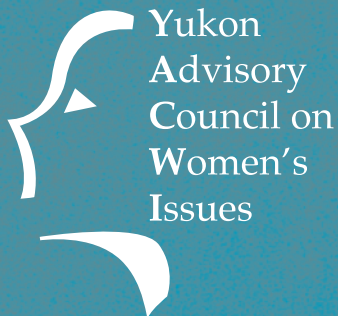




# Gaps, Needs and Options: Legal Advocacy for Yukon Women

Final Report | June 2014



Yukon  
Advisory  
Council on  
Women's  
Issues

The Yukon Advisory Council on Women's Issues commissioned this report written by Whitehorse lawyer, Jennifer Cunningham. 2014.

# Table of Contents

<b>Executive Summary</b> .....	5
<b>Introduction</b> .....	7
1. Methodology.....	7
2. The Concept of a Legal Advocate and Legal Advocacy.....	8
3. Existing Services in the Yukon for Women’s Legal Advocacy & Legal Services.....	10
4. Gaps in Legal Advocacy and Legal Services.....	11
5. Cross-Jurisdictional Best Practices for Women’s Legal Advocacy and Legal Services .....	16
6. Summary of Options for Legal Advocacy and Legal Services in the Yukon .....	19
7. Conclusion.....	23
<b>Literature Reviewed</b> .....	24
<b>Appendices</b>	
A Service Providers in the Yukon - Non Lawyers .....	25
B Service Providers in the Yukon - Lawyers .....	29
C Definitions.....	32





# Executive Summary

The Yukon Advisory Council on Women's Issues ("YACWI") acts in an advisory capacity to the Minister responsible for the Women's Directorate. As part of these responsibilities, YACWI has closely followed and participated in the ongoing dialogue about police and justice reform in the Yukon in recent years. YACWI has commissioned this paper to inform discussion regarding Recommendation 4.1 of *Sharing Common Ground*, the final report from the review of Yukon's Police Force, which calls for the "consideration of a legal advocate position to support women and/or a Yukon Court Watch program." It was identified that women require legal advocacy when they are intersecting with the police and the criminal justice system, as either complainants or accused persons, when they require assistance with family law, child protection law and poverty law, and when they confront human rights issues.

This paper is informed by the work of the *Sharing Common Ground* report, interviews, and a review of other related documents about women's advocacy needs and concerns. It defines legal advocacy to mean assistance of any kind provided to women in any way that has legal implications. The paper details existing advocacy services, discusses service gaps in the Yukon, reviews best practice examples from other Canadian jurisdictions, and presents potential options for further exploration.

A number of gaps in Yukon services are identified, including:

- Many of the legal advocacy services available are not always well understood by service providers working directly with women.
- Due to these services not always being well understood, referrals provided by service providers are often too weak to effectively ensure that women are able to access the advocacy that may be useful and appropriate.
- Many service providers who are working directly with women would benefit from access to legal information themselves to better advocate for their clients.
- There is a disparity in service delivery between Whitehorse women and rural Yukon women.
- Yukon Aboriginal women require culturally relevant services, which were sometimes described as services where the provider was non-judgemental and highly knowledgeable about the effects of colonization and systemic racism against Aboriginal people. Culturally relevant services were also described as services provided by Aboriginal women for Aboriginal women.
- Women need more information earlier in the process about their legal options and the consequences of the choices that are available when they are complainants or potential complainants in sexual assault and/or domestic violence cases.

The paper details a series of options for future research and exploration, including:

- *Strengthening existing services* by improving communication between existing service providers about their services, mandates and availability.
- *Public legal education* and legal advice for service providers and their clients.
- *Legal advocacy for complainants* to help women decide upon their best options regarding whether to report violence or pursue other alternatives. The need for legal advocacy during the criminal process and legal advocacy for civil and family law issues connected to domestic violence is also identified.
- *Rural services* including the need for 24-hour support services to be available in all Yukon communities.
- *Culturally relevant services* are essential for Aboriginal Yukon women, their families and communities.
- *Strategic litigation* as a means of challenging relevant issues within the law to affect change.

The paper provides background information and is intended to be a starting point for future dialogue and research on the issue of women's advocacy services in the Yukon.

# Introduction

The Yukon Advisory Council on Women's Issues acts in an advisory capacity to the Minister responsible for the Women's Directorate. YACWI is tasked with:

- Listening to individuals, organizations and government departments on a range of women's issues, programs and/or initiatives;
- Advising the Minister responsible for the Women's Directorate about issues that concern Yukon women;
- Reviewing policies, programs and legislation affecting women, as directed by the Minister; and
- Developing public awareness through annual forums focused on the issues affecting women.

As part of these responsibilities, YACWI has closely followed and participated in the ongoing dialogue about police and justice reform in the Yukon in recent years. YACWI is a collaborative partner in moving the dialogue forward and in meaningfully defining the issues and challenges. Recommendation 4.1 of *Sharing Common Ground*, the final report from the review of Yukon's Police Force, 2011, calls for the "consideration of a legal advocate position to support women and/or a Yukon Court Watch program." YACWI, with support from the Women's Directorate and the Department of Justice, commissioned this preliminary paper as a means to contribute to this dialogue by clarifying the possible scope and role for a position or positions to enhance women's legal advocacy in the Yukon.

This paper is informed by *Sharing Common Ground* and *If My Life Depended on It*<sup>1</sup> a report by Lois Moorcroft created for the Sharing Common Ground dialogue. The paper explores the meaning of "legal advocacy," details existing advocacy services, discusses service gaps in the Yukon, reviews best practice examples from other Canadian jurisdictions, and presents potential options for further exploration.

## 1 Methodology

Many individuals, groups, and documents were consulted in the course of this project. Structured and unstructured interviews, and document review were the primary methodologies. The following individuals and types of organizations provided valuable input:

- a) Aboriginal women's groups
- b) Women's groups
- c) Service providers from women's shelters in Whitehorse, Watson Lake and Dawson City
- d) Service providers in Whitehorse and 6 Yukon communities
- e) 10 individual women from 3 Yukon communities
- f) Current and past Women's Advocates
- g) Relevant Non-Government Organizations
- h) Yukon Child and Youth Advocate Office
- i) Council of Yukon First Nations Justice
- j) Yukon Government Units, such as: Victim Services, Adult Probation, and Family and Children's Services
- k) RCMP

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1 *If My Life Depended On It: Yukon Women and the RCMP*, Submission to Review of Yukon's Police Force, Lois Moorcroft, 2011

- l) Public Prosecution Service of Canada
- m) Yukon Legal Services Society
- n) The Law Line
- o) Yukon Human Rights Commission

## 2 The Concept of a Legal Advocate and Legal Advocacy

Legal advocacy is assistance of any kind that has legal implications. A legal advocate can be described as someone who is present with and supporting a woman while she makes decisions that have potential legal implications. It is important to note that stakeholders were careful to distinguish between those service providers who provide “information and support” and those who provide “advocacy and advice.” During the consultations, this distinction was clear and it is important to distinguish between the two concepts.

It is also important to distinguish between legal services and non-legal services. Although an advocate can provide legal advocacy, only a lawyer can provide legal advice.<sup>2</sup> There is also a difference between being an advocate at the micro and macro level. For example, many providers support individual women, and other services work at a policy level with the goal of affecting systemic change.

While reviewing the existing advocacy services in the Yukon (detailed in Appendix A and B), it is important to note that a number of the service providers consulted stated explicitly that they are not advocates. To these service providers, this means that they provide information and support to their clients but do not publicly advocate for their legal rights or position. Below, four different levels of advocacy are described: a) information and support; b) information and support including advocacy to others on a woman’s behalf; c) lawyer services; and d) advocacy at the policy level.

### 2.1 SUPPORT AND INFORMATION FOR INDIVIDUAL WOMEN

It is extremely stressful for a woman to be in a situation with the potential for legal consequences. Support and information can provide knowledge and assistance during these stressful times. Often a woman in such a situation has to make difficult decisions, which require an understanding of all of her options and the consequences of her decisions. With a service provider present to hear and receive the same information, the woman is able to de-brief and discuss her options in an environment she trusts. Some women also reported that they felt more respected by other service providers when they had a service provider accompany them. Support and information for individual women may be provided by Victim Service Workers (in a criminal court context) or the advocate at the Victoria Faulkner Women’s Centre. In describing this support role, those consulted viewed the role as someone who:

- Has some understanding, knowledge and experience around the issues the woman is facing;
- The woman trusts;
- Is a woman, as this was felt to be a positive step in removing any additional barriers in a crisis situation;
- Is non-judgmental towards the woman about her situation and choices;
- Does not have her own agenda concerning the outcome of the woman’s legal issues;
- Can explain what is occurring in the legal system in language the woman understands;
- Has experience helping others in the legal system and understands the larger system;

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2 See the exception to this for Aboriginal Courtworkers in Appendix A of this Report. The ability for Aboriginal Courtworkers to act as agents is set out in the Legal Professions Act, which states: “No Person, other than a member, is permitted to engage in the practice of law, except [...] b) an aboriginal court worker”.



- Accompanies women to appointments with social workers, lawyers and to Court;
- Assists women navigate the legal system by providing support and information;
- Assists women to ease the feelings of fear and ambivalence about the court process;
- Speaks her language and is on her side;
- Is not actually part of the criminal justice system, or child welfare system itself, but works outside of the system;
- Is available outside of usual office hours and can be present in a crisis situation;
- Provides accurate information to empower women to make decisions according to their best interest; and
- For Yukon Aboriginal women, is someone who has a shared experience and can understand systemic racism and alienation from the criminal justice system, the RCMP, and Family and Children's Services.

## 2.2 ADVOCATING TO OTHERS ON BEHALF OF AN INDIVIDUAL WOMAN

Beyond the provision of information and support, stakeholders indicated that the person in the advocacy role should be able to speak out on behalf of women in various legal forums. For example, an advocate could assist a woman to express her views and opinions to social workers, lawyers/judges, government agencies, or any other person or service where assistance is required. As a further example, the advocates at the Victoria Faulkner Women's Centre, the Elizabeth Fry Society, and Aboriginal Court Workers, advocate on behalf of others. It is important to note that some service providers stated that they do not advocate to others on a woman's behalf; for example, Victim Services, the Family Law Information Centre, Crown Witness Co-ordinators, and the lawyer at the Law Line do not advocate to others on behalf of individual women, but they do provide information and support as stated in section 2.1.

In describing this type of advocate, those consulted viewed the role as someone who, with the permission of the woman, may:

- Speak to agencies on behalf of a woman as she navigates the legal system (for example, to the RCMP and the Crown in charge of a criminal process the woman is engaged in);
- Write letters or talk to a landlord when necessary if housing is at risk;
- Speak to social workers at meetings with Family and Children's Services;
- Ask questions, seek clarification or probe for alternatives and solutions with the woman's defence lawyer for an accused or the Crown Attorney for complainants while attending meetings with the woman;
- Write letters or ask questions when Federal, Territorial or First Nations services are denied;
- Speak or write to family or community members; and
- Connect the woman to other community services – not just by making referrals, but by making connections on her behalf.

## 2.3 ADVOCATING AT A LEGAL LEVEL – LAWYER SERVICES

At another level of advocacy are those services that are provided by lawyers. Lawyers may provide those services described in 2.1, 2.2 and 2.4, but only lawyers can provide legal advice. As noted, the lawyer at the Law Line provides legal information, but not legal advice.

Lawyers and Aboriginal Courtworkers are also able to go to Court and speak on behalf of their clients before a Judge or a Justice of the Peace. Aboriginal Courtworkers may represent their clients in summary proceedings up until the point of trial.<sup>3</sup>

#### 2.4 ADVOCATING AT A POLICY LEVEL

Another level of advocacy is at the macro or policy level — an area already included in the mandates of many service providers. For example, in the Yukon, the Women’s Directorate, Yukon Aboriginal Women’s Council and Yukon Status of Women Council work at the policy level. Many service providers work at all levels, for example, Aboriginal Court Workers and Victoria Faulkner Women’s Centre. Stakeholders expressed a role for advocates on a policy level who could:

- Make submissions on proposed changes in policies and laws that affect women;
- Having a dialogue with the Court and lawyers about language that is used in the criminal justice process in sexual assault and domestic violence cases;
- Consult about local issues in the justice system similar to other parties, such as the Crown, defence counsel, Probation Officers, Victim Service Workers, Court Workers, and other justice participants; and
- Identify areas that may require change and work towards affecting that change for women in the Yukon.

### 3 Existing Services in the Yukon for Women’s Legal Advocacy & Legal Services

The following is a summary of the existing legal advocacy services and legal services in the Yukon. These service providers indicate that they offer the following, or a combination of the following: advocacy, support, advice and information.

Legal advocacy in the Yukon is a broad area, with a vast number of relevant services and programs. As such, the Women’s Directorate offers a Yukon Family Violence Resource Directory, to detail all these services. Although all of the services outlined in the YFVRD provide “legal advocacy” in the broader interpretation of the term, the intention of this section is to focus on those services that are directly related to navigating the legal system and/or providing legal rights information. This section will also provide more detail about what those services provide—and where they may fall short.

There are two types of non-lawyer advocacy services for women (as outlined in Appendix A). One type is direct advocacy with an individual. As an example, support workers and/or advocates who are available to assist women while they navigate the legal system are providing direct advocacy. The other type is systemic advocacy. This is when groups lobby different levels of government and other service providers to raise relevant supports on behalf of women. Sometimes an organization can offer both direct advocacy and systemic advocacy. Another category of advocacy is legal services, which is addressed in the second part of this section. Many advocates and lawyers can provide legal information, but legal advice is only provided by a lawyer who is on the side of the party seeking advice. The services listed in Appendix A and Appendix B detail which organizations provide legal advocacy.

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3 The ability for Aboriginal Courtworkers to act as agents is set out in the Legal Professions Act, which states: “No Person, other than a member, is permitted to engage in the practice of law, except [...] b) an aboriginal court worker”.

### 3.1 SUMMARY OF GAPS IN OFFERINGS FROM SERVICE PROVIDERS, AND EMERGENT TRENDS

In examining the variety of legal advocacy and legal services available to Yukon women, a number of gaps and trends emerged, including:

- Many of the advocacy services available were not always well understood by service providers working directly with women;
- The referral process is weak due to a lack of understanding of the exact mandate for each service provider and fails to effectively ensure that women are able to quickly access programs that may be useful and appropriate;
- Service providers that work with women in the justice system felt that their clients were being “left out of the conversation” when lawyers were involved;
- There were many instances when a complainant required consultation with a lawyer, but it also became clear that many service providers who work directly with complainants would benefit from access to legal information to better assist their clients;
- There is a disparity in service delivery for Whitehorse women and rural Yukon women because services are predominately available in Whitehorse. There are shelters in Watson Lake, Dawson City and Whitehorse, but all other Yukon communities do not have shelter services or 24-hour crisis support outside of calling the RCMP;
- Legal advocacy would also be helpful in situations that are not covered by Yukon Legal Services Society, such as prison law issues, RCMP complaints issues, advice for complainants in the criminal process, civil law issues arising from domestic violence, and strategic litigation;
- To better understand the areas of law where women require legal services and legal advocacy, one should conduct a close analysis of the type and amount of work the Law Line offers. The Law Line is available by phone to rural clients. It offers only information and the lawyer cannot act for clients in court, advocate publicly on behalf of clients, or offer legal advice;
- Women need more information earlier in the process when they are complainants in sexual assault cases or domestic violence;
- Yukon Aboriginal women require culturally relevant advocacy services; and
- During consultations, service providers and individual women described that they felt the lawyers at Yukon Legal Services Society did not have enough time to properly assist clients as the lawyers were too busy.

## 4 Gaps in Legal Advocacy and Legal Services

Sexualized assault and domestic violence are two areas where women report feeling reticence, fear, apathy, alienation, and lack of trust when they contemplate engaging the criminal justice process. This is connected to the many gaps in the efficacy of legal advocacy and legal services. It was felt that the justice system should be more responsive to the needs of women, which would encourage reporting and participation in the legal process. This section will address in more detail the gaps in legal advocacy and legal services that were identified by stakeholders and service providers, specifically in the context of sexual assault and domestic violence cases.

### 4.1 DECIDING WHETHER TO ENGAGE THE CRIMINAL JUSTICE SYSTEM

Many service providers discussed the complicated legal position that a woman finds herself in if she reaches out to the RCMP when she is being abused by an intimate partner. Each path a woman may choose has the potential for serious legal consequences. It is important to note that once a woman calls the RCMP to report abuse, the decision about whether or not a criminal charge will be laid is out of her hands and solely in the

discretion of the RCMP. After the RCMP initiates a criminal charge, the matter is transferred to the Crown lawyer and the decision to continue the prosecution is then solely in the Crown's discretion.

There are other options for women who do not want to engage the RCMP and the ensuing criminal process. There are Emergency Intervention Orders and peace bonds, the support of Victim Services, emergency shelters, family and community. It is important for individual women to be aware of all of their options and the consequences and outcomes of each path. For women in rural communities, with no women's shelter, the options are limited when responding to violence. If there is no safe place to go, women are left with no other option but to call the RCMP to ensure their safety and the safety of their children, even if they do not want to engage the criminal justice system. This is a serious impediment to seeking assistance, as women have expressed that calling the RCMP and facing the criminal justice system and its consequences, is often overwhelming. In a crisis, if a woman wants help, there is no other option in many of the rural communities in the Yukon.

Many women have been experiencing violence for a long time before they report the abuse. The moment that they call the RCMP to report the abuse is often just one small part of a much bigger picture. Although RCMP are able to respond in a way that could make a difference, a woman often enters with a limited understanding of the implications of her actions. This was identified as a time where advocacy and information are required to help women understand the legal consequences of choosing to provide a statement to the RCMP.

#### 4.2 GAPS IN SUPPORT IN THE CRIMINAL TRIAL PROCESS

Mistrust of the RCMP, lawyers and the court was a strong theme in the consultations and the reports informing this research. One gap that was specifically identified was the availability of legal advice and information for complainants so that they can navigate the difficult criminal process. It was felt that access to impartial legal information would help women feel less alienated and more empowered through the process. Stakeholders expressed that women who are complainants often believe the Crown is their advocate, only to realize that the Crown's role may be adverse to their interests. The Crown's role is to ensure public safety according to their viewpoint and the Crown's goals may be different than the complainant's goals throughout the process. For example, the Crown may decide to continue a prosecution in a case where the complainant does not want to continue the prosecution. A gap was identified for complainants who require legal advocacy responsive to their interest in the proceeding.

The only two lawyers who have a voice in court in the criminal justice system are the Crown and the Defence, neither of whom represent the complainant. There is a need for a lawyer who can provide legal information or advice to the complainant. Without this advocate, all of the information regarding her case will come from the Crown who may have a different interest in the outcome.<sup>4</sup> With her own advocate, a complainant will feel empowered and informed.

##### 4.2.1 *Independent Legal Advice*

Complicated legal issues arise when a complainant wants to "take back," recant, clarify, add context to, or change an initial statement that she provided to the RCMP. If this is a course of action a complainant wishes to take, there are legal issues that often require her to have her own lawyer, independent of the accused's lawyer and the Crown Prosecutor or police. When the complainant tries to seek legal advice from defence lawyers representing the accused, serious conflict arises. Independent legal advice is a term that is used by lawyers when one lawyer does not want to provide legal advice to two different sides of an issue. The complainant in the above scenario requires independent legal advice with a lawyer who would be representing only her interests, and not those of the accused or the Crown. Yukon Legal Services

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4 The **Barbara Schliffer Memorial Clinic** in Ontario provides this kind of legal information, as does the Law Line in the Yukon and the Outreach Lawyer in the NWT.

Society does not have a protocol in place to refer complainants for independent legal advice when they call the accused's defence lawyer. The Law Line is available to provide legal information to complainants in this situation, but not legal advice. The lawyer at the Law Line is not able to advocate or represent the complainant. The lawyer at the Law Line could describe the outcomes of various steps, but would not be able to communicate on behalf of the woman to the Crown or defence, accompany her when she provides a statement to the police, nor write letters or file material with the Court.<sup>5</sup>

#### 4.2.2 *Bail Terms in Domestic Violence Charges*

When a criminal charge has been laid by the police due to an allegation of domestic violence, it is a standard practice in the Yukon for the accused to be placed on a bail term that reads: "No contact with (the complainant) unless approved by the Bail Supervisor in consultation with Victim Services, Family and Children's Services, and the RCMP." Later, the term may be changed with the approval of the Bail Supervisor to allow for contact depending on the circumstances of each case. Without the consent of the Bail Supervisor, the no-contact condition is a court order that cannot be changed unless the Crown and the accused consent to alter it, or the Crown or the accused bring an application to the Court to request the Court to make changes. If the complainant's desire for contact differs with the view of the agencies named above, this could be a source of difficulty for the complainant, particularly if she shares a home, children and finances with the accused. The complainant has no standing to bring an application for a bail variation. Only the Crown and the accused are permitted to bring an application to seek contact or any other changes. The complainant can receive support and information from Victim Services and legal information from the Law Line, but there is a gap identified for the complainant in that she does not have an advocate to assist her in this process of attempting to develop bail terms for the accused that are helpful for her situation.<sup>6</sup> The no-contact term was identified by stakeholders as a source of significant stress and difficulty for complainants in the criminal justice process.

#### 4.2.3 *Sexual History of the Complainant*

Previous reports and many service providers mentioned that a complainant's sexual history should not be admissible during a criminal trial: "An overwhelming concern that many interviewees voiced was the need to ensure that a woman's previous sexual history is not disclosed in a sexualized assault case."<sup>7</sup> During the consultations, many stakeholders provided examples of cases where the complainant "walked away" from the trial process because she no longer wished to be involved. In these cases, the Court had made a determination that questions may be asked, or evidence was permitted to be led, about instances of a complainant's prior sexual activity. In the cases mentioned by the service providers, the complainants chose not to continue participating in the prosecution, and the Crown did not legally compel the complainant to continue. Therefore, the trial ended in an acquittal for the accused.

Legal advocacy early on in the proceeding could better prepare the complainant for the possibility that the Court will allow her prior sexual conduct to form part of the trial. If she were able to consult with a legal advocate or lawyer, the complainant may be better able to communicate her thoughts on the legal test to the Crown so that she feels she is understood and heard. Complainants taking part in the consultations describe that they were generally surprised when defence lawyers were allowed by the Court to ask questions about their sexual history on the day of the court proceeding.<sup>8</sup>

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5 The Outreach Lawyer in the NWT stated that this kind of advocacy is possible within the structure of that position and that the lawyer travels to rural communities in the NWT.

6 The Law Line in the Yukon may provide information, but the lawyer will not advocate, or write letters or assist in this process.

7 *Gaps in Services*, page 3

8 The procedure in the *Criminal Code* outlining when a Judge may admit this kind of evidence is well settled by the Supreme Court of Canada after a lot of work by women's groups to create changes in sexual assault trials.



#### 4.2.4 Third Party Records Applications

Third Party Record applications are an exception to the usual rule that there are only two speaking parties in a criminal trial, the Crown and the defence—and no lawyer to speak for the complainant. The Criminal Code allows for a lawyer for a complainant to make submissions if the Crown or defence seek private records from a complainant in a sexual assault case. The Court would likely request that a lawyer be appointed for the complainant in a Third Party Records application if required. One suggestion for better advocacy in this area is to have a roster of lawyers with Court Services who are familiar with sexual assault law and other issues common to Third Party Record applications.

#### 4.2.5 The Open Court Principle

Women in rural Yukon communities consistently expressed how difficult it was for them to testify in a sexual assault or domestic violence trial when community and family members attend the proceedings. Many women asked if there was any way the courts could be “cleared.” This was not as much of an issue in Whitehorse where people rarely attend court simply as observers. Because circuit court happens every two months in rural communities, many people attend to observe. It should be noted that the open court principle is central to the Canadian criminal justice system and is not likely to change.<sup>9</sup> There are times in a sexual assault proceeding where the court is closed. For example, the hearing is private during an application before the Court to determine if a complainants’ past sexual history is relevant to the proceedings. If the Court does determine the sexual history is relevant, the public is permitted to re-enter the courtroom to observe the defence lawyer questioning the complainant about her sexual history. The Court also has discretion to not allow observers during a preliminary inquiry, where it appears to the Court “that the ends of justice will be best served by so doing.”<sup>10</sup> But there is no power to exclude observers from the trial. Since this is not a legal issue that is subject to change, it is important to focus on the support and individual advocacy that is especially relevant for complainants in rural Yukon.

#### 4.2.6 De-Briefing After the Court Process

Throughout the consultations, it was clear that complainants often feel alienated and mistrustful in the criminal justice process. Aboriginal women especially expressed an added feeling of mistrust interacting with the justice and child welfare systems. Service providers who work closely with complainants in sexual assault and domestic violence cases communicated that there is a great need for more information to be provided to complainants throughout the entire process. As described in *Gaps in Services*,<sup>11</sup> and as many of those consulted explained, it is not clear to complainants (and accused) what is happening in the courtroom. It was stated that advocates could assist the participants in feeling less alienated from the process. Lawyers and Judges could work towards explaining the process in a clear manner to the participants in the system. Many stakeholders discussed the privilege that comes with having a lawyer. Service providers expressed the disadvantages experienced by their clients when they “do not have a voice at the table.” Service providers noted a need for access to quick, accurate legal information and advice for their clients.

### 4.3 CONCLUSIONS ABOUT GAPS IN SERVICES NAVIGATING THE LEGAL SYSTEM

In conclusion, complainants require access to clear legal information about aspects of their cases, including:

- Who makes the decision about whether an accused receives bail while awaiting criminal charges and why certain terms are imposed or not imposed;

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9 There are some exceptions to the open court principle, for example, in child protection proceedings, in Preliminary Inquires in criminal trials, in applications for private records, and in some of the evidentiary rulings in a sexual assault trial.

10 *Criminal Code of Canada*, section 537(1)(h)

11 *Gaps in Services*, page 3

- Accurate and transparent information about how the complainant could play a role in attempting to alter or delete another individual's bail term that may negatively affect her;
- Issues surrounding evidentiary procedures in sexual assault cases;
- When the Court gives reasons why there is an acquittal or a conviction, assistance in explaining the Reasons for Judgment;
- Why certain witnesses were called or not called to the trial;
- Understanding the legal test of "proof beyond a reasonable doubt" in a criminal trial;
- Why the Court allowed or disallowed a complainant to be questioned about her past sexual history;
- Why medical, psychiatric or school records were allowed or disallowed by the Court to be ordered disclosed to the defence;
- Understanding the open court principle and any possible exceptions to it throughout the criminal process;
- Why a certain sentence and/or conditions of probation were ordered or not ordered;
- Why a screen or closed-circuit television was not requested by the Crown and/or not permitted by the Court;
- Why restitution was or was not requested on behalf of the complainant;
- Information about the victim surcharge;
- When and why circle sentencing may be used;
- Understanding when publication ban may be requested; and
- Understanding why trials may collapse or not proceed as planned.

The present services for complainants are that a Victim Service Worker, an Aboriginal Courtworker<sup>12</sup>, or a Crown witness worker could be present in the Court with the complainant during her trial and if there were limitations to the knowledge of these parties to assist the complainant during a de-briefing, they could ask the Crown or the lawyer at the Law Line for assistance.

#### 4.4 COURT WATCH PROGRAM

The reports *If My Life Depended On It* and *Gaps in Services* both recommend a Court Watch Program in the Yukon.

Many women spoke out about the need for change throughout the criminal justice system in the cases of violence against women. Women said there is room for a more appropriate police response, more thorough investigations, and for the public prosecution service and police to work with women's groups on the systemic problem of women abuse in Yukon. A better understanding of court procedures could be accomplished through Women's Court Watch Yukon project. Court Watch could help to identify other system improvements.<sup>13</sup>

There was a Yukon Court Watch Program in the past which is described thoroughly in *Gaps in Services*<sup>14</sup> and therefore will only be briefly described here. The mandate of Court Watch was to:

- Collect data about the Court's response to violence against women;

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12 If the Aboriginal Courtworker is assisting an accused in a criminal matter, it would be a conflict for the Courtworker to also represent the complainant; this is a resource issue if there is only one Aboriginal Courtworker present.

13 *If My Life Depended On It: Yukon women and the RCMP*, page 15

14 *Gaps in Services*, pages 10-13

- Observe how participants in the justice system respond to issues of violence against women;
- Raise awareness about the Court’s response to violence against women, and provide the community with understanding of the effects of this violence; and
- Research to identify improvements that could be made, for example, educating participants in the justice system about violence against women.

The proposed Court Watch program seeks to improve services for women, raise awareness of the issues, and work towards systemic changes in the court system. Options for systemic changes will be explored further in 6) *Summary of Options* at the end of this paper.

## 5 Cross-Jurisdictional Best Practices for Women’s Legal Advocacy and Legal Services

This section includes some best practices that have been identified from other jurisdictions. It focuses on examples of best practices in the categories identified in Recommendation 4.1 of *Sharing Common Ground* to explore legal advocacy for women.

In Ontario, there are legal clinics for a variety of specific issues and clients such as: HIV/AIDS, Aboriginal people, Children and Youth, Women Experiencing Violence, Immigration and Refugee Law, African Canadian Legal Clinic, Prison Law, Advocates for the Elderly, etc.<sup>15</sup> These specialized legal clinics represent clients who fit their mandate for legal issues they are facing. Although it is not feasible to have separate specialty clinics in a smaller jurisdiction, in Ontario these models help to address significant gaps in services similar to those issues occurring in the Yukon. These clinics offer engagement in public legal education, policy-level legal work, and frequently challenge legal issues through the Courts that are relevant to their mandates – work that is largely absent in the Yukon. It important to note that there is a lack of public interest law and reform in the Yukon around specific issues.

In other jurisdictions, legal aid clinics often engage in test case litigation, work at the policy level, engage in legal education programs, and work with the community to effect change. The lawyers at Yukon Legal Services Society have extremely high caseloads. They are often “putting out fires” and are not able to look at the big picture, meet with community groups, plan strategic test case litigation, or provide policy submissions to the government. They are busy performing core service delivery to a high caseload of clients who have multiple vulnerabilities and time consuming legal issues. The lawyer at the Law Line does not offer legal advocacy and only provides legal information, furthering the gap in legal advocacy services in the Yukon. Without taking the time to review systemic and overarching legal issues, the same issues will come up again and again without being resolved at a systemic level.

Although there are many legal clinics funded through Legal Aid Ontario, there are two clinics that are most relevant to the concerns and issues raised in Recommendation 4.1 of the *Sharing Common Ground* report: The Barbara Schliffer Memorial Clinic and Aboriginal Legal Services of Toronto, as described below. Also relevant to the Yukon are service models from the Northwest Territories, also outlined below.

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15 A list of all of the Legal Aid Ontario specialty clinics can be found on its website: <http://www.legalaid.on.ca/en/contact/contact.asp?type=scl>

## 5.1 BARBARA SCHLIFFER MEMORIAL CLINIC AND ONTARIO CERTIFICATE PROGRAM

The Barbara Schliffer Clinic provides a full range of comprehensive legal services for women victims of violence in the areas of family and immigration law, as well as supportive legal services to victims in the criminal justice system. The clinic workers explore rights and remedies for their clients by: addressing their current protection needs, identifying their legal issues, and assisting their clients to make informed decisions about the feasibility of legal actions and choices in different areas of the law.

Another method of service delivery in Ontario is through the Family Violence Authorization Program. Legal Aid Ontario has an initiative which provides an emergency two hour consultation with a lawyer if the applicant is experiencing domestic violence and is in need of immediate help. The lawyers who provide legal advice under this program have experience in criminal, family and child protection law.

Programs such as these, if offered in the Yukon, would address the gaps in legal advocacy that have been identified in this paper. In the Yukon, the Law Line could offer this service. Further research could evaluate existing services in the Yukon to determine if they have the capacity to offer this kind of legal information and advice. To note, in the NWT, the outreach lawyer offers a similar service. The outreach lawyer also travels to the rural communities, a service that would be of great benefit to the Yukon.

## 5.2 ABORIGINAL LEGAL SERVICES OF TORONTO

This model is relevant to the Yukon for two reasons. First, Yukon Aboriginal women are seeking legal advocacy for themselves, their families and their communities. Aboriginal Legal Services is a model for legal advocacy based on experiences of Aboriginal people in the legal context. Many women consulted expressed that any solutions that left out healing for the whole community are not sustainable. ALST also has a multifaceted approach where healing and restorative justice are a focus.

Second, there were serious concerns expressed about First Nations citizens intersecting with the police. It is important to have legal advocacy services available upon arrest and detention to address interactions with police. Arrest and detention of First Nations citizens by the police is at the core of the *Sharing Common Ground* report. There is no specific service provider in the Yukon, lawyer or non-lawyer, mandated to address the serious concerns raised about police actions during detention and arrest. Defence lawyers could address arrest and detention issues during a criminal trial, but often the matters do not go to a trial, and the arrest and detention issues are never addressed.

Aboriginal Legal Services of Toronto provides free legal assistance to low-income Aboriginal people living in the City of Toronto. It serves people in a variety of areas including: police complaints, human rights, Indian Act matters, housing issues and income security issues. The Clinic is involved in law reform, community organizing, public legal education, and test case litigation. ALST is very involved in advocacy and law reform activities, and has made it a priority to become involved in test case litigation. In some instances, this means bringing cases forward on behalf of individuals or groups. In other cases, ALST intervenes in cases that have been brought forward by other parties.<sup>16</sup>

ALST is also relevant because of their mandate for legal reform for Aboriginal issues. Aboriginal persons in the Yukon disproportionately intersect with the justice system. Myriad legal issues arise in the areas of criminal, family, child protection, poverty, mental health and human rights law. For example, one possible test case could address the new mandatory minimum sentence regime as it intersects with the sentencing principles in *R. v. Gladue*—a Supreme Court case which calls for Courts to remedy the issue of over-incarceration of Aboriginal people. A client whose case fits this example could seek assistance from a clinic that addresses test case issues. A precedent would then be set in the Yukon preventing many accused individuals from having to raise complicated legal issues during each sentencing hearing.

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16 Further information about ALST can be found on its website: <http://www.aboriginallegal.ca/index.php>

There are many other examples of potential test cases. One would be a test case to address the issue of whether a statement is voluntary for accused individuals that have FASD. Another could address bail terms that order alcoholics to abstain from drinking in cases where the facts may not command this term. A legal clinic focusing on issues that arise for Aboriginal people would be able to address test case issues that YLSS does not have the time to address with their busy practices covering core services.

### 5.3 FAMILY AND POVERTY LAWYER IN YELLOWKNIFE AND IN RURAL COMMUNITIES IN NORTHWEST TERRITORIES

In Yellowknife, there is one lawyer who acts as a Legal Aid outreach lawyer and also practices in the area of child protection law. The outreach aspect is a pilot project with the Legal Services Board of the NWT. The Legal Services Board also oversees four other legal clinics which have staff and private lawyers practicing in the areas of criminal and family law. The outreach lawyer has a more varied portfolio and the position also includes travel to the many remote communities in the NWT to provide training and summary legal advice.

The outreach lawyer also offers an afternoon clinic every week in Yellowknife, where, during appointments that last up to one hour, the lawyer provides clients with summary advice on any topic. The lawyer also assists with writing letters and creating documents, plus provides basic legal information to help clients represent themselves.

Once a month, the lawyer offers a similar service with one of the communities in the NWT. They will stay there for a week to answer any summary questions on an unlimited number of topics; such as wills and estates, family law, complainant's issues in domestic and sexual assault, income security issues, and small claims issues. The advice is not limited by topic and the lawyer will assist for up to an hour in any field.

Specifically, this lawyer can provide advocacy for women who are complainants in sexual assault or domestic violence trials by providing summary information and advice. The lawyer is also able to advocate on behalf of women by writing letters and speaking to other justice participants. For example, the lawyer could write to Crown counsel advocating for a testimonial aid to be used for a witness in an upcoming trial or advocate for a variation in the accused's bail to allow contact with the complainant.

This outreach lawyer is also active in public legal education and meets with shelter workers to assist them in learning how to compile evidence that may be used at peace bond hearings. She also meets with court workers to assist them in learning how to help their clients. When the victim service workers or court workers need assistance with any legal questions, they may also seek information from the outreach lawyer. This model meets the concerns and issues raised by many stakeholders while also addressing the need for services outside of Whitehorse. The lawyer is able to address many different kinds of legal issues, including those addressed by the Barbara Schliffer Clinic described above.

### 5.4 NATIVE WOMEN'S ASSOCIATION OF THE NWT — VICTIM SERVICES IN YELLOWKNIFE

The mandate of the NWA is to provide compassionate support, information and referral services to victims of crime and trauma. They consider their services to be advocacy<sup>17</sup> and will communicate with the Crown and other justice participants and service providers to assist their clients.

In the NWT, victim services are provided by non-governmental organizations, which is a significant variation from the Yukon model. There are victim services in 7 different communities and are organized by region. Not every community in the NWT has access to victim service workers directly in their community, but every community has regional coverage.



There is a 24-hour crisis line and a 24-hour on call service. In Yellowknife, a victim service worker is available 24 hours, 7-days-a-week. Often the RCMP will call the victim service workers when they attend a call at someone's home to investigate an assault or other allegation. The RCMP attend, diffuse the urgent situation, and while they are involved in their investigation, the victim service worker is available in person to talk to the victim at the scene. The victim will have an opportunity to talk to the victim service worker and decide if they want to provide a statement to the police, go to the hospital, to a shelter, etc. If the victim decides to provide a statement, the victim service worker first provides a consultation, then, if requested, will attend the detachment while the victim provides the statement.<sup>18</sup> The 24-hour, 7-day-a-week, on-call service in Yellowknife is provided by the Co-ordinator, Front Line worker, and 10 volunteers. The volunteers and workers complete extensive training. They also provide court support in all its various forms: attendance at Court, peace bonds, Emergency Protection Orders, and Victim Impact Statements.

## 6 Summary of Options for Legal Advocacy and Legal Services in the Yukon

This section explores potential options for further research on and development of a legal advocate or legal service position(s). Some of the implications associated with each option are discussed.

### 6.1 STRENGTHENING EXISTING SERVICES

There are many service providers in the Yukon working on legal advocacy or providing information and support at the individual level. All of the groups that provide individual legal advocacy or information could be more connected to strengthen existing services and build a better understanding of where there are gaps in services for women in urban and rural Yukon. Stakeholders were consulted separately during this research, but many of the service providers were unfamiliar with the work of other service providers and how to connect with lawyers. During the course of the consultation, service providers identified gaps that in fact did not exist: the problem was that people were unaware of services offered. This was especially notable with respect to the Neighbourhood Law Clinic, where service providers were unaware that there is a lawyer in the Yukon available to assist with many poverty law issues.

### 6.2 CULTURALLY RELEVANT SERVICES FOR ABORIGINAL WOMEN

Strengthening delivery and accessibility of services should be investigated as an important part of strengthening services. Delivery mechanisms must address cultural issues, and not cause further alienation from service providers. Through consultations and reading relevant reports it was communicated that services must be culturally relevant to be accessible to Aboriginal Yukon women.<sup>19</sup>

The focus of consultations was around advocacy, but for many Aboriginal women their most urgent concern was around healing. The theme of the consultations was that there was an urgent need for counselling and healing supports for women, their families, and their communities as a whole. Discussions about what "advocacy" meant took a back seat to the urgency of culturally relevant, local, and ongoing counselling and support. A lack of counselling, both for crises and ongoing support, was the prime concern of many women. Women seek culturally based programs to address domestic violence for their families and communities.

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18 This is an important service as identified by stakeholders. Whether to provide a statement, and all of the ramifications that may follow legally, is considered by many to be a key time for legal advocacy.

19 *Working Together for Change* (draft copy) by the Whitehorse Aboriginal Women's Circle is an important resource that covers this issue thoroughly.

Recommendation 4.1 of *Sharing Common Ground* stated the need for: “consideration of a legal advocate position to support women and/or a Yukon Court Watch program.” Since the focus is on supporting women, the questions asked of participants in the consultation were also focused on services for women. To note, many of the women who were consulted, especially Aboriginal women, felt that any advocacy must focus on their families and their communities. Any solutions around advocacy for women that left out their families and communities were felt to be lacking. Any solution that did not include healing and support for men as well as women was found to be not sustainable.

The term “a wolf in sheep’s clothing” was used to describe the often-conflicting nature of the services and mandates of the RCMP, the Crown’s Office, and Family and Children’s Services. Mistrust is present for Aboriginal women using services that have a history of colonization and which are often imbued with systemic racism towards Aboriginal people. It was expressed that in current services there is sometimes a lack of empathy for the social realities of Aboriginal women. It is important that any service provider have a strong appreciation of cultural differences, the current legacy of colonialism, and the intergenerational effects of the residential school system. The fear of judgment was a very powerful impediment to many women accessing services and was described as an overwhelming barrier to accessibility. Any services that are being offered to assist Aboriginal women must be sensitive to the presence of systemic racism and whenever possible, Aboriginal women should be the service providers.<sup>20</sup> This sentiment was also expressed in a Research Report authored by the Pauktuutit Inuit Women’s Association: “In crisis, people need what is familiar and comfortable. It is not acceptable that an individual be faced with another culture’s ways in an emergency. When emotionally stressed, Inuit need Inuit, their knowledge, their familiarity.”<sup>21</sup>

### 6.3 ACCESS TO LEGAL INFORMATION

Many of the issues that arose during the consultations originated because of a general lack of legal information. Both service providers and their clients would benefit from legal education, such as: legal information sessions, workshops on advocacy, publications, and access to lawyers for clients and service providers. The pamphlet titled “How to support a woman who has been sexually assaulted,” Yukon Government, 2006, is a legal education pamphlet that is especially helpful in describing the consequences and choices that a woman has around reporting and engaging in the criminal justice system.

The model from the Northwest Territories was helpful for this research. The outreach lawyer there meets with service providers such as Aboriginal Court Workers and Victim Service Workers to assist and support them to meet their mandates. This is a helpful model for the Yukon where many of the service providers expressed a need for better legal information in order to better fulfill their mandates. Training and ongoing collaboration between a lawyer and service providers would better prepare service providers to assist their clients by addressing identified issues of concern and interest.

### 6.4 LEGAL ADVOCACY FOR COMPLAINANTS

A lawyer who provided legal advice to complainants in the criminal process could empower complainants and potential complainants with early, accurate and trusted legal information. Generally it was reported that complainants lack the legal information and advice about what options and consequences exist for reporting domestic violence to the RCMP and what alternatives exist to reporting violence. It was also identified that it would be useful to provide legal information and advice for complainants who are already engaged with the criminal justice system.<sup>22</sup>

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20 In consultations and in many reports about services by Aboriginal Women’s groups this is a consistent theme.

21 Final Report, 2005, page 13.

22 Aboriginal Courtworkers also support and advocate for their clients throughout the justice system. However due to the number of Courtworkers available, the coverage is not very complete.

The existing services could also be strengthened through collaboration and a better understanding of all of the services. There are unique differences between service providers that would be best known in advance. For example, does the service provider offer advocacy in a way that the client understands the term ‘advocacy’ to mean? If the service will only offer information and support, but the client is seeking legal representation, it is best if they know this early on. One service provider can then refer the client to another service provider who will best serve the client’s interests. Victim Service Workers are the obvious starting point to examine. During the research, it was clear that this avenue has some practical barriers for complainants seeking legal advocacy, as Victim Services Workers will not advocate.

The Law Line seems to be the only Yukon service to provide legal information to complainants seeking impartial and independent legal information.<sup>23</sup> That said, the lawyer at the Law Line is only able to offer information but not advice, and is not able to be an advocate on another’s behalf. This includes not being able to speak to other justice participants in the case, writing letters, or taking any action in court.

#### 6.5 LEGAL ADVOCACY FOR CIVIL AND FAMILY LAW ISSUES CONNECTED TO DOMESTIC VIOLENCE

During the consultations, a main concern for women reporting domestic violence was the intersection with Family and Children’s Services.<sup>24</sup> Many resources are required to assist women interfacing with the child welfare system. During the consultations, women were very concerned about the possibility of their children being apprehended if they report to the RCMP that their partner is abusing them. The potential threat of losing their children is a central concern women have when contemplating engaging with the justice system. Child custody issues are also a concern in domestic violence cases where the complainant and the accused, who may be joint caregivers, are no longer communicating or sharing a residence. The Family Law Information Centre and the Law Line are resources in the Yukon for family law. Yukon Legal Services Society provides services for child custody issues at any stage and offers family law when child custody is an issue.

Throughout the consultations, complainants and potential complainants expressed serious concerns about housing and financial issues that occur when criminal charges are laid against their partners. These issues were identified as significant barriers for women who want to leave abusive partners. There were concerns about how to divide up financial obligations and housing. Advocacy around landlord-tenant and income security issues, on an individual and at a policy level, are important issues to address for sustainable solutions to domestic violence.<sup>25</sup>

#### 6.6 RURAL SERVICES AND RURAL CRISIS SUPPORT SERVICES

The Yukon Aboriginal Women Council’s Report and Recommendations to the 2010 RCMP Review, states that there is a critical need within the outlying Aboriginal communities for resources that provide crisis support, shelter, counselling and advocacy. Since reporting abuse often has dramatic negative repercussions for women in small communities, the need for rural services is augmented.

Women in rural areas expressed that they required counselling, support and healing. There was a strong message for culturally relevant healing services that were available within the community. Some women consulted stated that they would, “like to see an Aboriginal woman in each community as a support

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23 For those with the financial means to do so, one may hire a private lawyer to provide this service.

24 The past Aboriginal Women’s Advocate at the Whitehorse Aboriginal Women’s Circle and the current Women’s Advocate from Victoria Faulkner Women’s Centre both advised that they spent half of their time accompanying their clients to Family and Children’s Services meetings.

25 See *A Little Kindness Would Go a Long Way* for extensive research on the link between poverty and domestic violence in the Yukon.

worker, counsellor or advocate.” As stated in the Final Report of the National Aboriginal Women’s Forum: “Programs and services that draw on or are based on culture and tradition should be available in all Aboriginal communities.”<sup>26</sup> There was also a recommendation to: “Increase women’s access to services that are designed and delivered by Aboriginal women, including in-community victims’ services, advocacy services, and activities that build capacity for Aboriginal women.”<sup>27</sup>

There was also a concern expressed for privacy and that living in a small community made reporting family violence extremely difficult. Services are required in rural Yukon – and should not be centralized only in Whitehorse. In many of the rural Yukon communities, there is a lack of crisis support services. Only Whitehorse, Dawson City and Watson Lake have emergency shelters that are available to assist women on a 24-hour basis. In every other community, the RCMP is the only emergency resource and not every woman wants to engage and become potentially entangled with the often overwhelming matrix of the RCMP, Courts and child welfare. Especially for Aboriginal women, the justice and child welfare systems have a history of colonialism and systemic racism that create additional barriers to accessing emergency/crisis services.

## 6.7 STRATEGIC LITIGATION

Strategic litigation is a way to address larger issues in the law to affect social change. In family law, child protection, criminal law, and poverty law there are issues that could strategically be addressed in the Courts. There may also be other options to challenge the justice system and seek changes for women in the Yukon. A possible model to explore further would be a legal advocate who could connect with community groups, while also connecting with lawyers about strategic issues facing their clients. Women could have a stronger voice at the table and could work for systemic changes that would affect Yukon women broadly, rather than one case at a time. If the law were challenged through “test cases” and by advocacy at a policy level on issues of systemic importance, changes could occur much faster, more economically, and be much more significant.

Systemic legal change is an avenue that was discussed by stakeholders. Recommendation 4.1 of *Sharing Common Ground*, the final report from the review of Yukon’s Police Force, called for the “consideration of a legal advocate position to support women and/or a Yukon Court Watch program.” The Yukon Court Watch Program appeared to be based on the desire for systemic change in the justice system. It may be a consideration that systemic change could occur more quickly through strategic or test case litigation. For example, there may be pervasive issues identified by Victim Service Workers, Aboriginal Court Workers, Yukon Legal Service Society lawyers, community groups and advocates that are not being addressed in a cohesive manner. If there was a lawyer who was mandated to collaborate and connect with community members to understand the systemic concerns, cases could be brought to Court. This model is used in many other jurisdictions in Canada, and is an effective way to create needed changes in the law that ultimately could effect positive change for a large number of Yukon women in an efficient and effective manner.

## 6.8 LEGAL ADVOCATE WITH A LAWYER WORKING TOGETHER

Some stakeholders talked about how in the past, unofficial teams of lawyers and advocates were created to assist women. Several lawyers who unofficially teamed up with the advocates discussed how effective this relationship was as a model to assist clients. Currently, Victim Service Workers and the Women’s Advocate housed at the Victoria Faulkner Women’s Centre may connect with the Law Line and Neighbourhood Law Clinic to assist women with support and legal information. This model has proven to be effective in the past, and may currently still be effective for advocacy services to be delivered to Yukon women. It may

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26 Collaboration to End Violence: National Aboriginal Women’s Forum: Final Report, 2011, page 9

27 *Ibid*, page 12

be efficient and cohesive to develop a model of an official relationship whereby a lawyer is mandated to support and work with advocates.

A lawyer could provide advocacy training and legal information to clients, service providers and women's groups. In the NWT, the Aboriginal Court Workers work directly with Legal Aid lawyers. A model could be explored in the Yukon where a lawyer is available to provide legal information, education, and consult on strategic litigation with a variety of advocates. For example, a lawyer could work with Aboriginal Court Workers to assist them to identify clients who require more assistance.

The lawyer could work with Victim Service Workers, Aboriginal Court Workers, and the women's advocates at Elizabeth Fry Society and Victoria Faulkner Women's Centre. The advocates could also focus on referring relevant clients to the lawyer. This model would assist in strengthening the existing advocacy services in the Yukon. As was highlighted in the NWT model, the lawyer could also work within rural Yukon and connect with advocates there to provide ongoing legal information, connections and support.

## 7 Conclusion

In conclusion, this paper draws on consultations and in-depth research to detail existing services, perceived and actual gaps in services, and suggested avenues to explore to provide better services in the Yukon. Suggestions include:

- *Strengthening existing services* through better communication between existing service providers about their services, mandates and availability.
- *Culturally relevant services* are essential for Aboriginal Yukon women, their families and communities.
- *Public legal education* and legal advice for service providers and their clients, which could be achieved by having advocates and lawyers working together and through public legal education initiatives.
- *Legal advocacy for complainants* to help women decide upon their best options regarding whether to report violence or pursue other alternatives. Also identified is the need for legal advocacy during the criminal process and legal advocacy for civil and family law issues related to domestic violence.
- *Rural services* including the need for 24-hour crisis support services available in all Yukon communities.
- *Strategic litigation* as a means of challenging relevant issues within the law to effect change.



## Literature Reviewed

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## Existing Services in the Yukon for Women's Legal Advocacy & Support

### 1 Service Providers – Non-Lawyer Services that provide Advocacy

#### **Aboriginal Courtworker Program**

Courtworkers support and advocate for their clients throughout the justice system. They gather information about the background of their clients, ensure that clients are provided with timely and accurate information about the criminal justice process, facilitate access to services and community resources, and serve as a link between court officials and clients and communities. The role of courtworkers also includes: assisting justice officials in understanding the culture, values and customs of Aboriginal people as well as the social and economic situation of each client; improving communication between Aboriginal clients and the justice system; strengthening the relationship between the Aboriginal community and the formal justice system by creating community partnerships; working on committees, providing information and promoting the Aboriginal Courtworker Program through activities such as presentations and workshops.

Courtworker services are available to all Aboriginals in the communities of Whitehorse, Kwanlin Dün, Carcross, Teslin, Haines Junction, Burwash and Beaver Creek through the Council of Yukon First Nations.

Communities with their own Courtworker program include Old Crow, Dawson City, Mayo (the Courtworker for Pelly Crossing, Mayo, and Carmacks is based in Mayo and travels to the other communities for circuit courts), Pelly Crossing, Carmacks, Ross River and Watson Lake.

Aboriginal Courtworkers represent clients in court with summary proceedings (except for trials).

#### **The Child and Youth Advocate**

The Advocate Office can support, assist, inform and advise children and youth who are involved with the Yukon government around issues concerning health and social services, education, with respect to government services.

#### **Dawson Women's Shelter**

Provides confidential shelter, support, information, advocacy, and outreach services to women and children in crisis on a 24-hour basis. Service providers will also assist women to access services in the Yukon.

#### **Elizabeth Fry Society of Yukon**

An advocate works with women in the justice system, and with women who are at risk of being criminalized. The advocate also works at the Whitehorse Correctional Centre to assist women who are incarcerated, and to advocate and support them through the correctional and justice system.

#### **Second Opinion Society**

Provides crisis support and advocacy for those trying to navigate the mental health system. Also, there is a Wednesday wellness group, assistance with appointments in the community, and information on rights protection and other resources available for people living with mental health issues.

### **Fetal Alcohol Syndrome Society Yukon**

Provides outreach and advocacy support to individuals with FASD that are specific to the needs of each person. FASSY can assist with issues related to housing, justice, activities of daily living, navigating health and social systems and building support systems. FASSY provides training and workshops in a variety of areas, including FASD and the justice system.

### **Help and Hope For Families: Watson Lake Transition Home/Women's Shelter**

Offers a 24-hour shelter for women and their children fleeing abusive relationships, in transition, or in crisis. There is also a 24-hour crisis line. The Shelter will also provide shelter for women who are on a recognizance, probation order, conditional sentence order, or parole. Services for advocacy, resource information, support and referrals are available.

### **Kwanlin Dün First Nation – Justice Programs**

Provides support and advocacy through various court processes. KDFN develops and provides programs and services to KDFN citizens and families who are in conflict with the law or who are in need of support from Victim Services, probation, or Court related services. They are working to develop restorative justice options for dealing with child welfare, Victim Services, policing, courts and corrections related issues.

### **Liard Aboriginal Women's Society**

LAWS works to heal the legacy of physical and sexual abuse in residential schools. This includes advocacy at the policy and community level. They serve the five Kaska communities of Good Hope Lake, Fort Ware, Lower Post, Watson Lake and Ross River.

### **Les EssentiElles**

Les EssentiElles does not provide direct support services, but advocacy on a policy level, specifically addressing the needs of francophone women in the Yukon.

### **Kaushee's Place/Yukon Women's Transition Home**

This is a shelter for women and their children who are fleeing abusive situations. They offer 30-day no-cost shelter and a limited amount of second stage housing, a 24-hour crisis line, and have drop-ins and information sessions. The staff often assist women with advocacy and support them with meeting their lawyers, attending court processes, and communications with child welfare authorities. The transition home workers report they often assist women in long-term abusive relationships who are criminalized themselves when they act in self-defence against their abusive partner. Service providers therefore advocate and help navigate the criminal justice system for women who are charged by the RCMP. Kaushee's offers individual advocacy and advocacy at a community and policy level.

### **Skookum Jim Friendship Centre**

Among other programs, the Centre offers youth diversion for young offenders facing criminal charges and support services for their families. The program provides early intervention and healthier alternatives for First Nation youth and their families who come in conflict with the law. The Tan Sakwathan Youth Diversion Program provides an 8-week Diversion workshop program to youth between the ages of 12-17 on an annual basis, who are in conflict with the law. The program incorporates the teaching of traditional ways by strengthening relationships between families and youth.

**Victoria Faulkner Women's Centre**

The Centre employs a full time bilingual (French/English) women's advocate. The Advocate offers support and assists women in assessing their options and accessing information and services. The women's advocate assists women who ask for help in a variety of legal settings. She reported that she currently spends half of her time accompanying women to meetings with Family and Children's Services. She has also assisted women with denials of government services such as: disability payments, unemployment insurance, income security issues, and various other issues.

**Whitehorse Aboriginal Women's Circle**

Provides a place for all aboriginal women to voice their concerns and seek support and guidance from each other. In 2011, they had 12-month funding for an Aboriginal women's advocate. This position is not currently funded. The former women's advocate, similar to the advocate at the Victoria Faulkner Women's Centre, advised that about half of her time was spent with women who were involved in meetings, interviews, and case plans at Family and Children's Services.

**Yukon Aboriginal Women's Council**

YAWC's mandate is to advance the interests of women of Aboriginal or Inuit ancestry in the Yukon including Status, Non-Status, Indians and Metis, to support the civil and human rights of native women. YAWC provides advocacy at a policy level.

**Yukon Status of Women Council**

The Yukon Status of Women Council is an advocacy and awareness group for women's issues, both locally and nationally. The Status has been operating for over 30 years, and is a strong lobbyist for feminist political change through political activism, public awareness, and education at the policy level.

## 2 Non-Lawyer Service Providers that Provide Information and Support

### **Crown Witness Co-ordinators**

Witness Co-ordinators work with Crown Counsel and provide information to Witnesses for the Crown, including victims of sexual assault and domestic violence, about the court system. The Crown Witness Co-ordinators do not provide advocacy on behalf of the witnesses.

### **Domestic Violence Treatment Option Court**

This is a Court for persons accused of domestic violence who agree to enter a guilty plea to the charge and enter into a counselling program. Available services include both counselling for the offender who enters a guilty plea, plus support and services for the victim. The counsellor for the offender will also consult the victim and invite the victim to participate in the offender's assessment process. There are no advocacy services associated with this Court, but there is counselling and support for offenders and victims of domestic violence.<sup>28</sup>

### **Victim Services Unit**

Offers support and information to clients who are victims of crime. Some of the clients are going through the criminal justice process. This includes: explaining the court process, attending meetings with the Crown and the client, explaining and assisting with peace bond proceedings and Emergency Intervention Orders under the Yukon Territorial *Family Violence Prevention Act*, and completing victim impact statements to be heard by the Court at sentencing hearings.

Assistance is provided by victim service workers and includes addressing personal safety, reducing isolation, increasing awareness of rights, education around the dynamics of abuse, the impact of abuse on women and their children, and moving to a place of empowerment. Victim service workers explained that they were able to offer information and support, but not advice or advocacy.

The services are offered Monday to Friday from 8:30am to 4:30pm. There are resident victim service workers in Dawson City and Watson Lake. The other communities in the Yukon have an assigned victim service worker, based in Whitehorse, who travels to communities for circuit courts and when otherwise required.

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28 A full description of the DVTO Court may be found here: <http://www.yukoncourts.ca/courts/territorial/dvtoc.html>  
An evaluation of the Court may be found here: [http://ucalgary.ca/~crilf/publications/Final\\_Outcome\\_Analysis\\_Report.pdf](http://ucalgary.ca/~crilf/publications/Final_Outcome_Analysis_Report.pdf)

## Existing Lawyer Services in the Yukon

### 1 Lawyer Services Providing Legal Information and Advice

#### **Yukon Legal Services Society**

Every Yukon resident can apply to YLSS for legal assistance. However, to receive legal aid the applicant must have a legal problem that YLSS covers, and must meet the financial eligibility guidelines. The legal problem must be something that a reasonable person would pay a lawyer to do, if they were financially able. Although an applicant may request a specific YLSS lawyer, it is in the sole discretion of YLSS to decide which lawyer to assign to which applicant. Below, there is one exception mentioned to the financial eligibility guidelines for the initial stage of a criminal proceeding.

There are three community law clinics in the Yukon which cover the areas of criminal law, child protection law, and family law where child custody is an issue. This is the majority of the coverage by YLSS, but some additional areas of law covered at the Neighbourhood Law Clinic are outlined below.

#### **Criminal Law**

Arrested and/or detained persons are able to call duty counsel 24 hours a day. Duty counsel is provided for any legal advice that is requested during the initial arrest and detention. Duty counsel also assists with the issue of an initial bail hearing in front of a Justice of the Peace or Judge. There is no financial ability assessment for these initial steps in the criminal process. They are offered to every resident that is arrested and detained.

After the initial stages, if the applicant requests a lawyer through YLSS, they must then meet the financial eligibility criteria to be accepted. Criminal matters are then assigned to one of the YLSS lawyers who will follow the matter through to its conclusion, whether that is by way of guilty plea, trial, diversion, peace bond, or a withdrawn charge.

Certain lawyers also act as duty counsel in specialty courts. For example, a lawyer is available to assist unrepresented accused persons before they are assigned specific counsel in DVTO Court and the Community Wellness Court.

#### **Child Protection Law**

A lawyer acting as duty counsel is available to assist in Child Protection matters before a lawyer is assigned by YLSS to a specific matter. A lawyer is also available as duty counsel before or at any appearance in child protection matters and also to provide legal advice in this area of the law. Some services providers consulted stated that legal issues, such as advising their clients how to respond to demands for interviews, requests to search, and requests to sign papers and agreements by social workers were out of their realm of experience. Lawyers at the Neighbourhood Law Clinic are able to provide legal advice for these matters even if no court proceedings have been initiated by the Director of Family and Children's Services.<sup>29</sup>

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<sup>29</sup> Some advocates and clients did not appear to be aware of this service offered by YLSS. The matter does not have to be in Court for legal advice to be accessed. If, for example, a social worker is requesting an interview with a woman or to search her home a lawyer may be contacted to provide legal advice.



## Family Law

There is limited coverage for YLSS for family law matters. If child custody is an issue, then there is coverage available, but there is no coverage for financial and division of property issues. A YLSS lawyer pointed out that this is an issue for parties before the Court involved in domestic violence and for other vulnerable persons when one party has a lawyer and the vulnerable person is unrepresented. There are many issues at stake during a separation or divorce concerning housing and financial security. There is no coverage for applicants or respondents seeking to obtain peace bonds or Orders under the *Family Violence Prevention Act*.<sup>30</sup> One of the three lawyers at the Neighbourhood Law Clinic has a different portfolio than the other lawyers at YLSS. This role is not yet well understood by the service providers and potential clients.<sup>31</sup> As well as taking on some of the core services as described above, one lawyer also covers the following areas of law:

- Initial immigration advice (not refugee law);
- Review Board matters for issues of mental health;
- Denials of government services and an appeal of that denial when there is legal merit to the case, for example: social services, housing, disability benefits, and Employment Insurance matters;
- Landlord tenant law;
- Guardianship Issues; and
- Civil Law only if there is a core issue related to basic income to care for oneself or one's family.

## Circuit Courts in Rural Communities

Each YLSS lawyer acts as counsel within one or two communities. There are circuits where a Territorial Court judge sits for a session in each community approximately once every two months. The lawyers are not usually in town for very long on each circuit and most of them travel up the day before the circuit starts to meet with their clients and witnesses. There are issues with circuit courts that were expressed by women in the rural communities. Often the experience is rushed since Court only sits for one day in many communities. The defence lawyer will attend the night before and often the Crown counsel will attend on the day of Court.<sup>32</sup> Many accused persons and complainants/witnesses expressed the stress that "rushed" circuit court has on them as participants in the justice system. There was also a concern expressed that there is no adequate legal services provided prior to the first appearance in each rural community. It was described that often defence counsel received disclosure from Crown counsel on the first appearance in Court. The accused would not be able to understand what is occurring until after the first circuit court. It was expressed that interim visits by the Crown, defence and victim service workers to the rural communities would be beneficial. YLSS lawyers are available to their clients on the telephone prior to an accused's first appearance, but if the defence lawyer has not received the disclosure from Crown counsel, it is difficult for the defence counsel to be of much assistance except to explain the general process.

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30 Victim Service workers assist in this area, but a respondent could be unrepresented.

31 During the consultations, it was notable that most services providers had no idea that YLSS offered these services. It was expressed by many services providers that they would have referred multiple clients to the Neighbourhood Law Clinic if they were aware of the services provided.

32 Some Court Workers expressed that in communities where Crown counsel have recently begun to attend mid-circuit to meet with complainants/witnesses, this alleviated a lot of stress about the unknown process and made the criminal litigation process more manageable.

### **Lawyers in the Yukon – The Private Bar**

If a person is financially able, they can hire a member of the private bar to assist with any legal issue. There are members of the Yukon Bar who practice in and/or specialize in most areas of the law. This information is available at the Law Society of Yukon and through referrals from other lawyers. There are many lawyers who can assist with all of the services listed above at YLSS for those who are financially able. Lawyers set their own fees and can decide which clients they are able to take on at any given time. Lawyers request different methods of payment and have either hourly or set rate for services. Some lawyers may work out a payment schedule if a person cannot afford to pay them at the beginning of the relationship.

Once a lawyer is retained (either privately or through YLSS), they do all the talking for the client and assist in making decisions about the client's legal issues. It is important to ensure that the client is comfortable communicating with the lawyer and that the lawyer is communicating on behalf of the client in a manner that the client trusts and understands. Many service providers discussed the amount of time that is often spent de-briefing and trying to help women understand discussions with lawyers.

### **Yukon Human Rights Commission**

The Human Rights Commission promotes human rights and the resolution of situations of discrimination. It provides training and educational resources to schools, community groups, employers, service providers and the public. The Yukon Human Rights Act prohibits discrimination on the basis of ancestry, including colour and race, national origin, ethnic or linguistic background or origin, religion or creed, or religious belief, religious association, or religious activity; age; sex, including pregnancy, and pregnancy related conditions; sexual orientation; physical or mental disability; criminal charges or criminal record; political belief, political association, or political activity; marital or family status; and actual or presumed association with other individuals or groups whose identity or membership is determined by any of grounds listed above. Discrimination is prohibited in the areas of: employment, services to the public, membership in unions and other occupational groups, tenancy, and public contracts. There are lawyers at the Commission whose mandate is to investigate allegations of discrimination while remaining neutral and assisting both the Complainant and the Respondent.

## 2 Lawyer Services – Legal Information Only

### **Law Society of Yukon**

There is also a service provided by the Law Society of Yukon called Lawyer Referral Certificates where a person can pay \$30.00 to a lawyer and receive an initial 30-minute consultation with a lawyer who has agreed to be part of this program.<sup>33</sup> The lawyer is not able to provide legal advice during the 30 minutes, but is able to direct the individual as to whether or not a lawyer is required and give them some basic information about their legal issue.

### **The Law Line**

The Law Line offers a staff lawyer, who can offer legal information but not legal advice. The lawyer will not follow up with letters, nor be able to advocate for clients, but is able to provide information and assistance so that clients can advocate for themselves on a wide variety of topics. He may also assist a client to write a letter in the client's own name seeking a remedy to their legal issue. Of note, the services are as follows:

- The services are not restricted by financial eligibility criteria and therefore any person will be assisted without delay;
- The lawyer is able to provide information about the complex legal issues that arise when a woman is contemplating whether or not to engage the RCMP by reporting domestic abuse; and
- The Law Line is intended to help callers to identify the legal issues confronting them and to give them information about how to go about resolving those legal issues.

### **Family Law Information Centre**

Is an office of the Court Services Branch of the Yukon Department of Justice that provides information on family law issues and court procedures. Services provided are free to the public. Anyone who needs information about Yukon family law matters can use the centre. The staff members do not provide legal advice.

## APPENDIX C

# Definitions

## Legal Advice

### **Summary Legal Advice**

This is advice from a lawyer with which the client does not have an ongoing solicitor/client relationship. It is provided in a summary manner in one session to address a discrete issue.

### **Independent Legal Advice**

This is a term that is used by lawyers when one lawyer does not want to provide legal advice to two different sides of an issue. In the context of this paper, complainants often would benefit from legal advice and will call the accused's lawyer because she is not getting the results/information/advocacy she is seeking from other services. The accused's lawyer may refer the complainant for Independent Legal Advice.





