



LEGAL AID
RESEARCH SERIES

LEGAL AID PROVISION IN
NORTHERN CANADA
Summary of Research in the
Northwest Territories, Nunavut ,
and the Yukon



Legal Service Provision in
Northern Canada
Summary of Research in the
Northwest Territories, Nunavut,
and the Yukon

rr03LARS15e

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January 2003



Programs Branch



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*The views expressed herein are solely those
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ACRONYMS

CW	Courtworker
CYFN	Council of Yukon First Nations
DVTO	Domestic Violence Treatment Option (Yukon)
FVPA	<i>Family Violence Protection Act</i> (Yukon)
GNWT	Government of the Northwest Territories
JP	Justice of the Peace
JP court	Justice of the Peace court
LSB	Legal Services Board (N.W.T.)
MVA	<i>Motor Vehicle Act</i> (Yukon)
NCJ	Nunavut Court of Justice
NLSB	Nunavut Legal Services Board
N.W.T.	Northwest Territories
PLEI	Public Legal Education and Information
RCMP	Royal Canadian Mounted Police
YCJA	<i>Youth Criminal Justice Act</i>
YLSS	Yukon Legal Services Society
YPLEA	Yukon Public Legal Education Association



EXECUTIVE SUMMARY

Introduction

Justice Canada commissioned three studies into legal service provision in Northern Canada, one each in the Northwest Territories (N.W.T.), Nunavut, and the Yukon, which were carried out between March and August 2002. The studies examined ten issues:

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

This report summarizes the results of the three studies.

Methodology

The studies were carried out using both quantitative and qualitative research methodologies, including interviews, focus groups or workshops, the review of documents, and the review of files or other sources of statistical information.

Several of the questions posed by Justice Canada required the research teams to assess the extent of unmet need for legal services in particular areas. Through the research process, it became apparent that there were two different definitions of unmet need among respondents. The first was unmet need resulting from lack of representation and the second was unmet need resulting from low-quality representation, referred to as under-representation in this report. It also became apparent that accurate means of measuring unmet need (either quantitative or qualitative) are not in place at this time. As a result, the extent of unmet need is likely under-reported.

Background information

There are contextual differences between the three territories that affect the provision of legal services.

- Legal services in the three jurisdictions are provided by different organizations. The mandates of these organizations are not identical. The greatest difference is between the mandate of the Yukon Legal Services Society (YLSS), which is limited to the provision of legal aid, and the mandates of the Legal Services

Board (LSB) of the N.W.T. and the Nunavut Legal Services Board (NSLB), which encompass legal aid, courtworker management, and the provision of PLEI.

- The legal systems in place in the jurisdictions differ. The unified court system in Nunavut is significantly different from the court systems in the N.W.T. and the Yukon, which follow the standard Canadian format (Territorial Court, Supreme Court, and Youth Court).
- The limits on legal service provision differ. In the N.W.T. and Nunavut legal services are intended to be available for family and other civil law cases, as well as for criminal cases. Legal service availability for family and other civil law cases is very limited in the Yukon, although the extent of service has slowly been increasing since 2001.
- There are some socio-economic differences between the jurisdictions. The most significant of these is that Nunavut has a far higher percentage of Aboriginal population (in this case, of Inuit) and a far higher percentage of individuals who do not speak English as their first language.

There are also some contextual similarities among the three territories, including the circuit court structure, the practice of presumed eligibility or “practical delivery,” the vast distances between communities, relatively youthful and undereducated populations, a high rate of alcohol and Fetal Alcohol Syndrome/Effects issues, very high crime rates (including violent crime and sexual assault), and the frequent lack of local resources such as remand centres, counselling facilities, and mediation services.

Impact of geography and culture

The impact of geography on service provision appears to be related to the degree of difficulty experienced in accessing communities. As a result, the N.W.T. and Nunavut reported greater impacts than the Yukon. Geography has an impact on:

- Preparation time.
- Schedules and workload while in communities.
- Access to communities.
- Extent of support infrastructure (e.g., telephones, internet access).
- Access to remand facilities and other resources such as process servers, sheriffs, and expert witnesses.
- Access to local programs and services (e.g., mediation services or counselling).

The impact of culture, and particularly language, differs fairly significantly among the jurisdictions – in relation to the composition of the population. Jurisdictions with greater Aboriginal populations experience higher impacts. Culture has an impact on the pattern of service delivery (for example, the role of courtworkers in bridging cultural gaps); the quality of service delivery (for example, cross-cultural communication issues may result in *de facto* under-representation); and the demand for service (if services are not culturally appropriate, demand may be low and not reflective of the underlying unmet need).

All three jurisdictions reported under-representation as a result of geography and culture, with Nunavut reporting significant issues related to culture, and both Nunavut and the N.W.T. reporting greater concerns related to geography than the Yukon.

Circuit courts

All three jurisdictions have circuit courts as well as resident courts. The circuit court structure affects:



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- The quality of service provision – Circuit courts are characterized by heavy dockets, compressed schedules, time pressures and, particularly in the N.W.T. and Nunavut, difficulty in accessing clients beforehand for case preparation.
 - Delays in service provision – Respondents in Nunavut perceived that circuit courts cause frequent and substantial delays in service provision, particularly in the Baffin region. Respondents in the N.W.T. and the Yukon did not identify delays as a significant issue.
 - Continuity of counsel – Respondents in the N.W.T., the Yukon, and the Kitikmeot and Kivalliq regions of Nunavut did not raise concerns with respect to continuity of counsel as systems are in place in these jurisdictions to ensure continuity. However, continuity of counsel was raised as a concern in the Baffin region of Nunavut.

Respondents in all three jurisdictions reported under-representation because of the circuit court structure on the quality of service provision, particularly in remote communities. Under-representation related to delays and discontinuity of counsel was reported only in the Baffin region of Nunavut.

Courtworkers

Courtworker services are delivered in a variety of ways across the three jurisdictions. Some courtworkers are resident in the communities they serve; others serve several communities; and still others fly into the communities with the circuit court party. In all three jurisdictions, the primary role of courtworkers is to bridge the gap between community members and the legal system, usually by explaining the system and its processes and by interpreting for clients during meetings and court sessions. However, courtworkers in the Yukon also have responsibilities with respect to alternative and community-based justice activities, in contrast with courtworkers from the N.W.T. and Nunavut. In all three jurisdictions it is expected that there will be significant pressure to expand the role of courtworkers as the role of Justice of the Peace courts expands.

A common constraint identified by all courtworkers was a lack of training in procedural issues, legal issues, and issues related to working with clients on an interpersonal basis. Other constraints identified included lack of space for interviewing clients when they are on circuit, the part-time nature of some of the positions (in the N.W.T. and Nunavut), and disparities in compensation (among regions in Nunavut).

Respondents from all three jurisdictions felt that under-representation as a result of lack of training will likely increase as the role of JP courts increases. In some cases, they felt that under-representation currently occurs due to lack of training for both JPs and courtworkers. The practical constraints identified above were also felt to lead to under-representation in the N.W.T. and Nunavut.

Justice of the Peace courts

The current role of JP courts differs among the three jurisdictions in terms of the types of cases being heard and the method of legal service delivery. In the Yukon, both duty counsel and courtworkers play a role in JP courts, whereas in Nunavut and the N.W.T., the vast majority of clients are represented by courtworkers. However, there is a common expectation that the role of JP courts will expand in the future in order to ease the workload of other parties in the legal system. Respondents from all three jurisdictions felt that, as the role of JP courts expands, so will the need for representation and the degree of training required to provide adequate representation.

In the Northwest Territories and Nunavut, respondents felt that under-representation may occur as a result of lack of training for JPs and courtworkers. Respondents from the N.W.T. also reported that, in some communities, there is a lack of representation in JP courts. In the Yukon, lack of representation in JP courts was raised as a concern by respondents, and it was felt that plans to increase the number of JP court sittings would further exacerbate this issue.

Civil legal aid

All three jurisdictions reported that, although theoretical coverage of family and other civil law issues varies, practical coverage of these issues is insufficient and there is a lack of representation. Beyond the lack of human and financial resources to provide legal services in this area, other concerns raised included the following:

- A shortage of private family and other civil lawyers to represent the other party.
- Practical limitations on service provision (for example, finding an appropriate party to serve official documents).
- The potential for unresolved family and other civil law cases to escalate into criminal incidents.
- The shortage of alternatives to the legal system (for example, the lack of mediation services).
- The special requirements of family law cases (for example, the administrative burden and the acrimonious and emotional nature of the cases).

Respondents from all three jurisdictions identified a significant lack of representation in a wide range of family and other civil law matters.

Prior to first appearance

The method of service delivery prior to first appearance differs significantly among the three jurisdictions. In the Northwest Territories and the Yukon, service is provided primarily by lawyers and infrequently by courtworkers. In Nunavut, the opposite scenario is the case, with courtworkers providing the majority of services prior to first appearance.

Respondents in all three jurisdictions raised concerns about lack of representation prior to first appearance, although the concerns were more significant in the N.W.T. and the Yukon than in Nunavut. Similarly, respondents in all three jurisdictions had concerns with the quality of representation possible over the telephone. In some cases, the quality was considered to be poor enough to result in under-representation.

Public legal education and information (PLEI)

PLEI is provided differently in the three jurisdictions. In the N.W.T. and Nunavut, PLEI is one of the responsibilities of the legal services boards. In the Yukon, PLEI is the responsibility of a separate organization, the Yukon Public Legal Education Association (YPLEA). Despite these differences, respondents from all three jurisdictions identified a wide range of unmet need for PLEI in the areas of:

- Basic information on the functioning of the justice system and legal services.
- Information on family law.
- Information on other areas of civil law.
- Information on criminal law procedures.



Cost drivers

Respondents in all three jurisdictions identified geography, socio-economic issues, and human resource and administration issues as common cost drivers. They also identified common federal and territorial cost drivers, including legislation (for example, the *Youth Criminal Justice Act*), policies (for example, zero tolerance for spousal assault), and imbalance in resource allocation between the Crown offices and the legal services boards.

Other cost drivers identified by respondents included the following:

- The lack of less expensive, non-litigious options with respect to family law.
- High rates of unemployment and seasonal employment, which increase financial eligibility.
- Addressing Aboriginal needs (for involvement, cross-cultural support, and self-government).
- The rate of jury trials (more expensive than trial by judge only) in the N.W.T.
- The number of unrepresented litigants in civil cases in the Yukon, which increases the time required to process a case.
- The decentralization of government services in Nunavut, which adds to travel and infrastructure costs.

Proposed solutions

A wide range of solutions were proposed in all three jurisdictions in response to the many areas and types of unmet need identified by respondents. Solutions common to the three jurisdictions include the following:

- Addressing the need for additional counsel on circuits to ease the workload
- Ensuring continuity of counsel on circuits (where this is an issue)
- Additional support for family and other civil law cases
- Improved training for courtworkers (including levels of training and certification)
- Addressing PLEI needs by developing plain language materials and communicating PLEI orally and in-person



1.0 INTRODUCTION

1.1 Purpose of the report

Justice Canada commissioned three studies into legal service provision in Northern Canada, one each in the Northwest Territories (N.W.T.), Nunavut, and the Yukon, which were carried out between March and August 2002. The N.W.T. and Yukon studies were conducted by Focus Consultants and the Nunavut study by IER and Dennis Glen Patterson. This document is intended to summarize the results of the three studies, drawing out the areas of commonality and difference among the three jurisdictions, identifying areas of unmet need, and putting forward solutions suggested by study respondents, where applicable.

1.2 Issues for examination

The Request for Proposals issued by Justice Canada listed ten issues to be examined by the research teams. These issues were identified by representatives of the three territories as being key to understanding the delivery of legal services in the northern context. The ten issues were:

- The impact of court structure, geography, and culture on the demand for legal services, pattern of service delivery, and quality of services.
- The impact of circuit courts on service delivery.
- The increased role of courtworkers.
- Unmet needs for legal representation in Justice of the Peace (JP) courts.
- Unmet needs in family and other civil matters.
- Unmet needs prior to first appearance or first instance.
- The interplay between the criminal and civil problems in the generation of legal needs.
- Public legal education and information (PLEI) needs.
- Factors driving legal representation costs.
- The impacts of federal legislation, policies, and resource allocation decisions on cost per case and territorial allocations of legal aid resources.

1.3 Format of the report

The summary report is divided into the following sections:

- Section 1.0 – *Introduction*.
- Section 2.0 – *Methodology* – summarizes the quantitative and qualitative research methodologies used in the three jurisdictions.
- Section 3.0 – *Background Information* – highlights key socio-economic characteristics of each jurisdiction, and compares the legal systems and systems for the delivery of legal services in place in the N.W.T., the Yukon, and Nunavut.

- Sections 4.0 through 13.0 address the ten issues raised by Justice Canada as the focus for these studies. They are presented in the order provided in subsection 1.2, above.
- Section 14.0 – *Proposed Solutions* – presents, for each jurisdiction, the solutions to unmet need proposed by respondents.
- Section 15.0 – *Conclusion*

2.0 METHODOLOGY

2.1 Quantitative and qualitative methodologies

In responding to the ten issues, the research teams used both quantitative and qualitative methodologies, including interviews, focus groups or workshops, the review of documents, and review of files or other sources of statistical information. Some issues were approached using both quantitative and qualitative methodologies, while others were more suited to a solely qualitative approach. In the cases where quantitative approaches were used, it became apparent that the quantitative data had limitations – both in terms of availability and appropriateness to the task at hand (for more on limitations and challenges, see subsection 2.2). Therefore, qualitative information was used extensively to answer all of the questions, including those where a quantitative approach was also attempted. The two research teams co-ordinated their initial methodological approaches (in particular, the basic interview questions) in order to improve the comparability of results.

Table 2.1 summarizes the methodologies used by the research teams.

Table 2.1 – Summary of Research Methodologies

Jurisdiction	Qualitative	Quantitative (incl. Document Review)
Northwest Territories	87 interviews 1 focus group	<ul style="list-style-type: none"> • Court Services data • Federal financial contribution data • Legal Services Board (LSB) records • Law Line database • GNWT Bureau of Statistics • Access to Justice Agreement Reports • Internal LSB documents
Nunavut	58 interviews 2 workshops	<ul style="list-style-type: none"> • Client files • Legal aid applications • Final dockets for circuit court • Concluded dockets for circuit court • Statistics Canada • Internal Nunavut Legal Services Board (NLSB) documents • Justice Canada documents • Nunavut Court of Justice (NCJ) Annual Report



Yukon	53 interviews 1 focus group	<ul style="list-style-type: none">• Yukon Legal Services Society (YLSS) database• Court Services data• Federal contribution data• Courtworker reports• Yukon Bureau of Statistics• YPLEA annual reports• YLSS internal documents
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A wide range of individuals were interviewed by the research teams, including staff counsel, private bar lawyers, legal services board members and executives, judges, justices of the peace, RCMP officers, courtworkers, Crown counsel, representatives of the territorial justice departments, and others representing social agencies and Aboriginal organizations. In Nunavut, some clients of the NLSB were interviewed in lieu of conducting two additional focus groups.

2.2 Methodological limitations and challenges

The research teams experienced some challenges in gathering information. These challenges give rise to limitations with respect to the data:

- *Quantitative data* – In the N.W.T. and the Yukon, the statistical data made available to the research team was not gathered specifically to answer the questions posed by Justice Canada and, in some cases, the data available was incomplete. In Nunavut, there were no electronic databases or records available from which to retrieve quantitative data. Therefore, all data was manually retrieved through the review of files at the LSB and NLSB offices. In the Yukon, some data was compiled manually as well. As a result of these differences, the quantitative data gathered by the three research studies is not, in most cases, directly comparable.
- *Qualitative data* – In the Northwest Territories and the Yukon, no clients were interviewed during the research process. In Nunavut, the high degree of interaction and interdependence among all components of the legal system made it difficult, at times, to isolate qualitative information on legal service provision exclusively.

As a result of these methodological challenges, this summary document relies significantly on the qualitative research results. Quantitative information has been included only where deemed to be comparable.

2.3 Assessing unmet need

Several of the questions posed by Justice Canada required the research teams to assess the extent of unmet need for legal services in particular areas (for example, in Justice of the Peace courts or with respect to public legal education and information). Through the course of the research, a number of issues became apparent that affected the way in which unmet need is described in the research results and the reliability of the estimates of unmet need made by the research teams. In particular:

- *Defining unmet need* – Respondents appeared to understand and define the concept of unmet need in two different ways. Some respondents defined unmet need as a lack of service. For example, if an accused is unrepresented in circuit court because there is no counsel available to

provide representation, that would be recognized as unmet need. Other respondents added a second definition of unmet need. They felt that, in some cases, the quality of the service being provided to the accused is lacking to the point where the accused is under-represented. These respondents felt that under-representation due to low-quality service also constitutes unmet need. As a result, in this summary document, a distinction has been made between unmet need due to lack of representation and unmet need due to under-representation.

- *Quantitative information on unmet need* – A significant issue emerged with respect to measuring the extent of unmet need using quantitative information on legal aid applications. The research teams originally planned to measure unmet need by looking at the number of legal aid applications that were denied. However, it was made clear to the researchers during the interviews and workshops that many individuals who might require legal aid assistance may not believe those services to be available and, therefore, may not complete a legal aid application. The area of family and other civil law was frequently cited as one where many individuals are not aware that services are available. As a result, there is a strong likelihood that the extent of unmet need, as measured using data on legal aid applications denied, is underestimated.
- *Qualitative information on unmet need* – Information on the extent of unmet need was also gathered through the interview and workshop processes. As is noted above, respondents felt that the extent of unmet need is greater than is shown using quantitative research methods. However, it should also be noted that interviewees may not have been aware of the true extent of unmet need in a particular area and, therefore, that the qualitative estimates of unmet need resulting from the research may also underestimate the true extent of unmet need for legal services in the three northern jurisdictions.

3.0 BACKGROUND INFORMATION

Although the three northern territories are often perceived as homogeneous by the rest of Canada, there are differences between them that have an impact on the demand for and provision of legal services. This section provides background information on socio-economic issues and on the existing systems for the provision of legal services in the three territories.

3.1 Socio-economic issues

3.1.1 Demographics

The demographic issues that most affect legal service delivery (demand and type) are population age, family structures, education, and language and ancestry.

- *Population age* – All three jurisdictions have young populations in comparison with the rest of Canada,¹ and the N.W.T. and Nunavut have younger populations than the Yukon. As younger people are more likely to require legal services than older people, this affects the demand for legal

¹ Statistics Canada Web site (<http://www.statscan.ca>).



services. Nunavut has the youngest population of the three territories, which is currently affecting demand for legal services for young offenders. As this population bulge ages, demand for legal services for adults is also expected to rise.

- *Family structures* – The Yukon has a higher divorce and/or separation rate than any other Canadian jurisdiction,² which has implications for the demand for family law services. All three jurisdictions also have a higher number of single-parent families than the rest of Canada, with Nunavut having the greatest number.³ While this does not directly affect demand for legal services, it does exacerbate the impact of unmet need. For example, if a lone parent is remanded out of his/her community while waiting for a bail hearing, or is sentenced to a longer jail term due to under-representation, his/her children experience greater disruption than children of families with two parents.
- *Education* – All three jurisdictions have lower rates of basic educational attainment than the rest of Canada. For example, 23 percent of Canadians have attained only a high school diploma. The comparative figures for the Yukon and the N.W.T. (including Nunavut) are 18 percent and 13 percent, respectively.⁴ Individuals with a lower level of educational attainment may require additional explanations of the legal process and of any documentation involved, which adds to the workload of counsel and courtworkers.
- *Language and ancestry* – There are significant differences between the three jurisdictions in terms of the ancestry and mother tongue of the populations. The majority of the population of Nunavut are Inuit (22,720 inhabitants out of approximately 29,000), with Inuktitut or Inuinnaqtun as the language used in the home for 65 percent of Nunavut Inuit.⁵ Approximately half of the population of the Northwest Territories is Aboriginal (48 percent), and Aboriginal people are the majority in 28 of the 31 communities outside of Yellowknife (Yellowknife's population is primarily non-Aboriginal). However, the majority of the population of the Northwest Territories have English as their mother tongue. The Yukon is 20 percent Aboriginal, with Aboriginal people the majority in seven of the 13 smaller communities outside of Whitehorse (Whitehorse's population is primarily non-Aboriginal). Again, the majority of the population have English as their mother tongue. In jurisdictions and communities where the majority of the population have English as a second language, there are often additional requirements for translation and interpretation that affect the delivery of legal services. Also, in some cases, significant additional efforts must be made by legal services personnel to cross the cultural divide and ensure that the accused understand the substance of the process, as well as the words used to describe it.

² Drawn from the source report for the Yukon.

³ Statistics Canada Web site (<http://www.statscan.ca>).

⁴ Statistics Canada Web site (<http://www.statscan.ca>).

⁵ Statistics Canada, 2001 Census: Analysis Series: Aboriginal Peoples of Canada: A Demographic Profile (January 2003). Note that this information has been updated from that contained in the original source report.

3.1.2 Geography and access

All three jurisdictions have large, sparsely populated land areas in comparison with the rest of Canada. Access to communities, which has a significant impact on the method of legal service provision and associated costs, varies among the jurisdictions:

- In the Yukon, the majority of communities are accessible by road.
- In the Northwest Territories, some communities can be accessed by road, but the smaller communities in the northern part of the territory are generally accessible only by plane.
- In Nunavut, all communities are accessible only by air. In some cases, these communities are extremely remote and very difficult to reach.

3.1.3 Alcohol and FAS/E

Respondents in all three jurisdictions highlighted alcohol consumption or fetal alcohol syndrome/effect (FAS/E) as issues affecting the demand for legal services:

- The Northwest Territories has the highest alcohol consumption rate in Canada (133.8 percent of the Canadian average).⁶
- The Yukon also has a very high alcohol consumption rate (119 percent of the Canadian average).⁷
- The incidence of FAS/E is believed to be above average in all three jurisdictions,⁸ but was specifically identified as an issue by respondents in Nunavut.

Excessive alcohol consumption can trigger additional demand for legal services, as alcohol is often a contributing factor in criminal behaviour such as assault.⁹ FAS/E is also believed to affect the demand for legal services, as individuals affected by FAS/E often lack the capacity to understand the consequences of their actions; may behave impulsively; and can have difficulty resolving problems and understanding right and wrong or complex issues.¹⁰

3.1.4 Crime and policing

The three northern territories have significantly more police officers per resident than any other jurisdiction in Canada.¹¹ The three territories also lead the country in crime rates.¹²

⁶ Canada Community Health Survey and *1996 Alcohol and Drug Survey* (GNWT Bureau of Statistics).

⁷ Canada Community Health Survey.

⁸ Based on FAS/E information for Alaska provided in: Fetal Alcohol Syndrome Surveillance Network. "Fetal Alcohol Syndrome – Alaska, Arizona, Colorado, and New York, 1995-1997," *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, May 24, 2002 (vol 51:20, pp. 433-435).

⁹ Alcohol consumption is also implicated in driving under the influence charges. However, legal aid is not available to individuals accused of driving under the influence.

¹⁰ Health Canada FAS/E Web site (<http://www.hc-sc.gc.ca/hppb/childhood-youth/cyfh/fas/whatisfas.html>).

¹¹ Statistics Canada Web site (<http://www.statscan.ca>).

¹² CBC News North Web site (<http://www.north.cbc.ca>).



- The Northwest Territories has the highest crime rate in Canada, followed by Nunavut and the Yukon, which were tied for second place.
- Nunavut has the highest violent crime rate in Canada, followed by the Northwest Territories and the Yukon.
- Nunavut has the highest rate of assault in Canada (5,419.2 per 100,000 people in 2001, compared with 769.5 per 100,000 people for the country as a whole), followed by the Northwest Territories (4,234 per 100,000 people) and the Yukon (3,212.3 per 100,000 people).¹³
- Nunavut has the highest rate of sexual assault in Canada (788.4 per 100,000 people in 2001, compared with 78.6 per 100,000 people for the country as a whole), followed by the Northwest Territories (359.8 per 100,000 people) and the Yukon (254.3 per 100,000 people).¹⁴

3.1.5 Lack of services at the community level

Respondents in all three jurisdictions also identified the lack of services at the community level as an important contextual issue. Among the primary concerns raised were the lack of remand facilities, the lack of counselling facilities (for example, for substance abuse issues or anger management), and the lack of mediation services and other non-litigious alternatives to the justice system.

3.2 Systems for the provision of legal services

3.2.1 Court structures

The court structures in place in the Northwest Territories and the Yukon are very similar, while that of Nunavut is significantly different.

The Northwest Territories and the Yukon have court structures similar to those of other Canadian jurisdictions, including a Territorial Court, a Supreme Court, Justice of the Peace (JP) courts, and a separate court for young offenders. Both jurisdictions have a combination of resident and circuit courts. In the Northwest Territories, there are resident courts in Yellowknife, Hay River, and Inuvik, and in the Yukon there is a resident court in Whitehorse. The role of JP courts differs somewhat among the territories. In the Northwest Territories, JP courts play a significant role in addressing territorial offences and summary criminal matters. In the Yukon, the current role of JP courts appears to be less extensive in communities outside Whitehorse. However, there is an intention to increase the role of JP courts to relieve pressure on the legal system and to build capacity in communities.

The court structure in Nunavut is unique in Canada, in that there is only one level of court, the Nunavut Court of Justice (NCJ). The NCJ deals with all offences: territorial, supreme, and young offender. There is a resident court in Iqaluit – all other communities are served by circuit courts. JP courts currently play a significant role in the Nunavut legal system, and this role is expected to expand in order to relieve pressure on the NCJ.

3.2.2 Resources and methods for legal service provision

Each jurisdiction has an organization responsible for legal service provision. However, the responsibilities and mandates of these organizations differ somewhat between the jurisdictions, as do their structures and resources (both human and financial). The mandates of these organizations are summarized in Table 3.1.

¹³ Statistics Canada Web site (<http://www.statscan.ca>).

¹⁴ *Ibid.*

- *The Northwest Territories* – Legal aid services are provided by the Legal Services Board (LSB), which has two offices, with headquarters located in Yellowknife and other clinic in Inuvik. The LSB is responsible for the provision of legal aid, the management of courtworker (CW) services, and the provision of public legal education and information (PLEI).
- *Nunavut* – Legal services are provided by the Nunavut Legal Services Board (NLSB), which is headquartered in Gjoa Haven and has four additional offices in three different regions (each region has its own Board structure, in addition to the territorial Board). The NLSB is responsible for the provision of legal aid, the management of CW services, and the provision of PLEI.
- *The Yukon* – Legal services are provided by the Yukon Legal Services Society (YLSS), which has one office, in Whitehorse. The YLSS is responsible for the provision of legal aid. CW services are provided by some of the individual First Nations in the territory and by the Council of Yukon First Nations (CYFN), a significant difference between the Yukon and the other two Northern jurisdictions. PLEI is provided by the Yukon Public Legal Education Association (YPLEA), a separate organization.

Table 3.1 – Legal Service Organization Mandates

Organization (Jurisdiction)	Legal Aid Provision	Courtworker Management	PLEI
LSB (N.W.T.)	Yes	Yes	Yes
NLSB (Nunavut)	Yes	Yes	Yes
YLSS (Yukon)	Yes	No	No

Table 3.2 compares the human and financial resources available to the legal service provision organizations in each jurisdiction.

Table 3.2 – Resources for Legal Service Provision

Jurisdiction	Human Resources (2002-2003)	Total Budget (2001-2002)*
Northwest Territories	5 staff counsel 9 full-time and 2 part-time CWs	\$3,892,668
Nunavut	8 staff counsel 11 part-time CWs 3 full-time CWs	\$3,390,000
Yukon	5.5 staff counsel 2 full-time and 5 part-time CWs*	\$1,374,541

* Courtworkers in the Yukon are employed by First Nations organizations. The Council of Yukon First Nations employs 2 full-time courtworkers. The CYFN courtworkers are based in Whitehorse. Five other First Nations employ courtworkers on a part-time basis to serve five communities.

* Salaries and operating expenses.

3.2.3 Demand for legal services

The only statistical measure available to assess demand for legal services is the number of legal aid applications received. Table 3.3 presents the number of approved applications for legal aid (youth, family and civil, and criminal) for each jurisdiction from 1999 to 2002. It should be noted, however, that, as a measure of demand, legal aid applications are not ideal and may substantially underestimate overall demand for services. The primary reason for this underestimation is the



practice of presumed eligibility (in Nunavut and the N.W.T.) and “practical service delivery” (in the Yukon). This significantly reduces the need for clients to complete legal aid applications, as the majority of legal services are provided by duty counsel during circuit court sittings without requiring that a legal aid application be filled out. (See subsection 3.2.4 for a detailed explanation of the effect of these practices.)

Table 3.3 – Approved Applications for Legal Aid (1999–2002 inclusive)

Jurisdiction	Youth	Family/Civil Law	Criminal
Northwest Territories	134	1,086	1,438
Nunavut	55	497	916
Yukon	88	782	2,344

3.2.4 Limitations on legal service provision

The limitations placed on legal service provision differ between the three jurisdictions.

- *Presumed eligibility* – A policy of presumed eligibility is in place in the Northwest Territories and Nunavut. Presumed eligibility is based on the assumption that all persons are financially eligible for circuit and duty counsel services. Therefore, “circuit and duty counsel services may be provided without consideration of financial eligibility, i.e., without application and approval for legal aid.”¹⁵ In practice, presumed eligibility means that duty counsel represent all accused persons who appear in court and wish to be represented up until the point where they decide to plead not guilty, at which point they complete an application form for legal aid. The Yukon does not have a policy of presumed eligibility. However, there is an informal policy of “practical delivery,” where duty counsel provide representation to all accused persons in circuit court unless they are clearly financially ineligible.¹⁶ It should be noted that, while presumed eligibility theoretically applies to family and other civil law cases as well as to criminal cases, in practice the vast majority of services provided under presumed eligibility or “practical delivery” are for criminal charges, as these make up the majority of cases heard in circuit courts.
- *Family and other civil law services* – Both the LSB and NLSB are intended to provide legal services in the areas of family and other civil law, as well as criminal law, with some exceptions. However, in practice, the amount of legal aid available for family and other civil law cases is extremely limited due to lack of resources in many parts of the legal system. In the Yukon until 2001, coverage of family and other civil law issues was limited to child protection proceedings, interim proceedings (where children are involved), and proceedings under the *Mental Health Act*. Since then, the YLSS has begun to provide more funding, particularly in the area of family law, on a case-by-case basis. The extent of unmet need in family and other civil law is discussed in greater detail in Section 8.0.

The percentage of applications denied by the LSB, NLSB and YLSS, and the reasons for denial, also provide some clarity on limitations to legal service provision. This information is provided in Table 3.4. However, it should be noted that data on

¹⁵ LSB, *Legal Aid Bulletin* #97-1, July 25, 1997.

¹⁶ It is not clear from the source report whether “practical delivery” ends at the point of a not guilty plea, as does presumed eligibility in Nunavut and the Northwest Territories.

applications denied does not necessarily provide a true indication of the extent of unmet demand for services, as individuals are likely aware that certain services are not offered and, therefore, will not submit an application. In particular, it is expected that the unmet demand for family and other civil law services would be underestimated based on legal aid applications and denials.

Table 3.4 – Applications Denied (Number and Percentage of Received) and Primary Reasons for Denial (2000-01)

Area of Service	Northwest Territories	Nunavut	Yukon*
Criminal Law (adult)			
Applications Denied	50 (10 percent)	1 (less than 1 percent)	18 (2 percent)
Primary Reasons for Denial	<ul style="list-style-type: none"> • Failure to provide necessary information. • Financial eligibility. 	<ul style="list-style-type: none"> • Failure to provide necessary information. • Perceived lack of benefit to client. 	<ul style="list-style-type: none"> • Financial eligibility.

Area of Service	Northwest Territories	Nunavut	Yukon*
Family Law			
Applications Denied	316 (47 percent)	2 (less than 1 percent)	70 (18 percent)
Primary Reasons for Denial	<ul style="list-style-type: none"> • Failure to provide necessary financial information. • Financial eligibility. 	<ul style="list-style-type: none"> • Type of case. • Failure to provide necessary information. • Perceived lack of benefit to client. 	<ul style="list-style-type: none"> • Financial eligibility. • Type of case. • Perceived lack of benefit client.
Other Civil Law			
Applications Denied	31 (62 percent)	3 (19 percent)	70 (18 percent)
Primary Reasons for Denial	<ul style="list-style-type: none"> • Type of case. 	<ul style="list-style-type: none"> • Type of case. • Failure to provide necessary information. • Perceived lack of benefit to client. 	<ul style="list-style-type: none"> • Financial eligibility. • Type of case. • Perceived lack of benefit client.

* Note that the statistics on applications denied for family and other civil law cases in the Yukon were not broken out into the two components. Therefore, the same information is provided for both areas.



4.0 IMPACT OF COURT STRUCTURE, GEOGRAPHY, AND CULTURE ON LEGAL SERVICES DEMAND, PATTERN, AND QUALITY

The demand for legal services, the pattern of service delivery, and the quality of services provided in the northern jurisdictions are affected by a number of different factors, including court structure, geography, and culture. In this section, the commonalities and differences among the jurisdictions are explored with respect to geography and culture. The impacts of court structure are discussed in Section 5.0 (Circuit courts) and Section 7.0 (Justice of the Peace courts). At the end of the section, in 4.3, a table is provided that summarizes the key areas of unmet need resulting from these factors.

4.1 Impact of geography

The impact of geography on service provision appears to be related to the degree of difficulty experienced in accessing communities. Therefore, both the Northwest Territories and Nunavut reported that geography had a significant impact on service provision, while the Yukon did not, and Nunavut reported greater difficulties related to geography than did the Northwest Territories. In these jurisdictions, geography primarily affects the quality of service provision. The distances involved, sometimes severe weather conditions, and lack of scheduled flights into some communities result in:

- Lack of preparation time.
- Tight schedules and heavy workloads while in communities.
- Difficulty accessing some communities (that do not have scheduled flights or are frequently weathered in).
- Lack of support infrastructure, such as telephones and internet access.
- Lack of access to appropriate remand facilities. In both the Northwest Territories and Nunavut, the accused are frequently remanded to either Yellowknife or Iqaluit (for lack of adequate facilities in their home communities), which may result in the accused pleading guilty in order to “get it over with” rather than remain far away from their home community and support base.
- Lack of access to other resources such as process servers, sheriffs, and expert witnesses.
- Lack of local programs and services, such as substance abuse counselling or mediation services, that might reduce the demand for legal services.

It should also be noted that geography has a significant impact on the cost of service provision (see Section 12.0) and on the difficulties associated with the circuit court structure (see Section 5.0).

4.2 Impact of culture

The impact of culture, and particularly language, differs fairly significantly among the three jurisdictions. The extent of the impact of culture appears to be related to the composition of the population – jurisdictions with greater Aboriginal populations experience higher impacts from cultural differences. As a result, Nunavut reported the greatest impact from culture, followed by the Northwest Territories, while the

Yukon did not report significant impacts from culture. Culture has an impact on the pattern of service delivery, the quality of service delivery, and the demand for service.

- *Pattern of service delivery* – In Nunavut, culture and language have a significant impact on the pattern of service delivery. CWs play an important role in service delivery in order to bridge the cultural and linguistic gaps between counsel and the accused. Interpreters are also used in the courts, and PLEI materials are provided in several languages. The establishment of three regional legal services offices, each with its own Inuit-controlled Board, is also a result of the cultural differences between Nunavut and the other northern territories. In the Northwest Territories and in the Yukon, CWs also play an important bridging role, along with interpreters. .
- *Quality of service delivery* – Difficulties in cross-cultural communication are believed to have an impact on the quality of service delivery. The legal system is based on premises that are, to a large extent, foreign to Inuit and Aboriginal culture. As a result, the legal system is not necessarily clearly understood by accused of Aboriginal ancestry, and it is very difficult to translate legal terms into Aboriginal languages. In some cases, as a result of these difficulties in cross-cultural communication, the extent and quality of communication between the accused and counsel may be limited to the point where the accused is under-represented.
- *Demand for service* – In some cases, culture may influence the demand for service. This was noted in particular in Nunavut with respect to demand for family law and other civil law services. Several respondents indicated that Inuit do not resolve these types of problems in an adversarial manner and, therefore, that demand for these services may be low. Other respondents indicated that individuals seeking legal assistance, particularly in family law cases, may be the subject of community pressure not to proceed in this manner. This is an area where demand for service does not necessarily reflect the extent of unmet need because the services available may be considered inappropriate by potential clients. If more culturally appropriate methods of service delivery were in place, it may be that demand would increase because clients would be more willing to make use of those services for family and other civil law matters.

It should also be noted that culture and language have an impact on the cost of service delivery (see Section 12.0).

4.3 Unmet need resulting from geography and culture

Table 4.1 summarizes the extent and nature of unmet need resulting from geography and culture in the Northwest Territories, Nunavut, and the Yukon.



Table 4.1 – Unmet Need Resulting from Geography and Culture

Jurisdiction	Geography	Culture
Northwest Territories	Quality of service provision impaired due to access and timeframe constraints.	Quality of service provision somewhat impaired because of cultural and linguistic barriers to communication and understanding.
Nunavut	Quality of service provision impaired due to access and timeframe constraints.	Quality of service provision impaired because of significant cultural and linguistic barriers to communication and understanding.
Yukon	Quality of service provision impaired due to access and timeframe constraints, although to a lesser degree than in the N.W.T. and Nunavut due to road access for most communities.	No significant effects reported.

5.0 CIRCUIT COURTS

Circuit courts are a significant feature of the court structure in all three northern jurisdictions. The impact of the circuit court structure on legal service provision and the extent of unmet need in circuit courts is somewhat affected by geography, as better access to communities appears to make the circuit court process easier to manage for all involved.

Discussions related to the impact of the circuit court structure on legal service provision centred on three themes: quality of service provision, delays in service provision, and continuity of counsel.

At the end of this section, in 5.4, is a table summarizing the extent and nature of unmet need in relation to circuit courts.

5.1 Quality of service provision

All three jurisdictions reported that the circuit court structure has a negative impact on the quality of service provision. In particular, it was noted that circuit courts are characterized by heavy dockets, compressed schedules, and pressure to speed up the process. In Nunavut and the Northwest Territories, there were also concerns expressed about accessing clients beforehand for case preparation, particularly in situations where the entire court party must travel together from community to community by special charter.

However, it should also be noted that respondents from each jurisdiction also felt that circuit courts are necessary in order to ensure access to justice in the communities (as opposed to holding court only in the three capital cities).

5.2 Delays in service provision

The jurisdictions reported differing opinions with respect to delays in service provision on circuit courts.

- The Northwest Territories reported that delays are not a significant factor, largely because there is a policy not to adjourn circuit courts until the docket is completed (it was noted that this increases the pressure on all individuals involved in the circuit court).
- In the Yukon, some delays were reported and the average case time appears to be slightly longer than in the resident court. However, delays were not perceived as a significant issue.
- In Nunavut, there was a significant perception that delays are frequent and substantial, particularly in the Baffin region. However, court dockets indicate that slightly over half of the delays occur for normal reasons that would affect any court. It was suggested that aspects of Inuit culture related to the immediacy of dealing with issues affect the impact of delays, making even short delays very difficult for the accused and the community to the point where some respondents felt that delays in circuit court cases represent an undue hardship for the accused.

It should be noted that, with circuit courts, an adjournment from one sitting to the next may mean a delay of a month or two, rather than of a few days, as is frequently the case with resident courts. Therefore, any delay in a circuit court is likely to have a more significant impact on all parties involved than a delay in a resident court.

5.3 Continuity of counsel

Continuity of counsel was not reported as a concern in the Northwest Territories and the Yukon, as both jurisdictions assign specific counsel to a circuit or community, ensuring continuity in representation. In Nunavut, the perception is that discontinuity of counsel is a significant issue in the Baffin region, but not in the Kitikmeot and Kivalliq regions, where the same clinic lawyers are always duty counsel on circuit, so avoiding discontinuity. Some respondents in Nunavut believed that discontinuity is related to presumed eligibility. However, as the presumed eligibility system exists throughout both the Northwest Territories and Nunavut, and concerns were reported only in the Baffin region, it appears possible to have continuity of counsel in legal systems using presumed eligibility.

5.4 Unmet need resulting from the circuit court structure

Table 5.1 summarizes the extent and nature of unmet need resulting from the circuit court structure in the Northwest Territories, Nunavut, and the Yukon.



Table 5.1 – Unmet Need Resulting from the Circuit Court Structure

Jurisdiction	Unmet Need
Northwest Territories	<ul style="list-style-type: none"> Under-representation may occur in communities outside of Yellowknife, primarily because of the impact of time and access constraints on quality of service.
Nunavut	<ul style="list-style-type: none"> Under-representation may occur, primarily because of the impact of time and access constraints on quality of service. Such under-representation is more of a concern in the Baffin region than elsewhere in Nunavut. Such under-representation is more likely to occur in smaller communities that do not have a local legal services office.
Yukon	<ul style="list-style-type: none"> Under-representation may occur in some communities, primarily because of the impact of time and access constraints on quality of service. Financial eligibility cut-offs are so low that there is unmet need for service among the working poor.

6.0 COURTWORKERS

There are significant differences in the way in which CW services are delivered across the northern jurisdictions. These different approaches result in some differences in the constraints facing CWs in carrying out their responsibilities, although there are also constraints that are common to all. Despite these differences, the role currently played by CWs and the anticipated pressures to expand that role are very similar in all three territories. Each of these issues is discussed in a separate subsection. Subsection 6.5 contains a table summarizing the extent and nature of unmet need for CW services.

6.1 Courtworker service provision

The provision of CW services differs considerably among the three jurisdictions. These differences are summarized in Table 6.1.

Table 6.1 – Differences in Courtworker Service Provision

Jurisdiction	Responsible Body	Location of Courtworkers*	Type of Position
Northwest Territories	LSB	Fly-in and drive-in; and resident.	Part-time and full-time.
Nunavut	NLSB	Resident and non-resident.	Part-time and full-time (one full-time position in each region).
Yukon	CYFN Some First Nations	Resident and non-resident.	Part-time and full-time (three full-time positions in total).

** Note that “resident” refers to courtworkers who live in the community they serve, “non-resident” refers to courtworkers who serve several communities, and “fly-in” refers to courtworkers who visit the community only with the rest of the circuit court party.*

6.2 Constraints facing Courtworkers

The primary constraint for CWs across the three northern jurisdictions is lack of training. A number of areas were identified where increased training would greatly improve the CW services available, including procedural issues, substantive legal issues, and issues related to working with clients on an interpersonal basis (for example, if the clients are unable to accept responsibility, if they appear to be lying, or if they appear to be suffering from FAS/E).

However, a number of other constraints were also identified that, in some instances, could be unique to each jurisdiction.

- In the N.W.T., respondents identified the part-time nature of the work as a constraint. The fly-in/drive-in nature of many CW locations in the territory also creates a constraint with respect to interview space while on circuit. CWs have no offices in the communities, so they are sometimes forced to interview clients in their hotel rooms.
- In Nunavut, respondents identified disparities in compensation across the territory as a significant issue affecting the hiring and retention of CWs. They also felt that the workload is too great for part-time positions, especially since there are communities that do not have a resident CW and must therefore be covered by a CW from another location. CWs in Nunavut also identified a lack of tools as a constraint. CWs lack offices (and must therefore sometimes interview clients in their homes), dedicated phone lines, fax machines, and storage space for confidential files.
- In the Yukon, the constraints facing CWs, beyond the need for training, were less clear, as the individual CW's situation appears to vary considerably from location to location.

6.3 Current role of Courtworkers

In many ways, the core role of CWs is similar in all three jurisdictions. This role has been described as a “bridging role” between the mainstream legal system, with its primarily non-Aboriginal employees, and Aboriginal clients. The bridging role includes translating and interpreting for the client and counsel, preparing the client for court, explaining court proceedings to the client, providing support to the client's family, interviewing the client and possibly other witnesses, providing counsel with background information on the community, and assisting clients with the completion of legal aid forms.

However, there are also differences in the role of CWs in the three jurisdictions. These differences are related to the courts that CWs are involved with and the nature of the CWs' relationship with the local government.

- In the N.W.T., CWs are active in both circuit courts and JP courts. They are involved with both criminal and civil cases, although their role in criminal cases is more extensive. Courtworkers can represent people in criminal cases. Normally they take legal aid applications only for civil matters. However, CWs in the N.W.T. appear to have less of a role with alternative justice programs and other local justice-related activities than CWs in the Yukon (see below). The source report does not provide an explanation for this difference. However, it seems likely that a combination of the potential for conflict of interest (see discussion with respect to Nunavut CWs) and the fact that many N.W.T. CWs fly into the community with the court party, rather than being full-time residents of the community, may play a role.



- In the Yukon, CWs are active in both circuit courts and JP courts, primarily with criminal cases. They also report more responsibilities with respect to alternative and community-based justice activities than their counterparts in the N.W.T. and Nunavut. CWs in the Yukon also report that they are sometimes required to serve the victims of crime, as well as the accused, in order to support the overall process. In contrast with CWs in Nunavut, CWs in the Yukon did not report concerns about conflict of interest due to their broader responsibilities. CWs also provide some PLEI in their communities.
- In Nunavut, CWs are active in both circuit courts and JP courts, where they are often the only representation for the accused. CWs have primarily been involved in criminal cases, although, as the extent of NLSB service provision for family and other civil law cases is increasing, so is the role of CWs in these areas. CWs in Nunavut are occasionally involved in local alternative justice programs, although the tendency is to avoid such involvement because of the opportunity for conflict of interest. CWs also provide PLEI in their communities.

6.4 Pressures on the role of Courtworkers

The key pressure to expand the role of CWs across the northern jurisdictions originates in the desire to expand the role of JP courts. As discussed in Section 7.0, the role of JP courts is expected to expand in all three jurisdictions, with the hope of relieving pressure on other aspects of the legal system. In Nunavut, this will have a direct and immediate impact on the role of CWs, as CWs are the primary source of representation for clients in JP courts. In the Northwest Territories and the Yukon, the effect will be less immediate, as legal services counsel are also engaged in representing clients at the JP court level. However, as the demand for JP court representation increases, it is expected that CWs in the N.W.T. and the Yukon will be required to carry more of the burden of service provision in JP courts, as there will not be enough counsel available to meet the demand.

6.5 Unmet need for Courtworker services

Table 6.2 summarizes the extent and nature of unmet need for CW services across the three jurisdictions.

Table 6.2 – Unmet Need for Courtworker Services

Jurisdiction	Unmet Need
Northwest Territories	<ul style="list-style-type: none"> • Where CWs fly or drive into communities, the quality of service provision and nature and extent of community linkages may be affected. • Additional training will be required to ensure adequate quality of service provision given expansion of JP court role.
Nunavut	<ul style="list-style-type: none"> • Lack of basic tools and infrastructure, combined with part-time positions affect quality of service provision. • Salary issues and work pressures may increase turnover and therefore affect the quality of service provision. • Additional training will be required to ensure adequate quality of service provision given expansion of JP court role.
Yukon	<ul style="list-style-type: none"> • Variation in qualifications, skills, training, and

	<p>experience as a result of decentralized CW employment may affect the quality of service provided.*</p> <ul style="list-style-type: none">• Additional training will be required to ensure adequate quality of service provision given expansion of JP court role.
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** Note that the management of courtworkers is also somewhat decentralized in Nunavut, as they are managed from the regional legal services clinics rather than from the NLSB head office. However, the effects of decentralized management were not raised as a concern in the Nunavut study.*



7.0 JUSTICE OF THE PEACE COURTS

The role of Justice of the Peace (JP) courts differs considerably between the three jurisdictions in terms of the types of cases being heard. The pattern of legal service delivery in JP courts also differs between the jurisdictions. These two factors combine to result in differing degrees of concern with respect to unmet need in JP courts in northern jurisdictions. The extent of unmet need in JP courts is summarized in subsection 7.3.

7.1 The role of Justice of the Peace courts

The role of JP courts differs between the three northern jurisdictions.

- *The Northwest Territories* – The number and complexity of cases heard in JP courts is increasing. Ninety percent of the cases that would previously have been pursued summarily by the Crown in Territorial Court are now being heard in JP court. The greatest increase has been in drug- and alcohol-related cases, impaired driving cases, and assault cases (32 percent of the charges disposed of in JP courts between 2000 and mid-2002 were for offences against the person).¹⁷ JP court decisions are reviewed by the Crown and by the LSB.
- *The Yukon* – The number of cases heard in JP courts is decreasing outside Whitehorse. JP courts primarily hear territorial and municipal charges, justice administration charges (such as breach of condition, failure to attend, etc.), and impaired driving cases. In the future, it is anticipated that the role of JP courts outside Whitehorse will be expanded and that they will sit more frequently, between circuit court sittings.
- *Nunavut* – JP courts are intended to carry a significant number of cases at a high level of complexity, easing the burden on the NCJ. However, to date, JP training has not progressed to the point where this shift has taken place. Eventually, JP courts will hear youth court and family law matters, and may even undertake preliminary hearings in addition to their current responsibilities, which include bail and show cause hearings. JP court decisions are not reviewed by either the Crown or the NLSB, for lack of resources.

The role of the RCMP as prosecutors in JP courts was raised as a concern in all three studies. Many respondents felt that it was inappropriate for RCMP officers to play the role of prosecutors in JP courts. Respondents from the RCMP also voiced discomfort with this role. However, it is also unclear how the legal systems in place would respond if the RCMP were to refuse the role of prosecutor in JP courts, as the resources do not currently exist for others to take on this responsibility.

7.2 Legal service provision in Justice of the Peace courts

The method of legal service provision in JP courts differs between the Yukon and the other two Northern jurisdictions.

¹⁷ Drawn from the source report for the Northwest Territories.

In the Yukon, duty counsel (staff or private bar lawyers) assist the accused in JP courts in Whitehorse. In some situations, CWs may assist clients in JP court in relation to pleas, speaking to sentence, and occasionally trials for *Motor Vehicle Act* (MVA) and other territorial offences.

In the N.W.T. and Nunavut, the vast majority of clients in JP courts are represented by CWs. JP courts CWs generally assist clients with pleas and sentencing, and occasionally with trials.

7.3 Unmet need resulting from Justice of the Peace courts

Concern over unmet need arising in JP courts is related to availability of representation (in the Yukon) and quality of representation (in the N.W.T. and Nunavut). The extent of unmet need in JP courts is also related to the nature and complexity of cases being heard in JP courts. More complex cases increase the need for representation and increase the degree of training required to provide representation of acceptable quality. Therefore, as the role of JP courts expands in the future, the level of unmet need is expected to increase unless steps are taken to address JP and CW training requirements.

Table 7.1 summarizes the extent and nature of unmet need in JP courts in each of the three jurisdictions.

Table 7.1 – Unmet Need Resulting from Justice of the Peace Courts

Jurisdiction	Unmet Need
Northwest Territories	<ul style="list-style-type: none"> • CWs may lack the necessary skills and education to ensure adequate representation. • As JP court role expands, concerns over quality of representation may increase. • In some communities, neither CWs nor counsel can attend JP Court, so unmet need exists.
Nunavut	<ul style="list-style-type: none"> • CWs may lack the necessary skills and education to ensure adequate representation. • Lack of review of JP court decisions increases the need for high quality representation. • As JP court role expands, concerns over quality of representation may increase.
Yukon	<ul style="list-style-type: none"> • Representation is not available for all who need it (e.g., 90 percent of <i>Motor Vehicle Act</i> cases are unrepresented in JP court). • Slightly more than half the respondents felt the level of representation in JP courts is satisfactory. • Plans to increase frequency of JP court sittings will reduce available representation from YLSS counsel. • As JP court role expands, concerns over quality of representation may increase.



8.0 CIVIL LEGAL AID

The extent to which family and other civil law cases are covered varies between the three jurisdictions (see discussion in subsection 3.2.3). Nonetheless, respondents in all three jurisdictions expressed concerns with respect to the provision of legal services in these areas and identified a significant amount of unmet need as a result.

8.1 Concerns relating to civil legal services provision

A number of concerns were raised with respect to the provision of family and other civil legal services in the three jurisdictions, including the shortage of private family and other civil lawyers, practical limitations on service delivery, the potential for escalation of family and other civil law cases into criminal cases, the shortage of alternatives to the legal system in family and other civil law cases, and the special requirements of family law cases.

8.1.1 Shortage of private family and other civil lawyers

All three jurisdictions reported a severe shortage of private family and other civil law practitioners. This represents a significant limiting factor for the provision of legal services in this area, as both sides of the dispute must be represented and legal services clinics can only represent one of the two.

In the N.W.T. and the Yukon, respondents reported that the lack of private practitioners is exacerbated by the low tariff provided by the LSB and YLSS, respectively, for legal aid cases. The tariff is approximately half of the private rate, which discourages the few existing private practitioners from accepting legal aid cases. In Nunavut, the very small private bar is unable to meet the needs of the population.

8.1.2 Practical limitations on service provision

Respondents from Nunavut identified a number of practical limitations to service provision in the areas of family and other civil law, above and beyond the shortage of private practitioners. For example, finding a secure party to swear an affidavit or serve papers is extremely difficult. The language and cultural barriers that exist with respect to all service provision in Nunavut also add to the difficulties in providing service on sensitive matters such as family law.

8.1.3 Potential for escalation

Respondents in all three jurisdictions felt that family and other civil law cases, where unresolved, could easily escalate into criminal incidents. This issue is discussed in greater detail in Section 10.0.

8.1.4 Shortage of alternatives to the legal system

Respondents in both the Northwest Territories and Nunavut indicated that there is a shortage of alternatives to the legal system that individuals can use in family and other civil law matters. Most commonly mentioned in relation to family and other civil law is the lack of mediation services. This shortage was not specifically identified in the Yukon, but it is likely that a similar situation exists with respect to the availability of alternatives to the legal system.

It should be noted that some respondents also raised concerns with the use of alternatives in family law cases. They felt that the power imbalance that may exist between the man and woman involved might prejudice the outcome of the mediation. These respondents felt that the option of going to court should always be available, even if mediation services become more prevalent.

8.1.5 Special requirements of family law cases

Respondents from all three jurisdictions also reported that there are a number of negative characteristics associated with family law cases that make them less attractive for private practitioners and more time-consuming for legal service providers. For example, family law cases are considered to be protracted and complicated in comparison with criminal law cases; the administrative burden associated with family law cases is greater; and the nature of the cases is more acrimonious and emotional, which is particularly difficult to manage in a small legal community, such as exists in all three jurisdictions.

8.2 Unmet needs in family and other civil law

All three jurisdictions identified significant areas of unmet need in family and other civil law. Table 8.1 summarizes the extent and nature of unmet need in family and other civil law service provision across the three jurisdictions.

Table 8.1 – Unmet Need in Family and Other Civil Law

Jurisdiction	Other Civil Law	Family Law
Northwest Territories	None specified in the source report.	<ul style="list-style-type: none"> Delays in receiving representation for women in transition housing. Child protection.
Nunavut	<ul style="list-style-type: none"> Estate law. Compensation for crime and personal injury. Employment law. Human rights. Landlord/tenant issues. Medical malpractice. Federal benefits access and disputes. Poverty law. Immigration law. 	<ul style="list-style-type: none"> Child welfare. Child support. Property distribution after divorce. Alternative dispute resolution. Custom adoption and related issues.
Yukon	<ul style="list-style-type: none"> Coverage for Small Claims Court for working poor <i>Mental Health Act</i> cases 	<ul style="list-style-type: none"> Coverage for <i>Family Violence Protection Act</i> (FVPA) cases Support for family orders to final stage.



9.0 ACTIVITIES PRIOR TO FIRST APPEARANCE

The method of service delivery to clients prior to first appearance varies between the three northern jurisdictions. However, concerns over access to representation prior to first appearance and provision of service by telephone are common to all three jurisdictions.

9.1 Method of service delivery prior to first appearance

The method of service delivery prior to first appearance differs significantly between the three jurisdictions.

- *The Northwest Territories* – LSB counsel provide the vast majority of service prior to first appearance. CWs report only very infrequent requests to provide service in this area.
- *The Yukon* – YLSS-funded counsel provide the majority of service prior to first appearance, although CWs also provide services in cases where the accused cannot or will not consult a lawyer. Service prior to first appearance is generally provided by duty counsel.
- *Nunavut* – Service prior to first appearance is primarily provided by CWs. Service provision by NLSB counsel is very infrequent.

9.2 Concerns relating to service delivery prior to first appearance

9.2.1 Access to legal advice

Respondents in all three jurisdictions raised concerns over access to representation prior to first appearance.

- *The Northwest Territories* – The majority of clients do not contact counsel prior to first appearance. Some respondents felt that the RCMP is not providing the accused with adequate information to contact counsel. The RCMP reported that it is very difficult to contact counsel in the evenings or at night, when demand is highest.
- *The Yukon* – Service prior to first appearance is generally provided by the duty counsel. Respondents in the Yukon also reported difficulty contacting duty counsel for service prior to first appearance during the day (as the counsel are normally in court).
- *Nunavut* – There were conflicting opinions with respect to access to legal advice prior to first appearance. JPs reported that the vast majority of accused do have access to advice unless they choose otherwise. However, the NLSB and CWs reported that some accused are unrepresented because of lack of access to counsel or a CW. The remand facility in Nunavut (the Baffin Correctional Centre in Iqaluit) typically holds approximately 30 individuals on remand (it is built to hold 15), and lack of access to counsel was reported as the most significant factor affecting the number of prisoners on remand.

9.2.2 Service by telephone

Respondents in all three jurisdictions raised similar concerns with respect to providing legal services prior to first appearance over the telephone. It was felt that communicating by telephone is not sufficient for the CW or counsel to adequately represent the client – due to language barriers, difficulty assessing the client’s degree of comprehension, disclosure issues, and concern over interaction between the RCMP and the JP (for example, passing written messages that the counsel or CW is unaware of).

The difficulties inherent in providing service over the telephone are significant enough to have an effect on quality of service, to the point of unmet need. As a result, many counsel refuse to deliver service prior to first appearance over the telephone. However, in situations where local counsel or CWs are not available to provide these services in person, refusal to provide service over the telephone also results in unmet need.

9.3 Unmet needs prior to first appearance

Table 9.1 summarizes the extent and nature of unmet need prior to first appearance in the three northern jurisdictions.

Table 9.1 – Unmet Need Prior to First Appearance

Jurisdiction	Unmet Need
Northwest Territories	<ul style="list-style-type: none"> • Majority of clients do not contact counsel prior to first appearance, therefore unmet need for service exists. • CWs provide few services in this area. • Significant difficulties are encountered providing service over the telephone, but some telephone hearings are conducted, despite concerns over quality of representation.
Nunavut	<ul style="list-style-type: none"> • Majority of clients receive service from CWs. • Unmet need for representation exists, particularly in communities with no resident CW or legal services office. • Difficulties encountered in providing service by telephone are such that telephone hearings are unusual.
Yukon	<ul style="list-style-type: none"> • Service is provided by duty counsel in court. There is some unmet need that results in some unmet need for types of cases not covered by the YLSS (approximately 30 percent of accused in <i>Criminal Code</i> cases are unrepresented at first appearance). • CWs provide some services in this area. • Approximately 10 percent of hearings are conducted by telephone, although difficulties are encountered in providing quality representation.



10.0 INTERPLAY BETWEEN CRIMINAL AND CIVIL ISSUES

Respondents in all three jurisdictions agreed that a connection could be made between unmet need for civil legal aid, particularly in the area of family law, and demand for criminal legal aid. Common examples include the following:

- Unresolved child custody disputes lead to abduction of the children or spousal assault.
- Women who are unaware of or unable to access legal services for divorce, child custody, and maintenance, remain in violent relationships (the violent spouse is eventually charged with assault).
- Frustration over the slow resolution of family or other civil law matters results in acts of mischief or impaired driving.

For a more detailed description of the extent of unmet need in family and civil law, please refer to Section 8.0.

11.0 PUBLIC LEGAL EDUCATION AND INFORMATION

Public legal education and information (PLEI) is an area where all three jurisdictions report significant unmet need, although current methods of PLEI delivery vary among the territories.

11.1 Current methods of PLEI delivery

PLEI delivery varies considerably between the three northern jurisdictions in terms of responsible organizations, programs and activities, and deliverers. The current methods of PLEI delivery across the three jurisdictions are summarized in Table 11.1.

Table 11.1 – Current Methods of PLEI Delivery

Jurisdiction	Responsible Organization	Programs and Activities	PLEI Deliverers
Northwest Territories	LSB	<ul style="list-style-type: none"> • Law Line – basic law information over the telephone. • Pamphlets – rights and remedies, court proceedings, local resources. • Informal provision by staff. 	LSB counsel. LSB staff. Some CWs. Private lawyers. Social agencies.
Nunavut	NLSB	<ul style="list-style-type: none"> • Newspaper articles – bilingual, plain language. • Law Line – access to N.W.T. service (see above). • Informal provision by staff. 	NLSB counsel. NLSB staff. CWs. Social agencies. NCJ. JPs. Private lawyers.
Yukon	YPLEA	<ul style="list-style-type: none"> • Law Line – basic law information over the telephone. • Child support guidelines training. • Resource centre – open to the public. • Administrative law training – for Boards of Directors and legal aid staff. • Maintenance Enforcement information session (Yukon PLEI is one of several participating organizations). • Lawyer Referral Service. 	YPLEA staff. CWs, YLSS. Social agencies. Legal professionals RCMP.

11.2 Unmet need for PLEI

Unmet need for PLEI is reported as extensive in all three jurisdictions. At the broadest level, the types of unmet need are similar:

- Basic information on the functioning of the justice system and legal services
- Information on family law
- Information on other areas of civil law
- Information on criminal law procedures

However, within these categories, specific needs do differ between the jurisdictions and more or less emphasis was placed on different categories or needs. Table 11.2 summarizes the extent and nature of unmet need for PLEI within these four categories and across the three jurisdictions.



Table 11.2 – Unmet Need for PLEI

Type of Unmet Need	Northwest Territories	Nunavut	Yukon
Justice System and Legal Services	<ul style="list-style-type: none"> • Basic information on processes. • Legal aid coverage. • Application procedures. 	<ul style="list-style-type: none"> • Rights upon arrest. • Bail/show cause hearings. • Post-court processes (conditions, etc.). 	<ul style="list-style-type: none"> • Implications of pleas. • Step-by-step court processes. • Contacting and applying for legal aid.
Family Law	<ul style="list-style-type: none"> • Child apprehension. • Post-separation counseling. • Custody, access, and child support. • Maintenance. • Common-law relationships. • Peace bonds and restraining orders. 	<ul style="list-style-type: none"> • Child support. • Child welfare. 	<ul style="list-style-type: none"> • Do-it-yourself divorce. • Property distribution.
Other Civil Law Matters	<ul style="list-style-type: none"> • Workplace issues. • Human rights. • Individual rights within Aboriginal structures. 	<ul style="list-style-type: none"> • Rights-based law. • Administrative tasks. • Estate planning. • Financial and legal planning. • Employment law. • Housing law. 	<ul style="list-style-type: none"> • Employment standards. • Landlord/tenant law. • Individual vs. community rights.
Criminal Law Procedures	<ul style="list-style-type: none"> • Crime and alcohol. • Sexual conduct. • Gun laws. • Wildlife laws. • Spousal assault, family violence, and zero tolerance. 	<ul style="list-style-type: none"> • Implications of the YCJA*. 	<ul style="list-style-type: none"> • Domestic violence legislation.

* Youth Criminal Justice Act.

12.0 COST DRIVERS

The three jurisdictions identified many cost drivers associated with legal service provision in the North. Some of these were common to all of the territories, while others were raised by only one or two of the three jurisdictions.

12.1 Common cost drivers

The common cost drivers identified by respondents were:

- *Geography* – Geography was identified as a key cost driver, particularly with respect to the circuit court structure. The difficulty of accessing many communities across the North results in high costs for travel and accommodation for counsel, for flying in expert witnesses, etc. Geography also results in long hours for staff on circuit court trips, which increases the need for human resources and, therefore, costs of service provision. The remote and widely dispersed nature of northern communities also adds to the cost of PLEI provision and to the cost of training for CWs and other staff.
- *Socio-economic issues* – As shown in subsection 3.1, the northern jurisdictions share a number of socio-economic characteristics that greatly increase demand for legal services and, therefore, the cost of providing those services. Among these challenges are alcohol abuse; FAS/E; a high overall incidence of crime, particularly assault and sexual assault; and, in the N.W.T. and the Yukon, residential school syndrome.
- *Human resources and administration* – The cost of recruiting and retaining staff is extremely high in the North and the recruitment process often requires several attempts before a successful candidate is found. The administrative and overhead costs associated with running legal services organizations is also higher than in the rest of Canada.

12.2 Other cost drivers

Other cost drivers identified by respondents include the following.

- *Lack of options with respect to family law* – This issue was raised in the Northwest Territories, where respondents felt it led to a high dependence on litigation, the most expensive option. Although the issue was not specifically raised in Nunavut, a similar lack of alternatives, such as mediation services, is a concern in that territory.
- *High rates of unemployment and seasonal employment* – This issue was raised in the Yukon, and was felt to increase the percentage of the population financially eligible for legal aid services and, therefore, the cost of service provision. Nunavut also has a high level of unemployment and underemployment.¹⁸ The presumed eligibility practice is a response to the resulting very high rates of financial eligibility.
- *Addressing Aboriginal needs* – The ongoing impact of self-government negotiations was raised as a potential cost driver by respondents in the Yukon. In Nunavut, costs associated with addressing Aboriginal needs were also reported. For example, there is a formal requirement for Inuit participation in the management of the NLSB, which results in the maintenance of four Board structures (one for the NLSB and one each for the three regional clinics). Also in Nunavut, there is an ongoing need for cultural and linguistic interpretation in order to provide an adequate level of service to the majority of the population of the territory, which adds to the cost of service provision.

¹⁸ The average unemployment rate in Nunavut was 17.4 percent in 1999. Justice Canada, Research and Statistics Division, *Nunavut Community Profiles* (draft), August 2000.



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- A high percentage of trials by jury (75 percent of trials between January 1, 2000 and June 30, 2002), as opposed to trials by judge alone, was raised in the N.W.T. Trials by jury were felt to be more expensive than trials by judge alone.
 - The number of unrepresented litigants in civil law cases, which increases the number of adjournments and court appearances, was raised in the Yukon.
 - The requirement for decentralization of government services, which results in the NLSB headquarters being located in Gjoa Haven, was raised in Nunavut.

Respondents also indicated that federal and territorial legislation and policies have a significant impact on the cost of service provision. These are discussed in more detail in Section 13.0.

13.0 FEDERAL AND TERRITORIAL LEGISLATION AND POLICIES

Respondents from all three jurisdictions reported that federal and territorial legislation and policies have a significant impact on aspects of service provision – on demand, quality of service, and cost. In some cases, there were commonalities among the jurisdictions in terms of the legislation and/or policies identified. However, there were also many issues unique to each jurisdiction. Finally, all three jurisdictions identified resource allocation decisions as having a strong impact on service delivery.

13.1 Federal and territorial legislation

The following federal and territorial legislation were identified as having a significant impact on service provision by increasing the time required to manage cases:

- *The Northwest Territories* – The Canadian *Charter of Rights and Freedoms* (increased awareness of individual rights and increased complexity of other cases); the new *Youth Criminal Justice Act* (YCJA) (increase in jury trials, maximum penalties, conditional sentences); drug-related legislation (interception of communications, search warrants, confiscation of funds, and higher penalties for marijuana cultivation); and uttering threats (now a separate charge).
- *The Yukon* – Federal firearms legislation and forensic DNA analysis legislation.
- *Nunavut* – Federal firearms legislation and the YCJA. Also, in general, a lack of consultation on the part of the federal government when developing legislation, which can have severe impacts on service provision in Nunavut, given its unique court structure and cultural differences.

Respondents in the Yukon also identified two changes in legislation that reduced the defence time required. Changes to the *Criminal Code* increased the RCMP's options for releasing offenders (reducing the number of show cause hearings) and the *Young Offenders Act* increased the level of diversion, decreasing the need for defence counsel in Youth Court.

13.2 Federal and territorial policies

The following federal and territorial policies were identified as having a significant impact on service provision by increasing demand for services and the time required to provide services.

- *The Northwest Territories* – Policies such as zero tolerance for spousal assault and the territorial policy of laying a “failure to appear” charge in response to non-appearance in traffic offences were felt to increase overall demand for legal services. Policies such as community-based alternative justice measures, creative conditional sentencing, and the territorial policy towards community courts (as opposed to a central resident court) were felt to increase the time required to provide services.
- *The Yukon* – Policies such as zero tolerance for spousal assault were felt to increase overall demand for legal services. Policies such as the use of alternative sentencing procedures, Domestic Violence Treatment Option (DVTO) court, youth justice panels, and Crown case assignment and handling procedures (lack of consistency, late disclosure, etc.) were felt to increase the time required to provide services.
- *Nunavut* – Policies such as zero tolerance for spousal assault, failure by the Crown and RCMP to make use of alternative justice measures, lack of prosecutorial oversight on the part of the Crown, and the extent of undertakings and conditions in sentencing were felt to increase overall demand for legal services. Policies such as the Crown electing to proceed by indictment more than strictly necessary were felt to increase the time required to provide services.

Respondents in Nunavut also pointed out that PLEI activities undertaken by the federal government at the national level could have a significant impact on demand for legal services (for example, recent initiatives on child support).

13.3 Resource allocation

Respondents in all three jurisdictions reported that there is an imbalance in resource allocation between legal services organizations and the Crown. As a result, the Crown “outguns” the legal services organizations – Crown prosecutors are able to prosecute cases far more intensively than the legal services organizations are able to defend them. The Crown also finds it easier to recruit and retain employees, as the opportunity to transfer from jurisdiction to jurisdiction is available and the Crown is able to provide housing and other benefits.

14.0 PROPOSED SOLUTIONS

A wide range of solutions were proposed by interviewees in the three jurisdictions in response to the many areas of unmet need identified by respondents. For the most part, the proposed solutions are unique to each jurisdiction, reflecting the interaction among the areas of unmet need, the socio-economic situation, the legal system, and the system in place for legal service provision.

Tables 14.1 through 14.3 summarize the proposed solutions across the three jurisdictions and areas of unmet need.



Table 14.1 – Proposed Solutions to Areas of Unmet Need in the Northwest Territories

Area of Unmet Need	Proposed Solutions
Circuit Courts	<ul style="list-style-type: none">• Arrange for counsel and CWs to arrive early in community.• Resident, part-time CWs in all communities.• Option for a 2nd counsel on circuit to ease workload.• Increase the number of Aboriginal representatives in the legal system.
Courtworkers	<ul style="list-style-type: none">• Significant increase in training, resulting in certification for a defined role.• Uniform minimum standards for new CWs.• Institute an automatic initial training period of 4–6 weeks for any new hire.
Family and Other Civil Law	<ul style="list-style-type: none">• Explore collaborative approaches (more culturally appropriate and attractive to practitioners).• Establish a Family Court.• Increase the tariff for family law cases and simplify the billing procedures.• Hire another staff counsel.• Contract with family law practitioners from outside the N.W.T.• Provide services in a less intimidating setting, in collaboration with other agencies.• Increase PLEI for family law.
Prior to first appearance	<ul style="list-style-type: none">• Establish a 1-800 line to reach counsel after hours.• Explore video-conferencing as an alternative for bail/show cause hearings (in collaboration with other agencies).• Increase the use of CWs in bail/show cause hearings (would require additional training).
PLEI Delivery	<ul style="list-style-type: none">• Plain language PLEI materials.• Oral and in-person communication.• Paralegals as PLEI deliverers.• Basic information sheets attached to charges.

Table 14.2 – Proposed Solutions to Areas of Unmet Need in Nunavut

Area of Unmet Need	Proposed Solutions
Human and financial resources for general service provision	<ul style="list-style-type: none"> • Build existing criminal and family law positions into the core funding formula for the NLSB. • Establish a mechanism to review the adequacy of staff lawyer positions based on caseloads, legal aid applications, and available private legal aid panel. • Ensure rough parity of benefits for NLSB lawyers and Crown counsel (including staff housing). • Ensure adequate office space for regional legal services clinics. • Establish and maintain an independent database and communications system for the NLSB.
Circuit courts	<ul style="list-style-type: none"> • Arrange for counsel to arrive early in community. • Resident CWs in all communities. • More full-time CWs. • Option for a 2nd counsel on circuit to ease workload, discontinuity.
Courtworkers	<ul style="list-style-type: none"> • Significant increase in training, resulting in certification for a defined role. • Translators and interpreters in courts. • Improve infrastructure. • Ensure that CWs and support staff have salaries and benefits comparable to other public servants in Nunavut. • Increase number of counsel to focus CWs' role. • More full-time CWs and CWs in each community. • A CW Trainer/Administrator.
Family and Other Civil Law	<ul style="list-style-type: none"> • Establish broader coverage of legal aid services for family law and other civil law areas (including a chargeback mechanism for those who can afford to contribute to legal services).
PLEI delivery	<ul style="list-style-type: none"> • Plain language PLEI materials. • Oral and in-person communication. • Materials in local languages. • Improved co-ordination of PLEI activities. • Training for PLEI providers. • More funding for PLEI activities.



Table 14.3 – Proposed Solutions to Areas of Unmet Need in the Yukon

Area of Unmet Need	Proposed Solutions
Circuit courts	<ul style="list-style-type: none"> • Arrange for counsel to arrive early in community. • Resident CWs in all communities. • Options for a 2nd counsel on circuit to ease workload.
Family and Other Civil Law	<ul style="list-style-type: none"> • Fund custody, access and support issues to the final order stage. • Establish “storefront” services in combination with YPLEA. • Establish a co-ordinated Family Court. • Ensure earlier legal aid intervention in child welfare cases.
Courtworkers	<ul style="list-style-type: none"> • Significant increase in training, resulting in certification for a defined role. • Establish a shared vision of CW role. • Increase co-ordination between CWs and YLSS, without losing CW independence.
PLEI delivery	<ul style="list-style-type: none"> • Plain language PLEI materials. • Oral and in-person communication. • Training for PLEI deliverers. • YPLEA office relocation to downtown. • Increased outreach to outlying communities.

15.0 CONCLUSION

As demonstrated in this summary report, the three studies into legal services provision in the Yukon, the Northwest Territories, and Nunavut identified some similarities in the challenges facing these jurisdictions, but also many differences.

There are differences between the three territories. The most significant of these are in the mandates of the legal services organizations, the legal systems in place in each jurisdiction, and some socio-economic indicators (particularly the percentage of population of Aboriginal/Inuit ancestry and the percentage of individuals who do not speak English as their first language). There are also some similarities among the three territories. The most significant of these are the circuit court structure, the practice of presumed eligibility or “practical delivery,” the vast distances between communities, the high rates of crime (particularly violent crime and sexual assault), and the frequent lack of local resources such as remand centres, counselling facilities, and mediation services.

All three studies report that unmet need for legal service provision clearly exists in all sectors examined, although to differing extents in the different jurisdictions. In some cases, this unmet need is the result of lack of representation (for example, in the family and other civil law sector, and with respect to PLEI). In other cases, unmet need was identified as a result of under-representation due to inadequate quality of representation (for example, in JP courts where the courtworkers may not have sufficient or appropriate training). The extent of unmet need reported has a negative impact on all parties to the justice system: the accused and the victim (or the litigants, in the case of family and other civil law matters), the counsel for all parties, the courtworkers, and members of the local community. However, in some cases, it is clear that unmet need affects some groups more than others. For example, lack of

representation in the area of family law is felt more severely by women than men and under-representation due to cross-cultural communication issues is felt more severely by people of Aboriginal ancestry than by others.

All three studies also discussed the cost drivers affecting legal service provision in the North. This was an area where the context for legal service delivery had a particularly strong impact (for example, the impact of geography and the circuit court structure on human resource requirements and the cost of service delivery). However, respondents from all three jurisdictions also identified federal and territorial cost drivers, including legislation (for example, the *Youth Criminal Justice Act*), policies (for example, zero tolerance for spousal assault), and resource allocation between the Crown offices and the legal services boards.

Diverse solutions were presented in each study according to the level and nature of unmet need identified in each jurisdiction. Some common solutions were identified with respect to the need for courtworker training and changes to the method of PLEI delivery, for example.