

Access to Justice in the NWT Inventory Project Report

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Access to Justice in the NWT

Inventory Project Report

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Introduction

The Access to Justice Committee of the Law Society of the Northwest Territories contracted Yellowknife consultant, Aggie Brockman, to produce an inventory to provide frontline workers, justice professionals and others with a listing of the services, publications, individuals and organizations that provide legal information, support or direction to the public.

The inventory will also assist the Law Society to identify concerns or gaps related to access to justice within the NWT.

The project

At the beginning of the project, the contractor and NWT Legal Aid Commission Executive Director identified four research questions which formed the basis for interviews with agencies and individuals.

1. What resources/tools do you know of that improve access to justice in the NWT (criminal, civil, family)
2. How should we organize an inventory of resources/tools?
3. What gaps exist?
4. How can we best keep an inventory current?

An initial list of people to interview for the project was developed and then expanded, in consultation with Legal Aid Commission lawyer Jeanette Savoie. The contractor contacted 71 people by email and/or telephone. Email-only contacts produced fewer responses and resulted in less participation than initial and/or follow-up telephone calls.

A notice about the project was published in the Law Society electronic newsletter. This prompted responses from two individuals.

The consultant received input into the inventory project from 33 individuals or organizations during 30 in-person and telephone interviews and through two

emails. Two interviews included three agency representatives and one included two agency representatives for a total of 35 project participants.

Project participants suggested additional people to speak to. The project budget and time available made it impossible to follow up on all of those suggestions as well as continue to follow up with people who did not respond to email or telephone requests for input.

The people who provided input into the inventory are listed in Appendix A.

What should be in the inventory?

Almost every project participant suggested items to go into an inventory to help frontline workers improve access to justice for the people they serve. The inventory includes almost all of those suggestions. The inventory does not include social service agencies and resources that are not directly justice related, though it is recognized that people and issues often intersect with both the justice and social service systems.

Two people noted that the availability of help for NWT residents to access justice has improved in the past decade or more. Improvements include online access to court schedules and dockets and A New Day, the program for men who have used violence in family relationships which operated out of the Tree of Peace Friendship Centre in Yellowknife. The problem, said several participants, is that people don't know what is available, and where to look for help.

While some participants wanted the inventory to be extensive, others suggested that a tighter focus could improve its effectiveness by making it more user friendly.

Legal Aid Commission Outreach lawyer, Jeannette Savoie, was the most frequently suggested resource. Project participants praised her service as "crucial" and say much more of this kind of assistance is needed.

Other suggestions included the following.

- NWT Human Rights Commission
- Family Law Guide/book
- Child support, family mediation, maintenance enforcement information
- How to make complaints against the RCMP and other professionals
- Divorce packages
- Emergency Protection Order (EPO) pamphlets
- Canadian Bar Association – legal health checklist
- Workers Safety and Compensation Commission, Workers' Advisory and Employment Standards brochures, tips sheets, worksheets

- Law Society of the NWT lawyer referral service
- Legal aid
- Emergency numbers
- Victim Services information and contacts
- Going to court and what to do if arrested information
- Federal Victims Bill of Rights
- Member of Parliament contact information
- Odara (Ontario Domestic Assault Risk Assessment tool)
- Internet crime information
- Federal mini-manual re: Youth Justice Act
- Federal website re: child support and family law
- *Don't Alienate the Kids*, by Bill Eddy
- Adoption registry
- Court process information
- BC law society web page
- LawNow pieces written for public
- Appeal boards, eg. income assistance, where people can go when feel wronged by the system
- Wellness Court, Domestic Violence Treatment Option (DVTO) information
- Salvation Army program for offenders
- A New Day program
- RCMP role re: youth issues
- Legal Pathways
- Seniors Info Handbook
- NWT Caregivers Guide
- NWT Help Directory
- YK Street Services guide
- Probation offices, Community Justice Committee and Police contacts for each community
- Youth and individual rights under the Mental Health Act
- Record suspension link to website
- GNWT good basic info from web site
- Forms for a fine extension request for overdue fines
- Guardianship referral
- Vital statistics eg. birth certificate form
- Choice of counsel form for certain crimes
- Inter-jurisdiction documents or examples of documents

In many cases these suggestions reflect the items that justice professionals and frontline workers use the most frequently.

The suggestions lead to conversations about the difference between the justice system and an individual feeling that justice is served when they believe they have been treated unjustly.

“It’s important to be heard,” said one participant. “It’s beneficial to organizations to understand and to be forced to account for their behavior. It could change things in the future for others.”

Organizing the inventory

The project participants had useful suggestions for organizing the inventory. There was universal agreement that the inventory should not include contact names for programs and services because of frequent and ongoing staff turnover in many positions.

While some interviewees wanted a paper copy of an inventory, most were happy with an online format that could be printed easily. A couple of project participants noted that anything that is printed is out of date immediately. There was general agreement that many members of the public do not have Internet access, but that it is available for the inventory audience.

Early in the project there was agreement among project participants to organize the inventory into three categories - civil, criminal and family law. Later, some participants expressed concern that people would not know what belongs under these categories and that the term, civil law, especially would need to be explained. A participant suggested sorting the inventory by topic and this approach was agreed to during subsequent interviews. One interviewee cautioned that the topics should be fairly specific, eg. child support, rather than family. Another suggested that we organize the inventory by community, a format used by the NWT Department of Health and Social Services for the NWT Help Directory, though it was agreed this could be repetitious.

One organization suggested the inventory be developed into a mobile App to facilitate use of the inventory away from the office and on mobile devices. The topics used in the inventory could act as keywords for an App or searchable online aid.

Other participants suggested that while the inventory should be helpful, what frontline workers and the public really needs is a staffed clearinghouse for information related to social and justice issues.

Access to justice barriers and gaps

Project participants identified several gaps in the system that negatively impact access to justice for NWT residents. Many people found it difficult to draw the line between social and justice problems since the two are often connected.

Some of the gaps relate to information, but others to lack of services and programs or how services do, or do not, interact with each other.

Sharing information

Many frontline workers and those within the justice system say that there are online sources of information and resources, but less out there for people with limited literacy skills, computer access or the ability to access information on the Internet. Much of the information on the Internet is not plain language or accessible, so people do not refer clients to websites, or even see it as appropriate to print and give out materials from the Internet. Many noted that while there is information in print and online for professionals, making it plain language would help save time and effort rewriting or 'translating' information for clients.

"I know there are some resources on the website - but most of my clients aren't computer literate. So, I've never used them nor referred anyone to them -- and I am not aware of any defense lawyer that has."

Printed materials are rarely in a format that people with lower literacy levels find useful. Some project participants say the public needs short, plain language videos using visuals. These would be useful to frontline workers helping clients understand issues and services. Videos could be accessible on YouTube. Graphic novels were also suggested as a format that might be helpful. While many people have low literacy skills, helping them access justice is also hampered when people are too shy or embarrassed to ask for help.

"You need really good English to understand even the family law guide. A chart or visual guide is needed to explain maintenance support. People end up with their employment income garnisheed and it can be part of a downward spiral that they can't get out of. Information and help is also needed for people whose bills get out of line."

Participants suggested that all programs and services be accessible through toll free phone numbers.

The specific information needs identified during this project include:

- How to revoke an emergency protection order, for example when a woman needs her partner to look after their children
- NWT-specific posters visually illustrating the court process for adults and youth
- Parenting After Divorce tools for those who can't access the workshops so they have information about court orders regarding child custody, access and support
- An Emergency Protection Orders video
- Wellness and DVTO Court pamphlets
- Visual information about the rights and responsibilities of temporary workers and a map of services, translated into Tagalog

- Mediation availability and information about where and when it can be accessed
- An online listing of notaries public and commissioners of oaths
- Information/pamphlet about the fine options program
- Plain language online checklist of divorce documents
- A definition of youth
- Video information about community justice committees so people know what they do and where they are located

The Courts

Project participants said that some people misunderstand the jargon used within the courts. Useful aids suggested include a poster, person or pamphlet to help people understand key words that could be used at a person's first court appearance. For example, the word counsel and counselor is confusing since it can mean a lawyer or a person who provides psychological support.

People go a long time without reacting to court orders and then find themselves deep in a financial or procedural hole. They may not recognize the consequences or have the long-range thinking that prevents them missing a court date. The court schedule may be on a website, but if people can't navigate that, they may not know the court date ahead of time.

Members of the older generation or people living a traditional lifestyle in a small community with little employment "don't appreciate the importance of being somewhere and being on time. It seems like a basic concern, but people are not aware of the consequences." They may not understand what an undertaking is or how seriously the court views a breach.

One project participant noted that some professionals in Yellowknife seem unaware of the culture and lifestyle within small communities, that people with no job have no reason to have a phone or to place importance on the concept of time. People in small communities face other barriers. Without access to a fax machine it is difficult to get information to a lawyer. Papers may be sent for signature to someone without the literacy skills to understand what they are being asked to sign.

Access to courts would be improved by making child care available. Getting to court is a barrier if someone has not had enough notice about the date, if they cannot get a babysitter, or if their sitter cancels or is sick.

Other project participants identified a need for basic and visual information to give to clients about how the court process works, how to be a witness, what to do if charged.

One project participant cautioned that, while videos for communities without court workers could help, videos need to be from a dependable and known source so people can tell that the information is accurate.

Small Claims Court

Project participants said that small claims court is underutilized because people don't know about it. Some of the information gaps identified were: how small businesses can collect on an unpaid invoice and a listing of licensed collection agencies for the territories. Some peoples suggested that the gap is greatest for debts under \$10,000 while others felt that the increase in the small claims court limit to \$35,000 increased the burden on people who represent themselves.

Justice navigator / advocate

No matter what legal information is out there and what the format, many project participants believe that the single most important way to improve access to justice is to create a justice navigator position. A navigator would ideally be able to communicate in the local indigenous language, as well as English, on a wide range of issues.

“No amount of resources or tools will replace personal help, especially from a person who over time develops contacts they can go to for information.”

The importance of non-verbal communication makes in-person help more useful than telephone assistance. While some people suggested an outreach lawyer in every community, others recommended that local and regional indigenous governments take on this role since they have the capacity to work in communities and may have the confidence of the people being served. With information and legal help they could provide advice on issues such as wills, power of attorneys and health directives. Some of these governments have shown their interest by paying for outreach services to come into their regions.

Project participants described the role as a navigator, an advocate, a problem-solver and a gap-filler. They want someone or an agency to help people who fall through the cracks to get through the system and to know where to turn for the help they need.

“Even other lawyers don't know where to send people. There is a potential role for a paralegal or someone in something like that role.”

There is frustration that there are not enough places to refer people for advice, not necessarily for legal representation. A navigator or advocate could help resolve issues that happen outside of the justice system, eg. harassment not related to one of the discrimination grounds in the Human Rights Act.

One participant suggested that Members of the Legislative Assembly might be good sources of information about the most common concerns of people, since that's where people seem to turn for help.

Teenagers with Fetal Alcohol Syndrome Disorder (FASD) need a navigator or advocate helping them show up for appointments and court appearances. “If they can avoid jail time for breaching probation, it could save a lot in court and jail costs.”

In some cases people simply need to ask someone if they need legal advice. But as one person suggested, the current outreach lawyer can't do everything.

While there is a need for an advocate generally two areas stood out for participants – housing and immigration. An advocate could provide advice on housing issues and go with people to rental office hearings. “Many people don't understand the process, their options and sometimes even why they are there.” As for immigration, even someone part time could help check the progress on people's applications and help temporary foreign workers.

One person noted that the NWT is the only territory without a youth advocate. They saw a need for a navigator for both justice and social services. Youth who are in treatment or out of care who don't agree with a social services decision need somewhere to go. A human rights complaint not always appropriate.

Agencies now do some of the work of a navigator or advocate off the side of their desks, but it isn't enough and increasingly difficult as agencies are funded on a project basis, without the core funding or capacity to take on roles and responsibilities that are not specifically identified and paid for.

Some court workers may play an advocate or navigator role, doing the extra things that can smooth access to justice for some residents. “If people could do these things on their own they wouldn't be in trouble.”

Training and turnover of community justice workers

More training is needed for community-based government service and justice workers so they can help community residents to complete forms and with other tasks. Some project participants questioned how well community justice workers understand legislation, such as that related to child support.

“Don't assume that frontline workers know things. They might just be a nice person who recently got hired.”

Community frontline workers need someone to teach them in person how to complete forms they are not familiar with. “Online help isn't as helpful. There's a lot of back and forth if forms are not completed correctly the first time, for example if someone passes away and doesn't have a lawyer.”

Turnover of justice-related workers is an issue that can impact access to justice. Long-term court workers, for instance, understand their communities, the people they serve and how to navigate the system.

Trained interpreters

The NWT has 11 official languages and there are few legal services available in most of them. While one project participant noted that CanTalk, an online translation service, is useful, an indigenous language speaker was adamant that it doesn't work. Project participants noted that there are no Dene language speakers or interpreters available for civil cases and no access to paralegal services in indigenous languages.

People also noted that the disappearance of legal interpreter/translator training in the Department of Justice and GNWT staff interpreters have harmed the system's ability to serve NWT residents. "We need to ensure that everyone is represented equally and that not happening."

People say that often interpreters are simply whoever is willing to do the job and that a person who speaks both English and an indigenous language may not read English well or understand certain concepts. "Family and friends are not familiar with legal terminology or they don't always want to share information with people."

Time-strapped Crown and defense counsel and pressures associated with the court process add to the difficulties for English-as-a-second language speakers. "If we can't have an interpreter, at least have someone who will take time with people for court preparation."

Available legal counsel and legal aid

Many project participants identified a lack of lawyers in the NWT generally, and family law and private lawyers specifically, as hampering access to justice.

People fall through the cracks if they do not qualify for legal aid. The people who make too much money to qualify for legal aid, but not enough to pay expensive legal costs are the group most in need. Agencies need guidance about legal aid eligibility. While criteria focuses on income, one person questioned whether the level of expenses should also be considered so people don't give up because they can't access justice. People also need to know they can negotiate legal aid coverage.

There are some legal matters not covered by legal aid and there are barriers to finding a private lawyer.

"People don't know where to find one. The Law Society website is not accessible." Justice committee workers may not know that the lawyer referral service on the website exists. If they do, at least one interviewee was doubtful that they could find the service or know how to use it and suggested it could be part of their annual training.

The lawyers listed in the referral service directory may not necessarily be taking clients and within the NWT lawyers often find themselves in conflict of interest situations. One interviewee suggested that a way should be found to identify legal firms in Edmonton with staff who can practice in the NWT. Another proposed a

stand-alone website, using plain language writing and design, to answer all the questions someone might have about hiring a lawyer, including how to prepare for appointments and what a lawyer costs.

Within the court system, people in communities are at the mercy of the court schedule and turnover of counsel. “People can wait for months to talk to a lawyer and then the lawyer has hardly any time to talk with their clients.” Sometimes the lawyer on duty can be out of their depth in family law situations.

The difficulty and cost of getting a lawyer results in people not being represented in legal matters and “the system is not friendly for people without lawyers”. Fairness is a major issue whether it’s in court or unrepresented complainants in human rights cases, which most often relate to employment and disability.

Project participants were not optimistic that the shortage of lawyers would be resolved any time soon so they provided some thoughts on how to help people reduce their need for lawyers or better represent themselves “without creating a monster”.

- Provide clear information, checklists and forms to help people file documents in divorce cases, represent themselves in small claims court, request a child support change or for landlords wanting to file for an eviction.
- Make available unbundled services or mini contracts with lawyers to limit legal costs.
- Collaborative lawyers could be retained on the understanding they will resolve cases outside of court to reduce time and expense.
- Tools, such as worksheets and checklists, could help people prepare information to save time and money with a lawyer.
- Provide more human rights information generally and a checklist people could use to test whether they have adequate evidence of discrimination, particularly for complaints based on family status or social conditions.
- Educate the public and legal profession about limited retainers as a way to help individuals do much of the legal work necessary themselves rather than have a lawyer take on their whole case.

One person noted that the NWT is one of the only jurisdictions in Canada without any form of legal support for foster families where there is an allegation against a foster family member.

Finally, the legal aid appeals that take place by phone are also seen as a barrier to accessing justice.

People with disabilities

A couple of project participants noted a need for training for justice professionals to improve recognition of the degree and the nature of disabilities among people in contact with territorial court. They say an active outreach person is needed to help

people get to court when they are supposed to be there. “We need a way to reduce the number of failure to appears.” While judges may identify FASD as a factor in a case before them, it’s difficult to distinguish between what a person won’t do and what they can’t do, so FASD may not be reflected in the sentence.

Systemic issues

Lack of communication between different governments and departments and inflexible policies can deny access to justice for something as simple as getting identification issued to an NWT resident who moved here from Nunavut.

The emphasis within the justice system on fixing rather than preventing crime is another systemic issue related by project participants.

Some offenders with FASD or other disability are adults who sometimes do not have the capacity to make decisions that will keep them out of the system. A graduated release or halfway house could set these people up with local supports. Some people have been offending since they were teenagers. A re-integration team could provide a stable home and supports necessary to keep people out of the justice system.

Other project participants frame the solution as needing more integrative case management such as that associated with Wellness Court.

A protocol is needed where the first point of contact within the justice, health or social service system facilitates victims signing a release of information form. Without that, victims of crime may not be referred to victim services until late in the process when there is then a panic to get a victim impact statement. People can also be re-victimized by having to retell their stories to several people. This protocol could make hospital and health centre emergency staff members more comfortable contacting victim services to come and take victims home, rather than putting them in a taxi, a potentially disturbing experience for someone who has been assaulted.

Victims of crime face a number of other barriers that make accessing justice difficult. For instance, at the Yellowknife RCMP detachment a glass divider makes it impossible to have a private conversation with the RCMP employee on duty without speaking loud enough to be heard by other people in the foyer. At the Stanton Territorial Hospital emergency department there is no separate space for sexual and domestic assault victims to wait for treatment other than a public waiting area.

Other identified service gaps include: inadequate victim services; funding for human rights cases; and, greater access to mediation so disputes that seriously affect peoples lives can be resolved outside of court and before they become health and social issues.

Some participants questioned whether there are any consequences for those who break probation orders or don’t do community service hours, suggesting it’s not

clear who has an enforcement role and a lack of clarity around the role that agencies might have in monitoring probation orders.

Strict enforcement of travel rules by Corrections and the Department of Health and Social Services are seen as creating homelessness in Yellowknife, a situation that can lead people to justice system encounters. Community people who travel to Yellowknife for medical reasons or who are released from jail are stranded without a way home if they miss their scheduled flight. Some project participants suggested that departments work together more effectively and acknowledge the impacts of their policies on NWT citizens, particularly those who are marginalized and most likely to fall through the cracks.

Keeping the inventory current

Project participants most commonly suggested that the Law Society take responsibility for keeping the inventory current. The Legal Aid Commission was also suggested.

Another suggestion was to use the British Columbia model for ClickLaw, which is operated by Courthouse Libraries BC and sponsored by a network of British Columbia organizations that provide or support public legal education and information. One person suggested updating the inventory could be a volunteer project for the NWT branch of the Canadian Bar Association. There was little interest in government taking over responsibility for the inventory because of the danger that priorities could shift and responsibility could become unclear over time.

Most interviewees said a staff person should be responsible for regular updates and/or the Law Society hire an intern, articling student, summer student or social work practicum student to contact everyone listed in the inventory for updated information at least once a year.

“Someone needs to own it. There needs to be a clear responsibility.”

Several project participants suggested that notices be sent every six to 12 months reminding people about the inventory and asking them to update their listing and suggest other changes. While most acknowledged that there would likely be limited success in getting feedback from agencies, others suggested the notices could remind people about the inventory and help increase its use.

Some people wanted a budget attached to keeping the inventory current to make sure it happens. It was also suggested that there should be a budget for increasing access to justice in the NWT.

Research participants

APPENDIX A

Alana Mero, Justice Committee Member, Yellowknife
Ashley Gamble, Community Justice Committee, Norman Wells
Barb Hood, NWT Seniors Society, Yellowknife
Caroline Wazonek, Lawyer, Yellowknife
Deborah McLeod, NWT Human Rights Commission, Yellowknife
Denise McKee, NWT Disabilities Council, Yellowknife
Dorothy Chocolate, Justice Canada, Yellowknife
Dusty Sauder, Salvation Army, Yellowknife
Glen Rutland, Lawyer, Yellowknife
Hawa Dumbuya, Marie Speakman, Sandra Drost, Native Women's Association of the NWT
Iris Hamlyn, Kassandra Spencer Hope's Haven, Yellowknife
Jacob Kudlak, Community Justice Committee, Sachs Harbour
Janice Laycock, GNWT Justice, Yellowknife
Jayneta Pascal, Community Justice Committee, Aklavik
Jeannette Savoie, Outreach Lawyer, Legal Aid Commission, Yellowknife
Katherine Robinson, Office of the NWT Premier, Yellowknife
Ken Kinnear, Children's Lawyer, Yellowknife
Lorraine Phaneuf, Samantha Thomas and Annemieke Mulders, Status of Women Council of the NWT
Lucy Tulugarjuk, Community Justice Committee, Fort Smith
Lydia Bardak, John Howard Society, Yellowknife
Lynn Hjartarson, Justice Canada, Yellowknife
Marcella Fabian, Community Justice Committee, Fort Resolution
Margo Nightingale, Lawyer, Yellowknife
Pat Waugh, Community Courtworker, Fort Simpson
Patrica Voudrach, Government Services Officer, Tuktoyaktuk
Paul Falvo, Lawyer, Yellowknife
Rick Alexander, Tree of Peace Friendship Centre, Yellowknife
Robin Nadli, Community Justice Committee, Fort Providence
Shari Olsen, Community Courtworker, Fort Smith
Steve Versteeg, GNWT Justice, Yellowknife
Sue Glowach, GNWT Justice, Yellowknife
Tammy Roberts, Foster Family Association of the NWT, Yellowknife
Val Watsyk, Community Courtworker, Yellowknife