list-style-type: none"> • Implement a clinic approach to family and civil law. 	<ul style="list-style-type: none"> • The example given was of two family law lawyers with two paralegal social workers or trained civil Courtworkers. This approach was felt to hold out more possibility of non-litigated settlements.
	<ul style="list-style-type: none"> • Collaborative law approach. 	<ul style="list-style-type: none"> • There is some interest in this approach and presentations made in Yellowknife. One problem is the fact that litigants and lawyers are frequently from different communities and /or jurisdictions.
	<ul style="list-style-type: none"> • Increase PLEI in family law. 	<ul style="list-style-type: none"> • This can also be done in relation to a clinic approach or in development of Courtworker functions.
Increasing accessibility of legal aid services to Aboriginal populations.	<ul style="list-style-type: none"> • Development and consolidation of Courtworker roles as above. 	
	<ul style="list-style-type: none"> • Development of a storefront service in Yellowknife. 	<ul style="list-style-type: none"> • This could also be part of a clinic approach, as per the family law strategies above.



Need	Strategies/Resources	Related Comments
	<ul style="list-style-type: none">• Lawyers go to communities in advance of circuit dates.	<ul style="list-style-type: none">• Although this requires more funds for accommodation, better case preparation can reduce trial adjournments and increase Aboriginal client confidence in the system.
	<ul style="list-style-type: none">• Through collaborative processes, increase PLEI done by community groups.	<ul style="list-style-type: none">• The rationale is that by diversifying delivery of PLEI through a wider community network to which Aboriginal individuals are connected, the impact of information is greater. One participant felt the issue should not be seen only as the role of PLEI in legal aid, but the role of legal aid in the overall provision of PLEI across all government departments and the community.
	<ul style="list-style-type: none">• Formalize and increase Courtworker role in PLEI.	<ul style="list-style-type: none">• Courtworkers have a vital role as a cultural bridge.
More activist role for legal aid with government departments and community agencies.	<ul style="list-style-type: none">• Clinic concept that may involve social workers or social work paralegals with lawyers.	<ul style="list-style-type: none">• See above discussion. It was felt that unless the Legal Services Board sought collaboration with other departments, these types of initiatives would be unlikely to occur.
Embrace technological approaches.	<ul style="list-style-type: none">• Push to get videoconferencing facilities in remote communities that could serve numerous types of users.	<ul style="list-style-type: none">• it was felt, as with the previous point, that this type of initiative will take collaboration with many other players. Although videoconferencing was of particular interest for show cause hearings, it was felt important to view this issue in a larger perspective, i.e., that technological solutions may be appropriate for a number of justice processes that are currently time-consuming and expensive.