



**THE NUNAVUT COURT OF JUSTICE
FORMATIVE EVALUATION
Final Report**

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**Evaluation Division
Office of Strategic Planning and Performance Management**



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EXECUTIVE SUMMARY

1. Introduction

The territory of Nunavut was created effective April 1, 1999. Federal and territorial legislation authorized the Nunavut Court of Justice (NCJ), a unified Court system, to provide an efficient and accessible Court structure capable of responding to the unique needs of the territory, while at the same time maintaining substantive and procedural rights equivalent to those enjoyed elsewhere in Canada. Nunavut is the only Canadian jurisdiction with a unified Court.

There are two major objectives for the evaluation:

- To provide the Government of Nunavut Department of Justice, the Nunavut Court of Justice and the Department of Justice Canada with an assessment of the implementation and results of the NCJ; and
- To provide input on whether any adjustments to legislation or processes might be beneficial to improve effectiveness.

2. Methodology

The evaluation involved four methodological approaches:

- Key informant interviews with practitioners and officials
- Interviews and meetings with local justices of the peace (JPs), Community Justice Committees, and other residents in four communities
- Case review using NCJ files
- Administrative data review using other NCJ files and files from other agencies.

The study was limited in the number of communities visited (four of twenty-six). Although criminal and family files were reviewed, civil files for the period 2001 to 2005 were not.

3. Nunavut Overview

Nunavut is characterized by a fast growing, young population. Its proportion of young people 0 to 14 years is almost twice that for Canada as a whole. The territory has a significantly higher rate of violent personal crime, particularly domestic abuse and sexual assault. Property crime, especially break and enter, are also proportionately high compared to the rest of Canada. With a high school drop-out rate of 75 percent and almost no youth-oriented programming throughout the territory, practitioners are concerned that the incidence of criminal behavior will increase significantly in the near future. In turn, this would place greater demands on the NCJ.

4. The Administration of Justice

Key informants and community members said the NCJ is doing a good job of delivering justice, especially in view of the challenges it faces. Nunavummiut have some concerns, as might be expected, but overall they are pleased with the Court and its improvements over time.

Case processing times have declined since 2001. Adjournments, particularly in the communities, continue for a number of reasons; however, practitioners almost unanimously believe that delay is not a major issue facing the Court. Delays in case processing are generally seen as reasonable compared to other jurisdictions, and inevitable in light of uncontrollable conditions such as weather. Some community members, however, are more concerned about case processing times, particularly in spousal assault cases. Delays are seen to be stressful for the accused, victims, witnesses and their families.

Remands are common in Nunavut, as they are in other jurisdictions. In Nunavut, however, there are significant cost implications because remanded offenders must be flown to the Baffin Correctional Centre in Iqaluit or to the Yellowknife Correctional Centre. As well, the stress on the overcrowded facility in Iqaluit is severe.

There is a serious shortage of community-based courtworkers. While there are barriers to the hiring of additional courtworkers, practitioners and community members believe that they would improve the effectiveness of the criminal justice system by working with the accused and defence counsel, and by doing preparatory work prior to the arrival of the NCJ. As well, courtworkers are seen to hold potential for facilitating family law cases, an area in which they are currently not involved. Courtworkers are the responsibility of the Nunavut Legal Aid Society.

Similarly, more JPs are needed, especially more trained and experienced at Level 3 (conduct trials of summary conviction offences) and Level 4 (as Level 3 and sit as Youth Court Judges). In four communities where Level 3 or Level 4 JPs are in place, JP Court is being held the day prior to the arrival of the NCJ. The preparation of the docket for the judge has increased the effectiveness of case processing in those communities. The NCJ is responsible for hiring, training and managing JPs. A lack of resources appears to be the primary reason for the shortage.

The lack of community-based programming, including mental health and addiction services, youth programs and probation services seriously affects the ability of judges to turn to alternatives to incarceration. The lack of adequate probation services, in particular, negatively affects the effectiveness and possibly the credibility of the Court. With regard to the non-custodial provisions of the *Youth Criminal Justice Act* (YCJA), the absence of community programs and the weakness of probation services present serious difficulties for the Court. The federal and territorial governments are responsible for funding and implementing these programs and services, not the NCJ; however, resource shortages are a serious problem in Nunavut.

Access to family law services has improved significantly in recent years thanks to additional family law lawyers in the legal aid system, and to the efforts of the judges to make hearings and mediation more accessible. The number of family law applications is increasing rapidly. Civil matters, however, remain underdeveloped, especially as there are no civil matters lawyers residing in Nunavut. Civil matters seek to resolve non-criminal disputes in areas such as contracts, property ownership, family law, and personal and property damages. While the judges hold civil chambers in every community, the poor quality of Nunavut's telephone service often presents difficulties regarding the parties who are not present. Informants believe that needs associated with civil matters will increase as business grows and as people become more aware of the possibilities in civil matters.

Judges regularly engage in pre-trial and pre-circuit conferencing in criminal and civil cases. Judges also assist in family mediation, although the requirement has not been great as counsel are effective in reaching agreement in all but the most complex cases. The family mediation project, *Inuusirmut Aqqusiuqtiit*, initiated by Justice Canada and the Nunavut Department of Justice in Iqaluit and Cape Dorset, is believed by practitioners to be working well. The process of accessing *ex parte* and emergency relief orders is seen as highly effective in Nunavut.

Deputy judges are an essential aspect of the NCJ due to the heavy circuit schedule. While the use of deputy judges is considered to work well overall, there are concerns regarding the inexperience in the North and in Aboriginal communities of some visiting judges, the unfamiliarity of the judges for lawyers and community members, and the significant amount of time invested in the preparation of deputy judges, particularly by the senior judge and Court

staff. Shortcomings in the use of deputy judges are seen as a valid reason for increasing the number of resident judges by at least one.

There are too few defence lawyers practising in Nunavut, whether as staff of the Nunavut Legal Aid Society or as members of the private bar. Practitioners are concerned about the implications of the shortage as it affects the service provided to the public. It can also lead to burnout and turnover among defence counsel, and has occasionally contributed to Court delays due to lack of preparation by counsel. While the recent increases in the number of legal aid lawyers practising family law has had a positive impact in that area, there remain no resident lawyers practising other forms of civil matters.

Practitioners and community respondents alike indicated that Nunavummiut generally remain unaware of legal processes and their right in the system. This applies especially with respect to family and civil matters. In view of the substantial workloads facing all practitioners in the system, no real efforts have been made to establish Public Legal Education and Information (PLEI) programs. PLEI is the responsibility primarily of the Nunavut Legal Aid Society. One exception to the lack has been the NCJ itself, in that, for example, the judges have been active in a high school outreach program and in employing youth panels in many communities. Communities want more legal education and believe that a greater presence of lawyers, JPs or courtworkers in communities would help to address the need.

Community Justice Committees are an important part of the justice system in Nunavut. However, for several reasons their capacity varies from community to community. Similarly, the extent to which they receive referrals varies, particularly pre-charge referrals from the Royal Canadian Mounted Police (RCMP). Crown prosecutors are more consistent in their post-charge referrals. Most legal system practitioners, as well as community residents and members of the Community Justice Committees, believe the Committees hold real potential to handle more diversions and, in many cases, more serious cases. It is also thought the Committees should be engaging in more family mediation. While a small number of Committees are presently engaging in these kinds of activities, most others require developmental support before they can move to a higher level of operation. In particular, many Committees continue to need support in the form of office space, training (mostly in mediation) for Committee members, and administrative coordinators who are trained and paid at reasonable levels.

The NCJ, particularly the resident judges, is seen by practitioners and community residents as sensitive to Inuit culture and to the social realities in Nunavut communities. The Court demonstrates this awareness in several ways, including elders' panels, a high proportion of Inuit

staff in the Court office, effective interpretation service, and a general consideration of the community and family context of individual accused and victims.

5. Court Office Management and Operations

The operational structure of the NCJ comprises the Court Services Division, part of the Nunavut Department of Justice, and the NCJ administration, responsible to the Chief Justice. The former is largely responsible for the ongoing operations of the Court, while the latter primarily meets the needs of the judges.

There are three resident judges in Nunavut. There was unanimous agreement by key informants and community respondents that it is essential a fourth judge (at least) be appointed immediately. Several factors contribute to this view, including the substantial and steadily increasing caseloads in all areas of the law, the demands of circuit court, the stresses associated with travel in the North, and the developmental responsibilities of Nunavut judges.

Staff workloads at the Court are also substantial. While some areas in Court Services are currently staffed to acceptable levels, others are not; for example, the Sheriff's Office. Additional training for the Sheriff and the two Deputy Sheriffs is also urgently needed. The staff member responsible for travel arrangements of the Court should be staffed by an additional person in order to ensure continuity and effectiveness.

Lawyers are generally satisfied with the level of service provided by Court Services, although some have occasionally experienced frustration with the flow of information in a timely manner. Overall, however, lawyers are pleased with the service provided and those who have been in Iqaluit for a long period of time are impressed by the improvements made by staff and management.

Interpretation services are an important aspect of Court in Nunavut. While interpretation in the Court is considered to have improved to the point where it is now very effective, some counsel continue to have concerns about the quality of interpretation, particularly in the Western Arctic where dialect can present a problem for interpreters traveling with the Court. The annual eight week Legal Interpreting course sponsored by the NCJ is attempting to address such issues. Community members are generally satisfied with the interpretation services provided by the Court.

With respect to the Court's information management systems, there has been vast improvement since 1999. Practitioners would like to see the development of a system with common reference

numbers between the Court, the RCMP, Crown and legal aid systems. As well, lawyers would like to be able to e-file capability that would allow counsel to send documents electronically to the Court while it is on circuit. This would be especially useful when counsel are appearing by telephone. Judges are developing standard language and forms for various types of orders. One judge, for example, is currently using a standard form for conditional sentence orders.

The computerization of case files is ongoing. Currently criminal files are computerized from January 2001 and civil files, including family, from January 2003. Manual files prior to the current year are presently stored in a substandard facility with questionable security.

The new court house in Iqaluit is a dedicated facility that should improve working conditions, public access and security. Facilities in the communities remain very poor, although most practitioners and community members recognize that these facilities are the best that the communities have to offer. Of real concern is the substandard quality of telephone service from most communities. Problems with telephones lead to frustrations for judges, counsel and clients when cases involve participation by parties in different communities.

6. Overall Views of the Nunavut Court of Justice

Both practitioners and community residents, including members of Community Justice Committees, see the NCJ as having improved greatly in service delivery since 1999 and as an effective institution that is doing well under very challenging circumstances. While improvements can be made – for example, more circuits, decreasing case processing times, and increasing the responsibility of Community Justice Committees – most respondents are satisfied with current standards in the administration of justice.

Respondents were unanimously concerned about the lack of community-based programming, including probation services. This is understood not to be the responsibility of the NCJ; however, practitioners and community members see it as affecting the administration of justice.

7. Achievement of Overall Objectives

The general objectives for the new Court as viewed by the federal and territorial Departments of Justice and the Nunavut judiciary are the following:

- To provide substantive and procedural rights equivalent to those enjoyed elsewhere in Canada.

- To provide Court-based justice services in a fair and inclusive manner.
- To provide an efficient and accessible Court structure capable of responding to the unique needs of Nunavut.

It was generally agreed among key informants and community members that both the single-level Court and the two-level Court (prior to April 1999) do an effective job of providing rights equivalent to those enjoyed elsewhere in Canada. With respect to the second and, particularly, the third objectives, the information compiled for this evaluation suggests that the NCJ has made improvements in the administration of justice in communities across the territory. With few exceptions throughout the evaluation process, key informants and community members said the NCJ is doing a good job of delivering justice, especially in view of the challenges it faces. Nunavummiut have some concerns, as might be expected, but overall they are pleased with the Court and its improvements over time.

1. INTRODUCTION

1.1. Evaluation Context

1.1.1. Purpose and Scope of the Evaluation

As part of the establishment of the Government of Nunavut, the evaluation of the unified Nunavut Court of Justice (NCJ) is a Treasury Board commitment. A formative evaluation, to be a joint federal/territorial evaluation of the Nunavut court system, began in 2004/05.

There are two major objectives for the evaluation:

- To provide the Government of Nunavut Department of Justice, the NCJ and the Department of Justice Canada with an assessment of the implementation and results of the NCJ; and
- To provide input on whether any adjustments to legislation or processes might be beneficial to improve effectiveness.

The evaluation provides information and analysis on the implementation of the NCJ, the results of that implementation, and possible ways to improve effectiveness. The evaluation does not assess the judicial decisions of the Court.

Two overall themes were addressed in the evaluation. The first could be called process issues. Generally, these issues concern the operations of the Court with respect to such matters as changes in case-processing time. The second type concerns innovation issues. These issues are linked to the “broader picture” of justice in Nunavut – the aspects of Nunavut justice that enable the formal system to work together with the more informal, community-based system. The two systems are not separable, and personnel working within both see that the success of one will depend, in part, on the flexibility and effectiveness of the other. Both process issues and innovation issues reflect the ideals espoused at the creation of Nunavut and the NCJ.

1.1.2. Intended Audience

The evaluation provides insights that should assist both in its day-to-day operations, as well as in its broader aims of providing accessible, culturally relevant justice to all communities and residents in Nunavut. In this sense, the Nunavut Court of Justice and the Nunavut Department of Justice will find the evaluation results useful. The Government of Canada will be informed by the evaluation in view of its responsibility for the Nunavut Court of Justice as a federally mandated Court. Finally, other Canadian jurisdictions may view the findings with interest insofar as they address the operation and effectiveness of the country's only unified Court, as well as ways to provide accessible justice in remote Aboriginal communities.

1.2. Evaluation Issues and Questions

The following key evaluation issues were included in the terms of reference and guided the study:

- Are there barriers/challenges or gaps that should be addressed in order to implement the NCJ as planned? If so, how should they be addressed?
- Are the necessary elements in place to achieve the intended results of the single level Court?
 - Are there adequate processes and systems in place to plan, implement and coordinate activities?
 - To what extent has the information management strategy been implemented?
- Are resource levels sufficient for successfully implementing the single level Court?
- Have there been any unintended impacts of the Court, either positive or negative?
- To what extent have the intended results of the NCJ been achieved?
- How does the efficiency and accessibility of the one-level Court system compare to the two-level Court system?

2. METHODOLOGY

2.1. Introduction

The evaluation involved four major data collection approaches and corresponding data sources:

- *Key informant interviews* with judges, Crown prosecutors, defence counsel (private bar), Executive Director and Counsel of the Nunavut Legal Aid Society, justices of the peace (JPs), NCJ staff, Nunavut Justice and Justice Canada officials in Ottawa.
- *Community interviews* and meetings with local JPs, Community Justice Committees and other residents.
- *Case review* using NCJ files (criminal and civil/family).
- *Administrative data review* using other NCJ files and files from other agencies (i.e., the RCMP and Nunavut Justice).

These approaches and data sources were important in that each provided a particular type of information which contributed to an overall understanding of the Court and allowed the evaluation issues to be addressed. Both quantitative data (case file reviews) and qualitative information were required to assess the actual administrative functioning of the NCJ (the process issues) as well as the degree to which the Court has been successful in providing equal access to justice for communities in a culturally meaningful way (the innovation issues).

2.2. Key Informant Interviews

Representatives of the following groups were interviewed:

- NCJ judges (3)
- Crown prosecutors in Nunavut (6)
- Counsel (private bar) (4)

- Legal Aid counsel (criminal and family), including Executive Director, Nunavut Legal Aid Society (9)
- RCMP (3)
- JPs (8 from the four respondent communities)
- Senior NCJ staff (5)
- Nunavut Department of Justice officials (4)
- Federal Department of Justice officials in Ottawa (2)

The number of respondents in each category depended on two factors. First, respondents were interviewed primarily according to their availability. For example, of the nine Crown prosecutors working in the Justice Canada office in Iqaluit, six were available for interview during the course of the evaluation; therefore, these six individuals were interviewed. The second factor affecting respondent selection was the extent of travel permitted by the scope of the contract to meet with individuals (e.g., JPs) in communities. Travel was restricted to four communities, including Iqaluit.

2.3. Community Meetings

On-site key informant interviews and community meetings were held by the evaluators in Iqaluit, Pangnirtung and Qikiqtarjuaq in the South Baffin region and Rankin Inlet in the Kivalliq region. The community visits provided the opportunity to meet key informants, including local JPs and members of Community Justice Committees. General community meetings provided an opportunity for residents to attend an open session which was advertised in the community beforehand. Both the key informant interviews and the general community meetings provided the evaluators with the views of Nunavummiut on the effectiveness of the NCJ at the community level and the extent to which it meets community needs.

2.4. Court File Reviews

2.4.1. File Selection - Criminal

The Court's criminal files are maintained in computerized format from January 2001. While criminal files prior to that date are filed according to conviction date, files from January 2001

onward are filed from the date of the start of the case for the Court (new information sworn). File review therefore began with files from January 2001. Files were reviewed manually. They were selected from the months of January, April, July and October for each year. These months were chosen to account for possible seasonal variation in Court activity. A sample rate of 10 percent was maintained for each month. In total, 425 adult criminal case files were reviewed.

Relatively few youth criminal files exist and therefore the sample size was small. In all, 28 youth criminal files were reviewed for the years 2001 to 2005 (based on a 10 percent sample). The small number of youth criminal files is a function of the consistent application of alternative measures for youth, whereby police are diverting most youth cases to Community Justice Committees without laying a charge. In the absence of a formal charge, a Court file is not opened.

Every tenth criminal file was selected for review, beginning with the first file opened for the month. Each file was followed through to its conclusion at the Court. It is important to note that the NCJ does not operate a case management system, which would track cases – with dates – in a single file through to completion of the justice process. Therefore, “completion” of an NCJ file occurs when a case is disposed of by the Court, not necessarily when follow-up measures such as probation are completed.

2.4.2. File Selection – Family

Family case files are included in the civil file management system in the Court office. Family files are defined according to the statutes relating to family matters. The relevant statutes are the *Divorce Act*, the *Family Law Act*, the *Children’s Law Act*, the *Maintenance Enforcement Act*, and the *Child and Family Services Act*. According to Court Services data, approximately 40 percent of the Court’s family law caseload concerns child welfare matters.

Civil files (including family) are computerized from January 2003, while files prior to that date are kept in manual format. Family files were reviewed back to January 2001. As with criminal files, family files were selected for the following months each year: January, April, July and October. A sample rate of 20 percent (every fifth file) was maintained for family files for each of January, April, July and October from 2001 to 2005.

While it was originally intended to sample civil (non-family) files for review, this was not possible due to problems of timing and availability. Findings and conclusions regarding the handling of civil applications by the NCJ are based primarily on key informant interviews. It can

be noted, however, that the number of civil and family applications combined has risen from 431 in 2002 to over 700 in 2005.¹

2.4.3. Administrative Files

Administrative data were provided to the evaluator by senior Court staff according to the indicators and information requirements specified in the evaluation matrix, e.g., circuit Court schedules. The data are maintained in various formats.

In certain instances, administrative data came from sources other than the Court. RCMP “V” Division in Iqaluit provided information on charging rates and the Nunavut Department of Justice provided information on incarceration rates and diversions to Community Justice Committees.

2.5. Limitations of the Evaluation

The limited geographic scope of the evaluation was a shortcoming. (Rankin Inlet in Kivalliq and three communities, including Iqaluit, in South Baffin were included. No communities in North Baffin or Kitikmeot were visited.) There is variation across Nunavut in terms of socio-economic conditions and community capacity, particularly regarding community justice. It was not possible to get community input regarding the effectiveness of circuit Court in all regions, and therefore not possible to conclude if there is variation in views on this topic. Coverage of all four regions through visits to one and preferably more communities in each of the four regions would have strengthened the coverage of local JPs, Community Justice Committees and other community residents.

Consistent dating of Nunavut case files began in 2001. Therefore, detailed file review began with 2001 files and each year is subsequently compared.² Ideally, files would have been reviewed in detail back to 1999 or earlier.

Finally, the study was lacking in the fact that civil (non-family) files were not reviewed in detail for the period 2001 to 2005.

¹ Data supplied by Court Services, NCJ.

² While file reviews began with 2001 files, key informant interviews and discussions with community residents covered a longer period, at least back to April 1, 1999.

3. BACKGROUND TO THE NUNAVUT COURT OF JUSTICE

3.1. Introduction

Nunavut, Canada's third territory, was created effective April 1, 1999. The *Nunavut Act* created the Nunavut Court of Justice (NCJ), a unified Court system, in order to provide an efficient and accessible Court structure capable of responding to the unique needs of the territory, while at the same time maintaining substantive and procedural rights equivalent to those enjoyed elsewhere in Canada. Nunavut is the only Canadian jurisdiction with a unified Court.

3.2. Legal Authorities and Rationale

The NCJ was created on April 1, 1999 at the time of division of the Northwest Territories into two distinct territories. The legal authority for the Nunavut Court is the following:

- Federal: *An Act to amend the Nunavut Act with respect to the Nunavut Court of Justice and to amend other Acts in consequence*, S.C. 1999, c.3. This Act conveyed to the NCJ all the powers, duties and functions formerly exercised by Northwest Territories courts, judges and justices, with the exception of the territorial Court of Appeal. The amendments also addressed appeals, bail, elections, preliminary inquiries, statutory review and young offenders' proceedings with the NCJ.³
- The *Criminal Code of Canada* was also amended to include the powers and functions of the NCJ.
- Territorial: *The Nunavut Judicial System Implementation Act*, S.N.W.T. 1998, c. 34. This legislation enacted a new *Judicature Act* and a new *Justices of the Peace Act* effective April 1, 1999. It established the composition, powers and officers of the NCJ and Court of Appeal, and designated Youth Courts for Nunavut. This Act also stated certain rules of law and procedure for Nunavut cases.⁴

³ Nunavut Court of Justice Website: www.nucj.ca/unifiedcourt.htm.

⁴ *Ibid.*

The NCJ judges were sworn in immediately after midnight on April 1, 1999 in order to ensure the new jurisdiction of Nunavut had a Court in place as constitutionally required. The NCJ was designed to be a single level or unified Court, the first of its kind in Canada. The realities facing the NCJ are both unique and challenging. Vast geographic distances, a scattered population, and cultural distinctiveness are factors that face the Court on a daily basis and that have required ongoing sensitivity and innovation. However, while sensitive to the needs of Nunavummiut, the NCJ has also had to maintain its fundamental commitment to Canada's high standards in the administration of a fair, equal and effective justice system.

3.3. Objectives and Intended Impacts

Key informants in the federal and territorial Departments of Justice, as well as in the Nunavut judiciary, agreed in consultations preparatory to the evaluation that the general objectives of the new unified Court were as follows:

- To provide substantive and procedural rights equivalent to those enjoyed elsewhere in Canada.
- To provide Court-based justice services in a fair and inclusive manner.
- To provide an efficient and accessible Court structure capable of responding to the unique needs of Nunavut.

More specifically, according to key informants, the major intended impacts of the new Court were seen as follows:

- The reduction of delays and case processing times throughout Nunavut.
- The provision of an effective JP function in all communities.
- Engagement of the communities in the court process through the use of elders' panels and youth panels at sentencing.
- Increased understanding of the justice system and court operations on the part of Nunavummiut.
- Culturally appropriate court processes, including effective Court interpretation services in all communities.
- The application of a range of culturally appropriate and community oriented sentencing alternatives.
- Increased access to civil and family law throughout Nunavut.

3.4. Comparison of Court Structures: Northwest Territories and Nunavut

Nunavut has its own Court system, distinct from that of the Northwest Territories. This section explains the Court system that was in place prior to April 1, 1999 and the structure that replaces it. All cases commencing after April 1, 1999 arising in Nunavut are heard by the NCJ. All cases and actions initiated prior to April 1, 1999 continued to be heard by the Northwest Territories Courts unless specifically transferred to the Nunavut Court.

Figure 1 below provides a comparative overview of the Court structures in the Northwest Territories and Nunavut.

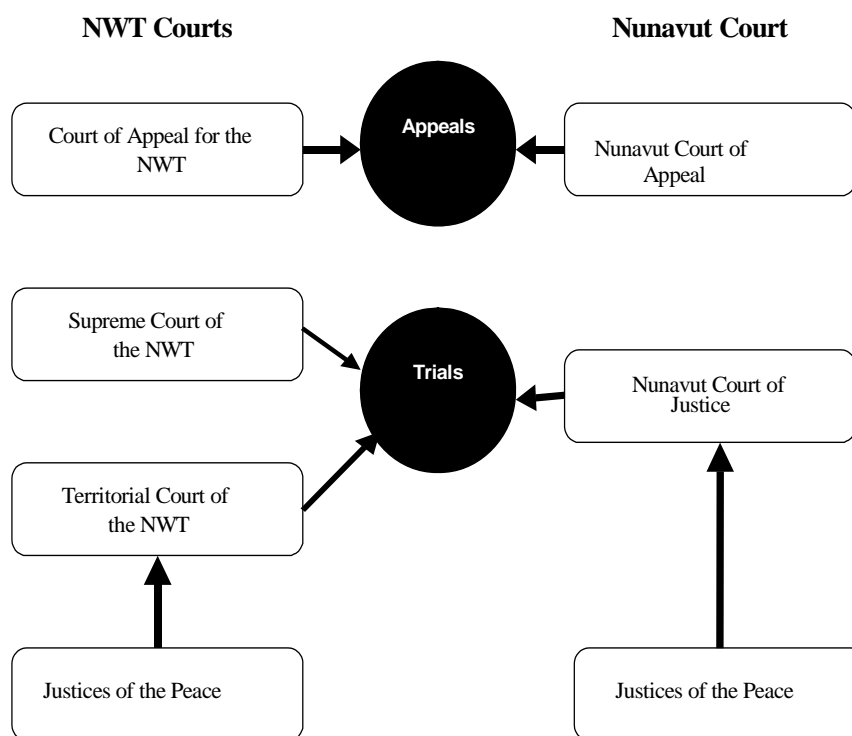


Figure 1

3.5. Structure of the Nunavut Court of Justice and Linkages with Other Bodies

The linkages between the NCJ and other agencies, departments and organizations are shown in Figure 2, below. Figure 2 is intended to show linkages, not lines of authority. Community Justice Committees, for example, are entities created by and responsible to the Nunavut Department of

Justice and to their communities; Crown prosecutors are federal employees; and Elders are independent, although they may assist the Court in various ways.

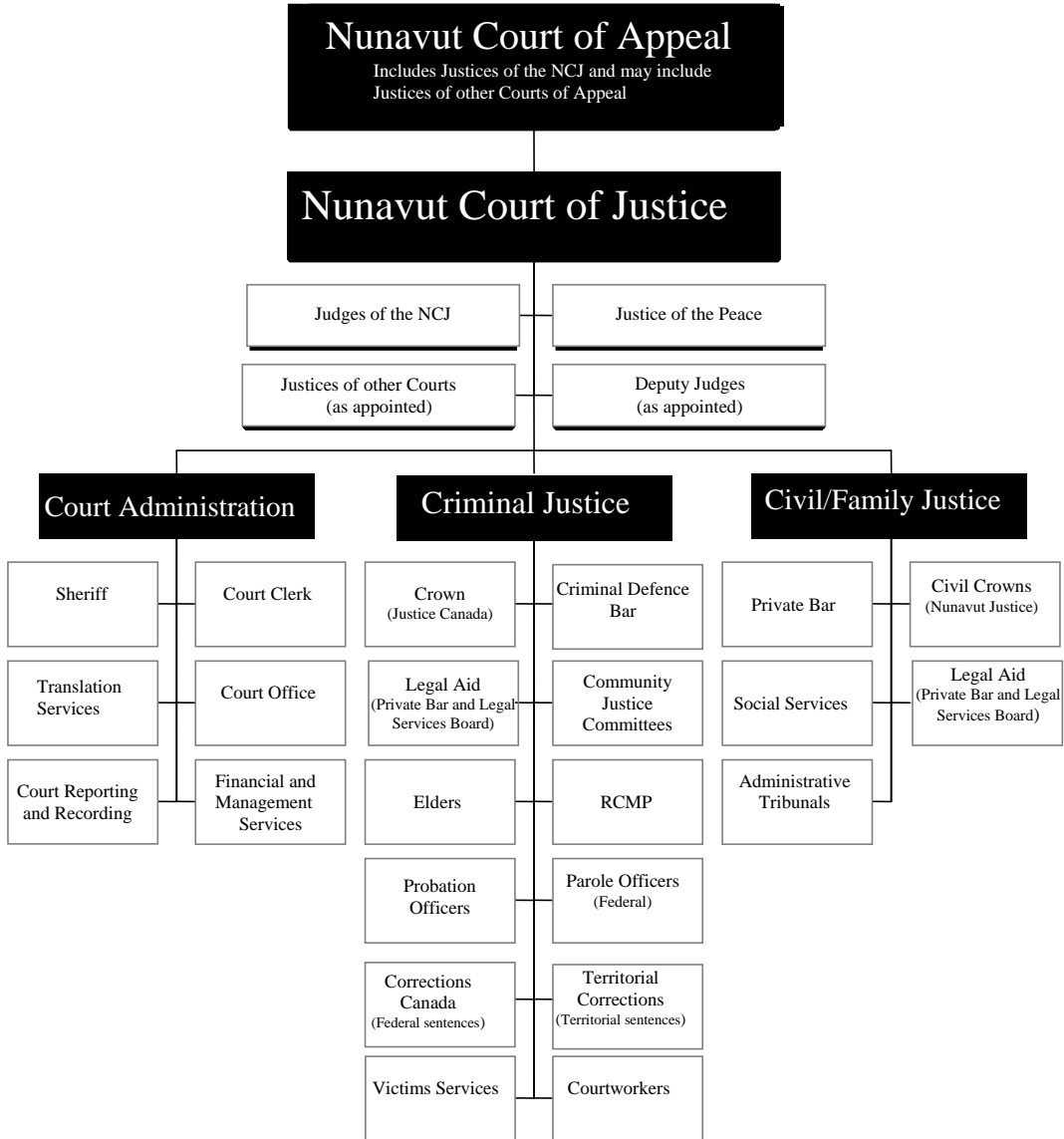


Figure 2

3.6. Adult and Youth Criminal Court – Logic Model

The activities involved in adult and youth criminal matters are described in Chart 1 below in the order that they would be expected to occur in criminal proceedings.

Chart 1: Adult and Youth Criminal Court Logic Model

	Charges	Bail Hearings	First Appearances and Remands	Preliminary Inquiries	Trials	Sentencing	Appeals to NCJ	Judicial Review
	↓	↓	↓	↓	↓	↓	↓	↓
Inputs	JP hears and considers Crown reviews evidence to make election (if applicable).	Hear evidence on the offence, risk of flight and possible danger to the community posed by releasing the accused.	The accused is read the charge and informed of Crown's election A plea is entered The accused election is made (if applicable) A contested remand is argued.	Hear Crown's case.	Crown and defence present case Witnesses are examined	Evidence is presented to assist the Court in determining sentence	The Court hears arguments on the JPs' decision New evidence may be heard (where applicable).	Arguments are heard on decision of NCJ judge.
	↓	↓	↓	↓	↓	↓	↓	↓
Outputs	Pre-bail hearing process included - Release - Charge is laid - Election is made	Accused is released on conditions or remains in custody	The matter is remanded to another date A hearing date is set A plea is accepted	Cases where the Crown has not met its burden are discharged	Guilty or not guilty.	A sentence is imposed.	The JPs' decision is upheld or overturned A new decision may be entered by the Court.	The earlier decision is upheld or overturned.
	↓	↓	↓	↓	↓	↓	↓	↓
Intended Short-term Outcomes	Minimize the number of charges quashed on the basis of procedural error on the part of Court personnel	Appropriate release decisions are made based on NCJ review	Accused persons are brought before the Court at the earliest possible date to determine when and how the matter will be proceeded with	Preliminary hearings occur in a timely fashion and the Crown either meets the burden of proof to commit the accused for trial or the accused is discharged	Trials fixed on a timely basis Delays not increased due to a lack of Courts/ judges To have procedurally and substantively "fair" trials	Just and appropriate sentences given Use of alternatives to incarceration when appropriate	Timely and "fair" determination of appeals	Timely access to the Court and a "fair" decision Equal access to reviews

3.7. Civil and Family Matters – Logic Model

Activities that arise in civil and family matters are outlined in Chart 2 below in the order that they may be expected to occur.

Chart 2: Civil and Family Matters Logic Model

	Initiating Proceedings	<i>Ex parte</i> and emergency hearings	Pre-trial conferences and motions	Hearings/Trials	Enforcement Proceedings	Appeals from Government Agencies
	↓	↓	↓	↓	↓	↓
Inputs	Issuing claims, actions and notices Filing responses Scheduling hearing dates	Party or parties argue the necessity of the expedient hearing Evidence is reviewed	Pre-trial issues are discussed and argued Evidence may be introduced	Evidence is presented and witnesses are examined Case law is argued	Evidence is heard on the nature of the default	The decision of the tribunal is reviewed and case law is argued
	↓	↓	↓	↓	↓	↓
Outputs	- Applicants/ plaintiffs commence legal actions and respondents/ defendants file documents defending their rights	An interim order is granted protecting assets or persons	Negotiated settlement Issues for trial are narrowed	A decision is rendered by the Court on liability, custody, access, etc.	An order for enforcement is entered	The former decision is upheld or sent back to the agency or tribunal for decision
	↓	↓	↓	↓	↓	↓
Intended Short-term Outcomes	Increased capacity to process cases Greater reach to communities	No substantial increase in number of successful appeals Increased access in remote communities to this type of hearing	There is a larger percentage of negotiated settlements The number of issues for the trial judge is reduced	There is no decrease in the number of small claims matters appealed There is no increase in the Court's ability to schedule trials	The delay in scheduling a hearing is not increased	The delay in obtaining a hearing date is not increased
	↓	↓	↓	↓	↓	↓
Expected Short-term Outcomes	Increase in the number of civil and family actions	Increase in the number of emergency and <i>ex parte</i> hearings	Increase in the number of pre-trial conferences	Increase in the number of civil and family trials Fair and just outcomes	Increase in the number of enforcement actions in relation to the increase in civil actions	Increase in the number of appeals from administrative tribunals

4. FINDINGS: OVERVIEW OF POPULATION AND CRIME

4.1. Introduction

This section of the report points out the relatively young population of Nunavut, and the relatively high rate of violent crimes in comparison to the rest of Canada. It is in this context that the NCJ must operate while attempting to meet the other challenges unique to Nunavut.

4.2. Population of Nunavut

As of July 1, 2005, the population of Nunavut was approximately 30,000.⁵ This represents an increase of 6.7 percent since 2001, which compares to a 4.0 percent increase for the same period for Canada as a whole. In terms of age breakdown, Nunavut's 2005 population was as follows:

- 0-14 years 10,400 (34.6 percent of total)
- 15-64 years 18,800 (62.6 percent of total)
- 65 and over 800 (2.6 percent of total).

In comparison, the population infancy-14 years for Canada as a whole was 17.6 percent in 2005. This indicates the relatively high population of young people in Nunavut, a fact which key informants agree will continue to have a bearing on the justice system in view of the relative absence of educational and employment opportunities for youth and a lack of programming for youth at risk.⁶

The populations of Nunavut's 26 communities vary from Bathurst Inlet-Umingmaktok with 35 individuals to Iqaluit with approximately 6,000. Current population statistics are unavailable for specific communities, as the most recent information is based on the 2001 Census. However, based on the current total territorial population, the current average population of the remaining 24 communities (exclusive of Iqaluit and Bathurst Inlet-Umingmaktok) is 1,248.

⁵ Source for the population data is Statistics Canada, *Canadian Statistics*, www.statcan.ca.

⁶ According to the Nunavut Department of Education, the high school drop out rate across the territory is approximately 75 percent.

4.3. Crimes by Offences: Canada, Northwest Territories, Nunavut

Table 1 indicates crime rates by offence per 100,000 population for Canada, the NWT and Nunavut.⁷ The rates for both the NWT and Nunavut are higher than for Canada as a whole. Crimes of violence (e.g., assault, sexual assault) are extremely high in the territories relative to Canada. Similarly, the rate of break and enter is substantially higher in the territories.

Table 1: Crimes by offences: Canada, Northwest Territories, Nunavut, 2004

	2004		
	Canada	Northwest Territories	Nunavut
	Rate per 100,000 population		
All incidents	8,834.9	45,164.7	38,493.5
<i>Criminal Code</i> offences (excluding traffic offences)	8,050.6	42,125.7	36,685.3
Crimes of violence	946.1	6,865.2	7,883.6
Homicide	2.0	9.3	13.5
Attempted murder	2.2	7.0	23.6
Assaults (level 1 to 3) ¹	731.8	6,155.1	6,628.7
Sexual assault	73.7	418.1	941.2
Other sexual offences	8.2	25.7	40.5
Robbery	86.0	44.4	10.1
Other crimes of violence ²	42.3	205.6	226.0
Property crimes	3,990.9	7,414.2	6,959.3
Breaking and entering	859.9	2,487.7	3,548.8
Motor vehicle theft	530.7	843.3	786.0
Theft over \$5,000	54.1	95.8	43.9
Theft \$5,000 and under	2,131.3	3,464.1	2,229.8
Possession of stolen goods	110.8	142.5	108.0
Frauds	303.9	380.8	242.9
Other <i>Criminal Code</i> offences	3,113.6	27,846.3	21,842.5
<i>Criminal Code</i> offences (traffic offences)	372.1	1,562.7	735.4
Impaired driving	247.2	1,371.2	580.2
Other <i>Criminal Code</i> traffic offences ³	124.9	191.6	155.2
Federal statutes	412.3	1,476.3	1,072.7
Drugs	304.1	925.0	914.2
Other federal statutes	108.2	551.3	158.6

1. "Assault level 1" is the first level of assault. It constitutes the intentional application of force without consent, the attempt or threat to apply force to another person, or openly wearing a weapon (or an imitation) while accosting or impeding another person.

2. Includes unlawfully causing bodily harm, discharging firearms with intent, abductions, assaults against police officers, assaults against other peace or public officers and other assaults.

3. Includes dangerous operation of motor vehicle, boat, vessel or aircraft, dangerous operation of motor vehicle, boat, vessel or aircraft causing bodily harm or death, driving motor vehicle while prohibited and failure to stop or remain.

Source: Statistics Canada.

⁷ Statistics Canada, *Canadian Statistics*, www.statcan.ca.

Table 2 indicates the rates of persons charged by type of offence per 100,000 population for Nunavut.⁸ Comparisons with Canada are included for some categories. The charging rate is substantially higher in Nunavut than in Canada as a whole.

Table 2: Persons charged by type of offence: Nunavut, 2004

	2004		
	Total persons charged	Youths charged	Adults charged
	Rate per 100,000 population		
Nunavut			
All incidents - Nunavut (Canada)	11,796.5 (2,286.7)	12,627.5 (3,494.6)	11,614.3 (2,163.4)
<i>Criminal Code</i> offences (excluding traffic offences) – Nunavut (Canada)	11,063.1 (1,774.7)	12,522.9 (3,065.4)	10,743.0 (1,643.0)
Crimes of violence – Nunavut (Canada)	5,444.5 (498.9)	2,483.7 (788.2)	6,093.8 (469.3)
Homicide	14.1	0.0	17.2
Attempted murder	28.2	26.1	28.7
Assaults (level 1 to 3) ¹	4,367.9	1,803.9	4,930.1
Sexual assault	771.1	366.0	859.9
Other sexual offences	14.1	52.3	5.7
Robbery	18.8	26.1	17.2
Other crimes of violence ²	230.4	209.2	235.0
Property crimes – Nunavut (Canada)	2,745.8 (575.6)	7,555.6 (1,189.9)	1,691.1 (512.9)
Breaking and entering	1,970.0	5,908.5	1,106.4
Motor vehicle theft	272.7	888.9	137.6
Theft over \$5,000	28.2	52.3	22.9
Theft \$5,000 and under	286.8	418.3	258.0
Possession of stolen goods	112.8	287.6	74.5
Frauds	75.2	0.0	91.7
Other <i>Criminal Code</i> offences	2,872.7	2,483.7	2,958.0
<i>Criminal Code</i> offences (traffic offences)	437.3	0.0	533.1
Impaired driving	305.6	0.0	372.6
Other <i>Criminal Code</i> traffic offences ³	131.6	0.0	160.5
Federal statutes	296.2	104.6	338.2
Drugs	263.3	26.1	315.3
Other federal statutes	32.9	78.4	22.9
<p>1. "Assault level 1" is the first level of assault. It constitutes the intentional application of force without consent, the attempt or threat to apply force to another person, or openly wearing a weapon (or an imitation) while accosting or impeding another person.</p> <p>2. Includes unlawfully causing bodily harm, discharging firearms with intent, abductions, assaults against police officers, assaults against other peace or public officers and other assaults.</p> <p>3. Includes dangerous operation of motor vehicle, boat, vessel or aircraft; dangerous operation of motor vehicle, boat, vessel or aircraft causing bodily harm or death, driving motor vehicle while prohibited and failure to stop or remain.</p> <p>Source: Statistics Canada.</p>			

⁸ Statistics Canada, *Canadian Statistics*, www.statcan.ca.

The Statistics Canada data included in Tables 1 and 2 demonstrate the relatively high level of violent offending by youth and adults in Nunavut, as well as the relatively high rates of property crime, particularly break and enter. Both RCMP and Nunavut Corrections personnel have suggested that these rates will likely continue to rise in view of the relatively young age of Nunavut's population. Key informants view the lack of community level programming for youth as an especially serious contributing factor in the rising crime rates.

4.4. Summary

Nunavut is characterized by a fast growing, young population. Its proportion of young people infancy to 14 years is almost twice that for Canada as a whole. The territory has a higher rate of violent personal crime, particularly domestic abuse and sexual assault, in comparison to Canada. Property crime, especially break and enter, are also proportionately high compared to the rest of Canada. Key informants are concerned that the incidence of criminal behavior will increase in the near future.

5. THE ADMINISTRATION OF JUSTICE

5.1. Introduction

Section 5 addresses the role of the Nunavut Court of Justice (NCJ) in administering justice throughout the territory. The “administration of justice” is a broadly defined term referring to questions of access to justice (e.g., frequency of Court hearings) and the manner in which the Court fulfills its mandate (e.g., meeting community needs in a culturally sensitive manner).⁹ These issues are distinct from, though related to, the questions pertaining to the management and operational matters of the Court office addressed in Section 6.

Issues such as delays and processing times in criminal cases are largely the responsibility of the NCJ and are important to the overall effectiveness of the justice system. Other issues, such as the number and qualifications of courtworkers, are not the direct responsibility of the NCJ. Such matters are, however, important to the work of the Court and the overall functioning of the justice system and are therefore included in this section. This section is based primarily on key informant interviews and discussions with community residents, including members of Community Justice Committees, as well as on information derived from the review of criminal and family case files.

5.2. Achievement of Intended Results

5.2.1. Reduction of Delays and Case Processing Times in Criminal Cases

The question of delays in the processing of criminal cases has been a concern since the inception of the NCJ. The creation of the new Court was intended, among other things, to result in fewer delays and improved case processing times. To some extent, it appears on the basis of discussion with key informants that there has been an assumption that delays are a problem simply because (a) delays occur in every jurisdiction in Canada, and (b) the NCJ faces unique challenges not usually seen by other Courts (such as bad weather) that would naturally cause delays. However,

⁹ This evaluation does not examine judicial decision making as an aspect of the administration of justice.

it became clear through key informant interviews that, while there are delays in Nunavut, they are not seen as especially problematic by the majority of individuals working in the justice system. The typical view of justice system personnel is that the delays are reasonable in comparison to other jurisdictions, and that delays will inevitably occur because of uncontrollable factors such as bad weather.

5.2.2. Circuits and Repeated Adjournments

Some community informants see delays – defined as infrequent circuits and repeated adjournments – as problematic. First, residents sometimes see offenders who are continuing to live in the community while awaiting a Court date as posing a potential threat to the community (although many offenders are remanded to Iqaluit for this reason). Residents sometimes also believe that the offender is getting easy treatment by being allowed to stay in his/her community after committing an offence.

More from the community perspective, perhaps, is the stress that delays place on victims, witnesses, the accused and their families. This may be particularly true in spousal abuse cases in that the couple may have reconciled by the time their case is heard. Re-visiting the incident in the stressful context of Court can be a negative experience for all participants. Remands to custody can also affect the family of the accused in that the accused is often held far from home and unable to provide economically and in other ways for the family.

The review of adult criminal case files undertaken for the evaluation indicates that case processing times have declined since 2001. In 2005, personal violence summary conviction cases required an average of 15.3 weeks from the date of an information being sworn (more or less the same as the offence and charge date) to disposition by the Court. In 2001, the equivalent timing was an average 17.7 weeks. The same cases in 2005 took an average of 7.6 weeks from the time of setting the date for trial until disposition. In 2001, the same process took 10.3 weeks. Jury trials take longer but are also improving in terms of timing. Jury trials (indictable offences) now typically take just over one year from the time of a trial date being set, while completion of jury trials commenced in 2001 often took closer to two years. Table 3 indicates the changes in processing times since 2001.

Table 3: Average Times for Summary Conviction Trials and Jury Trials (weeks)¹⁰

Type of Trial and Times Measured (average weeks)	2001	2002	2003	2004	2005
Summary conviction personal violence trials:					
1. time of setting trial date to disposition	10.3	10.0	9.2	8.3	7.6
2. time information sworn to disposition	17.7	17.5	17.0	16.1	15.3
Indictable jury trials:					
1. time of setting trial date to disposition	88.6	79.2	71.4	65.9	57.4
2. time of information sworn to disposition	102.5	93.6	84.2	76.2	67.7

Adjournments, particularly on circuit, affect the length of time for trials. Table 4 indicates the number of matters addressed and the number of matters adjourned on two circuits for each community. On this basis, an average 63.7 percent of matters were adjourned.

Table 4: Matters Addressed and Adjourned on Two Circuits¹¹

Community	Circuit Concluded	Number Matters	Number Adjourned	Circuit Concluded	Number Matters	Number Adjourned
Arctic Bay	Jun '05	35	39	Feb '06	71	71 ^d
Qikiqtarjuaq	Oct '05	54	37	Mar '06	46	35
Cape Dorset	Sep '05	130	91	Mar '06	130	47
Clyde River	Sep '05	100	100 ^a	Apr '06	102	65
Grise Fiord ^b	Mar '05	29	19	N/A		
Hall Beach	Oct '05	95	75	Feb '06	95	62
Igloolik	Oct '05	120	112	Feb '06	120	101
Kimmirut	Oct '05	37	22	May '06	43	22
Pangnirtung	Aug '05	253	172	Jan '06	40	13
Pond Inlet	Sep '05	140	92	Jan '06	135	70
Resolute Bay	Jun '05	39	32	Oct '05	73	41
Sanikiluaq	Jun '05	86	41	Nov '05	30	15
Arviat	Aug '05	99	84	Dec '05	94	39
Baker Lake	Aug '05	93	93 ^a	Dec '05	127	70
Chesterfield Inlet ^c	N/A	29	25	Nov '05	36	21
Coral Harbour	Sep '05	78	38	N/A		
Rankin Inlet	Aug '05	193	114	Jan '06	220	114
Repulse Bay	Aug '05	54	40	Dec '05	54	43
Whale Cove ^c	Jun '04	1	1	N/A		
Cambridge Bay	Oct '05	74	52	Jan '06	98	43
Gjoa Haven	Sep '05	157	134	Jan '06	143	77
Kugluktuk	Aug '05	182	81	Dec '05	227	120

¹⁰ These figures are based on a review of adult criminal case files from 2001 to 2005; n = 425.

¹¹ Information provided by Court Services.

Community	Circuit Concluded	Number Matters	Number Adjourned	Circuit Concluded	Number Matters	Number Adjourned
Kugaaruk	May '05	60	19	N/A		
Taloyoak	Sep '05	190	177	Jan '06	204	55
Average		97	70.4		104.4	56.2

a. Clyde River and Baker Lake circuits were adjourned due to weather and operational factors.

b. Grise Fiord circuit is usually held in Resolute Bay.

c. Chesterfield Inlet and Whale Cove circuits are scheduled only when required or combined with Rankin Inlet.

d. Circuit cancelled due to weather.

There are many reasons for the need to adjourn a matter. The review of criminal case files¹² indicates the most common reasons for adjournments of trials on Court circuits between 2001 and 2005 in the list shown below. This list generally reflects the frequency of reasons for adjournments, beginning with the most frequent. However, the relative frequency of reasons varies by community. In some communities, for example, witnesses tend to stay away from Court more frequently than in other communities. Similarly, weather is a more significant factor in some communities than in others. (Weather also varies as a factor according to the time of year.)

Common reasons for adjournments (each of the reasons listed below is expanded later in the report):

- Adjourned due to lack of time on circuit
- Not guilty plea (set over for trial)
- Crown elect (set for preliminary inquiry or trial)
- Crown elect (set over for plea)
- Weather
- Individuals (accused or witnesses) did not appear for Court (bench warrants often issued)¹³
- Guilty plea (adjourned for facts and sentencing, possibly with a request for a pre-sentence report)
- Defence requests for adjournments (e.g., unable to speak with client, possible resolution out of Court).

¹² The analysis of criminal case files was augmented by documentation from Court Services.

¹³ Several key informants indicated the problem of witness attendance could be addressed by the presence of a courtworker.

Other reasons for delays were provided by key informants (not ranked):

- General shortage of defence counsel
- Travel logistics (Court party members, including police officers and witnesses coming from different locations)
- Too few and inadequately trained courtworkers to prepare for trials
- Too few JPs to prepare for trials
- Too few JPs trained to conduct trials of summary conviction offences
- Inadequate treatment facilities for offenders
- Inadequate community supervision for offenders
- Inadequate alternative programs for offenders.

The last three factors listed above represent particularly serious challenges for the NCJ and the Nunavut Department of Justice.

There was a high level of unanimity among all lawyers interviewed (Crown prosecutors and defence counsel) that, on the whole, delay is *not* a major issue facing the Court. Most lawyers pointed to timelines consistent with, or better than, southern Courts. Most counsel were quite satisfied that the majority of cases saw substantive progress by the second Court date. Several lawyers remarked that even a serious homicide case would normally be concluded within two years.

Although almost no lawyers viewed delay as a serious issue in itself, most acknowledged that there are often time lapses between steps in proceedings owing to time between circuits, particularly in smaller communities. Even where the parties are operating with a high level of efficiency, if the Court only visits once every six months, as is the case in the smallest communities, significant time lapses occur. Even in mid-size communities, only three to four circuit stops a year are common and it is not unusual to have one of those trips further postponed due to weather-related problems. This time lapse may be a source of real hardship for affected individuals and their families. Some justice system informants pointed out that an extended period of uncertainty may have a particularly serious effect on family relationships, especially where the charges relate to domestic violence. As previously mentioned, community respondents also identified this as a concern.

Most lawyers and justice officials regard time between circuits as an inevitable consequence of geography, small populations, and the high cost of bringing the Court to more remote corners of the territory. Apart from time between circuits, locating witnesses and bringing them in for trial is a constant challenge, given the mobility of the population within Nunavut. Frequent RCMP rotations can also be a problem as the arresting officer must often fly to the site of a trial. The use of deputy judges may also add to the length of time before disposition. However, most key informants pointed to the increase in number of circuits (46 in 2001¹⁴ to 50 in 2005¹⁵) and time spent in communities since the inception of the NCJ as indications that the Court is addressing the issue of delays.

Defence counsel naturally have a different perception than Crown prosecutors about some factors which may contribute to delay. From a defence perspective, adjournments before a guilty plea may be strategic – allowing a client to get a job, to get assistance from social services if they are free pending trial, or to receive an ultimately shorter sentence due to time served if they are remanded. (Although credit for remand time can vary, in Nunavut it is usually calculated at sentencing according to the ratio of 1.5 to 1.)¹⁶ Defence lawyers see refusing to allow show-cause hearings in communities – requiring accused persons and often witnesses to be transported to Iqaluit – as an important breach of clients’ rights in the face of considerable jeopardy. Crown prosecutors are more likely to perceive that adjournments result from a lack of preparation or necessary flexibility on the part of defence. A number of new practices have increased the efficiency of the Court in communities – notably, having the defence counsel and the Crown prosecutor spend at least a day in a community before the Court arrives. (This tends to be hardest to achieve in the smallest communities where the Court sits in two or three communities on a single circuit). Lawyers from both defence and prosecution noted an improvement in timeliness in the past year resulting from a new practice of defence counsel (legal aid) consistently being assigned to the same circuits, thus creating a stronger incentive to quick settlement.

On the family law side, outside of emergencies, matters may take longer to get to the stage of an interim order than would be typical in the south. Even once a file has been assigned to a legal aid lawyer (and there continues to be a legal aid backlog in family files), it may take some time to receive instructions – particularly where lawyers and clients do not have a language in common. The most significant cause of delay is the difficulty in finding opposing counsel given the small size of the family bar. Family lawyers noted that their clients or potential clients appear

¹⁴ Nunavut Court of Justice, *Annual Report, 2001*.

¹⁵ Court Services Division.

¹⁶ Credit for remand time can be calculated at ratios of 2:1, 1.5:1, or 1:1. As well, there are circumstances when no credit is granted.

extremely patient with delay in receiving family law services. Some informants suggested that perhaps because this is a new area of service, community expectations about timeliness are lower.

In summary, while delays in criminal matters continue, it appears that the Court has had success in addressing the issue to the satisfaction of lawyers and other justice system personnel. Some community residents continue to have concerns about time lapses between circuits, especially in domestic violence cases.

5.2.3. Decrease in Number and Length of Remands

Remanded offenders are individuals who are held in correctional facilities awaiting appearance in Court. They are not released into the community to await their Court appearance because they are considered to be at risk to abscond or to harm others. A second category of remand – sentenced remand – refers to offenders who have been sentenced to a period of incarceration but have outstanding charges that must be dealt with by the Court. Remanded offenders are incarcerated either at the Baffin Correctional Centre (BCC) in Iqaluit or, if they are from the Kitikmeot Region, at the Yellowknife Correctional Centre (YCC).

In 2005-06, in any given month there were approximately 70 Nunavut inmates at BCC and 20 at YCC. In both institutions, slightly over 50 percent of those inmates were remanded. Judges commented that the lack of facilities and staff in the communities to hold or monitor problem offenders essentially forces them to remand individual accused in the interest of protecting the public.

There are implications arising from the remand process. First, as BCC and YCC are the only institutions available for remanded offenders from Nunavut, offenders who are remanded in a community must be flown to Iqaluit or Yellowknife. The associated travel costs are considerable. Second, remanded inmates place pressure on the institutions, particularly BCC. The institution was designed to hold 43 territorially sentenced men; however, with a typical population of approximately 70, of whom approximately half are remanded and mixed with the general inmate population, Nunavut Corrections officials advise that the stresses on the staff and the facility are serious.

5.2.4. Use of Alternatives to Incarceration

Alternatives to incarceration are seen by key informants and community respondents as important for several reasons. First, a sentence served in one's own community may provide less stress on the offender and his/her family than a jail term. Second, it may also provide the opportunity for the offender to reconcile with the victim and the community. Third, if the offender provides for his family through wage employment or hunting, these forms of support are not necessarily withdrawn when the offender is able to return to his/her community. Fourth, community-based, non-jail sentences are seen as more culturally appropriate than incarceration. Many community residents indicated that the family and the community have a responsibility to work with the offender, a responsibility inherent in Inuit culture. Fifth, the BCC and the YCC are overcrowded and lack rehabilitative programming. Both institutions are acknowledged by key informants and community respondents as undesirable for the long-term improvement of offenders.

It should be noted that the preference for alternatives to incarceration is not universal. Key informants and community respondents recognize the need to incarcerate certain offenders, depending on the nature and seriousness of the crime, the tendency of the offender to repeat his/her offending, and the ability of the family and the community to handle the offender with positive results. In some cases, incarceration is seen as the only route, particularly when victim and community safety are in question.

Lawyers were unanimous in the view that the NCJ does its best to explore alternatives to incarceration, including conditional sentences, in light of the resources available in the communities. Lawyers are routinely requested to provide information about alternatives if they have not already done so in their submissions; however, the absence of such information is sometimes a reason for adjournment.

A major concern related to alternatives was expressed unanimously by key informants, including judges, Crown prosecutors, defence counsel and JPs, as well as by Community Justice Committees and community residents. The concern is that there are serious shortages of community resources and programming, specifically probation officers, social workers, mental health and addictions services, youth programs, and consistently strong Community Justice Committees. All of these are seen as essential alternatives to incarceration. As one informant noted, the credibility of the Court depends on ensuring that there is effective follow-up to Court orders when the Court leaves town; if volunteer hours are not served, if counseling is not provided, or if conditions of house arrest are not enforced, then there may be a community

perception that an offender has “gotten away with something”. Similarly, without programs such as anger management and substance abuse counseling, the Court is often the only resort for handling an offender. In preventative terms, the shortage of programs for youth, such as supervised land programs, is viewed by community residents as contributing to youth crime.

The gaps in community-based programming for offenders are primarily a problem of resource shortages. Nunavut Department of Justice officials recognize the need for programs to assist offenders, as well as victims; however, the funds are generally not available on a sustainable basis to hire and train program workers in the communities.

The lack of community-based programs places the NCJ in a difficult position. Judges make every effort to ensure that the programs that do exist are accessed fully as part of a probation order. Similarly, as noted above, judges encourage defence counsel to seek out appropriate alternatives and to develop a plan for their clients. However, this is difficult for two reasons. First, most defence lawyers are extremely busy and have little time to seek out community programs and liaise with program staff. Second, the programs that exist are almost exclusively in the larger centres such as Iqaluit, Rankin Inlet and Cambridge Bay. Key informants and community respondents advise that the smaller communities essentially have no programming for adults or youth.

A few lawyers noted that there are other challenges facing the Court in considering alternatives. Several informants pointed to substantial numbers of offenders who have experienced serious trauma themselves, or who have major disabilities such as Fetal Alcohol Spectrum Disorder which complicate the assessment of criminal responsibility and appropriate punishment. Judges are aware of the sensitive nature of these cases and say (confirmed by key informant lawyers) that they try to find workable solutions in sentencing in these cases.

There were mixed views on the question of the effectiveness of alternatives to incarceration. A few key informants commented that there is a strong community perception of “no jail equals no punishment”. Other informants pointed out offenders in smaller communities experience a higher degree of scrutiny as RCMP, in particular, will check up on a regular basis; further, being required to serve a condition of house arrest is particularly severe given overcrowded living conditions. While studies of the relative effectiveness of community-based alternatives as opposed to incarceration have been undertaken elsewhere in Canada, key informants were not aware of them.

5.2.5. Probation and Parole

Probation is a common aspect of sentencing with respect to territorially sentenced offenders (i.e., cases in which the potential jail sentence is up to two years less a day). In less serious and non-repeat cases, it is usually not combined with a period of incarceration, although the combined sentence of incarceration plus probation also occurs. Conditional sentences, which are also applied, involve release with conditions but with an automatic reversion to serving the full term of incarceration if conditions are breached. Parole refers to federally sentenced offenders (over two years incarceration) after the prison term is served.

Table 5 refers to the numbers of adult and youth probation cases, conditional sentence cases and parolees in the eight highest ranking communities as of October 2005.¹⁷

Table 5: Probation and Parole Cases and Conditional Sentences in Eight Communities, October 2005

	Adult Probation	Youth Probation	Conditional Sentence	Parole	Total
Iqaluit	146	18	27	0	191
Cambridge Bay	55	8	24	1	88
Rankin Inlet	25	4	10	2	41
Arviat	29	8	3	0	40
Baker Lake	25	7	8	0	40
Kugluktuk	30	12	15	1	58
Pond Inlet	27	6	5	0	38
Pangnirtung	35	11	6	0	52

The Community Correction (Probation) Service was active in the eight communities listed in Table 5 in October 2005. In total, the program had 12 employees (Community Correction Officers), of whom two were management/administrative positions in Iqaluit. In addition to supervising the probation, parole and conditional sentence cases in their own communities, the Community Correction Officers are responsible for monitoring cases in the smaller communities.¹⁸ This is done through working by telephone with RCMP and social workers in the smaller communities, as well as through occasional visits. However, in view of the workload of all three parties – the Community Correction Officers, the RCMP and the social workers – this is not entirely effective. Travel by Community Correction Officers to other communities on a regular basis is prohibitively expensive. Nunavut Justice is currently attempting to add new

¹⁷ Information provided by the Nunavut Department of Justice.

¹⁸ Federal parole officers do not operate in Nunavut communities. These responsibilities are handled by Nunavut's Community Correction Officers.

positions in Kugluktuk, Igloolik and Rankin Inlet, although key informants say it is unlikely these additions will fully meet the need.

A recent increase in the workload of Community Correction Officers has been a greater number of requests from the Court for pre-sentence reports (PSRs). Preparation of PSRs requires a skill set usually acquired through training. Some key informants noted that the quality of the PSRs being provided generally does not meet the needs of the Court. In fact, the failure to provide PSRs which have been ordered by judges has led to adjournment on several occasions.

In many cases, responsibility for probation falls to social workers who are already heavily burdened and who may not have proper training in the enforcement role. Many counsel felt the use of social workers leads to conflict between the social workers' duties, to inadequate reports for the Court (especially written reports such as PSRs), and to burnout. While this problem is serious, in many communities there is no social worker for months at a time and the RCMP is tasked with probation duties. While the RCMP is intended to have this responsibility on a temporary basis, the time between departure of a social worker and the arrival of a replacement will often stretch to months. It is impossible to expect offenders will receive counseling or other services in this context.

Funding, recruitment and training are challenges facing the Community Correction (Probation) Service. The implications of those challenges are serious, as they have resulted in what many informants in the justice system consider to be an inadequate probation service. The absence of high quality PSRs makes the judges' task of sentencing more difficult. Perhaps more important, the probation orders and conditional sentences that should provide appropriate alternatives to incarceration are seen as largely ineffective due to a lack of supervision in most communities.

Concern for the lack of services goes far beyond the issue of probation and parole. Lack of available residential alcohol treatment programs in the territory, and otherwise limited substance abuse programs, limited mental health services, lack of programming for youth, and limited programs for offenders and victims in the context of domestic violence all narrow the practical power of the Court to respond to the circumstances of the offender in a way that is meaningful for them, for the community and for victims. Moreover, there are real concerns that where terms of probation orders are not well understood and not enforced, there may be a negative impact on the respect for the administration of justice in the territory. Again, as Nunavut officials and other key informants point out, these problems are largely due to a lack of adequate resources.

5.2.6. Use of Preliminary Inquiries

At the time of the creation of the NCJ, there was some concern that the use of preliminary inquiries might create the perception of conflict because the judges were members of a single-level trial Court. None of the lawyers or judges interviewed expressed any concern with the operation of preliminary inquiries in the single-level structure. One lawyer noted that there have been situations where the same judge will sit on both the preliminary inquiry and the trial, but that counsel had always consented in these situations and there had been no problem. From the judicial perspective, the lawyers generally do the required work ahead of time, and preliminary inquiries are used responsibly.

There were numerous comments – for and against – the *Criminal Code* amendments permitting preliminary inquiries to proceed with less use of witnesses. Most defence counsel viewed these changes as limiting their ability to test the Crown’s case, and potentially avoid having a matter set down for trial; the Crown and the judiciary on the whole view the changes as facilitative.

5.2.7. Increased Access to Civil and Family Justice

Key informants were unanimous in acknowledging a substantial expansion in the access to family justice in Nunavut since 1999. They were equally unanimous in citing the continuing lack of access to civil justice (other than family) for most people in the territory. Civil matters seek to resolve non-criminal disputes in areas such as contracts, property ownership, family law, and personal and property damages.

The expansion of family law services represents a considerable investment of resources and energy by the Court and the Nunavut Legal Aid Society – there has been an increase from one half-time staff lawyer practising family law to 3.5 full-time positions. Most individuals in Nunavut are eligible for legal aid for family law, including those who receive services on a contribution basis. Legal aid coverage is particularly important given the high cost of legal representation in light of geography and the absence of a Nunavut-based private bar handling family or civil matters. The increase in services has meant a substantial decrease in the backlog of legal aid applications; it has also meant a considerable increase in the number of cases in the system. Several informants noted that the rise in services has led directly to a sharp increase in demand – demonstrated, for example, in the number of legal aid applications for family law services which rose from 297 in 2003/04 to 667 in 2004/05.¹⁹ Thus, while the number of family

¹⁹ Cited in Focus Consultants, *Study of Unmet Civil Legal Aid Needs in Yukon, Northwest Territories, and Nunavut*, Research Report prepared for Justice Canada, draft January 2006, p. 17.

law lawyers has increased, each lawyer continues to carry between 120 and 170 files.²⁰ As one informant said, ‘if you build it, they will come’ – as more people in communities see friends or relatives who have had positive outcomes from family law proceedings they are encouraged to seek assistance on their own behalf. Community residents confirmed this view and noted there is a sense of relief in the communities that access to family law services has improved.

The increase in family law services in the territory has had a marked impact on Court dockets and the need for Court attention. While noting the strong expressions of support by judges for the development of family law services, most family lawyers expressed the view that family law cases are not a priority for the Court, which is perceived as being geared towards its high-volume, less paper-intensive criminal law responsibilities. Most commented on a perception that family matters will be the first sacrificed if there is time pressure on a circuit. A number of structural factors reinforce that perception – notably, the Nunavut Department of Justice funds travel for witnesses and accused persons in criminal proceedings but there is no provision for similar funding on the civil or family side. This is considered a particular problem in the context of child welfare proceedings (including custody) where the Department of Social Services does not fund travel.

All family lawyers expressed considerable frustration about participating in hearings by telephone, particularly if the Court is in smaller communities which may not have a teleconference capacity (resulting in situations where clients are not able to be present – even by phone – while their matter is discussed.) The lack of teleconference capacity, together with generally poor quality telephone connections in many of the communities, is a source of frustration for all concerned – judges, lawyers and clients – in civil and family cases. When the telephone system is working properly, however, it is being used effectively, especially for Civil Chambers matters. The NCJ has been experimenting with the use of videoconferencing technology through the telehealth system, for example, for monthly Iqaluit dockets on matters not requiring the presence of the accused, and for some Civil Chambers matters. However, access to the telehealth system is limited due to health related needs. The Court is therefore hoping to be able to install a videoconferencing system in the new Courthouse. (While teleconferencing and videoconferencing are potentially useful in civil and family cases, they are of more limited use in substantive criminal cases where the judge and the accused are in different communities. On the other hand, there is real potential for the use of these technologies in show cause hearings.)

²⁰ Source: Court Services Division.

The Court received a great deal of credit for its involvement in a unique family mediation program – *Inuusirmut Aqqusiuqtiit* (Pathfinders) in Iqaluit and Cape Dorset (a pilot in Kugluktuk closed in 2005). Several lawyers and community residents commented on considerable successes realized through the program. This project was initiated by Justice Canada and the Nunavut Department of Justice, and was initially funded with federal government pilot funds²¹ though the Nunavut Department of Justice. It was initially managed within the family maintenance program in the Court Services Division. Now that federal funding has ceased, the program's institutional home is being moved out of the NCJ to the Community Justice Division in Nunavut Justice. There are concerns about the program's viability without the hands-on support it has been receiving from the Court, particularly the judiciary. Other initiatives supported by the Court include the development of a parenting after separation program, also considered by key informants and community respondents to be effective.

Family lawyers were universally positive about the benefits of the unified Court structure for streamlining their practice and allowing a strong focus on substantive issues. As well, counsel were positive about the flexibility of the judiciary and Court staff in making every effort to allow issues to proceed on their merits in light of the challenges of northern practice. Most cited this flexibility as one of the greatest strengths of the Court.

On the civil side, there has been less development since 1999. However, it should be noted that the Court now holds Civil Chambers in every community. Respondents in foreclosure actions and in child support guideline and custody access applications, and parties in small claims trial can now attend Court in their own communities. The quality of inter-community telephone service continues to present difficulties for these activities in Chambers as not all parties can attend in person. However, key respondents believe these technical challenges will be overcome.

The Court has supported the development of new made-in-Nunavut Small Claims Rules but the Rules have not yet (as of March 2006) been brought into force. Therefore, it is not possible to assess their impact. Legal aid clinics report high numbers of potential clients with diverse civil legal needs, ranging from concerns about medical malpractice, to slips and falls, to wrongful dismissals, to estate issues. A key informant working in the Kivalliq region, for example, said that over the past few years there have been almost as many requests for information and advice in the area of civil matters as family law in the region.

²¹ Pilot funds were provided from two resources within Justice Canada: the Legal Aid Pilot Project Fund and the Child Centered Family Justice Fund.

A civil legal aid pilot project in Iqaluit is perceived to have had only a limited impact in its first two years of operation. There are no private civil lawyers located in Nunavut to handle either litigation-driven matters with a direct impact on the Court, or to carry on a solicitor's practice. Civil lawyers working for Nunavut clients are almost all based in Yellowknife or Ottawa. There are no public alternative dispute resolution mechanisms in the territory which would be particularly useful in communities where disputants are uncomfortable with the formality or adversarialism of the court process. Without small claims rules, the lack of access to civil justice is particularly acute for potential litigants who do not have legal representation. According to most key informants working in the justice system, the situation of unrepresented would-be litigants is extremely challenging in Nunavut, given low levels of education and relatively low levels of knowledge about rights in civil matters.

5.2.8. Increases in Pre-trials, Conferencing and Mediation

Judges engage in settlement conferences, mediations, and very frequently in pre-trial and pre-circuit meetings in both the criminal and civil areas. Some key informant lawyers said case-management (whereby a case is overseen by a judge until its completion) is not the established approach to family and civil matters and that matters are still frequently adjourned *sine die*.²² On the other hand, the Court will appoint a judge to case manage any file requested by counsel. From the perspective of the judiciary, there are only a few files currently under case management because there have been few requests.

Mediation involving judges in family cases is not frequently practiced in the territory. Key informant members of the family bar all commented that they work hard to settle their cases without the assistance of the Court. The judiciary shares this view, with the additional point that judges are willing to provide assistance when requested. There appears to be a very high level of collegiality in this bar and a strong commitment to promoting settlement where fair and reasonable, an observation also supported by the judiciary. There have been a few complex cases where judicial conferencing has been successfully employed. Lawyers involved expressed satisfaction with this process but cautioned about the difficulties of conferencing where parties and lawyers are not in the same place. Another concern expressed was the resource and time implications of early judicial involvement in family and civil matters given the heavy travel duties of the Court.

²² *Sine die*: adjourned indefinitely; without a date for future continuation.

The exception to the lack of formal mediation programming is the family mediation project *Inuusirmut Aqqusiuqtiit* (Pathfinders) in Iqaluit and Cape Dorset.²³ Beyond *Inuusirmut Aqqusiuqtiit*, there are no mediation services in the territory to address other civil matters or family matters involving complex property issues. The few lawyers who are members of the private bar do not offer a mediation practice. Informants expressed divergent views on whether the Court should be actively promoting expanded mediation services in the territory.

5.2.9. Increases in Access to *Ex Parte* and Emergency Relief Hearings

Ex parte and emergency relief hearings refer to instances when a Court order is urgently required (e.g., a restraining order) but a judge is unavailable at that particular local. All lawyers were extremely pleased with the service provided by the Court in the context of emergency access. They praised both the judiciary and the Court staff for their successful efforts to ensure urgent matters are expeditiously addressed. The Court's scheduling, which calls for a judge to be available in Iqaluit at all times, helps facilitate this access as do the provisions of the *Nunavut Act* which allow judges of the Nunavut Court of Justice to make orders when they are physically outside the territory. Lawyers outside Iqaluit were equally pleased with the access they were able to achieve in having matters heard by telephone.

5.2.10. Cultural Sensitivity

Most key informants, including lawyers and JPs, together with community respondents, were positive in their assessment of the cultural sensitivity of the individuals associated with the Court, particularly the resident judges. That said, several expressed the view that the Court is and will remain a somewhat foreign institution in communities and that there are fundamental questions about the ability of the Court to transform itself to improve cultural 'fit' without compromising its identity as a Court.

Community respondents and practitioners identified a number of practices of the Court as strong evidence of cultural sensitivity. These ranged from the symbolic – the use of sealskin sashes – to substantive issues of law and personnel. The development of an effective interpretation service was also frequently identified as a demonstration of the Court's cultural sensitivity.

²³ *Inuusirmut Aqqusiuqtiit* is the family mediation project initiated by Justice Canada and the Nunavut Department of Justice noted in section 5.2.7, above.

Most frequently, the use of elders' panels in sentencing was considered an important way for Court decision making to reflect community norms. Elders' panels which advise on sentencing are active in every community except Iqaluit. Most informants were very positive about the use of elders by the Court, though a few raised questions including whether elders were perceived to be biased in some cases where relatives might be involved, or whether giving elders a judge-like status but not necessarily abiding by their advice was perceived as respectful (e.g., in a situation where the law requires incarceration and elders are advising against it).

The sensitivity of resident judges to cultural and community dynamics and their ability to address these issues in sentencing were noted by both key informants and community respondents. The willingness of the Court to consider and adopt customary law was frequently mentioned in the context of civil and family litigation.

The large number of bilingual Inuit staff working with the Court was cited as a strength, although it was mentioned that until there are more Inuit lawyers and even judges, Inuit representation will be limited. (The success of the Akitsiraq Law School is addressing that need, as the first graduates are now engaged in their articles. Most, if not all, intend to practice in Nunavut.) The Court was also praised for its support, encouragement of and demonstrated respect for other Inuit participants in the process, including courtworkers and Crown Witness Coordinators.

Most lawyers and community respondents believe the Court is sensitive to the Aboriginal identity of those appearing before it. As one lawyer informant noted, the Court has internalized the need to take this factor into account to such an extent that the formal recital of that consideration is usually not needed. The vast majority of counsel – both defence and Crown - stated the Court is very aware of the life history of individuals, their ties to community and culture, and the rapid cultural changes which are affecting Inuit in Nunavut. One defence lawyer noted that the Court has almost always gone further to take Aboriginal identity into account than could ever be expected should an appellate review take place.

5.3. Adequacy of Resource Levels

5.3.1. Courtworkers

The Courtworker Program falls within the mandate of the Nunavut Legal Aid Society and is funded through a cost-shared agreement between the federal Department of Justice and the

Nunavut Department of Justice. The *Nunavut Legal Services Study*, completed in 2002, describes the ideal role of courtworkers in the following way:

Courtworkers are, or should be, a vital link between Nunavut's Inuit communities and the still-transient court system. As a permanent, indigenous presence in communities with knowledge of the legal system, and skills at operating in it, courtworkers play a key role in the representation of accused persons before the court. Often, that role is facilitative: courtworkers connect clients with fly-in lawyers, do background work for submissions, interpret language and cultural context, or may rally community resources for the development of a feasible release plan. Effective lawyer-courtworker teamwork makes defense representation more efficient and more effective. Courtworkers also directly participate in the court system. With support and training, they have effectively represented accused persons in show-cause hearings and trials and run public legal information events, as well as providing invaluable information and assistance to people facing charges.²⁴

It is important to note, however, that the above description is idealized, according to key informants for this study. The program continues to be plagued by problems in recruiting and training. As the authors of the *Nunavut Legal Services Study* (2002) also said:

The courtworker system is supposed to be an essential strength of Legal Services in the territory. In fact, despite the good work of numerous courtworkers, the system appears to be in poor shape. The majority of communities do not have a courtworker; the numbers have gone down dramatically in the last few years. Several observers also commented that courtworkers are being offered steadily lower levels of responsibility. Today, unlike five years ago, it is quite rare for courtworkers to act for clients in trials, or to appear at all in the Nunavut Court of Justice. The capacity of different courtworkers varies, from community to community, depending on training, experience, confidence and support.²⁵

While resident courtworkers presently work in 12 communities, the remaining 14 communities do not benefit from the service. Table 6 shows the current number of courtworkers throughout Nunavut, their assigned communities, full or part time status, and residential status.

²⁴ Department of Justice Canada, Research and Statistics, 2002. *Nunavut Legal Services Study: Final Report*, available online at www.justice.gc.ca.

²⁵ *ibid.*

Table 6: Current Courtworker Assignments by Community²⁶

	Number of Courtworkers	Full or Part Time	Resident in Community
Baker Lake	1	part	yes
Cambridge Bay	1	full	yes
Cape Dorset	1	part	yes
Hall Beach	1	part	yes
Iqaluit	1	full	yes
Kimmirut	1	part	yes
Kugluktuk	1	part	yes
Pangnirtung	1	part	yes
Pond Inlet	1	part	yes
Rankin Inlet	1	full	yes
Resolute Bay	1	part	yes
Taloyoak	1	part	yes

Key informants, including judges and lawyers, agree that there is considerable improvement in the level and ease of preparation before Court in communities where a courtworker is present. When the system is working effectively, courtworkers prepare and represent accused in Justice of the Peace Court, and work with defence counsel and the accused to prepare for NCJ hearings. They can also help to ensure that witnesses appear when scheduled. An obvious strength of courtworkers is their inherent ability to speak Inuktitut or Innuinaqtun, as well as English. However, the lack of trained courtworkers means that JP Court is often not held because of the absence of representation for the accused. It also means that in many communities counsel must take time to prepare for cases that could otherwise be done locally by a courtworker.

The authors of the *Nunavut Legal Service Study* found that courtworkers face a number of barriers, including “lack of infrastructure and resources (such as offices, telephones and fax machines), an unfair and inadequate compensation system ... and a lack of recognition for their work.”²⁷ The report went on to say that “Courtworkers have the potential to meet a number of unmet needs in the justice system in Nunavut, including areas such as family law, youth justice, PLEI, community and alternative justice, and JP Courts.”²⁸ While the Nunavut Legal Aid Society is currently working on improving training for courtworkers, other challenges – infrastructure, resources and compensation (which affects recruitment) – remain. In part, this is a resource management issue which involves not only the Nunavut Legal Aid Society, but also the federal

²⁶ Source: Legal Services Board of Nunavut.

²⁷ Department of Justice of Canada, Research and Statistics, 2002. *Nunavut Legal Services Study: Final Report*.

²⁸ *ibid.*

and territorial Departments of Justice in terms of ensuring adequate funding and the achievement of program objectives.

In summary, courtworkers have demonstrated the potential to have a positive impact on Court preparations through their ability to work with the accused and lawyers. Fluency in Inuktitut or Innuinaqtun and English is a valuable asset. However, only 12 of Nunavut's 26 communities are served by courtworkers. The program continues to face barriers with respect to training, compensation and recognition of the contributions of courtworkers.

5.3.2. Justices of the Peace

Currently there are 100 active JPs located throughout Nunavut, compared to 54 in 2001.²⁹ Most are Inuit or long-term northern residents. JPs do most of the show-cause hearings, some sentencing matters and some scheduling. They also conduct civil marriage ceremonies, attend swearing-in functions in the community, and sign formal documents. The Senior Judge is responsible for the JP Program and is assisted by a Senior Justice of the Peace and a Program Administrator. Resident judges are involved in training JPs, and provide ongoing support over the telephone and on circuit.

From the inception of the NCJ, the role of JPs has been considered an important aspect of the administration of justice in the territory. This is because, as a unified Court at the superior level, the NCJ does not have an equivalent to the pre-1999 Territorial Court. Ideally, JPs would therefore handle many of the summary conviction matters that would previously have been taken by the Territorial Court. However, as indicated below, key informants working in the justice system are concerned that, while the JP Program continues to improve, it is still not meeting expectations.

Key informants in the justice system and community residents acknowledged ongoing efforts by the Court at recruitment and training of JPs, but felt there should be greater effort in this regard. For instance, in some communities there continues to be only one active JP. Several respondents commented on the importance of having at least a few JPs available in each community for two reasons: first, in the event of conflict of interest (not infrequent in small communities); and, second, in the event of the unavailability of a JP. This point was reiterated by JP respondents and the Administrator of the JP Program, who said that ideally there would be three JPs in every community, and that ultimately, every JP would be trained to the highest levels of qualification

²⁹ Nunavut Court of Justice, *Annual Report, 2005* and *Annual Report, 2001*.

(Levels 3 and 4).³⁰ This informant noted that many JPs have other jobs, hunt, travel, or have conflicts of interest in their communities, thus increasing the chances of a JP not being available when needed. It was also pointed out that it would be practical to have two JPs sitting together for certain difficult show-cause and sentencing hearings in order to support each other. This would also provide training and mentoring opportunities for newer JPs.

Lawyer informants were satisfied that the JPs were people who generally bring useful experience and community knowledge to their role. However, they expressed reservations about JPs' understanding of the law in their more complex (Levels 3 and 4) functions; for example, one informant questioned whether a majority of JPs understand the reverse onus rules in show-cause hearings. Lawyers commented that JPs responded differently when it appeared they were having trouble with the law governing particular decisions – some would recuse themselves; others insisted on proceeding. While lawyers were not advocating an expanded role for JPs, they did point to the need for more and better trained JPs in order to avoid the kinds of problems just described.

The challenge of JP recruitment and training depends in large part on the availability of financial resources. The JP Program has faced this issue since the inception of the NCJ. Some training is currently being carried out at all four levels by the JP Administrator with assistance from the judges (e.g., regarding show-cause, sentencing and search warrants). Sessions have recently taken place both in Iqaluit and in the regions. In 2005, special training regarding the *Youth Criminal Justice Act* (YCJA) was funded by Justice Canada; however, according to the Program Administrator, more is needed. Additional funding would assist the development of the JP Program by covering the travel expenses of JPs in communities to travel to Iqaluit to sit with the more experienced Iqaluit JPs for one week.

More training and experience for community JPs would eventually enable more of them to handle summary conviction matters. In turn, this would help to clear some of the summary conviction dockets currently being handled by NCJ judges. In Rankin Inlet, Cambridge Bay, Arviat and Gjoa Haven, experienced local JPs have been able to hold JP Court in preparation for the NCJ for the last year. In Rankin Inlet, for example, two JPs handle the first day of the criminal docket on the Monday of the week the NCJ arrives. The JPs do sentencing on less serious matters and prepare the docket for the judge, who will start on the Tuesday. The Crown prosecutor flies into Rankin Inlet for the weekend prior to the Court week and works with the JPs

³⁰ There are four levels of Justice of the Peace qualification in Nunavut. Most significantly, Level 3 JPs can conduct trials of summary conviction offences; Level 4 JPs conduct summary conviction trials and sit as Youth Court Judges.

on Monday. Defence counsel is usually already present in Rankin Inlet and, if not, will also fly in for the weekend to talk with clients. Together the JPs and the Crown prosecutor ensure that the necessary information is in place and clear the docket in preparation for the judge to begin work on preliminary inquiries and trials on Tuesday. This system is viewed positively by judges and lawyers, both Crown and defence. It is limited, however, by the availability of only two qualified JPs in Rankin Inlet (conflict of interest and other factors affecting availability is a frequent problem). While the process appears to work effectively, the JPs face the additional problem of a lack of administrative support. They could use the assistance of a clerk to help them maintain the records for Court on an ongoing basis, to prepare documents for the NCJ, and to handle administrative matters in follow-up to the Court circuit. Again, while funding is the primary preventative issue, recruitment and training are also important concerns.

Senior JPs in the communities who are qualified at Level 3 or Level 4 (e.g., in Rankin Inlet) often handle Level 3 work, such as show-causes, for other communities by telephone. While this is generally effective, it can present difficulties in three ways. First, Level 3 or Level 4 JPs are not always available when needed. Second, many senior JPs have lived in the communities for many years and frequently find themselves in conflict of interest situations, even when handling show-causes in other communities. Third, the majority of Level 3 and Level 4 JPs are presently non-Inuktitut speakers for whom interpretation services are generally inadequate. As well, it is unclear who is responsible for setting up interpretation services for JPs, especially on telephone cases with other communities. These issues would be solved largely by increased numbers of community-based, Inuktitut-speaking JPs trained at least at Level 3.

In summary, JPs play an essential role in the administration of justice in Nunavut by handling a range of responsibilities on behalf of the Court. In Cambridge Bay, Rankin Inlet, Gjoa Haven and Arviat, experienced JPs are able to hold JP Court the day before the arrival of the NCJ, thereby clearing many matters that would otherwise have to be addressed by the judges. While progress has been made, more JPs are still needed to meet the demands in the communities. JPs also continue to require further training and qualification at higher levels (especially Level 3).

5.3.3. Use of Deputy Judges

Deputy judges, either active or retired, travel to Nunavut from other jurisdictions in order to handle some of the circuit caseloads. In 2005, 16 deputy judges sat in Nunavut and came from various provinces, most notably Ontario and Alberta. The Court Services Division estimates that approximately 23 percent of the Court's sitting weeks are handled by deputy judges. This would

be substantially higher if Nunavut judges were assigned “judgement writing weeks” similar to judges in most other jurisdictions (typically eight weeks per year).

While deputy judges are essential for the operation of the NCJ, they can represent a considerable demand on the time of the senior judge and Court staff. Many of the deputy judges working in Nunavut have been doing so for a considerable time and are familiar with the travel demands, the communities, the cultural uniqueness and the logistical challenges in Nunavut. However, others are less familiar with these factors and require intensive briefing. The senior judge has taken on this role, in part because she is responsible for the scheduling of circuits. The senior judge has prepared a manual for use by visiting judges, although it is a relatively brief introduction to presiding in Nunavut.

One of the senior judge’s primary concerns is to ensure consistency in the judicial process, a difficult goal in view of the variation in knowledge and style of non-resident judges and the relatively small body of recorded caselaw from the territory. When it was established, the single-level Court aimed to make Court more familiar to the communities by ensuring consistency in the judges traveling on circuit. Success in this regard has been somewhat diminished due to the need for deputy judges. One key informant noted that the presence of deputy judges can lead to different Court dynamics in the communities because the people are unfamiliar with them. Similarly, it was noted that it is sometimes difficult for Nunavut lawyers to work with unfamiliar deputy judges because the lawyers are unsure how to prepare and what to expect in terms of judicial approach.

Every lawyer respondent also expressed the view that communities are better served by Nunavut’s resident judges. Factors commonly mentioned included resident judges’ stronger understanding of Inuit culture, community expectations, and the background of individuals appearing before the Court (e.g., experiences of trauma, serious disabilities and so forth.). Many of the criminal lawyers expressed the view that deputy judges were more likely to impose custodial sentences, and that the lawyers’ decreased ability to assess how a judge would sentence had an effect on the advice counsel would give to clients. In turn, lawyers said this could lead to more reluctance to enter a plea, a greater likelihood of requesting a pre-sentence report, or other measures which could slow down the justice system.

The above points being noted, the resident Nunavut judges and the vast majority of counsel were very positive regarding the overall contribution made by deputy judges.

In summary, deputy judges continue to be an essential part of the NCJ insofar as they handle a substantial number of circuits. At the same time, there are costs to the justice system. This issue speaks to the question of the need for additional resident judges in Nunavut (discussed below).

5.3.4. Availability of Lawyers

There was unanimity among all key informants and community respondents that there are too few defence lawyers practising in Nunavut. There is continuing concern about the limited number of private lawyers and the lack of development of a private bar. In 2005-06, there were 10 resident private lawyers and 33 public sector lawyers in Nunavut.³¹ While this is an improvement over previous years, there is a further concern that some counsel are overextended because they handle too many circuits and carry too many files. In turn, this is seen as leading to limited case preparation, Court delays, and ultimately to burnout. In the absence of a substantial private bar, the view was expressed by key informants and community respondents that this speaks to the need for the funding of more legal aid staff positions.

Key informants generally believe there are enough Crown prosecutors, particularly when the Justice Canada office is fully staffed with 13 to 15 lawyers. However, there is some consensus in the legal community that there should be a resident Crown prosecutor outside Iqaluit in Rankin Inlet and/or Cambridge Bay. This might facilitate greater contact between the Crown Prosecution Service and local JPs, Community Justice Committees and legal aid lawyers resident in the Kivalliq and Kitikmeot regions.

Most key informants felt there was room for at least one more family law position to handle the steadily increasing demand for family law services. Counsel manage heavy caseloads (averaging around 100 cases) with limited support staff (more important in the paper-intensive practice of family law) and with all the logistical obstacles typical of practice in the North.

Several lawyers and judges raised the issue of the absence of resident counsel who have a solicitor's practice as an access-to-justice problem.

Several respondents – both Crown prosecutors and defence counsel – mentioned that any assessment of the workload of counsel must take into account not only the actual numbers of cases being handled by individual lawyers, but the generally serious, even traumatic, nature of a

³¹ See Law Society of Nunavut, *Annual Report of the Membership and Admission Committee*, 2005-06.

high proportion of the offences and the circumstances surrounding them as factors that make the job more difficult and emotionally taxing.

While most informants suggested that the shortage of counsel was not serious enough to put the system into crisis, interviewees raised a number of implications of the shortage. First, there are concerns about burnout, possibly leading to high levels of turnover which would have resource implications and represent a recurring loss of expertise. Second, some key informants advised that the combination of heavy caseloads and the stress associated with the nature of offences and the demands of travel may lead to delays in case processing. Judges have found it necessary to adjourn trials fairly often because defence counsel is not properly prepared. Respondents also acknowledged that preparation by counsel depends in large part on the willingness of the accused to participate in the process, a factor which is largely beyond the control of counsel but which may speak to the need for more defence lawyers and more courtworkers. Third, some respondents noted that heavy caseloads also mean that lawyers are fully consumed with particular cases and are rarely in a position to invest the energy and time to push the boundaries of the law – from challenging child protection legislation to expanding the jurisprudence on sentencing for Aboriginal peoples, for example.

5.3.5. Facilities

All informants and community respondents saw that the move in 2006 to the new Courthouse in Iqaluit to result in a considerable improvement in working conditions, public access and security.

On the other hand, key informants and community respondents unanimously acknowledged shortcomings in community facilities. In the smaller communities, Court is typically held in the community hall. The issue most commonly raised by informants working in the justice system was the lack of facilities for meeting with clients – several people commented that lawyer-client interviews were frequently conducted in bathrooms or across the room from opposing counsel. There were concerns raised about victim safety in some cases, and about protection for child witnesses (the Court does not always travel with a screen).

The response of counsel and judiciary to these shortcomings varied – the majority of respondents were largely resigned to the conditions, mostly on the basis that the conditions they faced were the best communities had to offer. A few were concerned that the level of facilities represented a problem for the perception of the administration of justice or for witnesses or others affected by the operations of the Court.

Lawyers outside Iqaluit, and the judiciary, want to see a second, more modest permanent Courthouse in the Kitikmeot or Kivalliq regions. It was felt that the permanent presence of a Courthouse would considerably enhance service in those regions. Such a decision is the responsibility of the Government of Nunavut.

The most common recurring concern was the telephone connections with communities, as noted earlier in this report. Lawyer informants are concerned about situations where poor phone quality makes it impossible to proceed, or required them to proceed relying on the integrity of opposing counsel because they could barely hear what is going on; or situations where clients rights are being affected but cannot attend by phone because of a lack of conferencing capacity. This issue is considerably more serious in Nunavut than it would be elsewhere because of the vast distances and the relatively low levels of telecommunications capacity in the smaller communities, i.e., the demand is greater and the capacity is lower than in other jurisdictions. According to one informant, relying on anything digitally based outside Iqaluit is a high-risk proposition. The Court has experimented with bringing phones (both analogue and digital) with them on circuit, which proved to be a considerable staff burden. One suggestion was permanent Court phones in every community, similar to the fax machines that were put into communities several years ago. However, while that option might address the need for a dedicated telephone, it would not solve the problem of the generally poor telecommunications capacity in the communities.

5.4. Unintended Impacts

5.4.1. The Youth Criminal Justice Act

Relatively few informants working in the justice system had strong views on the impact of the *Youth Criminal Justice Act* (YCJA), though most noted a decrease in the number of custodial sentences. In 2006, approximately half the number of offenders are serving institutional sentences relative to three years ago (8 vs. 15) with greater use of custodial homes and other community alternatives. The new provisions – e.g., the use of deferred custody – are perceived by key informants as increasing options for the judiciary. Crown prosecutors noted a marked increase in the number of youth being diverted by police before charges are laid, and said they were more likely to urge police to divert as part of their charge review process.

That said, several informants registered serious concern about the prospects for youth at high risk in Nunavut – either because of the high school drop-out rate of 75 percent, conditions such as Fetal Alcohol Spectrum Disorder, or lack of recreational or employment opportunities. In this

context, there is concern that the YCJA and the Court will not be able to effectively address the needs of this population nor work preventatively. The Court has identified a need for greater coordination of service and planning for young offenders, including identification of designated individuals within Crown, defence and social service agencies. There have not been resources to develop this type of coordination to date.

There are 11 individuals designated as Youth Court judges in Nunavut. Of these, three are NCJ judges and eight are experienced JPs (Level 4). As noted above, there has been some training of JPs regarding the YCJA, although not enough to increase the eligibility of JPs as Youth Court judges. One key informant involved with the JP Program advised that in view of the relatively small number of JPs able to handle youth cases, the impact of the YCJA on JP Court has been minimal. Youth cases tend to be heard in the NCJ when they are of a serious nature. In most other cases they are diverted to Community Justice Committees either by the police (pre-charge) or Crown prosecutors (post-charge).³²

The Court has taken the initiative to involve youth panels in the criminal justice system in a number of communities. Thus far, youth panels have been established and are active in Iqaluit, Rankin Inlet, Arviat, Cambridge Bay and Kugluktuk. Selected youth have an opportunity to speak to offenders and the Court about offences and sentencing after the sentencing submissions have been made and the panel has had the opportunity to deliberate in private. The cases concerned are generally youth matters, are not of a seriously violent nature, and do not involve sexual assault. This initiative is seen to reinforce the purposes of sentencing for offenders and to educate young people about the court process.

5.5. Barriers/Challenges or Gaps to be Addressed

5.5.1. Community Understanding of the Legal System in Nunavut

Most key informants felt that Nunavummiut had relatively limited understanding of the Court system and their rights in it. Several cited low levels of knowledge about fundamental issues

³² Refer to *Review of the Nunavut Community Justice Program: Final Report* prepared by Scott Clark Consulting for the Research and Statistics Division, Justice Canada, 2004, pp. 49-50. It is unclear how many youth are being diverted to Community Justice Committees. This is a relatively informal process involving police, Crown prosecutors and the committees. The rate of diversion varies by community, in part due to the capacity of the local Community Justice Committee and the willingness of police and Crown prosecutors to divert. However, all parties agree that the number of diversions throughout Nunavut is large enough to have a significant positive impact on the workload of the Courts.

such as the role of Crown and defence in an adversarial system; judges' responsibility to apply the law, particularly case law; or differences between family and criminal law in the context of domestic violence.

Some respondents commented, however, that many Nunavummiut have a much stronger understanding of the criminal justice system than the general public in the south. They pointed to the presence of the Court in communities, and high levels of attendance when the Court is sitting. They also pointed out that large numbers of Nunavummiut have had direct experience with the Court system, as accused persons or as victims or close family and friends of people who are before the Courts. In their view, many if not most Nunavummiut have a strong grasp on Court procedures. A few respondents noted there is a considerable generational difference – younger people tend to be more aware of their rights and the working of the system.

There was considerable concern that people have extremely low levels of knowledge about their rights in the context of family law and that most people in communities had little idea about civil remedies that may be available to them. On the other hand, it was noted by some key informants that this situation may be changing as more family law lawyers begin practising in Nunavut and as the message spreads in the communities.

A small number of key informants commented on the general lack of public understanding of the Court as opposed to government, government agencies and/or Inuit organizations with responsibilities under the land claim. It was suggested that there is not a strong understanding in the general population about the distinction between the judicial and executive functions. Accordingly, many people may see the Court as just another part of the government rather than viewing it as a fully independent check on governmental authority. In this regard, it is the ongoing responsibility of the senior judge to monitor (from the perspective of the Court) the relationship between the Court and the government to ensure judicial independence is respected. This is seen as important for maintaining the credibility of the Court in the eyes of Nunavummiut.

Community respondents generally acknowledged the lack of understanding of the functioning of the justice system, particularly with regard to family law and civil matters, by Nunavummiut. Community respondents frequently expressed the view that the full-time presence of a lawyer, a JP or a courtworker would help in this regard, particularly if that person was willing to engage in educating community members about the law.

5.5.2. Public Legal Education and Information

Most informants agreed that there is relatively little visible PLEI work underway in the territory. However, there were very low levels of consensus about the need for more PLEI among lawyers. Community residents see a real need for PLEI and many suggested lawyers or courtworkers should spend time in the communities for this purpose.

Under Nunavut's *Legal Services Act* and federal-territorial funding agreements, the Nunavut Legal Aid Society has primary responsibility for delivery of PLEI in the territory. Several key informants in the justice system discussed the possibility that well-informed Community Justice Committees could have an important PLEI role; most believe, however, that current Committee members do not have sufficient training or knowledge to play this role in communities today. The view of Community Justice Committees, on the other hand, is less clear on this point. Members of well-established Community Justice Committees indicated that, as a committee, they would be able to engage in PLEI. However, the same Committee members also said that in most cases they do not have the time to dedicate to this kind of activity in addition to the work they already do in handling diverted cases.

Slightly more than half the key informants indicated there is a serious shortfall in PLEI and that considerably more efforts are required to ensure that people have timely access to information about their rights, their choice of language, with respect to criminal, civil and family law. Several people noted the importance of doing more than providing a statement about legal rights and responsibilities, but rather that there is a real need for information and services that allows people to implement those rights. A toll-free family law information line operated by the Nunavut Legal Aid Society was cited as a useful example by both key informants and community respondents. Several community members expressed a desire that lawyers on circuit take time to hold question-and-answer legal information meetings while they are in communities.

The NCJ has been directly involved in a number of outstanding initiatives promoting public legal education among youth. The Court has played a lead role in the development of youth panels in several communities, as noted above. The panels allow young people to participate in youth matters and to provide input on sentencing. The Judges have also coordinated a high-school level law course in Iqaluit over the past several years.

It should also be noted that the chief judge has been a key supporter in the development and success of the Akitsiraq Law School Program training Inuit lawyers. While other bodies,

including Nunavut Justice and Justice Canada, were also active supporters of the program, the leadership of the Court was essential to the success of this initiative.

5.5.3. Community Justice Committees

Community Justice Committees play an important role in the Nunavut justice system.³³ Committees operate in every community, although there is variation in the capacity of the Committees to handle cases. Cases are diverted on either a pre-charge basis by the RCMP or a post-charge basis by Crown prosecutors. Relatively minor property offences by youth are most frequently referred, although some Committees also handle more serious offences committed by adults. In addition to capacity issues, there appears to be variation in the frequency and type of pre-charge diversions according to the individual views of local RCMP members.³⁴ Crown prosecutors appear to be more consistent in their approach to diverting cases and generally follow the guidelines set out in their *Prosecutors' Handbook* (although there is some frustration – see below). Regardless of these variations, it was almost unanimously agreed by key informants working in the justice system that Community Justice Committees are an essential part of the justice system in Nunavut. Community respondents and members of Community Justice Committees agree with this view.

Key informants see the Court as supportive of community justice initiatives and Community Justice Committees. Few lawyers, however, were satisfied that the Committees were as effectively involved as they might be in cases and issues where they could potentially make a useful contribution. Most key informants noted variation between communities. Several noted that Committees were very weak in some communities – having trouble getting committee members to attend meetings, trouble recruiting and retaining members, and/or a serious unwillingness to get involved in a wide array of cases. Low salaries and a lack of support and training for the Committees' Coordinators were identified as factors that may make it more difficult to help Committees run well. The roots of these problems were perceived to lie in limited funding and support from the Government of Nunavut as well as burn-out among committed community members. In some communities, lawyers see active Committees playing a wide range of roles and are seeking more responsibility.

³³ See *Review of the Nunavut Community Justice Program: Final Report* prepared by Scott Clark Consulting for the Research and Statistics Division, Justice Canada, 2004.

³⁴ *ibid.*

Lawyers had relatively little to say about the appropriate role for the Community Justice Committees. Most informants talked about the Committees' handling of referrals, and about their potential to provide input on sentencing and to play a role in supervising community sentences (e.g., monitoring offenders' apologies to victims, and setting up and supervising community service work). One respondent noted that – over time – the Community Justice Committees should be key actors in getting communities involved in the justice process and building a sense of community responsibility for addressing problems that lead to Court involvement. Another noted that Committees have the ability to facilitate a more meaningful way of resolving issues affecting communities, citing a recent wave of youth vandalism as an issue requiring more community involvement. A few key informants talked of the Community Justice Committees as a cultural bridge between a largely foreign Court and the communities in which they work. Two informants speculated about the potential of Community Justice Committees getting involved in civil and/or family dispute resolution, another about their potential PLEI role.

The judiciary expressed the view that Community Justice Committees should receive more referrals from police and Crown, assuming they received the support to develop the required capacity. It was also noted that Committees have the potential to actively and effectively engage in family and civil mediation, especially since the Committees' approach to mediation may be more appropriate to Inuit culture than standard southern approaches. Community Justice Committee members on the whole agree with these views, although they stress that they would want some training in mediation techniques. They also note the ongoing problem facing many Committees in terms of the lack of effective administrative support.³⁵

The key liaison role for the Committees lies with the Crown, not the Court. It is currently Crown practice to try to meet with the Committees on every circuit to discuss possible post-charge diversions and follow-up on previous diversions. Crown prosecutors generally believe they are restricted by federal guidelines in the types of offences that can be referred to committees, even where there is capacity and will to take on more challenging cases on the part of Committees. With one exception, defence counsel have not had significant involvement with community justice and restorative work.

Opinions of key informants varied on whether the judges should be doing more to meet directly with Community Justice Committees. Some informants stated that routine meetings outside the Court would be a useful step in helping with capacity building for the Committees. The same respondents said that regular judicial-Committee communications would assist judges in

³⁵ *ibid.*

understanding the strengths and weaknesses of individual committees. A question was submitted about the appropriateness or usefulness of regular meetings in that they could raise unrealistic expectations, given that judges have limited ability to promote a restorative process and diversion. The point in this regard is that community-based justice is a community responsibility, not a responsibility of the Court.

5.5.4. Interpretation Services

There are few jurisdictions in Canada where interpretation is so prevalent and none where an Aboriginal language has such a presence within the Court system. The Court routinely hears testimony in Inuktitut and Innuinaqtun. Frequently, there are unilingual Inuktitut-speaking jurors and the entire proceedings will be interpreted. The Court makes use of consecutive interpretation which allows – should it be necessary – comparison between English and Inuktitut versions. The Court sponsors an annual eight-week Legal Interpreting course (originally offered through Nunavut Arctic College but now held in-house) to train interpreters from across the territory. Although there have been one or two cases where a hearing has been unable to proceed because there is no interpreter, key informants and community respondents say that the Court has generally excelled at ensuring the presence of a trained interpreter whenever needed. Experienced northern counsel and judges routinely take steps to facilitate the process of interpretation, including providing interpreters with copies of jury charges or submissions in advance.

Some English-speaking counsel continued to express reservations about the consistent quality of interpretation. These informants are concerned that some complex legal concepts may not be properly translated in some instances or that testimony may not be fully and accurately interpreted. They expressed particular concern about interpretation quality in the western Arctic where differences in dialect may present challenges for interpreters traveling with the Court. A few counsel said they would advise their clients or witnesses to use English based on what they had observed with interpreters to date, even if they were less proficient in the language, to avoid possible interpretation pitfalls and uncertainty.

There was some concern that there does not appear to be a way to address interpretation problems as they occur. However, the first group of bilingual (Inuktitut-English) lawyers is now entering the profession and may be in a position to challenge difficulties with interpretation. Community respondents are generally pleased with the interpretation service provided by the Court.

A few counsel particularly mentioned the helpfulness of Court interpreters in facilitating client communication outside of the formality of Court proceedings.

5.6. Summary: The Administration of Justice

Case processing times have declined since 2001. Adjournments, particularly in the communities, continue for a number of reasons; however, practitioners almost unanimously believe that delay is not a major issue facing the Court. Delays in case processing are generally seen as acceptable and inevitable in light of uncontrollable conditions such as weather. Some community members, however, are more concerned about case processing times, particularly in spousal assault cases. Delays are seen to be stressful for the accused, victims, witnesses, and their families.

Remands are common in Nunavut, as they are in other jurisdictions. In Nunavut, however, there are cost implications because remanded offenders must be flown to the Baffin Correctional Centre in Iqaluit or to the Yellowknife Correctional Centre. As well, the stress on this overcrowded facility is severe.

There is a serious shortage of community-based courtworkers. While there are barriers to the hiring of additional courtworkers, practitioners and community members believe that they would improve the effectiveness of the justice system by working with the accused and defence counsel, and by doing preparatory work prior to the arrival of the NCJ. Similarly, more JPs are needed, especially more trained and experienced at least at Level 3. In communities where this level of JP exists, JP Court is being held the day prior to the arrival of the NCJ. The preparation of the docket for the judge has increased the effectiveness of case processing in those communities.

The lack of community-based programming, including mental health and addiction services, youth programs and probation services seriously affects the ability of judges to turn to alternatives to incarceration. The lack of adequate probation services, in particular, negatively affects the effectiveness and possibly the credibility of the Court. With regard to the non-custodial provisions of the YCJA, the absence of community programs and the weakness of probation services present serious difficulties for the Court.

Access to family law services has improved in recent years thanks to additional family law lawyers in the legal aid system, and to the efforts of the judges to make hearings and mediation more accessible. The number of family law applications is increasing rapidly. Civil matters, however, remain underdeveloped, especially as there are no civil matters lawyers residing in

Nunavut. While the judges hold Civil Chambers in every community, the poor quality of Nunavut's telephone service often presents difficulties for the parties who are not present. Key informants believe that civil matter needs will increase as business grows and as people become more aware of the possibilities in civil matters.

Judges engage in settlement conferences, mediations, and very frequently, in pre-trial and pre-circuit meetings in both the criminal and civil areas. There has been relatively little case management involving judges as there have been few requests from counsel. Mediation in family cases has involved judges when needed; however, the family law lawyers in Nunavut are effective at reaching agreement on their own and rarely require judicial assistance except occasionally in very complex cases. The Court-initiated family mediation project, *Inuusirmut Aqqusiuqtiit*, in Iqaluit and Cape Dorset, is believed by practitioners to be working well. The process of accessing *ex parte* and emergency relief orders is seen as highly effective in Nunavut.

Deputy judges are an essential aspect of the NCJ due to the heavy circuit schedule. While the use of deputy judges is considered to work well overall, there are concerns regarding the inexperience in the North and in Aboriginal communities of some visiting judges, the unfamiliarity of the judges for lawyers and community members, and the amount of time invested in the preparation of deputy judges, particularly by the senior judge and Court staff. Shortcomings in the use of deputy judges are seen as a valid reason for increasing the number of resident judges by at least one.

There are too few defence lawyers practising in Nunavut, whether as staff of the Nunavut Legal Aid Society or as members of the private bar. Practitioners are concerned about the implications of the shortage, as it affects the service provided to the public. It could also lead to burnout and turnover among defence counsel, as has occasionally contributed to Court delays due to lack of preparation by counsel. While the recent increases in the number of legal aid lawyers practising family law has had a positive impact in that area, there remain no resident lawyers practising other forms of civil matters.

Practitioners and community respondents alike indicated that Nunavummiut generally remain unaware of legal processes and their rights in the justice system. This applies especially with respect to family and civil matters. In view of the substantial workloads facing all practitioners in the system, no real efforts have been made to establish PLEI programs. One exception has been the NCJ itself, in that, for example, the judges have been active in a high school outreach program and in employing youth panels in many communities. Communities want more legal

education and believe that a greater presence of either lawyers, JPs or courtworkers in communities would help to address the need.

Community Justice Committees are an important part of the justice system in Nunavut. However, for several reasons, their capacity varies from community to community. Similarly, the extent to which they receive referrals varies, particularly pre-charge referrals from the RCMP. Crown prosecutors are more consistent in their post-charge referrals. Most legal system practitioners, as well as community residents and members of the Community Justice Committees, believe the Committees hold real potential to handle more diversions and, in many situations, more serious cases. It is also thought the Committees should be engaging in more family mediation. While a small number of Committees are presently engaging in these kinds of activities, most others require developmental support before they can move to a higher level of operation. In particular, many Committees continue to need support in the form of office space, training (mostly in mediation) for Committee members and administrative coordinators who are trained and paid at reasonable levels.

The NCJ, particularly the resident judges, is seen by practitioners and community residents as sensitive to Inuit culture and to the social realities in Nunavut communities. The Court demonstrates this awareness in several ways, including elders' panels, a high proportion of Inuit staff in the Court office, effective interpretation service, and a general consideration of the community and family context of individual accused and victims.

6. COURT OFFICE MANAGEMENT AND OPERATIONS

6.1. Introduction

This section of the report addresses the efficiency and effectiveness of management and operations in the NCJ office, as distinct from the broader administration of justice issues examined in Section 5. The establishment of the new Court in 1999 presented challenges with respect to implementing court operations. Two factors were especially challenging from the beginning. First, the Iqaluit facility where the Court continued to reside after division was entirely inadequate. For its first year of operation, the NCJ shared a relatively small and ill-equipped building with the new Nunavut Department of Justice, the Crown prosecutor's office, and Maliganik Tukisiniakvik, the Iqaluit-based legal aid office. While Nunavut Justice and the Crown prosecutors moved to other premises, Maliganik Tukisiniakvik remained and continued to share the original building with the NCJ. The NCJ did not move to a new, dedicated Court building until March 2006.

The second challenge to the NCJ from its inception was the commitment of the Government of Nunavut and the NCJ to fill as many staff positions as possible with Inuit employees. This is unanimously viewed by key informants and community respondents as a positive and responsible approach to staffing. However, it has required sustained effort by management in training and mentoring new staff members who have not had previous Court experience or, in many cases, previous office experience of any kind. Respondents agree that persistence by both management and Inuit employees has resulted in an effective Court staff that will, in turn, pass on its skills to others.

While challenges remain, improvements have been made with respect to continuity of staff, levels of training, and the computerization of case files. (The latter is an ongoing process.) Supervisory staff members are active in training, mentoring, directing and monitoring non-supervisory staff. It is anticipated the recent move to the new Courthouse will further improve the working conditions for Court staff and will thereby continue to increase efficiency in the Court office.

6.2. The Adequacy of Processes to Plan, Implement and Coordinate Activities

6.2.1. Operational Structure

The NCJ operates with two complementary administrative structures. The first is Court Services Division, under the authority of the Deputy Minister of Justice for Nunavut. The second is the Nunavut Court of Justice administration, responsible ultimately to the senior judge.

The senior management of Court Services (under the Department of Justice) comprises the Director of Court Services, supported by the Manager, Business Planning and Support and the Manager, Court Operations. The Manager, Business Planning and Support is responsible for finance and planning, as well as for the Sheriff's Office. The Manager, Court Operations is responsible for Court administration for both criminal and civil matters. Each of the senior managers is responsible for maintaining effective operations in the NCJ, as well as for training and mentoring staff.

The NCJ administration comprises an administrator responsible for judicial services and judges' secretaries. This structure includes the Administrator of the Justice of the Peace Program, as all JPs are responsible to the senior judge.

6.2.2. Judges' Workloads

When the NCJ was established in 1999, there were no reliable caseload statistics to inform the decision regarding the number of judges needed. The decision was especially problematic as the single-level Court was a new entity that had not previously existed in Canada. As a result, there is now clear consensus among key informants, including all lawyers, JPs, judges and others, as well as among community respondents, that at least one more resident judge is required in addition to the current three. Many key informants stated that two or even three additional judges are warranted.

The travel obligations of the judges, their administrative load, including preparing deputy judges, the expanding size of the bar, and the difficult nature of the cases the judges hear were all cited as reasons why the current bench is stretched beyond reasonable capacity. A few key informants commented that it would be extremely useful to have a judge with a focused family law background. Most informants were unequivocal in stating that the communities of Nunavut were better served by resident judges with their in-depth knowledge of community norms and Inuit culture than even the best deputy judges.

6.2.3. Criminal Caseload

Table 7 indicates criminal caseload for the Court for the period January 2002 to the end of 2005 (estimated from September to December 2005). The caseload in terms of the total number of charge appearances has increased substantially over that period by 81 percent, from 18,257 to 33,111. The same data are represented graphically in Figure 3.

Table 7: Criminal Caseload January 1, 2002 to December 31, 2005³⁶

Activity	2002	2003	2004	2005 (to Sep 30)	2005 (estimated) ³⁷
New information sworn ³⁸	2,822	3,007	3,220	2,143	3,095
Scheduled appearances/hearings	670	692	702	542	783
Total number of charges addressed in Court	6,387	6,973	7,729	7,268	10,498
Total number of charge appearances ³⁹	18,257	21,034	27,424	22,923	33,111

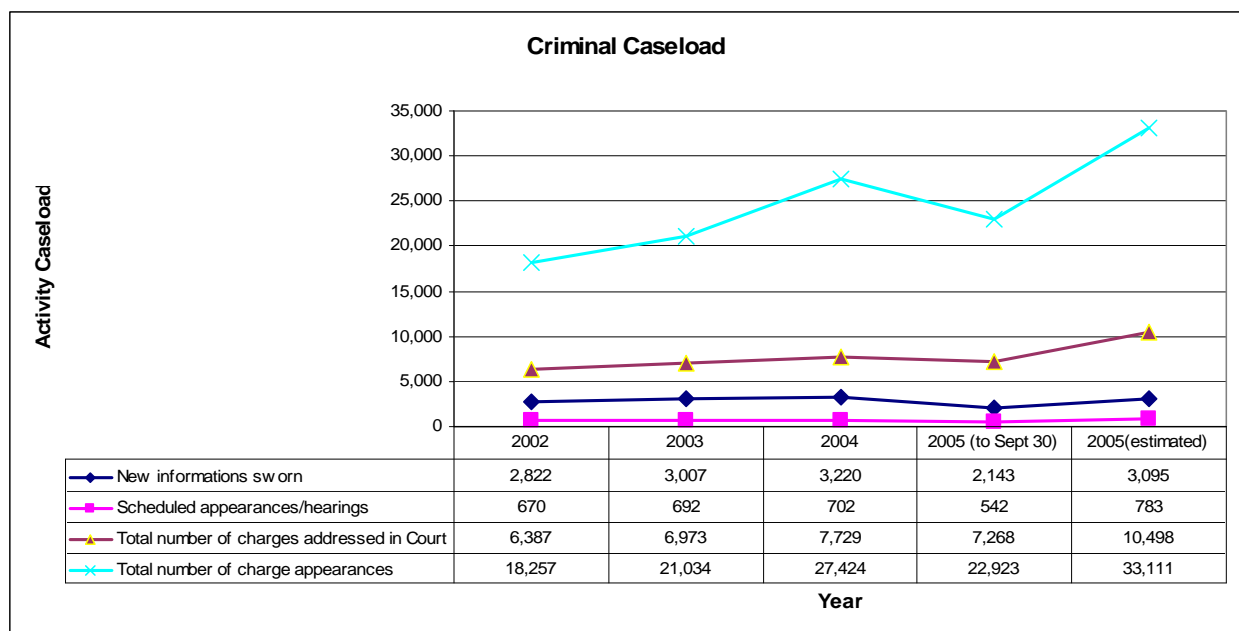


Figure 3: Criminal Caseload January 1, 2002 to December 31, 2005

³⁶ Source: Nunavut Court of Justice, Court Services, 2006.

³⁷ Data entry for October to December 2005 not yet verified by Court Services.

³⁸ An information is usually filed by a police officer and may contain more than one charge.

³⁹ Count of all charges addressed in all hearings (excluding non-posted appearances such as voluntary fine payments).

It should be noted that while the number of information sworn in the three-year period indicated in Table 7 and Figure 3 increased somewhat (from 2,822 to 3,095), the total number of charges addressed in Court increased at a higher rate (from 6,387 to 10,498). This would suggest that multiple charges are increasingly being associated with a single information. Further, the most substantial increase occurs with respect to the total number of charge appearances (from 18,257 to 33,111). This seemingly disproportionate jump is likely due to cases being adjourned a number of times before being resolved, thus presenting the Court with high numbers of appearances, many of which are repeats. The fact remains, however, that the Court is faced with substantial and increasing numbers of cases to handle and appearances to address.

Table 8 indicates the total number of new, completed and pending charges for the period January 1, 2003 to September 30, 2005.⁴⁰

Table 8: Charges January 1, 2003 to September 30, 2005

Total information sworn	Total charges sworn	Total charges completed	Total charges pending
8,370	15,500	12,518	2,982

The information in Table 8 indicates both the volume of cases being addressed by the NCJ and, perhaps more importantly, the number of charges pending. In any jurisdiction, the reasons vary with respect to the number of pending charges. Concern has been expressed that Nunavut's pending charges may be directly linked to avoidable Court delays. (This question is addressed above.) Regardless of the variety of factors affecting processing times, there is consensus among key informants that the perceived shortage of resident judges is an issue that affects – directly or indirectly – the court process, especially in the communities.

6.2.4. Civil and Family Caseload

Tables 9 and 10⁴¹ indicate the rate of increase in the number of civil and family files from 2002 to 2005 (civil and family files are combined in these tables). Table 9 shows the number of new files each year and the percentage change over the previous year.

⁴⁰ Source: Nunavut Court of Justice, Court Services, 2006.

⁴¹ Source for Tables 9 and 10: Nunavut Court of Justice, Court Services, 2006.

Table 9: Yearly Changes in Civil and Family Files

	2002	2003	2004	2005 (to Sep 30)	2005 (estimated) ⁴²
New files	431	664	659	491	709
% change over previous year		54.1	(0.7)	(25.4) (data only to Sep 30)	8.0

Table 10 shows the numbers for Civil Chambers hearings in the three busiest NCJ Courts (Iqaluit, Cambridge Bay and Rankin Inlet) for May, September and December from 2002 to 2005.⁴³

Table 10: Civil Chambers Hearings in Iqaluit, Cambridge Bay, Rankin Inlet

Time period	# files heard	% change over year	Time period	# files heard	% change over year	Time period	# files heard	% change over year
May 2002	26		Sep 2002	24		Dec 2002	36	
May 2003	41	58	Sep 2003	37	54	Dec 2003	35	(2.7)
May 2004	43	5	Sep 2004	65	76	Dec 2004	60	71
May 2005	56	30	Sep 2005	64	(1.5)			

As the above tables indicate and as noted earlier in the report, the numbers of civil and family cases are increasing substantially. As in the criminal area, these increases have implications for judges' workloads.

It is reasonable to say that the workload of the resident Nunavut judges is substantial. Key informants were clear that judges' workload and the question of the number of judges needed should be assessed on criteria that match the Nunavut reality, not on the basis of comparative activities in the south. Informants cited several reasons for this. First, the travel responsibilities of Nunavut judges are extremely challenging. Not only are vast distances covered at all times of year (often in bad weather), but the facilities for visitors in many of the communities are barely adequate. Judges are on circuit one week out of every three. While they receive standard holiday time, Nunavut judges are not allotted judgement writing weeks, as is done in most other jurisdictions (noted above). Table 11 provides an indication of the increasing numbers of Court sittings and the extent of the demands on the Judges.

⁴² Data entry for October to December, 2005 not verified by Court Services at time of writing of this report.

⁴³ Data entry for October to December, 2005 not verified by Court Services at time of writing of this report.

Table 11: Court Scheduling for 2004 and 2005⁴⁴

	Non-jury circuit weeks	Iqaluit Court weeks	Jury trials	Non-scheduled Court sittings
2004	45	26	16	20
2005	50	26	28 +	20 +

Second, as key informants indicated, the nature of the cases heard by Nunavut judges – a high proportion of domestic violence and sexual assault cases – must naturally take a toll on an individual. Judges are also constantly aware of cultural sensitivities and other community dynamics that have a bearing on the delivery of justice in Nunavut.

Third, the judges of the NCJ have a developmental responsibility not normally associated with the judiciary in other jurisdictions. For example, the family mediation program now operating in Iqaluit and elsewhere was developed by the judges in consultation with community members, and receives ongoing guidance from the judges. Similarly, the establishment and maintenance of Elders and youth panels in the communities is a judicial responsibility. The Nunavut judges engage in community educational activities, such as the law information program for high school students. They are also in regular communication with JPs who telephone from their communities with questions on legal process.

In summary, it is clear judges' workloads are substantial and the attendant stresses high. This is confirmed by the substantive information and the unanimous view of key informants working in the justice system and by community residents. It is impressive, therefore, that the Court continues to improve year by year and appears to increasingly meet the needs of Nunavummiut. However, as Nunavut's population grows (and its youth population increases proportionately), there will be increasingly greater demands on the justice system. Moreover, as the Court's success in areas such as family law attracts more clients to the system, the demands will grow further. There appears to be little doubt that a fourth judge is required now, and that a fifth judge may be needed in the future.

6.2.5. Staff Workloads

Workloads for Court staff are substantial. In the past this has been problematic in that it has sometimes affected the completeness of the case information that was required by the Court for trials or civil hearings. The situation has improved to the point where information gaps rarely

⁴⁴ Source: Court Services Division. The data for 2005 regarding jury trials and non-scheduled Court sittings were compiled to June.

occur. However, ongoing training and mentoring is required to ensure that staff members can work effectively.

The Court currently has seven Juridical Officers plus a supervisor. Senior management in Court Services indicates that this number should be adequate to cover juridical responsibilities (e.g., Court Clerks) for the foreseeable future. Similarly, senior management confirms the Civil Registry is adequately staffed at present. The Civil Registry comprises one Civil Registrar, three Deputy Registrars and one Deputy Registrar/Interpreter.

Staff turnover can have an impact, however, and even one individual leaving is likely to create problems in the daily operation of the Court. The staff member responsible for the Court's travel arrangements provides a case in point. Currently, one individual has this responsibility, a substantial job due to the frequency of circuits, the number of Court personnel traveling, and the challenges inherent in northern travel. Key informants indicated Court Services urgently need to hire an additional staff person to be trained for work on travel arrangements. A second staff member dedicated to travel would make the workload more reasonable and would provide continuity in the event of one individual's absence.

The Sheriff's Office continues to be understaffed, even though it now has one Sheriff and two Deputy Sheriffs. The new Courthouse requires additional monitoring by sheriffs with regard to public access. Sheriffs are also being asked to provide security in Court, a task for which they are not adequately prepared in terms of time or expertise.⁴⁵ In addition, sheriffs' responsibilities outside the Courthouse (e.g., property seizures) are increasing as Nunavut grows. While the NCJ contracts with local agents in the communities outside Iqaluit to act as bailiffs for some of this work, it appears that this has not been effective to date. The primary problem is the lack of experience of potential agents. Training will be required in order for the process to work effectively. In the meantime, the Sheriff or Deputy Sheriffs (who are also new to the job and need training) are required to travel from Iqaluit to communities for bailiff duties on matters such as property seizures. The Sheriff or a Deputy Sheriff must also travel to communities with the Court party for jury trials to provide security and logistical support. These travel requirements represent a substantial investment of time and funds for the Court.

⁴⁵ The RCMP is required only to escort prisoners to and from Court, not to perform guard duty while Court is in session. The Sheriff's office is increasingly expected to take on this responsibility.

6.3. Implementation of an NCJ Information Management Strategy

6.3.1. Practitioners' Needs

From the lawyers' perspective, there is a strong sense the information management capacity of the Court has improved dramatically since 1999. But while the system is seen to be basically sufficient, there is continuing room for improvement. Certain points were raised with some consistency by key informants working in the justice system. (Community residents did not have views on the matter.)

Currently, an overlap in information management is perceived between the Court, RCMP, Crown and legal aid systems. Practitioners wish to see the development of systems with common reference numbers to improve tracking, and eventually to allow data to be more effectively shared between these agencies where appropriate.

Lawyers also want to see the Court implement an e-filing capability that they can use to access documents from communities while on circuit and when counsel are appearing by telephone. Because Court staff cannot access documents remotely, there is a considerable burden on lawyers to determine the practical filing deadline on a case-by-case basis and often, to refax documents to the community where the Court is in at the time. The current situation creates a substantial amount of time-consuming work for counsel, especially in light of the general shortage of support staff in the North.

Some judges have developed standard language and forms for use in conditional sentence orders. Key informant lawyers welcome this effort. There has also been discussion regarding the development of standard language in family law orders. These steps towards auto-orders have some potential to speed up production of orders and decrease errors.

6.3.2. File Management

The Court's criminal files are maintained in computerized format since January 2001. Criminal files prior to that date are difficult to track because they are filed according to conviction date. Files from January 2001 onward are filed from the date of the start of the case for the Court (new information sworn). There are few youth criminal files in view of the consistent application of alternative measures for youth.

As noted earlier in this report, the NCJ does not operate a case management system, which would track cases – with dates – in a single file through to completion of the justice process. Therefore, “completion” of an NCJ file occurs when a case is dispensed by the Court, not necessarily when follow-up measures such as probation are completed.

Civil files (including family) are computerized from January 2003, while files prior to that date are kept in manual format. Family case files are included in the civil file management system in the Court office. Family files are defined according to the statutes relating to family matters. The relevant statutes are the *Divorce Act*, the *Family Law Act*, the *Children’s Law Act*, the *Maintenance Enforcement Act*, and the *Child and Family Services Act*. According to Court Services data, approximately 40 percent of the Court’s family law caseload concerns child welfare matters.

Efforts to computerize NCJ files in the criminal, civil and family areas are ongoing. A full-time programmer has been working in the Court office for an extended period and has made significant progress in designing the systems and entering the data. Informants in the Court Services Division advise that the systems work well. However, their use is not intuitive and training is required in order for staff members to access the system effectively. This is a challenge in view of the workload demands already facing staff.

Manual files for years prior to the current year are stored under the supervision of the Records Management Division of the Nunavut Department of Community and Government Services. The storage facility is located on the outskirts of Iqaluit in a building which is substandard for this purpose. While the staff at the facility attempt to maintain secure access to the files, it is unlikely that security would meet federal or provincial standards. Similarly, the structure itself appears to leave contents susceptible to fire and water damage. While records management staff do their best with the resources available, informants say that funding shortages have prevented the construction of a new facility by the Government of Nunavut. The NCJ should be concerned about the storage of its case files once they leave the Court building.

6.3.3. Effectiveness and Efficiency of the Court Office

In general, lawyers and judges were extremely positive about the way the Court office operates. A few commented on the high calibre of the staff in light of the fact the Court Services Division is the Government of Nunavut Division with the highest levels of Inuit employment across the Government of Nunavut. Those who have been working since before 1999 commented on the

dramatic improvement in the skills and helpfulness of the staff since the transition to the unified Court.

Although overall feedback was very positive, there were some concerns expressed by key informants regarding the effectiveness of the Court. High staff turnover in Court Services, as is typical throughout the Government of Nunavut, means that new staff members are constantly being trained and mentored. It is acknowledged that this is certainly not the fault of staff, but it leads to some concern regarding workloads for Court Services management and overall effectiveness in the Court office. There is also a clear perception among key informants that staff members have unrealistically high workloads and a very heavy burden of travel and associated logistics.

Civil counsel pointed to some lack of consistency with the filing of documents, particularly burdensome for those who practice at a distance where fax filing adds an additional layer of complexity to proceedings. There are occasional problems getting file-stamped copies of orders; similarly, there are frequent problems with Crown getting copies of orders. Criminal counsel pointed to the need for dockets to be ready earlier (though considerable improvements were noted, particularly sending electronic dockets in advance). Others commented that written orders do not always accurately reflect the judges' oral direction, requiring higher than normal levels of proofreading – though those informants felt increased use of standard forms (e.g., for conditional sentence orders) had reduced this problem and that the development of more forms in the database could further improve this situation. Errors on dockets – ranging from typographical to inclusion of a child victim names – were a concern for some lawyers. Transmission of documents from communities to Iqaluit may require better tracking mechanisms. One informant felt there was a need for a stronger basic understanding of the justice system as part of the training process; another commented that sometimes it feels like staff do not understand the legal consequences of different procedural decisions, so will not understand whether or not a particular formality is important. Some informants expressed the view that a lack of general legal knowledge on the part of staff may make it more difficult for litigants without representation.

Those points being made, key informants working in the justice system are generally very appreciative of the consistently good work by management and staff in the Court Services Division. Again, practitioners who have been working in Nunavut for several years tend to be impressed by the continuing progress being made by staff at the Courthouse.

6.4. Summary: Court Management and Operations

The operational structure of the NCJ comprises the Court Services Division, which is part of the Nunavut Department of Justice, and the NCJ administration, which is answerable to the senior judge. The former is largely responsible for the ongoing operations of the Court, while the latter primarily meets the needs of the judges.

There are three resident judges in Nunavut. There was unanimous agreement among key informants and community respondents that it is essential a fourth judge be appointed. A number of informants believed that eventually two additional judges are needed. Several factors contribute to this view, including the substantial and steadily increasing caseloads in all areas of the law, the demands of circuit Court, the stresses associated with travel in the North, and the developmental responsibilities of Nunavut judges.

Staff workloads at the Court are also substantial. While some areas in Court Services are currently staffed to acceptable levels, others are not; for example, the Sheriff's Office. As well, the staff member responsible for travel arrangements of the Court should be staffed by an additional person in order to ensure continuity and effectiveness of these services.

Lawyers are generally satisfied with the level of service provided by Court Services, although some have had experience with inaccuracies in documentation, the timeliness of dockets, and accuracy of written orders. Overall, however, lawyers are pleased with the service provided, and those who have been in Iqaluit for a long period are impressed by the improvements made by staff and management.

Interpretation services are an important aspect of Court in Nunavut. Although interpretation in the Court is considered to have improved to the point where it is now very effective, some counsel continue to have concerns about the quality of interpretation, particularly in the western Arctic where dialect can present a problem for interpreters traveling with the Court. The annual eight-week Legal Interpreting course sponsored by the NCJ is attempting to address such issues. Community members are generally satisfied with the interpretation services provided by the Court.

With respect to the Court's information management systems, there has been vast improvement since 1999. Practitioners would like to see the development of a system with common reference numbers between the Court, the RCMP, Crown and legal aid systems. As well, lawyers would like to be able to e-file capability that would allow counsel to send documents electronically to

the Court while it is on circuit. This would be especially useful when counsel are appearing by telephone. Judges are developing standard language and forms for various types of orders. One judge, for example, is currently using a standard form for conditional sentence orders.

The computerization of case files is ongoing. Currently criminal files are computerized from January 2001 and civil files, including family, from January 2003. Manual files prior to the current year are presently stored in a substandard facility with questionable security.

The new Courthouse in Iqaluit is a dedicated facility that should improve working conditions, public access and security. Facilities in the communities remain very poor, although most practitioners and community members recognize that these facilities are the best that the communities have to offer. Of real concern is the substandard quality of telephone service in most communities. Problems with telephones lead to frustrations for judges, counsel and clients when cases involve participation by parties in different communities.

7. VIEWS ON THE OVERALL EFFECTIVENESS OF THE NUNAVUT COURT OF JUSTICE

7.1. Introduction

Key informants and community respondents, including members of Community Justice Committees, were asked to provide their views on the overall effectiveness of the NCJ in meeting the justice needs of Nunavummiut.

A serious concern held in common by all informants in the justice system, communities, and Community Justice Committees is the lack of programming in the territory. Respondents frequently cited the need for treatment and rehabilitative facilities for offenders and victims, preventative programs for youth, and monitoring and enforcement programming in the form of more probation services in all communities. This is not seen as the responsibility of the NCJ; however, people do understand the gaps have a direct bearing on crime and social problems, as well as on the effectiveness of the Court.

7.2. The Legal Community

There was striking unanimity among lawyers in viewing the Court as a generally strong institution which is doing the best job possible in challenging circumstances. Several lawyers commented positively on the judges' efforts as key policy drivers for initiatives to improve meaningful access to justice within and beyond the Court system.

Most lawyers indicated that the Court still faces major challenges in meeting community expectations; however, most also thought those expectations were extremely high. Some key informants observed that the Court is often a focus for dissatisfaction over broader social issues – particularly issues relating to mental health and related social problems – because the Court, unlike social services, is present in communities to deal with the ultimate fallout of untreated social ills. As noted above, the lack of health, social and education-related resources in the communities hampers the ability of the Court to be fully responsive to needs of community and culture. The lack of probation services is only part of the problem. These challenges are

obviously exacerbated by the territory's geography. In general, most lawyers believe that the shortcomings of the Court were related to factors beyond the control of the Nunavut Court of Justice as an institution.

The unified Court structure has been widely accepted and is seen to be a successful innovation to improve the efficiency of justice services in the territory. Few lawyers think the Community Justice Committees are operating at their full potential, although most lawyers do not believe the NCJ has a key role in helping the Committees achieve that potential. Lawyers generally see that the Court is consistent in its effort to consider and use alternatives to incarceration. Personnel associated with the Court – including but not limited to the judges – are generally perceived within the legal community as being quite sensitive to the dynamics of culture and community in Nunavut, though there is clearly room for more Inuit personnel, particularly as lawyers, judges and senior managers. Family law is an area in which it is believed the Court has expanded and improved its services since the Court's inception in 1999. Lawyers perceive that the area of civil justice is one where Nunavummiut continue to have very limited access, with no resident lawyers, no small claims procedures, and few community-based alternatives.

Overall, the Court was highly rated by lawyers in terms of its ability to process individual cases with a relatively high degree of efficiency, fairness and sensitivity. The NCJ is also seen positively with respect to its progressiveness and the steps taken towards change and reform in the interests of better serving Nunavummiut.

7.3. Community Members and Community Justice Committees

Community members who had input to the evaluation generally expressed positive views of the NCJ. There appears to be a certain sense of ownership that has developed since 1999. While expectations are high, as noted above, many community members appear to believe that the Court can solve social problems because it is the administrative institution in which they have most faith and which they respect most highly. In many communities, it is also the administrative body that they see most regularly.

Community respondents frequently cited the compatibility of the Court with the needs of communities. For example, judges were praised for instituting elder and youth panels and for respecting the participants on those panels. Members of Community Justice Committees recognize the importance of the Court – through the Crown prosecutors – permitting cases to be diverted from the Court to the Committees.

Community members do have concerns, however – not explicitly with the NCJ but more generally with the justice system as a whole. As discussed earlier in this report, community residents are often frustrated by the time it takes to process a case. Respondents often define this problem as delays due to inefficiencies in the system, and in many communities, to too few circuits. As noted above, many community members talked of the stress of having to wait for the circuit Court to arrive, possibly months after an incident. Again, this is particularly difficult in domestic abuse cases because it can bring to the fore issues that have been resolved through reconciliation.

Members of Community Justice Committees generally believe the Court is doing a good job but often want more pre- and post-charge cases diverted to their Committee. (Committees recognize that pre-charge diversions are the responsibility of the RCMP.) The same Committees usually want to be able to take on more mediation, although they cite time requirements as a possible hindrance. Committees also say they require training in mediation techniques and more effective administrative support in order to realize their full potential.⁴⁶

7.4. Summary: Overall Effectiveness of the Nunavut Court of Justice

Both practitioners and community residents, including members of Community Justice Committees, see the NCJ as having improved greatly in service delivery since 1999 and as an effective institution that is doing well under very challenging circumstances. While improvements can still be made – for example, more circuits, further decreasing case processing times, and increasing the responsibility of Community Justice Committees – most respondents are satisfied with current standards in the administration of justice and in court operations.

Respondents were unanimously concerned about the lack of community-based programming, including probation services. This is understood not to be the responsibility of the NCJ, and it is generally recognized that the primary issue is a lack of resources. However, practitioners and community members see the problem as affecting the administration of justice.

⁴⁶ The desire of Community Justice Committees to take on more responsibility varies by community. In some communities, the Committees are experienced and have the support of community residents; in others, the Committee may be new and relatively inexperienced and thus not comfortable with additional responsibilities in the near future. The Committees included in this review in Pangnirtung, Qikiqtarjuaq, Rankin Inlet and Iqaluit all expressed a desire for more referrals and to handle mediations.

8. CONCLUSIONS

8.1. Resources

- Working relations among the various components of the system are effective. However, a shortage of defence counsel for criminal matters (private bar and legal aid) negatively affects the entire criminal justice process. Defence counsel carry unreasonably high caseloads (typically over 100 cases at any given time) and this often affects their ability to dedicate adequate preparation time to individual cases, including consultations with clients. There is a shortage of criminal lawyers. In particular, Inuit lawyers will contribute positively – the Akitsiraq Law School graduates are expected to meet this need, at least in part.
- Although the recent addition of family lawyers to the legal aid staff is a positive step, there continues to be an absence of lawyers doing other civil work in Nunavut. Civil cases are currently handled by lawyers primarily from Ottawa and Yellowknife. As Nunavut continues to develop and more businesses locate in the territory, the presence of resident civil lawyers will be increasingly important.
- While the JP Program is working well in some communities to help facilitate the NCJ circuit courts (e.g., Iqaluit, Rankin Inlet, Cambridge Bay), a shortage of experienced JPs in other communities inhibits the full and effective operation of the Court. More could be done in JP Court if there were more JPs and if they were trained and certified at higher levels. A more active JP Program would help to reduce the time required to process cases through the Court.
- Fewer than 50 percent of communities are served by a courtworker, and only three communities have a full-time courtworker. There is a common belief among all key informants, shared by community members, that a strong Courtworker Program would substantially increase the efficiency and effectiveness of all aspects of the criminal justice system. This responsibility rests primarily with the Nunavut Legal Services Society, under whose mandate the Courtworker Program operates. More locally based courtworkers are required to work with accused and defence counsel, and to prepare for the arrival of circuit Court. The view of respondents – practitioners and community members – is that additional

courtworkers would improve case processing times and would make the court process less onerous for the accused and others involved in the case.

- The workload for judges, which includes a substantial amount of challenging travel, is onerous. There continues to be a gap in terms of the number and frequency of circuits, even with the help of deputy judges. The clear preference of justice system personnel and community respondents is to have at least one more resident judge to focus on circuit work. There are good reasons for the hiring of a fourth judge, including the fact that it would result in better service for communities.
- Court meets on a regular basis in Iqaluit. In most communities, Court sittings are less frequent and normally take place every two months, except in the smaller communities (e.g., Resolute Bay) where Court might only sit every six months. Court sits for a maximum of three days in any community, and often for only one or two days in smaller communities. As a result, dockets are lengthy and can rarely be dealt with in one sitting.
- There is a clear need for more PLEI throughout Nunavut, particularly regarding family and civil matters. Individuals in the public should be more aware of their rights, legal options, and ways to initiate a legal action. This will be increasingly important as the population of Nunavut grows, and as business transactions increase. There also continues to be a fundamental lack of understanding of the criminal justice system by community residents, a fact which practitioners and community members agree should be addressed. While the judges engage in extra-curricular educational activities (e.g., in the high school), there continues to be a lack of understanding of the justice system and court operations (particularly regarding civil matters) by many Nunavummiut. This is primarily the responsibility of the Nunavut Legal Aid Society.
- Although not the responsibility of the NCJ, there is a lack of Community Correction Officers (Probation Officers) for a variety of reasons (see below), including support for the Court by providing pre-sentence reports when requested by judges.
- Community-based alternatives are lacking throughout Nunavut. This limits the options available to the Court in sentencing. Some respondents believe that the lack of community-based alternatives ultimately detract from the stature of the Court because its sentencing orders (e.g., probation, conditional sentences) are not monitored and not followed. In communities without the services of a resident Community Correction Officer (Probation Officer), the local social worker is often asked to take responsibility for the Court-ordered conditions; however, this is not within the mandate or training of social workers and presents

them with potential professional conflicts (i.e., serving both offender and victim) and untenable workloads.

- The YCJA has not been well implemented in Nunavut due to the absence of community-based programming needed for youth. The NCJ is obliged to release young offenders to their communities in the knowledge that the programs to assist in their care and improvement do not exist. Community Justice Committees attempt to handle youth cases but do not have the resources to counsel youth or monitor them in restitutional activities.
- As well as additional human resources required in existing programs, entirely new programming is needed. This would involve substantial investments in hiring and training of new staff by various Government of Nunavut departments (e.g., Health and Social Services, and Justice) and the federal government. Substance abuse and anger management treatment programs are required immediately. Similarly, counselling and support programs for young offenders and mentally ill offenders are needed. Without these kinds of programs, the NCJ will remain limited in its ability to use community-based alternatives in a meaningful way. As well, most respondents believe that crime and family problems will continue to rise in Nunavut as long as effective community-based programming, including crime prevention programs for youth, is not in place.
- Adjournments can be a source of stress for individuals and families, particularly in domestic violence cases in communities. In these cases, couples often reconcile long before the Court arrives to hear the case. If the case is adjourned, it is not heard for an additional two months. This can be stressful for the individuals concerned. One solution to delays is to increase the number of local JPs trained to Level 3 so that JP Court can be held frequently to deal with relatively straightforward cases. More frequent JP Court would free up the NCJ docket and more likely enable judges to get through entire dockets in one sitting. JP Court has recently been scheduled for the day before NCJ sitting in certain communities, a fact which appears to be freeing up the NCJ and reducing processing time.
- The personal safety of judges and Court staff continues to be a concern in Iqaluit, even with the move to the new Courthouse. The Sheriff's Office is responsible for the general security of the Courthouse, as well as for courtroom security in Iqaluit and in the communities (during jury trials), a function for which the Sheriff's Office staff is not adequately trained. Personal safety of the Court staff and adequate training for employees in the Sheriff's Office is a concern.

- Fiscal resources are required to provide improved storage facilities for archived files. While this is currently the responsibility of the Nunavut Department of Community and Government Services, the need is clear.
- Interpretation services have improved greatly in the last few years. However, the NCJ must constantly be ready to recruit and train new interpreters as needed.

8.2. Effectiveness of Management Systems and Information Management Strategy

- Supervisory staff members are responsible for monitoring the work of Court office staff, as well as for training and mentoring staff. The pressure for constant monitoring, training and mentoring has lessened in the last one to two years as staff members gain more expertise and as staff retention increases. However, these activities continue to be a major time requirement for supervisory staff due to staff turnover, a fact which is challenging in view of the Court office workload.
- Court staff, together with a programmer, continues to develop the computerized file management systems. The computerized system for criminal files was started in 2001, although records have been kept accurately and reliably since 2002. The computerized family and civil systems have been operating since 2003 (effectively since 2004). Prior to those years, all files were kept manually. The computerized system appears to be working well, although it is not as flexible for users as desired. Work is continuing on the system.
- Court staff members are being trained in the use of the computerized systems. However, challenges exist in terms of the ongoing training required as the systems continue to be developed. This is due to the heavy workload in the Court office and the shortage of training time for management and staff.
- Security of information has been increased since the inception of the computerized case file system. However, files prior to the current year are stored in the Government of Nunavut records storage facility and appear to be less than ideally secure. Security of information/court records is a concern.

8.3. Impacts of the NCJ – Intended and Unintended

- Delays and case processing times have been reduced and the NCJ is continuing its efforts to further improve the situation. Several strategies were identified in this report (e.g., holding JP

Court the day prior to the arrival of the NCJ). However, there remain a number of steps to be taken, most of which require increased levels of fiscal and human resources. In particular, at least one more resident judge, more qualified JPs, more trained courtworkers and more legal aid lawyers are needed.

- The JP program improves yearly with respect to the numbers of JPs in the communities and their level of training. However, there continues to be a serious shortage. At least three JPs would ideally be located in every community, and all three would be qualified at least at Level 3. This would ensure (a) that a non-conflicted JP was always available in every community, and (b) that JP Court could be held to help manage the dockets currently facing the NCJ judges.
- Community members are involved in implementing the justice system insofar as Community Justice Committees are active in most communities. As well, in most communities judges use the services of elders who assist with advice in sentencing and who speak to the offender. Similarly, judges use youth panels to advise in sentencing in certain kinds of cases (i.e., mostly youth cases; no sexual assault or serious assault cases).
- Post-charge diversions are being handled effectively by Community Justice Committees in most communities, although further training is needed in others. In certain communities that already have a high level of capacity to handle referrals, increases in post-charge diversions are warranted. Most Committees require further support from Government with respect to facilities, training for mediation, and adequately paid and trained administrative coordinators.
- There is consensus that the NCJ provides services in a culturally relevant manner in the communities. Examples of the way in which the Court achieves this include good quality interpretation, elders' panels, youth panels, and post-charge diversions to Community Justice Committees. The qualification on this point is provided by some respondents who believe that the Canadian justice system continues to be unfamiliar to and incompatible with Inuit culture.
- Respondents agree that the principles underlying *Gladue* are applied consistently in Nunavut. While judges may not be explicit in their questioning or their addresses to the accused or juries, there is no doubt that the Aboriginal background of the accused is taken into account.
- The application of a range of culturally appropriate and community-oriented sentencing alternatives continues to be a challenge for the Court. The principles of restorative justice are adhered to by the NCJ to the extent possible in light of scarce community-based resources. Community Justice Committees are generally active and receive post-charge diversions from

the Court through the Crown prosecutors. However, community justice is limited by the lack of community-based mediation, counselling and treatment programs, as well as by a lack of alternatives to incarceration due to the shortage of community-based Community Corrections Officers.

- Deputy judges make significant contributions to the administration of justice in Nunavut. However, it appears that deputy judges require a substantial time investment by Court staff and the senior judge. Consensus among respondents suggests that at least one more resident judge would ease these demands and would generally lead to a more effective delivery of justice.
- The NCJ is meeting its goal of increasing access to justice, including civil and family law, throughout Nunavut.

8.4. Efficiency and Accessibility of the NCJ Compared to the Two-Level Court

To address this question, it is informative to return to the general objectives for the new Court as viewed by the federal and territorial Departments of Justice and the Nunavut judiciary (page 8, above).

- To provide substantive and procedural rights equivalent to those enjoyed elsewhere in Canada.
- To provide Court-based justice services in a fair and inclusive manner.
- To provide an efficient and accessible Court structure capable of responding to the unique needs of Nunavut.

It was generally agreed among key informants and community members that both types of Court do an effective job of providing rights equivalent to those enjoyed elsewhere in Canada. With respect to the second and, particularly, the third objectives, the information compiled for this evaluation suggests that the Nunavut Court of Justice has made improvements in the administration of justice in communities across the territory. With few exceptions throughout the evaluation process, key informants and community members said the NCJ is doing a good job of delivering justice, especially in view of the challenges it faces. Nunavummiut have some concerns, as might be expected, but overall they are pleased with the Court and its improvements over time.