



# ANNUAL REPORT

ON THE STATE OF INUIT CULTURE AND SOCIETY 13-14

Examining the Justice System in Nunavut



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**Unidentified Inuit women and children and an RCMP officer outside an RCMP post office, July 1951.**

*W. Doucette/National Film Board of Canada Phototèque Collection/Library and Archives Canada/e002265622*



## EXECUTIVE SUMMARY

Nunavut Tunngavik Inc.'s (NTI) 2013/2014 *Annual Report on the State of Inuit Culture and Society* focuses on Nunavut's criminal justice system within the larger context of social and economic challenges faced by Inuit. This report focuses on three areas within this broad topic: community justice initiatives, family violence, and the relationship between mental health and the criminal justice system.

The Government of Canada's criminal justice system was used to advance Canadian sovereignty in the Arctic, laying the groundwork for more intrusive social policies such as community relocation and residential schooling. Many of the social and economic challenges experienced by Inuit today are rooted in the loss of power and control caused by these policies. Given this background, there was a strong pre-division expectation that Inuit would have a greater role in the administration of justice in the new territory, yet Inuit continue to play a marginal and largely underutilized role in this area. Between 1999 and 2012, Canada's crime rate decreased while Nunavut's crime rate more than doubled, and the proportion of those crimes considered serious and violent also rose.

The reasons for this trend are complex, but a partial explanation can be found in the territory's continuing lack of basic infrastructure and resources needed to care for its citizens. The severe housing shortage in the territory puts stress on a population with many people who have experienced trauma. Women and children are the most vulnerable to violence, often because they lack economic security and access to shelter or affordable housing. These issues are compounded by the fact that basic mental health services are scarce in Nunavut, and there are few safety nets in place to ensure that people struggling with trauma or mental health disorders can obtain the services and supports they need. As a result, the Nunavut Court of Justice (NCJ), the Legal Aid Program, and Nunavut Corrections are too often the first stop for troubled people who do not have access to care.

The system that exists in Nunavut today is failing children and youth: far too many grow up experiencing adversity and lack the services and support they need in order to live productive lives. These same children and youth enter the criminal justice system, creating a vicious cycle. Individuals working on these issues told NTI repeatedly that justice is part of a system that must be looked at holistically; NTI was told that government agencies, advocates, and Inuit organizations work in silos, and these barriers need to be torn down to forge the cross-sector

partnerships needed to address the challenges facing the Nunavut population in a holistic way. NTI agrees and hopes that the analyses and recommendations contained in this report can facilitate the process. These recommendations will not fix the entire justice system or its associated social challenges. However, they provide a starting place for a new way of thinking about the administration of justice in Nunavut.



Group of Inuit outside RCMP detachment awaiting arrival of passengers from *R.M.S. Nascopie*. From far left: Qaarlugaasi and Kautak, Pangnirtung, NWT (now NU), Aug. 1946.

George Hunter/National Film Board of Canada. Photothèque/Library and Archives Canada/PA-166454



## RECOMMENDATIONS

### RECOMMENDATION 1

A trauma-informed system of care is needed to coordinate mental health resources to identify and screen at-risk individuals for trauma history and mental health disorders. Such a system should involve implementing a referral system at schools, clinics, Youth Justice Court, and Community Justice Committees (CJCs) that identifies at-risk children and youth and connects them with trauma-informed services and support. The Government of Nunavut's (GN) Department of Health and Department of Family Services should lead this initiative in partnership with NTI and the GN's Department of Education.

### RECOMMENDATION 2

CJCs currently lack the training, resources, and support needed to play a more meaningful and sustainable role in the administration of justice in the territory. CJCs operate at arm's length from the Department of Justice's Community Justice division through hamlet-employed community justice outreach workers. NTI recommends that the Department of Justice hire committee members as GN employees in order to provide ongoing training and support, to prevent attrition, and to help alleviate the administrative burden that can weigh down this important work.

### RECOMMENDATION 3

Health Canada's 2012 across-the-board funding cuts for the National Aboriginal Health Organization (NAHO), Pauktuutit Inuit Women of Canada, and Inuit Tapiriit Kanatami (ITK) are part of the current government's assault on the health of Aboriginal Canadians. Pauktuutit plays a key role in delivering programs that help close gaps in services that contribute to disproportionate levels of physical and sexual violence against Inuit women and children in Nunavut. For fiscal year 2015/16, Health Canada should restore health funding for Pauktuutit to pre-2012 levels in order to facilitate this vital work. Accordingly, Justice Canada and Public Safety Canada should give priority to funding proposals for Inuit advocacy organizations in recognition of the disproportionate need in Inuit communities.

### RECOMMENDATION 4

The draft *Ilaqiitsiarniq* family violence prevention action plan is not a meaningful contribution to violence prevention. A coordinated cross-sector initiative akin to the Embrace Life Council's work on suicide prevention is needed to develop a meaningful strategy and action plan on ending family violence in Nunavut. Ideally, this body would include the NTI, GN, Nunavut Housing Corporation, Qullit Status of Women Council, and the Royal Canadian Mounted Police (RCMP) as partners. NTI will work with the Qullit Status of Women Council to convene this body.

### RECOMMENDATION 5

The *Family Abuse Intervention Act* (FAIA) should be amended to include a provision for mandatory clinical screenings for Community Intervention Order (CIO) and Emergency Protection Order (EPO) respondents carried out by community psychiatric nurses. Screenings should be used to identify mental health, home environment, and physical health needs and to refer people to a wider range of trauma-informed mental health services and support when needed.

### RECOMMENDATION 6

Nunavummiut lack access to consistent psychiatric care in part because there are no resident psychiatrists in the territory. People requiring psychiatric diagnoses or psychological therapy generally must access these resources outside Nunavut. The Department of Health should develop a multi-year recruitment plan that focuses on recruiting and retaining resident psychiatrists and clinical psychologists. In addition, the department should explore implementing telehealth videoconferencing in community clinics or schools to connect people with the psychiatric and psychological care they need.





## Examining the Justice System in Nunavut

### RECOMMENDATION 7

There is a long-standing need for a substance abuse treatment centre in Nunavut. The lack of substance abuse treatment in the territory has far-reaching, negative impacts, contributing to a higher crime rate and a larger number of incarcerations. The 2013 renovation of the Akausisarvik Mental Health Treatment Centre by the GN showed a promising political commitment to mental health. The GN must fulfill this commitment by establishing a substance abuse treatment centre in the territory.

### RECOMMENDATION 8

Nunavut needs a mental health strategy to coordinate mental health resources, foster interdepartmental collaboration, and set formal protocols for people with mental health needs who enter the criminal justice system. The Department of Justice and Department of Health should take the lead on this issue in collaboration with the NTI, NCJ, and Legal Aid.



Nunavut Territory and Communities<sup>1</sup>



### INTRODUCTION

On Aug. 14, 1917, Sinnisiak and Uluksuk stood trial in Edmonton before an all-Caucasian jury nearly 5,000 km from their home at the mouth of the Coppermine River near present-day Kugluktuk. The two men, having confessed the previous summer to murdering Roman Catholic missionaries Jean-Baptiste Rouvière and Guillaume LeRoux in 1913, were the first Inuit ever prosecuted and sentenced in a Canadian courtroom. Absent a court of its own at the time, crimes committed in the Northwest Territories (NWT) were tried in the Yukon Territory or in any Canadian province. Sinnisiak and Uluksuk were arrested the previous summer after news of the disappearance of the missionaries reached the Royal North West Mounted Police.

The trial was a spectacle. Sinnisiak and Uluksuk were made to dress in their caribou skin clothing with their hair cropped short and with buckets of ice water placed at their bare feet. Lacking Inuit language translation, the two listened incomprehensibly to Crown prosecutor Charles Coursolles McCaul's damning opening remarks:

*These remote savages, really cannibals, the Eskimo of the Arctic regions have got to be taught to recognize the authority of the British Crown...and that the authority of the Crown and of the Dominion of Canada, of which these countries are a part, extends to the furthest limits of the frozen North.<sup>2</sup>*

In R. G. Moyles' account of the trial, the court "was not merely concerned with seeing justice *done* but in seeing that justice – British justice – was taught."<sup>3</sup> At that time, the law upheld in the NWT flowed from the British law in force on July 15, 1870, unless amended, and from federal enactments and NWT ordinances.<sup>4</sup> McCaul wanted the trial to be an example for all Inuit, who he regarded to be uncivilized, prehistoric savages. He believed that the trial would show the illegitimacy of Inuit forms of conflict resolution so that "when the result of this trial is brought back to the Arctic regions that all such savage notions will be effectually dispelled."<sup>5</sup>

McCaul had proposed trying Sinnisiak and Uluksuk separately; Sinnisiak was tried first and only for the murder of Rouvière on the grounds that he was the instigator of the crime as well as the perpetrator. To McCaul's shock, the jury found Sinnisiak not guilty. Attributing the verdict to jury bias, anti-Catholic sentiment in the region, and sensational press treatment of the trial, McCaul successfully requested a retrial and a change of venue to Calgary. In Calgary, both Sinnisiak and Uluksuk were charged

with the murder of LeRoux. This time, they were found guilty and sentenced to death. On Aug. 19, 1917, the Governor General of Canada commuted the sentence of death to life imprisonment.

Sinnisiak and Uluksuk spent two years in minimum-security detention at Fort Resolution. By 1919, at the urging of McCaul, the Royal North West Mounted Police established a small command at Tree River, ironically with the help of Sinnisiak and Uluksuk. This detachment was established to demonstrate Canadian sovereignty and the government's determination to enforce the law in the Coppermine–Coronation Gulf region.<sup>6</sup> Released from custody that year, the pair continued working for the police before returning home in 1922.

Subsequent trials followed. In 1922, an Inuk named Alikomiak from Kent Peninsula, near present-day Cambridge Bay, murdered RCMP Corporal W.A. Doak and Hudson's Bay Company trader Otto Binder while in custody at Tree River. Doak and Binder were the only representatives of Canada in the Arctic when they were killed and the attack on them was perceived as an attack on Canadian sovereignty in the region.<sup>7</sup> Alikomiak and another Inuk named Tatimagana, who was also in custody but charged with a separate crime, were subsequently transported to Herschel Island for trial in 1923. Since a verdict of guilty was predetermined, a hangman was brought in with the court party in addition to an all-Caucasian jury handpicked from communities along the Mackenzie River. In his address to the jury, Judge Lucien Dubuc of Edmonton explained why a guilty verdict was necessary to support Canadian sovereignty in the region:

*It is your duty as Jurymen who have taken the oath as such to decide according to the evidence and make these tribes understand that the stern but at the same time just hand of British justice extends also to these northern shores. We want it plainly understood in the minds of these people that one of our most important laws is for the protection of human life which flows from the Divine command "Thou shalt not kill."<sup>8</sup>*

Alikomiak was found guilty of the murder of Doak and Binder; Tatimagana was found guilty of the murder of another Inuk during a separate incident. The two were hanged on Feb. 1, 1924.



It was not until 1955 that the Supreme Court of the Northwest Territories was established, and it would be another seven years until the Government of the Northwest Territories was physically moved from Ottawa to Yellowknife. By this time, the court had an established practice of carrying out court circuit visits to NWT communities.

### Canadian sovereignty through law enforcement

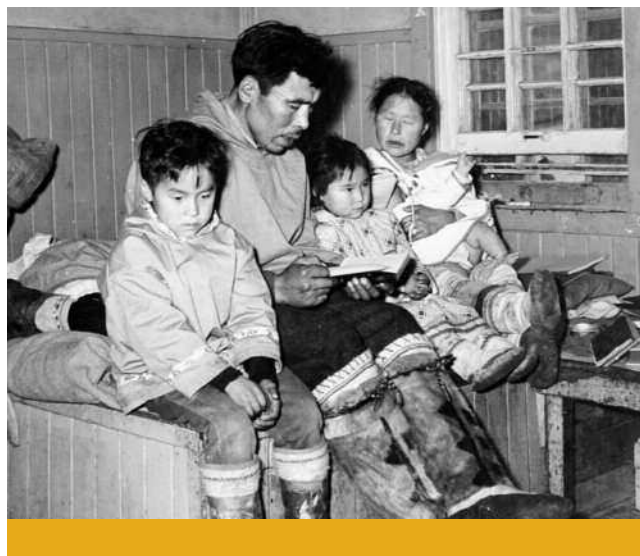
The Government of Canada used the criminal justice system as a tool to extend Ottawa's reach into the Inuit regions of Canada (Inuit Nunangat) and lay sovereignty claims to this vast region. The trials of Sinnisiak and Uluksuk, and later Alikomiak and Tatimagana, were important early chapters in the colonization of Inuit because they established the legal pretext needed to justify more intrusive policies later on. The imposition of Canadian sovereignty through government administration was necessary in an environment too harsh and unfamiliar to invade and settle as the British and French had in the provinces and in a land too sparsely populated to subjugate by force.<sup>9</sup> The founding of the North West Mounted Police in 1873 (the name was changed to the Royal North West Mounted Police in 1904) was itself motivated by the need to demonstrate Canadian sovereignty over the newly acquired prairies through administration of criminal justice in the region.<sup>10</sup>

These early trials were precursors of more systematic efforts to establish Canadian sovereignty over Inuit people and land through government policy. Inuit never relinquished sovereignty over Inuit homelands, and the illegality of Canada's Arctic claims was the impetus for the *Nunavut Land Claims Agreement* (NLCA). Settlement of the NLCA in 1993 and the creation of Nunavut in 1999 were efforts to reconcile the imposition of Canadian sovereignty over Inuit people, waters, and land with the rights of Inuit to land ownership and self-determination through a public government; this would include the administration of justice. In the area of criminal justice, Inuit leaders at that time believed that, despite the rigidity of Canada's Criminal Code, it would be possible to craft a justice system tailored to the needs and realities of our communities.

### Creating a new justice system

The federally appointed Nunavut Implementation Commission (NIC) was responsible for establishing and implementing policy towards the division of the NWT and the creation of Nunavut. As part of its statutory mandate under the *Nunavut Act*, NIC completed two comprehensive planning reports in 1995 and 1996 outlining the desired model for the design of the new government. These reports were submitted to the Department of Indian Affairs and Northern Development, the Government of the Northwest Territories, and NTI.

The 1996 report, *Footprints 2*, dealt with justice issues and the institutional framework for the delivery of justice programs and services. NIC acknowledged that the thoughtful design of an institutional framework for the delivery of justice programs was at best only a partial solution to justice problems and that the real determinants of criminal and other forms of destructive behaviour were the "enjoyment – or lack of enjoyment – of social, economic and cultural well-being" in the population.<sup>11</sup> Citing an NWT violent crime rate that was several times higher than the rate for Canada as a whole, NIC acknowledged the widespread belief among those working in the justice system of the NWT "that the current system is not working well" and that "problems are growing at an alarming rate."<sup>12</sup>



Panipakoochoo, an RCMP special constable, and his family reading the Bible written in Inuit syllabics, Dundas Harbour, NWT (now NU), 1950.

A. Stevenson/Department of Indian Affairs and Northern Development/Library and Archives Canada/fonds/PA-181327





## Examining the Justice System in Nunavut

In *Footprints 2* NIC recognized that improving the administration of justice in Nunavut would require equal investment in the social, economic, cultural, health and well-being of the Inuit population to ensure a full partnership. NIC focused primarily on institutionalizing a cross-organizational effort to reform Nunavut's justice system, as well as administrative and logistical planning issues. To this end, the report includes nine justice-related recommendations dealing with a range of issues including establishment of a judiciary, police, and corrections system, as well as governance of the legal profession and unification of the court system. The first of these recommendations calls on the Office of the Interim Commissioner to convene a meeting of organizations active in the administration of justice in Nunavut and that this meeting be used to plan a special Nunavut justice conference.

The justice conference was held in Rankin Inlet in 1998 and focused on more detailed planning for Nunavut's justice system. Titled "Towards Justice that Brings Peace," the conference was convened by the Nunavut Social Development Council (NSDC) in order to assist the Interim Commission for Nunavut, the Government of the Northwest Territories, and Canada in planning and implementing an effective justice system. The conference brought together a balance of Inuit participants active in community justice initiatives as well as justice officials active in all aspects of the formal justice system in Nunavut.

The premise of the conference was that the justice system should be changed so that it would work more effectively for Inuit and result in more peace and less conflict and anger.<sup>13</sup> The four major conference themes were (1) "Community Justice Initiatives for Nunavut," (2) "Alternatives to Jail for Nunavut," (3) "The Role of Justices of the Peace (JP) in Nunavut," and (4) "Healing, Counselling, and the Justice System in Nunavut." "This meeting is about Inuit taking more responsibility for justice issues in their communities," then NSDC President Elijah Erkloo said. "We want to know what is not working now in our justice system, and what is working."<sup>14</sup>

Conference participants prepared a total of 23 recommendations covering all conference themes. In summary, these recommendations called for the necessary policy changes needed to strengthen the capacity of Inuit communities to play a more proactive role in the administration of justice. For example, under "Community Justice Initiatives for Nunavut," participants recommended that the formal justice and court system should delegate the power to deal with more serious matters, including domestic violence, to CJCs. And under "Healing, Counselling, and the Justice System in Nunavut," participants stressed that Inuit have long-established ways of healing and counselling and community healers and counsellors must be accredited and recognized, which includes receiving remuneration.

The focus of the "Towards Justice that Brings Peace" conference was restoring a sense of ownership of the justice system to Inuit. According to delegate Susan Enuaraq, this goal has only been partially achieved to date:

*To some extent we achieved that; however, we have not achieved the true Inukness within the justice system. And I think that's going to be difficult to achieve for the time being because right now, there's very few Inuit that are in positions within what we know as the justice system, which really a lot of Inuit tend to think of as just the criminal justice system because that's where Inuit have been involved with the most.<sup>15</sup>*

Enuaraq holds a law degree and believes incorporating Inuit values and worldview into the justice system is possible as more Inuit enter the legal field.

Today, Inuit are court workers, JPs, community justice outreach workers, and increasingly lawyers. But with few exceptions, the laws and philosophical framework upon which those laws are based are entirely European-Canadian. The territory's judges are not from the territory and the GN Department of Justice has the second smallest proportion of Inuit employees of any government department; 91 per cent of these Inuit employees are paraprofessionals and administrative support.<sup>16</sup> Circuit courts are the means used by the NCJ to visit communities to sit for trials, and they reflect the way justice is administered elsewhere.

Despite the high expectations for change in 1999, Inuit today continue to lack meaningful participation in the administration of justice. The imposition of the Canadian justice system upon Inuit society and its lack of compatibility with traditional Inuit justice practices are partially to blame for the awkward way justice is meted out in the territory. The trauma and social challenges seen in Nunavut are by-products of Canada's past destructive social policies in the North exacerbated by a continuing lack of social services and infrastructure to deal with those challenges.

### Traditional Inuit justice

Traditional Inuit justice was much different than the contemporary Nunavut justice system. It was characterized by total community control over the administration of justice. Traditionally, community leaders and elders placed a higher value on counselling wrongdoers and getting to the root of a given problem before it escalated than they did on punitive measures that ostracized offenders. Instead of being guided by the Criminal Code, behaviour was guided by the necessity of upholding





values that contributed to community safety and cohesion in a harsh environment. In a society without jails, people held each other accountable, and community leaders and elders provided more formal intervention for serious cases.

As late as the 1950s, outsiders described traditional Inuit society as a state of lawless, leaderless anarchy without government.<sup>17</sup> On the contrary, Inuit community leaders and elders played important roles in the maintenance of community safety and cohesion. They did not necessarily see themselves as official agents of law and order or social control, but they actively maintained peace and safety in the community by counselling the individuals responsible for wrongdoing, determining the threat level these individuals posed to the community, and administering appropriate solutions.<sup>18</sup> In at least one region, the administration of justice took the form of a more formal institution. At a site called Akitsiraqvik, near present-day Cape Dorset, a powerful council made up of regional community leaders met to resolve disputes and administer justice. Their court was composed of two concentric circles of massive upright stones with seating on the inner stones.<sup>19</sup> The last-remembered trial, which involved a murder, took place in Akitsiraqvik in August 1924.

Generally, elders counselled offenders in private, individually, or as a group depending on the seriousness of the crime, with the community becoming involved for grave offences, such as murder. Punishment was typically handed out only if wrongdoers continued to offend. Repeat and dangerous offenders could be forced to live alone for a time to gain an appreciation for the community; sometimes this was accomplished by simply moving camp without notifying the offender.<sup>20</sup> Murderers who did not show remorse or who posed a threat to the community could be killed in order to maintain community safety and cohesion. There was also a metaphysical aspect to traditional justice. Within the traditional Inuit worldview, individuals are part of an interconnected life system encompassing animals and the environment. Wrongdoers and the relatives of wrongdoers who disrupt this balance by committing a murder, for example, could face consequences such as failing weather, lethal accidents, or unsuccessful hunting.

### Nunavut Court of Justice

Under the Constitution of Canada, the federal government has the power to enact criminal law and determine the rules of criminal procedure. The *Criminal Code* applies to all Canadians, and the Public Prosecution Service of Canada prosecutes all criminal offences in the territories. The structure of Nunavut's justice system is unique in that it is the only jurisdiction in Canada with a unified or single-level criminal court, the NCJ. The NCJ manages family and civil matters in addition to criminal cases. The *Nunavut Act* created the territory's unified court in keeping with NIC's recommendations in *Footprints 2*. The NIC

believed that a unified court would (1) enhance the efficiency of the court system and its coherence at the community level, (2) make for a better functioning court system by allowing a single court to deal with almost all serious criminal and civil matters, and (3) bring about the possibility of the community-based JP network taking on an enhanced role.<sup>21</sup>

This single-level court model differs from courts in other jurisdictions in that the normally distinct functions of the superior court and the provincial or territorial courts are combined into a single superior court.<sup>22</sup> The Governor General, on the advice of cabinet, appoints Nunavut's justices, and the territory's Court of Appeal consists of a panel of judges drawn from the NCJ and the Courts of Appeal of other jurisdictions that meet as required.<sup>23</sup> Before 1999, three territorial court judges and three justices of the NWT Supreme Court serviced communities in what is now Nunavut. At the time of writing, there are six justices serving Nunavummiut. This is the largest superior court in northern Canada.<sup>24</sup> In addition to the six resident justices, the NCJ has also recruited 91 deputy judges from southern superior courts to assist the Court in meeting its core responsibilities. In 2014, the Court used 22 deputy judges to meet the territory's needs.<sup>25</sup>



Group of officials and Inuit outside the newly constructed RCMP post, Bache Peninsula, Ellesmere Island, NWT (now NU), 1926.

G.P. Mackenzie/Library and Archives Canada/002342616



## Examining the Justice System in Nunavut

### Justices of the Peace

In addition to these judges, the NCJ employs JPs who are citizens working and living in the same community where they perform a variety of judicial and quasi-judicial functions. The duties of a JP are generally carried out on a part-time basis and include presiding over summary conviction matters arising out of territorial statutes, municipal bylaws, and selected criminal matters. The JPs regularly conduct first appearance and bail hearings and also issue warrants and summonses. In addition, they carry out various public functions such as conducting marriage ceremonies.<sup>26</sup> There are two full-time JPs in Nunavut: the senior JP who manages the JP program and the FAIA JP who is responsible for the administration of the Act and hearing matters under it. More experienced JPs are also able to hold JP court the day before the arrival of the NCJ during court circuit, thereby clearing many matters that would otherwise need to be addressed by the judges.<sup>27</sup>

As made clear in the 1998 conference “Towards Justice that Brings Peace,” JPs have been considered an important aspect of the administration of justice in the territory since the inception of the NCJ.<sup>28</sup> There are two main reasons for this. First, Inuit saw Nunavut’s unified court model as an opportunity to expand the role of JPs in areas such as carrying out preliminary hearings, child welfare matters, and small claims actions, and thus to expand community participation in the administration of justice. Second, participants in the conference believed that in their capacity as mediators of conflict, JPs played an important role in infusing traditional Inuit justice practices into their work. However, conference participants familiar with the NWT JP program voiced serious concern about the public perception of JPs in their communities, the stigma this role often carries, the lack of training and support provided to JPs by the NCJ, and even the logistical operation of JP courts.

### Inuit today

Today, 35,500 people live in Nunavut, 81 per cent of whom are Inuit living in 25 communities spanning an area the size of western Europe. The Inuit culture and language continue to be resilient and most people consider their communities peaceful places to live.<sup>29</sup> Strong and loving bonds that promote sharing, compassion, and cooperation characterize the majority of Inuit families and the communities we live in. However, many Inuit in Nunavut are also struggling, reflected by an average life expectancy 10 years lower than for Canadians as a whole, high poverty, and low educational attainment. It is against this backdrop of family and community resiliency and struggle that we examine justice-related issues in Nunavut.

### Report roadmap

Part 1 of this report provides an overview of crime statistics in the territory and summarizes research that puts these statistics in context. By doing so, NTI shows how a trauma-informed system of care can help close gaps in mental health services and other social services and support. The role of CJCs is also discussed, and NTI outlines how this important resource can have an integral role in the administration of justice in the territory.

Part 2 discusses how family violence affects women and children disproportionately and identifies the barriers in place that prevent many women and children from accessing justice. NTI analyzes the territory’s draft family violence prevention action plan in the context of these barriers and proposes solutions to strengthen the plan. Finally, NTI examines the FAIA against this background and proposes amendments to the Act.

Part 3 focuses on how the gaps in mental health services and resources are affecting the NCJ, Legal Aid, and Corrections. In this section NTI shows how more cross-sector collaboration is needed to reduce the number of individuals with mental health issues entering the criminal justice system and describes how this can be achieved.



### PART 1: CRIME RATE TRENDS AND COMMUNITY-BASED JUSTICE

Nunavut's crime rates have dwarfed those for the rest of Canada since 1999, and there is little indication that the situation is improving. Women and children are the most vulnerable populations in the territory, experiencing physical and sexual violence at rates far above the rest of the country. Compounding this problem is the lack of resources and support available for women and children who experience violence.

The fact that the crime rate in Nunavut has been so high for so long partially explains the lack of urgency in addressing its root causes. The report and charge rates for assault (levels 1–3), sexual assault (levels 1–3), sexual violations against children, and homicide are symptoms of a society that has been under immense social, cultural, and economic stress for at least the last three generations. Part 1 of this report provides an overview of trends in number and type of crime in Nunavut as well as a summary of relevant mental health research in the population. NTI proposes a trauma-informed system of care in the territory and the development of CJs into frontline prevention workers.

#### Nunavut crime statistics

Statistics Canada reports on the number and type of criminal incidents that come to the attention of police each year. Crime statistics are measured in relation to a standard number of people (100,000 people) in a province or territory in order to facilitate comparisons among geographic areas as well as over time.<sup>30</sup> The two primary sources of national crime data are the Uniform Crime Reporting Survey, administered by Statistics Canada since 1962, and the General Social Survey on victimization, administered every five years.<sup>31</sup>

In this section, NTI draws on statistics compiled by Statistics Canada through the Uniform Crime Reporting Survey to show trends in the number and type of crime experienced by Nunavummiut compared with the rest of Canada. NTI does so by comparing the Crime Severity Index (CSI) and Violent Crime Severity Index (VCSI) for both jurisdictions for annual non-traffic-related crime rates, as well as by comparing the report and charge rates for violent criminal offences for the 14-year period from 1999 to 2012. This provides context for the sections that follow that examine in more detail violence against women and children and access to justice for people with mental health issues.

#### Crime Severity Index and Violent Crime Severity Index

The CSI is a statistical measure used to track changes in the severity of police-reported crime from year to year across

jurisdictions. It takes into account all *Criminal Code* violations including traffic, as well as drug violations and all federal statutes. The CSI allows for a more nuanced comparison of crime among jurisdictions by assigning a weight to different types of crime based on their seriousness. Weights are derived from actual sentences handed down by courts in all provinces and territories, with more serious crimes assigned higher weights and less serious crimes assigned lower weights.<sup>32</sup> The CSI value in a given jurisdiction thus depends on the mix of crimes and their relative seriousness in that jurisdiction; jurisdictions with a higher proportion of more serious crimes have a higher CSI value and vice versa.<sup>32</sup>

The CSI is useful in determining whether a particular crime is coming to the attention of police more or less often than previously and whether police-reported crime in a given city or province is more or less serious than in Canada overall.<sup>33</sup>

The VCSI narrows the scope of the CSI to include only violent contraventions of the *Criminal Code*. If a jurisdiction has a high proportion of less serious and lower-weighted offences, it will have a lower VCSI value; a jurisdiction with a high proportion of more serious crimes will have a higher VCSI value.



Jimmy Gibbons, Inuit deputy RCMP constable, Aug. 1, 1946, Eskimo Point, NWT (now Arviat, NU).

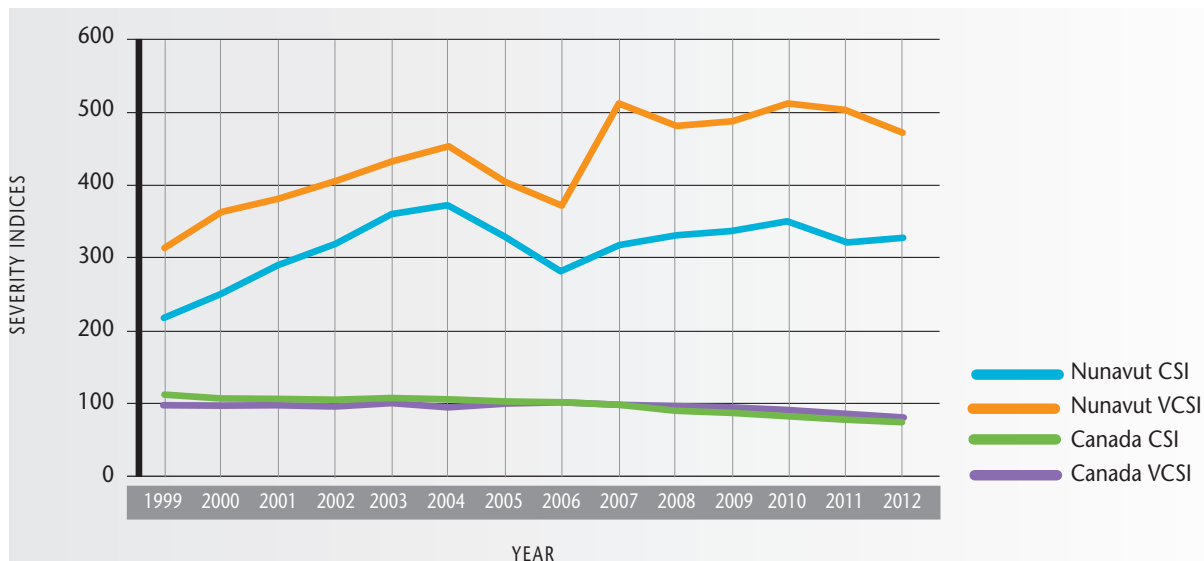
George Hunter/National Film Board of Canada. Photothèque Collection/ e005477072

<sup>30</sup> For example, the seriousness weight for first- and second-degree murder is more than 7,000 times that for cannabis possession. For more detailed information on the calculation of the Crime Severity Index see: <http://www.statcan.gc.ca/pub/85-004-x/85-004-x2009001-eng.htm>.



## Examining the Justice System in Nunavut

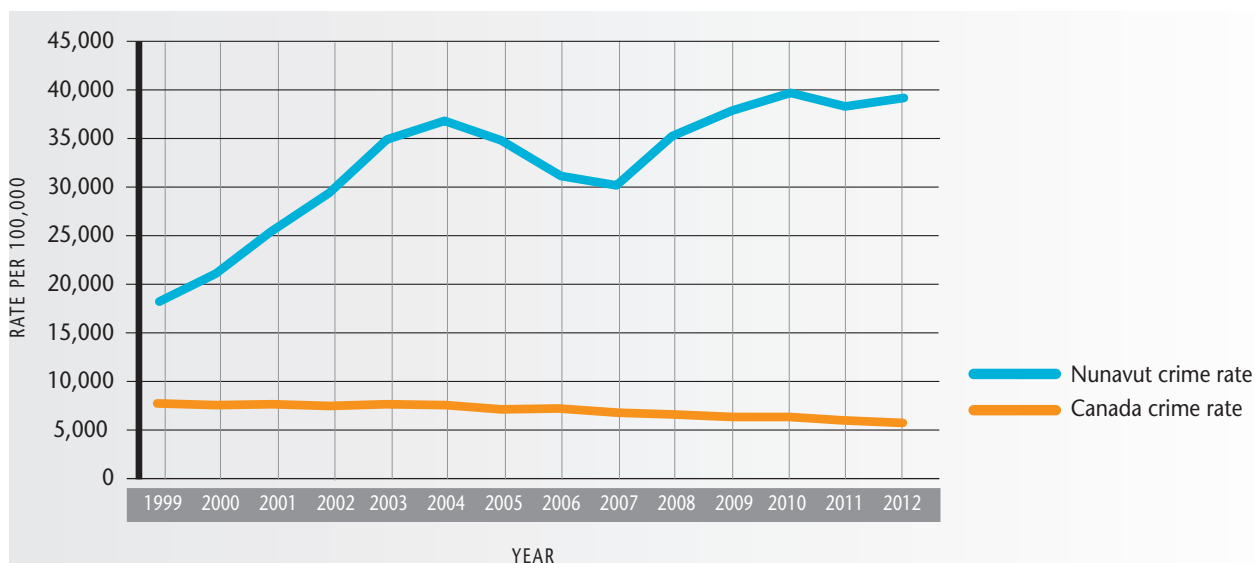
### Crime Severity Index (CSI) and Violent Crime Severity Index (VCSI), Nunavut and Canada, 1999-2012<sup>34</sup>



Excluding traffic crimes, Canada's crime rate decreased by 27 per cent between 1999 and 2012, while the CSI dropped even further (33 per cent).<sup>†</sup> During this time, violent crime in Canada decreased by 17 per cent, with a corresponding

18 per cent decrease in the VCSI. This means that the number of police-reported crime and violent crime decreased in Canada during this time period, with an even greater decrease in the seriousness of the crimes coming to the attention of police.

### Crime rate, Nunavut and Canada, 1999-2012<sup>35</sup>



<sup>†</sup> Note: drugs, traffic offences, and federal statutes are all excluded from the traditional crime rate but are included in the Crime Severity Index.





This trend does not hold true for Nunavut. During the same 14-year period, the territory's year-over-year crime rate decreased only four times (2005, 2006, 2007, and 2011). Nunavut's crime rate in 2012 was 114 per cent higher than it was in 1999, with a 48 per cent increase in the CSI. The rate of violent crime also increased by 27 per cent during these years, with a corresponding 50 per cent increase in the VCSI.

This means that the volume of crime has more than doubled since 1999, and the proportion of crimes that are serious offences has also more than doubled. In the following section, NTI looks more closely at different types of crime in Nunavut to better understand these trends and their implications.

### Violent crime in Nunavut

Crime rates are measured annually by Statistics Canada in two basic ways that allow for comparison across jurisdictions. The crime report rate represents the number of criminal offences reported to police in a given jurisdiction per 100,000 people; the charge rate is the number of charges laid for a given crime per 100,000 population aged 12 years and older. For example, 1,743 level 1 assaults were reported to the RCMP in 2012 in a territorial population of 33,697. Nunavut's level 1 assault report rate that year was thus 5,172.6 per 100,000. This means that if Nunavut had a population of 100,000 then 5,172.6 level 1 assaults would have been reported in 2012.<sup>36</sup>

The crime report and charge rates shown below were compiled from incident-based crime statistics gathered by Statistics Canada for the years 1999–2012. NTI looks at trends in four types of violent crime: level 1–3 assault, level 1–3 sexual assault, sexual violations against children, and homicide.

The *Criminal Code* of Canada defines these crimes as follows:

#### Assault:

- **Level 1 assault** or common assault is defined as the application of force, attempted application of force, or threatened application of force by someone having an immediate ability to carry out the threat (no bodily harm being caused to the victim).<sup>37</sup>
- **Level 2 assault** is an assault involving weapons and/or causing bodily harm to the victim.<sup>38</sup>
- **Level 3 assault** (or aggravated assault) is an assault that wounds, maims, or disfigures the victim.<sup>39</sup>

#### Sexual assault:

- **Level 1 sexual assault** is a sexual assault involving unwanted sexual touching but excludes incidents involving weapons, bodily harm, or aggravated bodily harm.<sup>40</sup>
- **Level 2 sexual assault** is an assault in which the perpetrator uses, or threatens to use, a weapon or threatens the victim's friends or family members, or causes bodily harm to a third party, or commits the assault with another person (multiple assailants).<sup>41</sup>
- **Level 3 sexual assault** is an assault resulting in wounding, maiming, or disfiguring or endangering the life of the victim.<sup>42</sup>

#### Sexual violations against children:

There are 16 offences in the *Criminal Code* that are defined as sexual violations against children. In this report, NTI only looks at the following three types of offences which were reported in Nunavut.

- **Sexual interference** is defined as touching for a sexual purpose, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years.<sup>43</sup>
- **Invitation to sexual touching** means that a person, for a sexual purpose, invites, counsels, or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels, or incites and the body of the person under the age of 16 years.<sup>44</sup>
- **Luring a child via a computer** is defined as committing an offence where, by means of telecommunication, an individual communicates with a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of further sexual offences.<sup>45</sup>

#### Homicide:

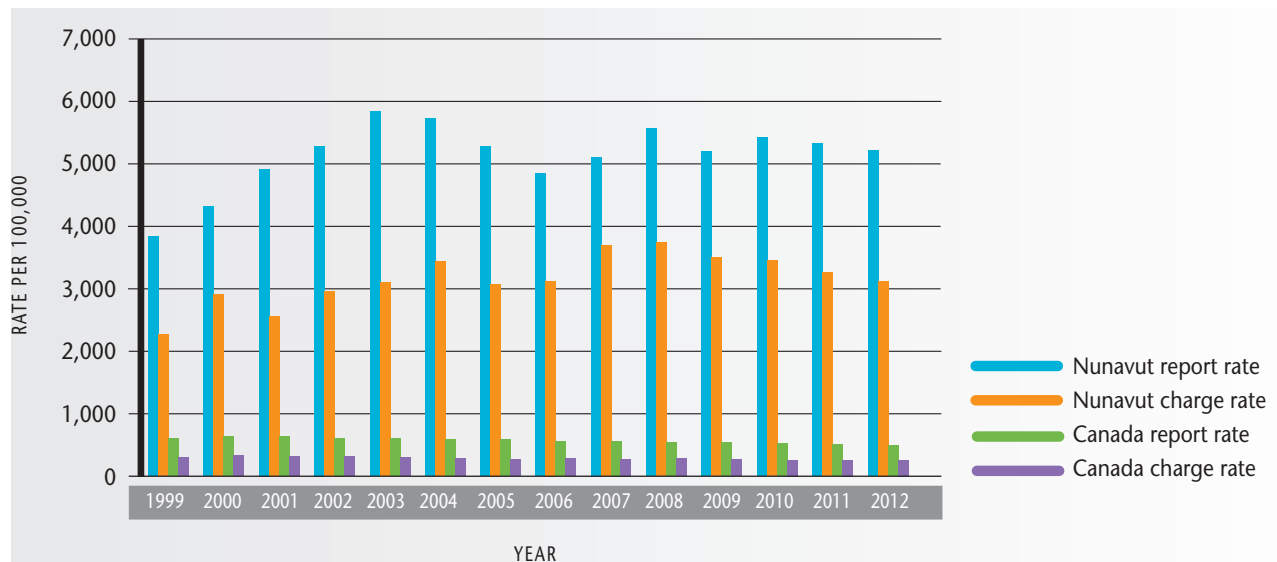
A person commits homicide when, directly or indirectly, by any means, he or she causes the death of a human being. Homicides include first- and second-degree murder, manslaughter, and infanticide. Homicide can be culpable or not culpable (culpable homicide is murder or manslaughter or infanticide).



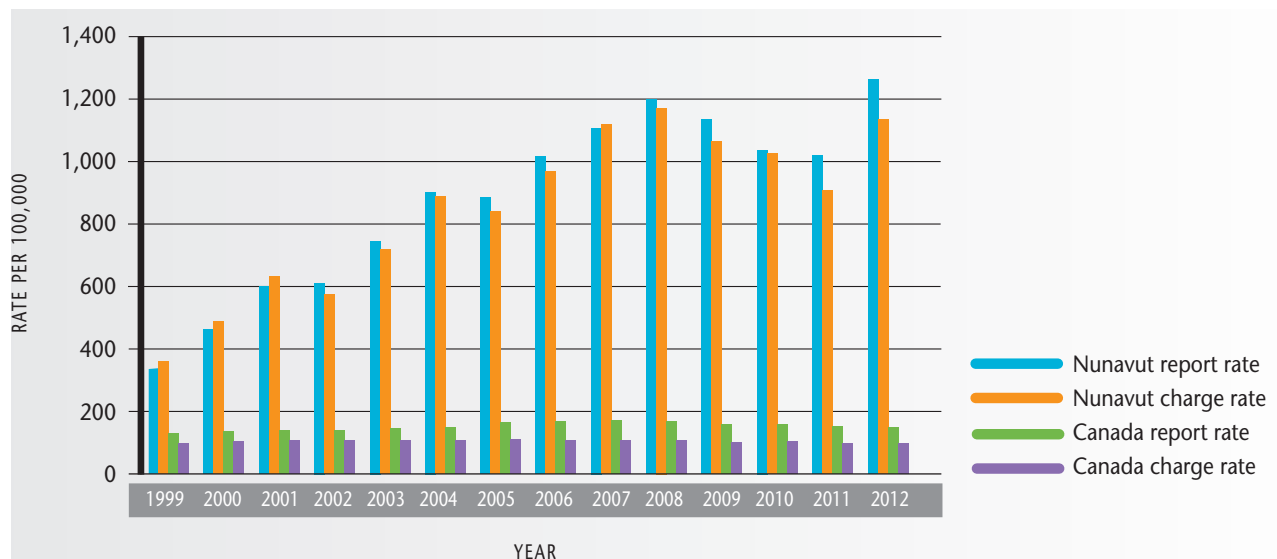
## Examining the Justice System in Nunavut

### Violent crime statistics: Nunavut and Canada

Level 1 assault report and charge rates, Nunavut and Canada, 1999-2012<sup>46</sup>

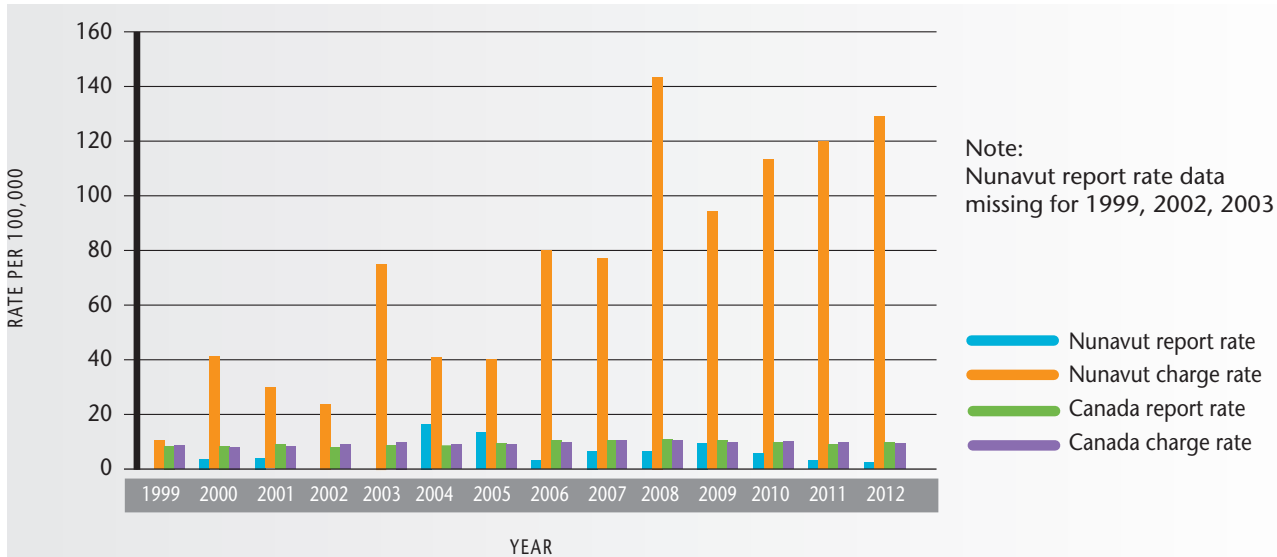


Level 2 assault report and charge rates, Nunavut and Canada, 1999-2012<sup>47</sup>





**Level 3 assault report and charge rates, Nunavut and Canada, 1999-2012<sup>48</sup>**



Level 1 assault was by far the most common type of violent crime committed in Nunavut during the 14-year period 1999–2012, accounting for 55 per cent of all reported incidents of violent crime. This was higher than for Canada as a whole, where level 1 assault accounted for 44 per cent of reported incidents of violent crime.

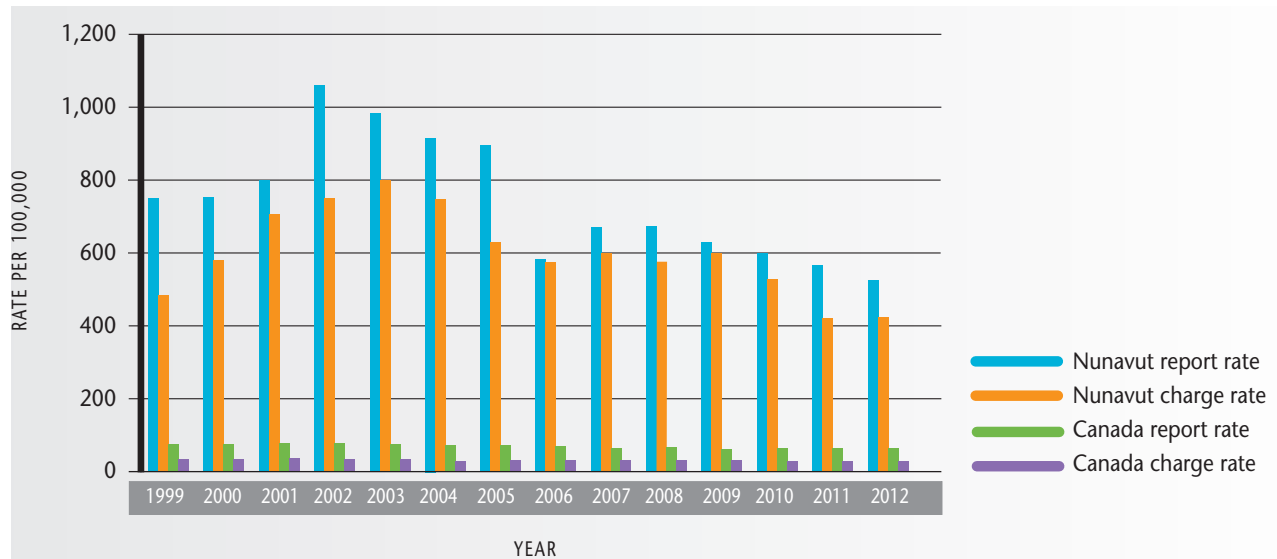
The rates of reported assault in Nunavut dwarf those for Canada as a whole. For example, in 2012, level 1 and level 2 assault charge rates were more than 12 times the national rate. Especially concerning are the increasing rates of level 2 assault, which increased from six reported incidents in 1999 to 36 in 2012.

No report rate data were available for level 3 assaults for 1999, 2002, and 2003. However, the charge rate exceeded the report rate for all years that report rates were available. This is likely a result of Nunavut’s unusual population demographics and the way charge rates are calculated. Charge rates are calculated using only a subset of each jurisdiction’s population (people over the age of 12), while report rates are calculated in relation to the entire population.<sup>49</sup> Because of higher birth rates in Nunavut, the percentage of the population under the age of 12 is much larger than in the rest of Canada. As a result, a smaller over-12 population is used to calculate charge rates, which can lead to skewing of these rates.

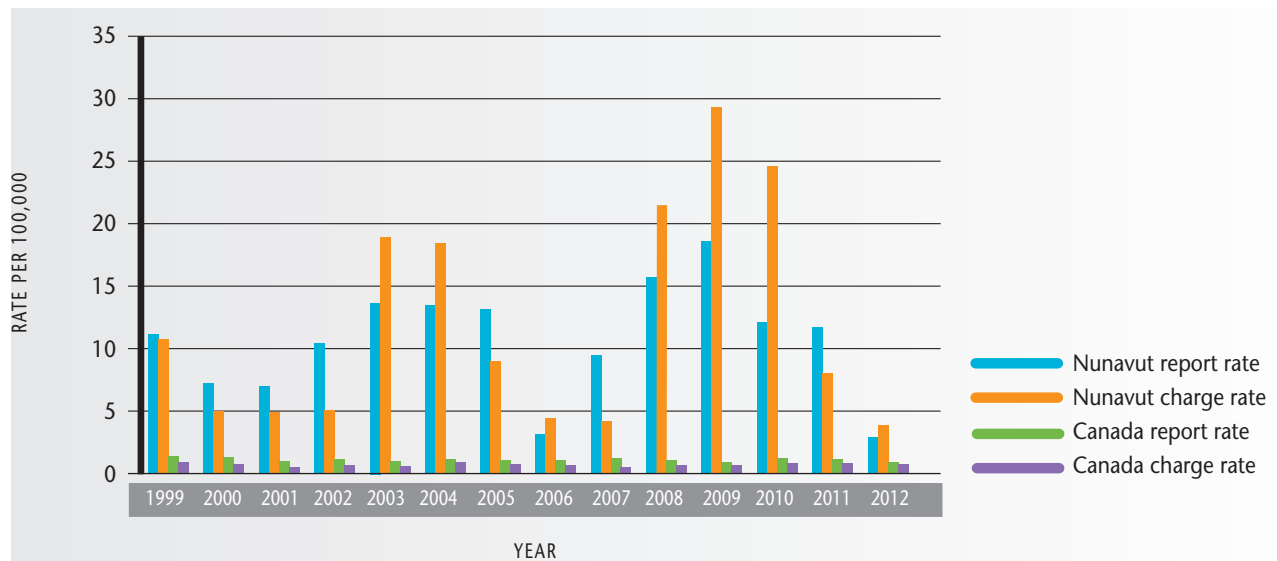


## Examining the Justice System in Nunavut

**Level 1 sexual assault report and charge rates, Nunavut and Canada, 1999-2012<sup>50</sup>**



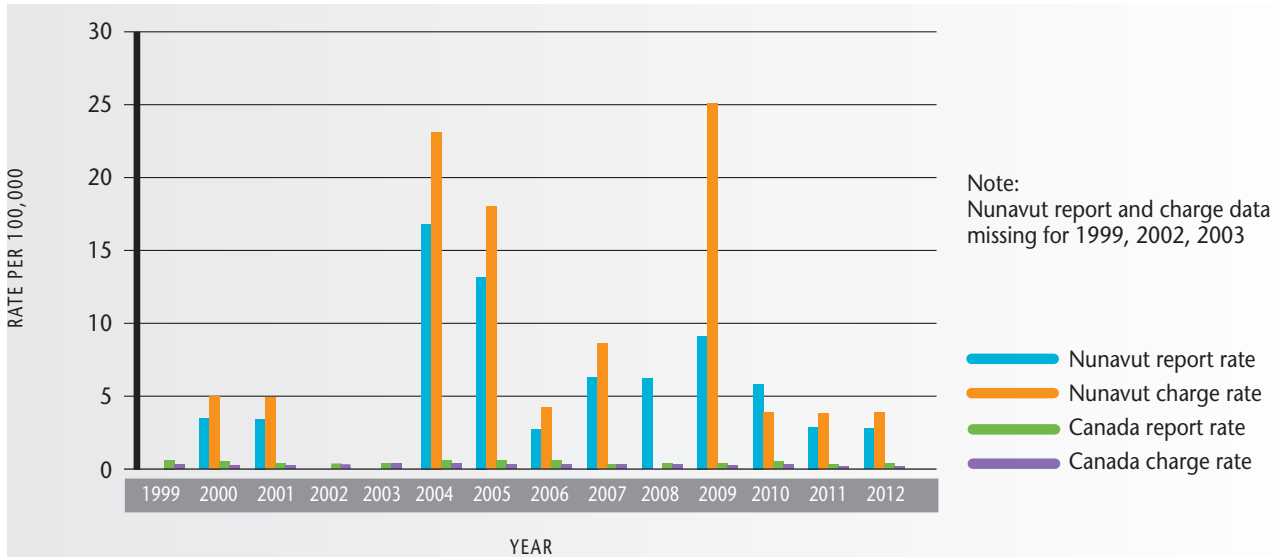
**Level 2 sexual assault report and charge rates, Nunavut and Canada, 1999-2012<sup>51</sup>**







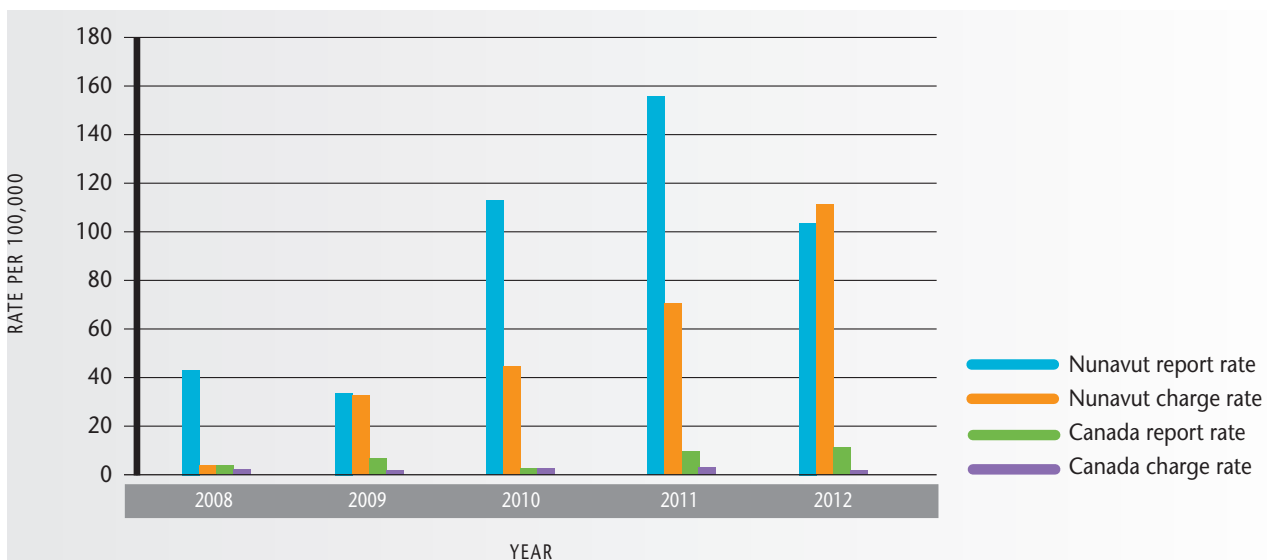
**Level 3 sexual assault report and charge rates, Nunavut and Canada, 1999-2012<sup>52</sup>**



Between 1999 and 2012 in Nunavut, there were 3,132 reported incidents of level 1 sexual assault (1,846 charged), 46 reported incidents of level 2 sexual assault (38 charged), and 23 reported incidents of level 3 sexual assault (23 charged). The territory's level 1 sexual assault report rate was lowest in 2012, yet it was still more than eight times the national rate for that year. It is

encouraging that the number of reported incidents of level 1 sexual assault decreased between 2008 and 2012. However, this should be interpreted with caution. Each year, 88 per cent of sexual assaults in Canada go unreported to police.<sup>53</sup> Decreasing sexual assault rates could therefore mean that fewer people are choosing to report being assaulted than in previous years.

**Sexual violations against children, Nunavut and Canada, 2008-2012<sup>54</sup>**

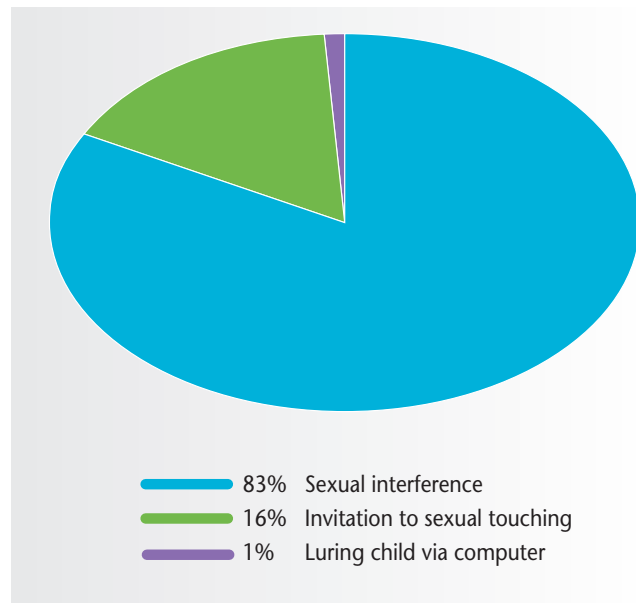




## Examining the Justice System in Nunavut

From 1999 to 2007, either zero sexual violations against children were reported or report data were missing. NTI, therefore, only examines the 2008–2012 time period. During this period, there were 149 reported incidents of sexual offences against children in Nunavut. Of these incidents, 83 per cent were sexual interference, 16 per cent were invitation to sexual touching, and only one per cent was luring a child via a computer.

### Sexual violations against children by incident type, Nunavut, 2008-2012<sup>55</sup>



As with sexual assault, these report and charge rates give an impression of how prevalent child sexual abuse in Nunavut is in any given year relative to the nation as a whole, yet they can be misleading because offences are under-reported. Accurate data on child sexual abuse is extremely difficult to obtain, in part because 89 per cent of child and youth victims of sexual assault in Canada are victimized by somebody they know, and in 35 per cent of cases, parents, siblings, or other family members are the perpetrators.<sup>56</sup>



Two Inuit girls wearing parkas with fur-trimmed hoods at the original RCMP Headquarters, Cambridge Bay, NWT (now NU).

*Library and Archives Canada/Department of Health fonds/e010999100*

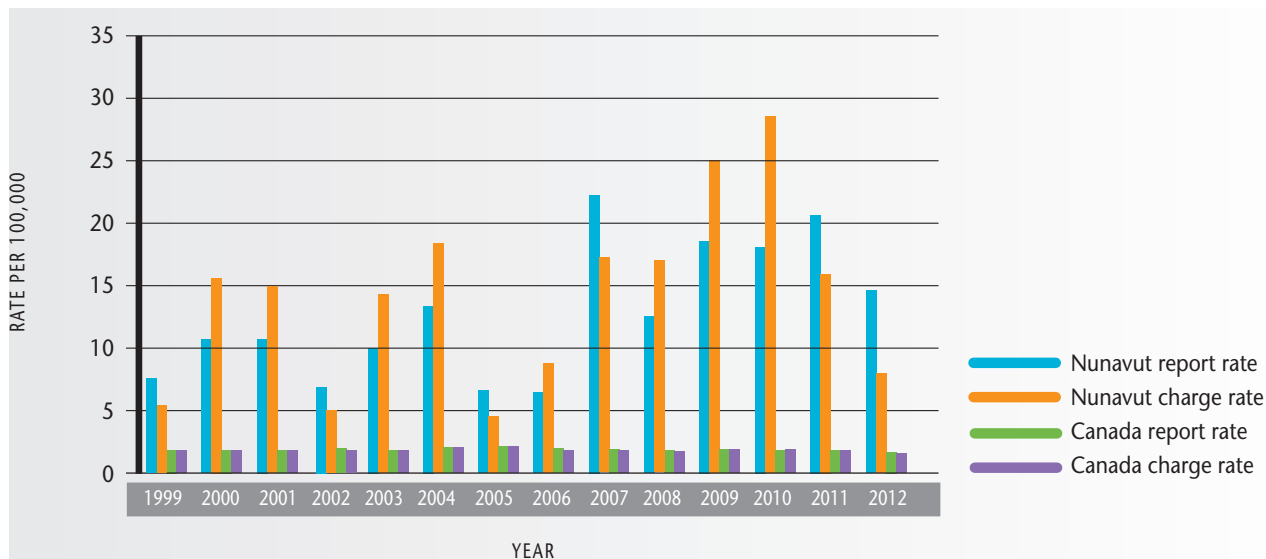


During Operation Lancaster in Aug. 2006, RCMP officers and Canadian Forces personnel participated in the grave restoration of two Mounties who died in the 1920s while stationed at Dundas Harbour on Devon Island. The buildings pictured here are what remain of the former RCMP detachment.

*By Kerry McCluskey*



## Homicide report and charge rates, Nunavut and Canada, 1999-2012<sup>57</sup>



Nunavut has the highest per capita rate of homicide in the nation. There were 56 homicides between 1999 and 2012, with 45 charges laid. The number of homicides fluctuated widely during this period and from year to year, ranging from two homicides in 2006 to seven in 2007. By comparison, in 2012, Canada had its lowest homicide rate since 1966, at 1.56 homicides per 100,000 people.

These statistics are valuable in showing the prevalence of certain types of violent crime from year to year, as well as trends in police-reported crime rates and charge rates. Equally important, however, is the understanding of some of the factors that can place people at greater risk from violence. It follows that any serious effort to reduce the number of Inuit entering the criminal justice system must focus on identifying and supporting people who have mental health issues and/or have experienced trauma.

### Research shows prevalence of violence, sexual abuse, and mental illness

The *Nunavut Community and Personal Wellness* report describes the outcomes of the 2007–2008 *Inuit Health Survey*. This report puts crime rates into perspective because the *Inuit Health Survey* interviewed a representative sample of Inuit about their exposure to certain types of violence. The survey was carried out in Nunavut's 25 communities with participation from 1,923 Inuit adults. A subset of 1,710 people took the Nunavut

Community and Personal Wellness questionnaire, which asked about mental and physical health and wellness. Because such a large number of participants took this questionnaire, it is possible to generalize their answers to Nunavut's total Inuit population at that point in time. The following are the questionnaire responses relevant to this report:

#### Assault:

- 31 per cent of participants reported experiencing severe physical abuse as children (31 per cent of women and 31 per cent of men)<sup>58</sup>
- 50 per cent of participants reported experiencing at least one form of physical violence as an adult (52 per cent of women and 46 per cent of men)<sup>59</sup>

#### Sexual abuse during childhood (any form of unwanted sexual touching, sexual coercion, or forced sexual intercourse):

- 41 per cent of respondents reported experiencing severe sexual abuse during childhood (52 per cent of women and 22 per cent of men)<sup>60</sup>



## Examining the Justice System in Nunavut

### Sexual abuse during adulthood:

- 18 per cent of respondents reported experiencing forced or attempted forced sexual activity (27 per cent of women and 5 per cent of men)<sup>61</sup>

### Depression:

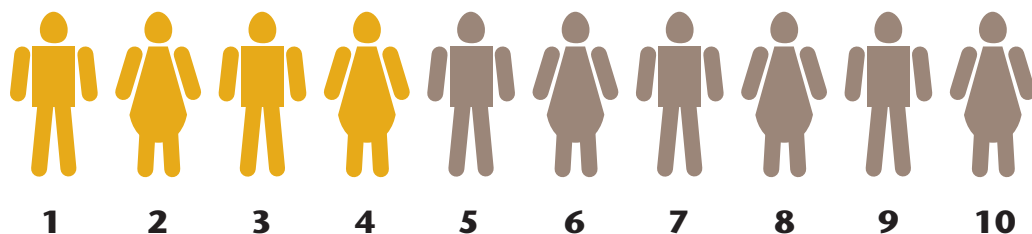
- 43 per cent of respondents reported feeling so depressed that nothing could cheer them up some of the time in the last 30 days<sup>62</sup>
- 9 per cent of respondents reported feeling so depressed that nothing could cheer them up all or most of the time in the last 30 days<sup>63</sup>

### Suicide:

- 48 per cent of respondents reported having had suicidal thoughts at some point in their lives; 14 per cent had them in the past 12 months<sup>64</sup>
- 29 per cent of respondents reported having attempted suicide at some point in their lives (31 per cent of women and 25 per cent of men)<sup>65</sup>
- 5 per cent of respondents had attempted suicide in the 12 months prior to the survey<sup>66</sup>

These findings show us that there is a high prevalence of depression, suicidal ideation, and suicide attempts among Inuit adults in the territory. Many people also reported having experienced physical and sexual violence and child sexual abuse in their lifetimes.

### 4 in 10 Inuit adults in Nunavut have experienced severe sexual abuse during childhood<sup>67</sup>



### The Adverse Childhood Experiences study and lifelong health and well-being

The Adverse Childhood Experiences (ACE) study can further our understanding of how some of the ACEs discussed above, such as witnessing or experiencing violence and/or sexual abuse have the potential to negatively affect health outcomes later in life. The ACE study substantiates what many Nunavummiut already know, which is that there is often a relationship between ACEs, such as physical and sexual abuse, and poor mental health outcomes later in life.

More than 17,000 American adults participated in the ACE study by completing a medical evaluation of adult risk behaviour, health status, and disease. Participants then answered a questionnaire about their childhood experience of abuse, neglect, and family dysfunction. Ten ACEs were studied, including child abuse (emotional, physical, sexual), neglect (emotional, physical), and growing up in a seriously dysfunctional household (witnessing domestic violence, alcohol, or other substance abuse in the home, mentally ill or suicidal household members, parental marital discord, crime in the home).<sup>68</sup>

The study found that the prevalence and risk for smoking, severe obesity, physical inactivity, depressed mood, and suicide attempts increased as the number of childhood exposures to these adverse experiences increased.

For example, the likelihood of attempting suicide was found to be more than 12 times greater for those who had four ACEs than for those with zero such experiences. The prevalence and risk for alcoholism, drug use, sexual promiscuity, and sexually transmitted diseases followed a similar pattern.<sup>69</sup> The study also found strong relationships between the breadth of exposure to abuse or household dysfunction during childhood and multiple

risk factors for several of the leading causes of death in adult life. In other words, there was a greater prevalence and risk of heart disease, cancer, chronic lung disease, skeletal fractures, liver disease, as well as poor self-rated health among those with more exposure to ACEs.





The idea that early experiences affect developmental outcomes is accepted as common wisdom among health practitioners.<sup>70</sup> The crime trends and sobering statistics seen today are symptoms of the challenging environments that many of today's offenders have grown up in, as well as the failure of the government to meet many of the basic needs of the population. The majority of people who experience ACEs do not become perpetrators of violence as adults. However, a large proportion of those who are perpetrators of violence have experienced adversity in their lifetimes. That being said, the majority of Inuit grow up in healthy, functional families with the love and support they need.

### The need for a trauma-informed justice system

Violent victimization during adolescence is acknowledged as a risk factor for violent crime victimization, domestic violence perpetration, and problem drug use in adulthood<sup>71</sup> because adverse experiences can disrupt the course of child development in very fundamental ways and contribute to problems over the course of a lifetime.

Children who have been sexually abused and received little parental support, for example, may develop post-traumatic stress disorder, depression, and anxiety; their ability to trust adults to take care of them may also be jeopardized.<sup>72</sup> As a result of such disorders, children may struggle to concentrate in school, struggle to regulate their emotions, and fail to maintain normal social relationships. Children who are physically abused may develop chronic anxiety or depression, and abuse can teach them that hitting is a way of controlling other people or solving problems, leading to problems at school, at home, and with friends.<sup>73</sup> Without receiving therapy and support, the issues related to these disorders and behaviours can cascade into more serious problems in adulthood, such as substance abuse and violent behaviour that can put them at greater risk of entering the criminal justice system. Nunavut's Senior Judge Robert Kilpatrick succinctly described this pattern:

*The sad reality in Nunavut is that [children and youth] start off small; they exhibit these problems; they're labelled a troublemaker usually in the educational system; they drop out of school; they get into trouble; they go into Youth Court; they're dealt with in Youth Court for a few years using what few resources Nunavut has in that area, and then they graduate to adult court and jail. That's the reality. The court is powerless to address these sort of social problems without having the tools in the community to identify it and treat it and control it.<sup>74</sup>*

This is why it is so important for children and youth to have access to a service system with a trauma-informed perspective. A trauma-informed child and family service system is one in which all parties involved recognize and respond to the impact of traumatic stress on those who have contact with the system including children, caregivers, and service providers. Programs and agencies within such a system may include schools, community health clinics, Youth Justice Court, and CJsCs, for example. Programs and agencies within such a system use best practices informed by current scientific knowledge to facilitate and support the recovery and resiliency of the child and family.<sup>75</sup>

A trauma-informed system consists of programs, agencies, and service providers that (1) routinely screen for trauma exposure and related symptoms; (2) use culturally appropriate evidence-based assessment and treatment for traumatic stress and associated mental health symptoms; (3) make resources available to children, families, and providers on trauma exposure, its impact, and treatment; (4) engage in efforts to strengthen the resilience and protective factors of children and families affected by and vulnerable to trauma; (5) address parent and caregiver trauma and its impact on the family system; (6) emphasize continuity of care and collaboration across child-service systems; and (7) maintain an environment of care for staff that addresses, minimizes, and treats secondary traumatic stress and increases staff resilience.<sup>76</sup>

Implementing a trauma-informed system of care in Nunavut would create safety nets for youth who, by no fault of their own, are struggling to succeed in our society. Such a system of care would build on work already being carried out by the Department of Family Services in response to the 2014 recommendation from the Office of the Auditor General to track basic information about children in its care. The department has committed to tracking child information more vigilantly and to implementing a client information system across Nunavut.<sup>77</sup>



## Examining the Justice System in Nunavut

### Developing Community Justice Committees

Inuit have intuitively understood the basic concepts described above for centuries. In the past, in order to identify the root cause of the offending behaviour and prevent future offences, community elders systematically counselled individuals who violated community norms. Today, the Community Justice Diversion Program strives to carry out a similar function through CJs. CJs could fill an even more important role with proper training and support because they regularly come into contact with people who may present signs of trauma.

The CJs in Nunavut generally deal with low-level cases of violence and low-level crimes, such as property offences, and the law obliges the prosecutor to divert youth cases whenever possible.<sup>78</sup> CJs are made up of local volunteers in each community who are interested in justice issues and have a desire to help youth and adult offenders take responsibility for their actions, making the community a safer place to live.<sup>79</sup>

The RCMP can divert cases to the CJs before a person has been charged with a crime. CJC members are supposed to work with individuals who have been diverted using a restorative justice approach. Restorative justice is an approach to sentencing for criminal offences that takes victim input into account; victims and offenders meet face-to-face in a community setting instead of in a conventional court setting, and some form of restitution and (ideally) reconciliation occurs between the victim and offender.<sup>80</sup>

Cases diverted to CJs do not come before the NCJ or Youth Court unless the diversion has been unsuccessful. In this capacity, CJs currently play an active role in the administration of justice in the territory. In 2012/2013, 137 cases were diverted to CJs; of those, 92 were completed, 29 are pending, and 12 were referred back to court.<sup>81</sup>

Family group conferencing is a typical restorative justice model in which an offender and the victim, as well as their families or supporters, are brought together under the guidance of a trained facilitator to discuss the offence, to determine how they have all been affected, and to jointly develop a plan to correct what has occurred. Offenders must accept responsibility for their own actions and are confronted with the way in which their behaviour affected the victim personally—and they hear it directly from the victim.<sup>82</sup>

Victim participation is, therefore, considered essential from the RCMP's point of view because this interaction is intended to bring about feelings of remorse and empathy, and thus the action and reconciliation needed to restore justice. CJC members are supposed to help victims and offenders develop consensus-based plans that meet victim-identified needs in the wake of a

crime.<sup>83</sup> However, in traditional Inuit community justice practices, the offender was the only party usually given counselling. CJs have followed this practice, only involving the victim when he or she agreed to participate.

Although CJs may succeed in diverting offenders from the criminal justice system, it is questionable whether or not victims benefit from this process and receive the reconciliation they need. The Department of Justice's Community Justice division is responsible for oversight of this program and is aware of these issues. The division plans to train CJs to use a family group conferencing model that brings together victims and offenders to look at ways of repairing the harm done to victims and the community.<sup>84</sup> The division took steps in this direction by convening two regional conferences attended by CJC representatives and community justice outreach workers in March 2014 to discuss the need and importance of ensuring that victims are incorporated into the process.<sup>85</sup>

The functioning and capacity of CJs vary by community, with some having greater capacity and community support or requiring more time commitment than others. It is beyond the scope of this report to provide an exhaustive analysis of the Community Justice Diversion Program. However, a Justice Canada evaluation of the program carried out a decade ago reported that the most effective CJs seem to be having an impact on decreasing incidences of reoffending in the community and even reducing offences in some cases. At least anecdotally, it notes that CJs are providing an effective alternative to the formal justice system overall despite shortcomings in areas such as training, infrastructure, and inconsistency in selection and appointment of members.<sup>86</sup> The Department of Justice's Community Justice division continues to struggle to provide CJs with adequate training needed to ensure their effectiveness and reduce inconsistency in functioning.

Committee members in Nunavut are selected by the Department of Justice's Community Justice division and appointed by the Minister of Justice. Based on the current diversion protocol agreement between CJs, the RCMP, the Public Prosecution Service, and the Community Justice division, CJs deal with summary offences only; they do not have the federally derived legal authority to deal with sexual assaults, spousal violence, and any cases involving children.<sup>87</sup>

At the time of writing, CJs are functioning in every community except Taloyoak and Iqaluit.<sup>88</sup> The Amaat Iqaluit Restorative Justice Society served as Iqaluit's CJC for a decade before becoming inactive in July 2012 due to attrition. Iqaluit elder Mary Iqu Wilman, who served as a member of Amaat, cites burnout related to the amount of volunteer hours members



committed to administration and the lack of available support and training of new members as contributing factors. Amaat comprised about a dozen Inuit elders, RCMP, NCJ, and Department of Justice partners.

Wilman aptly describes how restorative justice practices differ from those of the NCJ: “It’s on [a] human level...the focus isn’t to punish; the focus is to correct the behaviour, that’s the difference.” Wilman said that part of correcting an individual’s behaviour could involve referring that person to long-term counselling and a social worker.<sup>89</sup> Iqaluit elder and former Amaat member Annie Nataaq described how traditional Inuit counselling practices were used in more detail:

*We try and let them understand that it is not acceptable behaviour, that when your life is like this, you will have a more peaceful life. What you are doing is going to make your life harder and it is not good...That is how we work on helping the offenders. We also let them understand that we are not there to scold them and be angry with them; we tell them that we discipline them only because we love them and want them to be in the right track.<sup>90</sup>*

It is clear that despite their setbacks, CJs have an important role to play in the administration of justice in the territory. CJs are one of the few channels through which Inuit participate in the administration of justice, and CJC members care deeply about this work. However, it is also clear that despite the significant economic and social benefits to the territory associated with successfully diverting offenders from the criminal justice system, CJs continue to lack the support they need to grow into a more formal apparatus of the criminal justice system. Perhaps the clearest sign of this is the fact that the Community Justice division has been wrestling with the same training, support, recruitment, and retention issues for more than a decade.

### Hiring CJC members as Government of Nunavut employees

As the Community Justice division pursues formal training of CJs in family group conferencing, it is reasonable to assume that CJC members will be tasked with adopting more standardized protocols that will lead to more diversions. Dealing with these diversions will require an investment of time and energy on the part of CJC members, many of whom are elders. CJC members currently receive an honorarium of \$100 per month for volunteer work that potentially saves the territory millions of dollars. In order for CJs to be sustainable and to perform their intended function, we believe the Department of Justice should hire CJC members as GN employees. Doing so would help formalize the recruitment process, improve retention, and provide needed economic support to CJC members and their families.

Through this relationship, the Community Justice division could provide ongoing professional development and support to CJs. Strong, fully supported CJs would reduce the burden on the NCJ, Legal Aid, and Corrections by preventing Inuit from entering the criminal justice system and reducing recidivism in the territory.

CJC members are uniquely positioned to identify at-risk individuals and families, many of whom they know and have trusting relationships with. With appropriate training, CJs could play a key role in providing a layer of trauma-informed care in the territory by using the restorative justice process to systematically identify and refer people with mental health needs to the appropriate services and support.

Justice Canada helps fund community justice work in Nunavut through its Aboriginal Justice Strategy; this provides two funding streams that can be accessed by governments to develop and support community-based justice programs. The Aboriginal Justice Strategy community-based justice fund currently helps fund 24 community justice outreach worker positions in Nunavut on a cost-sharing basis with the GN. These outreach workers are responsible for coordinating the work of CJs in addition to carrying out their separate responsibilities. The purpose of the Aboriginal Justice Strategy is to “provide timely and effective alternatives to the mainstream justice system...in order to increase the involvement of Aboriginal communities in the local administration of justice and to decrease rates of crime, victimization and incarceration of Aboriginal persons in communities with AJS [Aboriginal Justice Strategy]-funded programs.”<sup>91</sup> Canada-wide, these programs have been successful in reducing rates of incarceration and recidivism for Aboriginal persons who are diverted to Community Justice Programs.<sup>92</sup>

According to the Community Justice division, the cost-shared funding provided to the GN by the Aboriginal Justice Strategy is barely enough to cover the total expenses of the 24 community justice outreach worker positions.<sup>93</sup> In order to hire CJC members, the Department of Justice will likely need to document the effectiveness of CJs in reducing recidivism in Nunavut, as well as the estimated long-term economic savings to Justice Canada of investments in community-based justice programs that prevent incarceration and recidivism. NTI is willing to work in cooperation with the Department of Justice to advocate for these changes.





## Examining the Justice System in Nunavut

### Conclusion to Part 1

Nunavut has seen its crime rate double since 1999 against a backdrop of troubling social challenges, including a high prevalence of physical and sexual abuse. The rate and type of crime seen in the territory is largely a symptom of these deeper issues in addition to compounding factors such as poverty, low educational attainment, and crowded housing. Given the complexity and scope of these challenges, the territory would benefit from integrating a trauma-informed system of care into the work of its agencies in order to screen and identify at-risk individuals and families who require treatment and support. Such a holistic system is necessary to ensure that people get the help they need and avoid entering the criminal justice system.

Traditional Inuit justice practices focused on counselling individuals who had disrupted community norms in order to prevent future offences. Today's CJs continue that practice by taking pre- and post-charge diversions from the RCMP and court. Given their unique position in the communities where they work and the Community Justice division's plans to train CJs in more formal restorative justice practices, the Department of Justice would benefit from hiring CJC members as full-time employees, much in the same way as community justice outreach workers are.

### RECOMMENDATION 1

A trauma-informed system of care is needed to coordinate mental health resources to identify and screen at-risk individuals for trauma history and mental health disorders. Such a system should involve implementing a referral system at schools, clinics, Youth Justice Court, and CJs that identifies at-risk children and youth and connects them with trauma-informed services and support. The GN's Department of Health and Department of Family Services should lead this initiative in partnership with NTI and the GN's Department of Education.

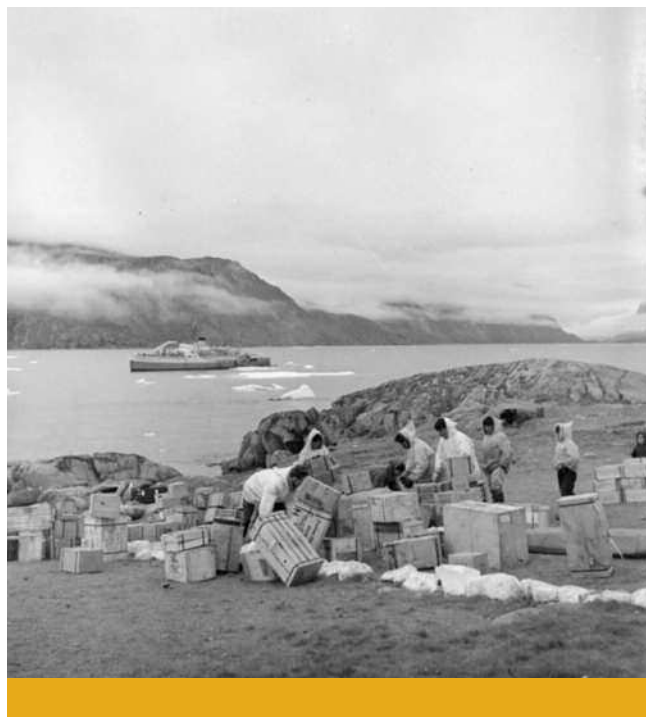
### RECOMMENDATION 2

CJCs currently lack the training, resources, and support needed to play a more meaningful and sustainable role in the administration of justice in the territory. CJs operate at arm's length from the Community Justice division through hamlet-employed community justice outreach workers. NTI recommends that the Department of Justice hire CJC members as GN employees in order to provide ongoing training and support, prevent attrition, and help alleviate the administrative burden that can weigh down this important work.



Jimmy Gibbons, an Inuit deputy RCMP constable, at home with his family in Eskimo Point, NWT (now Arviat, NU), Aug. 1, 1946.

George Hunter/National Film Board of Canada. Photothèque Collection/ e005477068



Inuit transporting supplies for the RCMP from the *C.D. Howe*, Pangnirtung, NWT (now NU), July 1951.

W. Doucette/National Film Board of Canada/Library and Archives Canada/PA-146649





## PART 2: FAMILY VIOLENCE, RESOURCE GAPS, AND ACCESS TO JUSTICE FOR INUIT WOMEN AND CHILDREN

The violence reflected in the statistics and research cited in Part 1 of this report does not affect all the territory's citizens equally. It should by now be a well-known fact that Inuit and other Aboriginal women and children in Canada experience physical and sexual violence at rates far higher than non-Aboriginal Canadians. The 1996 Royal Commission on Aboriginal Peoples explained that in some cases "a culture of violence has invaded communities" and that this violence is often hidden.<sup>94</sup> Eighteen years later, nearly a full generation since these words were published, rates of physical and sexual violence against Inuit women and children remain a crisis. A collective failure to protect Inuit women and children in the territory is primarily due to a lack of political will to end the violence against women and children. This is, in part, a result of the continuing culture of silence around the issue of violence against women and children.

In an interview for this report, Charlotte Borg, President of the Qullit Nunavut Status of Women Council, aptly described this culture of silence as follows:

*If you have a pot of boiling water and you put a frog in it, the frog's going to jump out for survival because the frog knows this is threatening its life. But if you put a pot of water on the stove and you put the frog in it and then you slowly boil the water, the frog will never jump out. The frog will just get used to it until it's dead. And I think with the issue of violence in Nunavut, we're kind of there. Like we were with suicide, until people began to speak out. Everywhere you turn, somebody's lost somebody to suicide, and we lost the stigma of talking about suicide. We still haven't lost the stigma about being abused women, and we still hide it. And children still come to school and don't talk about it. I think we're there. We're the frog in the pot of boiling water, and that's why there isn't the outcry nationally and territorially.<sup>95</sup>*

In 2000, there was an "extreme shortage of services for victims of violence" in Nunavut and the situation remains that way.<sup>96</sup> Despite NIC acknowledging that family violence would be a challenge for the new territory, Nunavut lacks a government position or office dedicated to addressing this issue or even a

meaningful strategy to guide prevention efforts. This means that unless action is taken soon, the rate of violent crime discussed in Part 1 of this report will likely continue to increase and the mental health issues associated with this issue will also continue to increase. In this context, Nunavut's already overburdened justice system will face added strain.

**27% of women in Nunavut have experienced forced or attempted forced sexual activity as an adult<sup>97</sup>**



Nunavut is the most dangerous jurisdiction in Canada in which to be a woman or child. Women in Nunavut are the victims of violent crime at a rate more than 13 times higher than the rate for women in Canada as a whole,<sup>98</sup> and the rate of intimate-partner violence against women is the highest in the country.<sup>99</sup> The prevalence of sexual assault against women is also staggering. The risk of a woman being sexually assaulted in Nunavut is 12 times greater than the Canadian provincial average.<sup>100</sup> Women are also nearly twice as likely as men to be victims of intimate-partner homicide:<sup>‡</sup> between 2000 and 2010, nine women and five men were the victims of intimate-partner homicide.<sup>101</sup>

In general, child abuse and domestic violence co-occur in an estimated 30 to 60 per cent of cases; even when children are not directly injured by violence, exposure can contribute to behavioural, social, or emotional problems.<sup>102</sup> The report rate of family violence<sup>§</sup> experienced by children and youth in Nunavut is more than nine times the rate for children and youth in Ontario, and more than six times the rate reported for all Canadian children and youth.<sup>103</sup>

Perhaps most concerning is the intergenerational pattern of sexual assault and family violence, irrespective of race, with many perpetrators of sexual assault and family violence having suffered abuse in their personal history. A Justice Canada report on family violence and sexual assault in the territories found that over two-thirds of sexual assault offenders and over three-quarters of family violence offenders likely have a personal history of abuse.<sup>104</sup>

<sup>‡</sup> Intimate partner homicide refers to homicides against legally married, separated, divorced, common-law, and dating partners (current and previous).

<sup>§</sup> Family violence refers to violence committed by parents, siblings, extended family, and spouses.



## Examining the Justice System in Nunavut

People who experience physical and sexual violence are often traumatized by their experiences and are unable to attend work or school, or to live their lives free from stress and fear.<sup>105</sup> Sexual and physical violence often exact a punishing economic toll on survivors as well. In 2009, the economic cost of spousal violence\*\* for women and men in Canada was \$7.4 billion, or \$220 per Canadian, with primary victims of violence bearing \$6 billion of that cost through medical attention, hospitalizations, lost wages, missed schools days, and stolen or damaged property.<sup>106</sup> In total, the cost of spousal violence against women was estimated at \$4.8 billion.

For decades, Inuit women have been tireless advocates for their international human right to live free from sexual and physical violence. Before division from the NWT, the majority of Inuit women lent cautious support to the creation of Nunavut despite concerns over how changes to the administration of justice would affect violence against women and children.<sup>107</sup> Then, as now, the rates of violence against women and children in the NWT were several times higher than in Canada as a whole, and sexual assault and common assault were among those crimes noted to have increased between 1986 and 1996.<sup>108</sup>

### 1 in 2 Inuit women in Nunavut has experienced severe sexual abuse during childhood<sup>109</sup>



This is why Pauktuutit, Canada's national Inuit women's advocacy organization, had a prominent voice in the NIC's 1996 planning document, *Footprints in New Snow 2*. A Pauktuutit report on family violence published the same year is quoted extensively in *Footprints 2* in order to bring attention to sexual assault and spousal assault and to highlight the organization's proposed pilot treatment program for sexual offenders. NIC recommended that the appropriate funding agencies support this initiative.

### Ilagiitsiarniq family violence prevention action plan

In 2006, the GN Violence Against Women Working Group partnered with Qullit Nunavut Status of Women Council to host a symposium on ending violence against women. The working group consisted of deputy ministers and senior officials

from several government departments as well as representatives from NTI, the Nunavut Housing Corporation, the RCMP, and Justice Canada. The mandate of the working group was to increase awareness of domestic violence, identify resources for prevention, and cultivate cross-sector partnerships between departments and organizations.

To that end, symposium participants made 78 recommendations that the working group intended to be foundational "for a future strategy to end violence against women in the territory" that would "result in appropriate government support of community-based solutions to violence."<sup>110</sup> These recommendations stressed that community members need to be given the support and resources needed to take action because they are at the forefront of violence.<sup>111</sup> Participants outlined novel solutions and specified the need for support and resources in areas such as community-based victim crisis response, education and support of children, parenting training and support, and community-based justice initiatives.

The working group is no longer active, and it was not until December 2010 that the GN Department of Health and Social Services renewed its commitment to *Inuuqatigiitsiarniq* with promises to develop a family violence prevention strategy within the year. In March 2013, the GN Department of Health and Social Services tabled a draft of its family violence prevention action plan in the Legislative Assembly, a document more than two years in the making. Called *Ilagiitsiarniq*, the purpose of this eight-page document is to "coordinate how we as a government, as communities and as individuals respond to family violence" and to "attempt to reduce the prevalence of family violence in Nunavut."<sup>112</sup>

The NTI, Qikiqtaani Inuit Association, Pauktuutit, Qullit Nunavut Status of Women Council, YWCA Agvvik Society, and the RCMP formed the external advisory committee that the Department of Health and Social Services solicited for input. However, this action plan does not reflect the input provided by NTI or the Qikiqtani Inuit Association.

Because the document contains few specific action items and no timelines for implementation, there is little assurance that this action plan will fulfill its stated intent. Among its more substantive promises, the document commits the Department of Health and Social Services to (1) create an inter-sector working group to coordinate family violence prevention efforts, (2) strengthen the *Child and Family Services Act* by extending the

\*\* "Spousal" refers to relationships of married, common-law, separated, or divorced partners of at least 15 years of age, and "spousal violence" means violence perpetrated by a spouse against his/her current or former spouse in any one of the defined relationships.



circumstances under which a child is in need of protection to include a child who is being exposed to family violence, and (3) hire a family violence prevention coordinator within the Department of Child and Family Services to coordinate the implementation of the *Ilagiitsiarniq* action plan.<sup>113</sup>

At the time of writing, Child and Family Services has not hired a family violence prevention coordinator. While NTI welcomes the good intentions behind the move to hire a family violence prevention coordinator, NTI does not believe that a single position is adequate for implementing *Ilagiitsiarniq* in a way that will impact family violence in Nunavut meaningfully.

Given our positive experiences working in close collaboration with the GN, Embrace Life Council, and the RCMP to produce the *Nunavut Suicide Prevention Strategy*<sup>114</sup> and *Nunavut Suicide Prevention Action Plan*,<sup>115</sup> NTI understands the impact of cross-sector collaboration. However, we see *Ilagiitsiarniq*'s vague promise of initiating and facilitating cross-sector collaboration through the family violence prevention coordinator without specifying the intended parameters of this collaboration as too ambiguous.

Charlotte Borg of Qullit believes that the same collaborative, cross-sector approach taken to produce the *Nunavut Suicide Prevention Strategy* and *Nunavut Suicide Prevention Action Plan* must also be applied to the issue of violence against women and children.

*The same kind of action needs to be taken with violence. We need to establish a council that has representatives from housing, education, the women's shelter, Qullit, with an executive director and an office, and an action plan and there's a concerted strategy around it. I think that the same approach is necessary...so that it's not just the realm of Family Services; that department has enough on its plate.*<sup>116</sup>

NTI supports the need for such a collaborative approach on this issue in order to identify and focus shared resources on developing a territory-wide strategy and action plan on ending violence against women and children. Given our positive, collaborative work on suicide prevention, NTI is willing to take a lead role working in partnership with Qullit to convene this body.

As it stands, *Ilagiitsiarniq* is not a serious or acceptable action plan to address the growing crisis of family violence in Nunavut. Despite precedent-setting work by the violence against women working group in 2006 and even a national strategy to prevent abuse in Inuit communities completed by Pauktuutit the same year, *Ilagiitsiarniq* largely ignores this precedent-setting work and excludes input provided by action plan working group members.<sup>117</sup> This is worrying because family violence is at the

root of the territory's growing social challenges, symptoms of which include elevated trauma, suicide, and substance abuse in the population. These social challenges in turn place enormous stress on the territory's criminal justice system and sparse services. Left unchecked, these problems will continue to snowball into rising poverty, violent crime, and mental illness.

### Gaps in service and infrastructure contribute to violence against women and children

Inuit women who report a physical or sexual assault are incredibly brave because, apart from the threat of future harm, they must navigate intimidating service and infrastructure gaps. Women experiencing violence often do not have access to the information they need to understand the legal process, to access programs, to appeal unfair rulings, or in general to advocate for themselves and their children. There is no centralized source of information such as a website explaining their options, a dedicated government office, or a hotline where people experiencing physical or sexual violence can learn about reporting options, services available to them, such as counselling or income support, and how their cases will proceed.

There are also few places of refuge available to women and children fleeing violence. Temporary shelters for those experiencing family violence are scarce in the territory and a lack of affordable housing means that many people have nowhere permanent to go. In fact, since 1999, a growing number of Inuit women from the Kitikmeot region have used shelters in Yellowknife because of the lack of shelter space in the territory.<sup>118</sup> In many cases, women fleeing violence face the prospect of homelessness and even the possibility of losing custody of their children as a direct consequence. These additional crises can place a burden on the mental and physical health of abuse survivors that is equal to or greater than the stressors they experienced in the abusive relationship.

In addition, months may elapse between the time a charge is laid and sentencing of the perpetrator of the violence because the court visits a community anywhere from two to seven times a year depending on a number of factors, such as charge volumes in the community and size of the community. In 2013, the court spent 68 weeks on circuit in Nunavut communities.<sup>119</sup> The gaps in time between circuits can mean that a couple involved in a domestic abuse situation may have to wait up to six months for the court to arrive and address the case in a first hearing and sentencing may not take place until a later circuit.<sup>120</sup> In the interim, couples may have little choice but to endure the stress of remaining together in a potentially explosive and violent situation, typically with little or no counselling or other supportive programming.<sup>121</sup>



## Examining the Justice System in Nunavut

There are currently five family violence shelters (Table 1) in the territory as well as the 12-bed Sivummut homeless shelter for women and children in Iqaluit. At the time of writing, the St. Michael's Crisis Shelter in Cambridge Bay was closed indefinitely on April 1, 2014 pending the renewal of a contribution agreement between the Hamlet of Cambridge Bay and the GN.

Women in Baffin Island communities can access the shelter in three primary ways: a referral from a community social worker, a referral from the RCMP, or self-referral. Women who are in immediate danger can call Health and Social Services workers in their communities who can then process the paperwork needed to transport them to Iqaluit. After intake at Qimaavik, women meet with certified counsellors to identify immediate needs and goals and to determine whether referrals are needed for mental

**Table 1. Nunavut family violence shelters, beds and capacity, April 2014**

Facility	Location	Beds	At capacity?
<i>Rankin Inlet Kataujuq Society</i>	<i>Rankin Inlet</i>	9	No
<i>Cambridge Bay St. Michael's Crisis Shelter</i>	<i>Cambridge Bay</i>	8	Closed
<i>Kugaaruk Family Violence Shelter</i>	<i>Kugaaruk</i>	8	Yes
<i>Kugluktuk Women's Crisis Centre</i>	<i>Kugluktuk</i>	7	Yes
<i>Qimaavik Shelter</i>	<i>Iqaluit</i>	21	Yes
<b>Total</b>	<b>5</b>	<b>53</b>	

The largest family violence shelter, the 21-bed Qimaavik emergency shelter, is located in Iqaluit and operated by the YWCA, Canada's oldest and largest multi-service women's organization. The shelter is open to the 13 communities in Baffin region. In order to gain a more detailed understanding of the services Qimaavik provides and some of the challenges faced by family violence shelters, NTI interviewed Suny Jacobs, executive director of YWCA Aggviq Nunavut.

The maximum stay for women and children at Qimaavik is about six weeks and the shelter often operates at 100 to 115 per cent capacity with as many as 35 to 40 clients passing through in a given month. Core funding comes from the GN Department of Family Services with supplementary funding from the Status of Women Canada, Canadian Women's Foundation, and Canadian Heritage. Qimaavik employs five community outreach workers in Iqaluit and provides round-the-clock counselling for residents. Jacobs estimates that 80 per cent of the shelter's current residents are employed.<sup>122</sup>

health services, medical treatment, addictions treatment, or legal advocacy. Women suffering from addictions or serious mental illness are not admitted to the shelter.

Jacobs estimates that up to 65 per cent of Qimaavik's clients are repeat clients who have stayed at the shelter before, "like a revolving door system."<sup>123</sup> She attributes this cycle to two primary causes: homelessness and a general lack of services and support for people struggling with addictions within the territory. "There is not much help, which is because we do not have a healing centre; we do not have any detox centre; we do not have anywhere where they can go to get any kind of support in order to get out of this."<sup>124</sup>

Nunavut lacks a substance abuse treatment centre or detoxification centre for people working towards sobriety. This creates an obstacle for many survivors of violence because experiencing violence can have various impacts on women's physical and psychological health, including their levels of mental health and substance use.<sup>125</sup>







## Examining the Justice System in Nunavut

promote access to justice, improve the capacity of service providers, and/or increase the awareness of services available to victims of crime and their families.

This has been part of a broader Conservative government assault on the health of Aboriginal Peoples in Canada. In 2012, Health Canada eliminated the NAHO and withdrew \$800,000 of annual funding for Pauktuutiit health programs. These programs included education on HIV, sexual health, fetal alcohol syndrome (FAS), injury prevention, and hepatitis C. By contrast, Canada was quick to provide a \$220 million foreign aid package to the Ukraine in March 2014 in response to that country's destabilization.<sup>136</sup>

### Family Abuse Intervention Act

In order to help mitigate some of the challenges discussed above, the FAIA was passed by the Legislative Assembly in late 2006 and is aimed at preventing domestic violence in Nunavut. Every jurisdiction in Canada has family abuse legislation. The Community Justice Program within the Department of Justice is responsible for implementing FAIA. Community Justice does so indirectly through contribution agreements with the hamlets. Each hamlet is responsible for hiring personnel including the community justice outreach workers who are considered the frontline providers for Community Justice Programs. The law came into force in March 2008 and has the following four different types of orders Nunavummiut can use to protect themselves against violence:

- **Emergency Protection Order (EPO):** Nunavummiut can apply for an EPO through a JP, ordering an abusive family member (the respondent) to be removed from the home within short notice. The EPO may also grant the applicant custody of children and possession of the family home, as well as prohibit the abusive person from contacting the family. In order for a JP to issue an EPO, there needs to be reasonable likelihood that the abuse will be repeated or resume.
- **Community Intervention Order (CIO):** Nunavummiut can apply for a CIO through a JP in order to restrain a respondent from committing family abuse and directing the applicant and respondent to attend traditional Inuit counselling with a specified traditional counsellor.
- **Assistance Order:** An order granted by judges through the NCJ in cases in which family abuse has occurred, and there is reasonable likelihood that it will continue to occur. Assistance Orders are basically restraining orders that impose different levels of restraint on the respondent (e.g., refrain from communicating with or contacting the abused person).

- **Compensation Order:** Compensation Orders are granted through a judge and require the respondent to reimburse the applicant or any specified person for any monetary loss suffered or expense incurred as a result of family abuse including loss of income, damage to personal property, and expenses relating to new accommodations.

These orders are meant to prevent the escalation of violence, according to Paul Okalik who was the Nunavut premier when the law was passed. "Usually the serious offences start from the minimal stage and they escalate," he said in 2008. "So we're trying to intervene at the early stage and prevent the problems from escalating."<sup>137</sup>

In order to gain a better understanding of FAIA, NTI interviewed Sunday Thomas, director of Community Justice Programs, and Lisa Tootoo, community justice specialist. Tootoo said the CIO is a novel feature of the law that makes FAIA unique in Canada because it is meant to promote community self-reliance.

*When you really look at the spirit and intent of FAIA, it's to prevent abuse and decrease the escalation of it. And that really can be achieved through our Community Intervention Orders. So bringing people together before there's something physical that's happened, to talk about, "you know what, things are starting to escalate within our family. We want the abuse to stop and we want to be able to stay together."<sup>138</sup>*

CIO applicants are supposed to work with community justice outreach workers to identify the core issues contributing to family conflict and identify potential solutions. Community justice outreach workers are then responsible for bringing family members together to discuss counselling details, including who will provide counselling and in what format. This feedback becomes part of the formal plan presented to JPs who then decide whether or not to grant a CIO order.

Under a CIO, counselling is supposed to be carried out in cases of family abuse through a specified traditional counsellor.<sup>139</sup> Counsellors can be just about anyone, including CJC members, elders, or mental health consultants. Community justice outreach workers are also responsible for keeping an updated list of potential counsellors that people can draw on. Tootoo said that, to date, there are very few examples of CIOs being used in Nunavut, attributing this to the need for additional outreach and training and support for community justice outreach workers.<sup>140</sup> The Community Justice division does not have a breakdown of the number of orders, by type, that have been issued to date but is in the process of developing a tracking system to capture these statistics.<sup>141</sup>

EPOs are also an option for conflict resolution outside the criminal justice system under FAIA and are issued by JPs to applicants



in cases in which abuse has taken place and an applicant needs immediate protection. The abused family member would initiate contact with a community justice outreach worker who would then provide assistance in completing an application form and an affidavit. A JP would review this application and, if granted, the RCMP would serve the EPO to the perpetrator. Depending on the nature of the abuse, an EPO may grant an applicant sole custody of children, possessions, and the family home for up to 90 days. If a perpetrator breaks the conditions stipulated in the order by a JP, the RCMP could then lay criminal charges for failure to comply with a court order, which is an indictable criminal offence. It may seem counterintuitive that people experiencing abuse would not report violence directly to the RCMP, but Tootoo said that there are a variety of reasons for individuals feeling reluctant to do so including distrust of law enforcement or a desire to repair relationships without sending a loved one to prison.

### Criticism of the *Family Abuse Intervention Act*

An evaluation of FAIA carried out by the Genesis Group a year after the law came into force deemed the law to be failing largely because community justice outreach workers were considered unqualified and unable to carry out their requisite duties.<sup>142</sup> The report, titled *FAIA: Implementation Evaluation*, found the law to be applied unevenly in 2009/10 with more than half the 80 EPOs issued that year being issued in south Baffin Island, with more than half of those in Iqaluit and Cape Dorset. The perceived implementation shortcomings were blamed, in part, on the fact that community justice outreach workers are hamlet employees rather than employees of the government department responsible for implementing the legislation.<sup>143</sup> In addition, the report noted issues related to the quality of traditional counselling with many of those interviewed indicating that they did not support the use of traditional counsellors. In 2010/11, Nunavut JPs issued 67 EPOs and seven CIOs.<sup>144</sup>

When the evaluation was released, Assistant Deputy Minister of Justice Rebekah Williams defended the law, citing the newness of the legislation and recommending a follow-up evaluation in five years.<sup>145</sup> But NTI's interview in 2013, five years after the law was implemented, indicates that gaps remain in the training of community justice outreach workers and in public education on how to take advantage of this legislation, which contributes to underutilization of CIOs. Community justice outreach workers are trained by the Community Justice division's five justice specialists. Justice specialists fly to communities in their designated region and carry out FAIA training with new community justice outreach workers, supplemented by ongoing regional and territory-wide training and support. They are required to travel to each community in their region at least once each year for this purpose.<sup>146</sup>

Community Justice seems to be taking steps towards supporting outreach workers in implementing FAIA, but the main feature of the law intended to help prevent family violence is not preventing family violence. NTI can only speculate why this issue persists despite being identified over four years ago.

NTI recognizes the good intentions of the individuals working to implement FAIA and the complex challenges of implementing a unique mechanism for greater community participation in the administration of justice. However, as discussed in greater detail in Part 3 of this report, family violence is often a symptom of deeper issues, such as childhood trauma, that cannot be addressed through sporadic family mediation with counsellors. Counsellors can play an important role in helping people overcome challenges in the moment, but counselling is not necessarily a substitute for longer-term mental health care by a professional. Violence prevention ultimately requires deeper healing in the population through intentional, long-term services and supports.

Violent attitudes and behaviours in adults are often learned over the course of a lifetime. They can become hardwired by years of stress, abuse, and neglect and expressed when people lack the coping skills, support, and resources needed to manage their emotions and behaviour. People who fit this profile often have complex needs that require complex interventions in the home, in the school, and in the community. They need access to services that treat these issues and help individuals and families manage the stressors in their environment that can worsen their symptoms. Through CIOs, FAIA passively seeks to address only a small part of this bigger picture.

### Strengthening CIOs

NTI believes FAIA can serve a more proactive role in preventing family violence by amending the legislation to include a provision that respondents who are served CIOs or EPOs must undergo mandatory clinical screening to determine their mental health needs. Screening would be carried out by community psychiatric nurses, and the results would be used to refer respondents to the appropriate services and supports.

Screening CIO and EPO respondents would help integrate needed mental health services into this Community Justice Program. By doing so, FAIA would be an additional entry point into a broader range of services that help prevent people entering the criminal justice system.





## Examining the Justice System in Nunavut

### Conclusion to Part 2

Women and children are disproportionately affected by physical and sexual violence in Nunavut and this issue is magnified by gaps in legislation and infrastructure. Despite decades of advocacy by Pauktuutit and other organizations, the political commitment to ending family violence is inadequate. The draft *Ilagiitsiarniq* family violence prevention action plan completed in March 2013 does not reflect Inuit input and is not a realistic strategy for preventing family violence in the territory. FAIA, through its hallmark CIOs, is similarly lacking, but the legislation can be strengthened through a legislative amendment.

### RECOMMENDATION 3

Health Canada's 2012 across-the-board funding cuts for NAHO, Pauktuutit, and ITK are part of the current government's assault on the health of Aboriginal Canadians. Pauktuutit plays a key role in delivering programs that help close gaps in services that contribute to disproportionate levels of physical and sexual violence against Inuit women and children in Nunavut. Health Canada should restore health funding for Pauktuutit to pre-2012 levels for fiscal year 2015/16 to help facilitate this vital work. Accordingly, Justice Canada and Public Safety Canada should give priority to funding proposals for Inuit advocacy organizations in recognition of the disproportionate need in Inuit communities.

### RECOMMENDATION 4

The draft *Ilagiitsiarniq* family violence prevention action plan is not a meaningful contribution to violence prevention. A coordinated cross-sector initiative akin to the Embrace Life Council's work on suicide prevention is needed to develop a meaningful strategy and action plan on ending family violence in Nunavut. Ideally, this body would include NTI, the GN, Nunavut Housing Corporation, Qullit Status of Women Council, and the RCMP as partners. NTI will work with the Qullit Status of Women Council to convene this body.

### RECOMMENDATION 5

FAIA should be amended to include a provision for mandatory clinical screenings for CIO and EPO respondents carried out by community psychiatric nurses. Screenings should be used to identify mental health, home environment, and physical health needs, and to refer people to a wider range of trauma-informed mental health services and support when needed.



Noel Avadluk and an RCMP officer stopping for tea. Noel traveled as a guide with RCMP officers taking them to Inuit camps.

Library and Archives Canada/Credit: Richard Harrington/Richard Harrington fonds/PA-146556





## PART 3: MENTAL HEALTH AND THE CRIMINAL JUSTICE SYSTEM

Given the challenges faced by many Inuit in Nunavut, it is troubling that gaps in key government services persist; as a consequence, there are few safety nets in place to catch people who are experiencing adversity. In this context, Nunavut's criminal justice system is often the first stop in a cradle-to-prison pipeline in which people struggling with trauma, mental health disorders, or prenatal alcohol exposure are most vulnerable to incarceration. This is a problem that the NCJ and Legal Aid are well aware of, but in their respective roles they lack the political or legal mandate to address this issue. Once incarcerated, there are few rehabilitative services available to the majority of inmates; there are simply not enough mental health personnel in the territory to meet the needs of the general population let alone the prison population. Added to this, many prisoners are housed in crowded, inhumane conditions, so it is easy to understand why the re-offence rate is so high. Part 3 of this report describes how violent crime, disabilities related to prenatal alcohol exposure, and mental illness in the population, impacts the NCJ, Nunavut Corrections, and Legal Aid.

Inuit in Nunavut lack access to the mental health services and support that many people living in southern Canada take for granted. For Inuit living in Nunavut who have an undiagnosed mental disorder such as post-traumatic stress disorder or schizophrenia, the point of access to care would be the community mental health outreach worker or psychiatric nurse in their community (if the position is filled). Currently there are psychiatric nurses in 22 of the territory's 25 communities. Mental health outreach workers are responsible for providing community education and addressing mental health problems in individuals before they become a crisis. The psychiatric nurse would be responsible for assessing the individual's mental health in order to determine if a referral for psychiatric assessment or psychological therapy is needed.

Depending on the community an individual lives in, the referral for diagnosis and treatment may be to a psychiatrist or clinical psychologist in Yellowknife, Winnipeg, Edmonton, or Ottawa. Upon return to Nunavut, access to a psychiatrist or psychologist would be sporadic because these professionals may visit a community only once or twice per year,<sup>147</sup> and this would be a different person each time. Any required medication would be received from a psychiatric nurse who is neither local to the community nor speaks the language.

These are just some of the barriers that the minority of Inuit who access mental health services and support must overcome. However, for those who are less fortunate, being born with or developing a mental disorder early in life often ends in incarceration.

### Akausisarvik Mental Health Treatment Centre

In order to gain a basic understanding of the services available in the territory for the mentally ill, NTI interviewed Jackie Sheffield, mental health manager of the Akausisarvik Mental Health Treatment Centre in Iqaluit. Akausisarvik opened its doors in 2002 as a private organization and was subsumed into the GN Department of Health in 2006. Currently, the Centre has the capacity to serve 16 inpatients and up to 40 outpatients living with serious mental illness, such as schizophrenia, bipolar disorder, Fetal Alcohol Spectrum Disorders/Fetal Alcohol Effects (FASD/FAE), serious depression, or post-traumatic stress disorder. The Centre's inpatient population has reached capacity and about 20 outpatients who live independently or with family in Iqaluit use the facility for a variety of purposes including socialization and support, assistance with resumé building and employment, and access to medications. At the time of writing, all patients are Inuit.

Akausisarvik does accept referrals from the NCJ with a diagnosis, but people who are referred cannot be a danger to themselves or others, nor can substance abuse be the primary diagnosis. Sheffield said that she did not want the facility to become a stand-in for a substance abuse treatment centre.

Centre staff focus on reintegrating inpatients to their communities, their families, and cultures using a psychosocial rehabilitative framework. This means that staff members help patients develop independence by teaching them basic life skills and coaching them as they participate in day-to-day activities in the community. In addition, the Centre works with inpatients' community-based case managers and families to develop a plan for their return to their respective communities.

In order to be admitted to Akausisarvik, patients must be motivated to attend and have identified a psychiatric nurse in their community who is willing to work with the Centre to help reintegrate them upon their return home. In addition, they must have been seen by a psychiatrist or medical doctor in the previous three months and diagnosed with a serious mental illness. Most of the referrals received by Sheffield come from the Selkirk Mental Health Centre in Winnipeg where people have been hospitalized; some referrals also come from the Royal Ottawa Mental Health Centre. The Kitikmeot region uses Stanton Hospital in Yellowknife. Patient referrals may also come from community-based psychiatric nurses. The reliance on mental health services outside the territory is a result of there being no resident psychiatrists in Nunavut, thus nobody within the territory who can diagnose serious mental illnesses and prescribe medication when needed.<sup>148</sup>



## Examining the Justice System in Nunavut

Sheffield says that psychiatrists from the Centre for Addiction and Mental Health in Toronto are flown in to visit Akausisarvik every month for at least a few days; psychiatrists visit communities in Qikiqtaaluk region twice each year. This means that each visit patients must deal with a new psychiatrist. Sheffield comments:

*Unfortunately for clients – especially mentally ill clients – it’s very difficult to have to tell your story over and over again to different doctors. So there’s a lack of consistency for our psychiatric service and I believe the Kivalliq and Kitikmeot region struggle with the same issues and they even have less availability than we do.<sup>149</sup>*

Sheffield said that during her 20 years of experience working in the North serious mental illness in the population seems to have increased, though she acknowledges the possibility that more people may be seeking treatment than in the past.<sup>150</sup> Sheffield also said that in her previous role as a nurse in Inuit communities, many of the individuals and families she worked with experienced complex trauma which meant people were experiencing one traumatic event after another. This piling up of trauma and stress can put individuals at greater risk for developing psychiatric disorders, such as major depression. Sheffield also says that she is now seeing intergenerational mental illness in some of her patients:

*We’re seeing schizophrenia in families; I have two or three older individuals here and we’re now seeing their nephews and nieces coming and they’re being diagnosed with schizophrenia. So it seems to be following families and it seems to be cropping up more frequently. I’m not really sure why that is. I wonder if we were able to intervene more quickly and if there were more resources on the ground, if communities had more capacity to actually be in the community and be working more collaboratively say with the school to identify these kids earlier, we would be able to have a better outcome.<sup>151</sup>*

These issues may seem remote from criminal justice, but it is imperative to grasp how they are dealt with because of the effects trauma and mental illness can have on decision-making and behaviour. The services provided by Akausisarvik target non-violent individuals who have already been institutionalized and diagnosed with a serious mental illness. NTI commends Akausisarvik’s work, but the limited access to services described by Sheffield nearly vanishes once Nunavummiut have entered the criminal justice system.

### Nunavut Corrections

Nunavut Corrections operates six correctional facilities (Table 2) in the territory that serve different populations. Baffin Correctional Centre (BCC) in Iqaluit is the largest and houses minimum- to high-risk inmates, while the Correctional Healing Facility in Rankin Inlet houses minimum- and medium-security prisoners. Uttaqivik Community Residential Centre in Iqaluit and Ilavut Healing Centre in Kugluktuk focus on inmate rehabilitation and skill building, maintaining partial or complete open-door facilities. At Uttaqivik, residents are expected to draft resumé’s, search for employment, and manage their own budgets.<sup>152</sup> In order to apply for transfer to these facilities from BCC, inmates must meet behavioural and mental health criteria.

Due to the high volume of offenders entering the criminal justice system, BCC has faced chronic overcrowding for years. In 2013, the Office of the Correctional Investigator described the current state of disrepair and crowding at BCC as “nothing short of appalling”<sup>153</sup> and recommended that BCC “be closed and replaced by a new facility or facilities.”<sup>154</sup> BCC was built to house 41 inmates in 1986, but through renovation has been expanded to house 65 people. At the time of writing 96 people were sentenced or on remand at BCC.



Following the grave restoration on Devon Island during Operation Lancaster, the group of army, navy, air force personnel, Rangers and RCMP officers posed with the Canadian and Ranger flags.

*By Kerry McCluskey*

**Table 2. Corrections facilities as of March 2014**

Facility	Location	Beds	No. sentenced or on remand
Baffin Correctional Centre	Iqaluit	65	96 <sup>a</sup>
Young Offenders Facility	Iqaluit	17	9
Women's Correctional Centre	Iqaluit	8	5
Uttaqivik Community Residential Centre	Iqaluit	14	13
Correctional Healing Facility	Rankin Inlet	48	31 <sup>b</sup>
Ilavut Healing Centre	Kugluktuk	16	10
<b>Total</b>	<b>6</b>	<b>168</b>	<b>164</b>

<sup>a</sup> 37 sentenced, 46 remanded, 13 halfway housed

<sup>b</sup> 22 sentenced, 9 halfway housed

In order to help alleviate crowding in Nunavut facilities, inmates are housed in the North Slave Correctional Centre in Yellowknife. Inmates are also housed in Ontario at the Fenbrook Institution and the Ottawa-Carlton Detention Centre through memoranda of understanding with the Department of Justice. Through these memoranda, the GN pays a daily fee to have an inmate housed in a southern facility. However, housing inmates outside the territory is not a preferred solution given the significant economic expense and the threat of gangs and violence in the mainstream prison population.<sup>155</sup>

The Office of the Correctional Investigator has criticized the official Nunavut Corrections policy framework for not providing specific requirements or guidance for decision-making that would "take into account the unique needs and historical situation of incarcerated Inuit People."<sup>156</sup> The disparities in mental health and suicide discussed in Part 1 of this report show that such needs include access to mental health services to address trauma and serious mental illness.

In order to learn more about these issues, NTI interviewed Acting Director of Corrections Jackie Simpson. Simpson describes how the shortage of physical space at BCC is compounded by limited access to care for people with cognitive disabilities or undiagnosed mental health disorders, and yet she is seeing a growing number of inmates who fit this profile:

*It certainly is challenging because we don't have the proper space for folks that are very low functioning or that do suffer certain mental health issues. Oftentimes these issues aren't assessed properly; we have psychological services [but] we do not have psychiatric services inside our facility. Our staff are finding it much more challenging now with the increase of that particular inmate profile. It seems to be a larger number that's coming into the system, and I think that's right straight across Canada, that people are experiencing that.<sup>157</sup>*

Nationally, the proportion of the offender population with mental health concerns is indeed growing. Correctional Service Canada<sup>††</sup> estimates that the proportion of offenders with mental health needs identified at intake doubled between 1997 and 2008.<sup>158</sup> In fiscal year 2011/12, Correctional Service Canada delivered at least one institutional mental health service to 48.3 per cent of the total inmate population, with 47 per cent of Aboriginal offenders receiving services in fiscal year 2011/12.<sup>159</sup>

<sup>††</sup> Correctional Service Canada is the federal government agency responsible for administering sentences imposed by the court of two years or more. It is also responsible for managing institutions of various security levels and supervising offenders under conditional release in the community.





## Examining the Justice System in Nunavut

Both psychologists and psychiatrists can provide psychological therapy services, but psychiatrists are trained medical doctors who can prescribe medications and assess, diagnose, treat, and prevent mental illness. Simpson says that psychiatric services for inmates are available on a priority basis when psychiatrists visit BCC during routine visits from the south. This differs from many corrections facilities in southern Canada, which have more reliable access to psychiatric care for inmates:

*The difference is, [southern facilities] have psychiatric services that they're able to assess some of these mental health issues. They're able to put [inmates] on proper medication to assist them in trying to develop skills that will assist in them managing their mental health issues. We have a psychologist inside BCC that can assist someone, but not to the greatest degree and even if we take them to the clinics and get them referred, our psychiatric services are limited because many times we have to wait for the psychiatrist to actually come up.<sup>160</sup>*

Simpson says the lack of consistent access to mental health services in communities can lead some people to self-medicate through alcohol and substance abuse. Addictions increase the likelihood that people will enter the criminal justice system, where they are unlikely to receive the care they need. This lack of consistent access to care is often compounded by the fact that many people whose sentences have ended return to the same stressful, psychologically or physically harmful environments, and eventually re-offend:

*I think over the last 30 plus years that I've been working within corrections, I have seen very young people come into jail, and they're now well into their fifties, and they're still coming into jail. And they started out when they were 14, 15 years old. All the programming in the world inside the system doesn't help unless we can match something out in the community.<sup>161</sup>*

This is why Simpson believes that there must be broader support for Nunavut families in order to break the cycle of violence. Ideally, this would involve identifying at-risk youth before they enter the criminal justice system and engaging their families early in order to identify needs and provide support. "You can't just treat one person in the family and think the family is going to be fixed," she said.<sup>162</sup>

### Nunavut Court of Justice

NCJ's Senior Judge Robert Kilpatrick commented on how gaps in mental health services contribute to a vicious cycle of crime and violence. Judge Kilpatrick has served as senior judge since 2009, and was one of two judges first appointed to the NCJ upon the creation of Nunavut in 1999. Judge Kilpatrick said that many of the offences he adjudicates in his courtroom stem from mental health service gaps and that people with prenatal alcohol exposure are often affected:

*In Nunavut we have a runaway substance abuse problem. It's getting worse without any means of treating it. And the reality is our government is not able at present to address the real issue. It's a grave concern to me because what I may see on the face of it, it might appear to be someone who is very contemptuous of a court order. They're the type of person that gets released on conditions and within hours they're doing exactly what they shouldn't be doing. It may well be someone suffering from FAS—fetal alcohol syndrome—to some degree.<sup>163</sup>*

FASDs are a group of conditions that can occur in an individual whose mother consumed alcohol during pregnancy. FASDs include FAS, partial fetal alcohol syndrome (pFAS), Alcohol-Related Neurodevelopmental Disorder (ARND), and Alcohol-Related Birth Defects (ARBD). The lifelong neurological impairments found in people with FASDs including learning disabilities, impulsivity, hyperactivity, social ineptness, and poor judgment can increase susceptibility to victimization and involvement in the criminal justice system.<sup>164</sup> These effects can be compounded by exposure to childhood adversity including neglect, parental substance abuse, physical and sexual abuse, poor nutrition, and stress.<sup>165</sup> As people with FASDs enter adolescence, the risk for substance abuse and involvement with the corrections system increases dramatically and may affect as many as 60 per cent of this population.<sup>166</sup>

Currently, there is no residential substance abuse treatment facility in Nunavut and no detoxification centre for people working towards sobriety. The number of people with FASDs in the territory is unknown, and Nunavut lacks the diagnostic services needed to identify people with FASDs. Furthermore, the focus of the Department of Health is entirely on prevention of FASDs by spreading community awareness, and there are no programs or services, aside from Akausisarvik, to assist individuals suffering from these disorders. According to Judge Kilpatrick:

*Mental health problems are on the rise here. The number of forensic assessment orders we're making are going up each year. It's very expensive. There's no resident psychiatrist. They come and they go and when we do have a resident psychiatrist, they're a territory-wide resource, they're not there to actually take caseloads.<sup>167</sup>*





In a September 2013 sentencing (*R v. Joamie*) of a young Inuk allegedly suffering from FASD, Judge Kilpatrick described the Court's limited ability to craft appropriate sentences for individuals who may suffer from FASD or other undiagnosed mental disorders without the forensic medical or psychiatric evidence needed to understand how the offender's cognitive deficits affected his or her behaviour in a given offence.<sup>168</sup> He emphasized that the government's failure to provide these services places a social and economic burden on the entire society because to compensate for the gaps in the Department of Health's services, the Court must order out-of-territory forensic assessments to obtain diagnoses when needed. This is accomplished through a transfer of funds from the Department of Health to the Department of Justice to be used to fly forensic psychiatrists into the territory to carry out diagnoses. As forensic psychiatric assessments become more frequent, Judge Kilpatrick says the cost to taxpayers will appreciate accordingly.

However, this will not address the needs of individuals with undiagnosed mental disorders outside the criminal justice system. Judge Kilpatrick acknowledges that even with a diagnosis in hand, he is again confronted with the reality that remedial treatment options for individuals with mental health disorders do not exist in the territory and that makes it challenging to provide alternatives to custodial sentences:

*At the end of the day, we want to try and protect the communities and other people. It just doesn't make a lot of sense, if you know there's a serious problem, to just release them back into a community with no supports, no services, and we'll end up with more victims. So it's a real problem. That's why I started off by saying that the judiciary is not superhuman. We can only do what we can do using the tools that government gives us to work with. And unfortunately in Nunavut, those tools are often missing.*<sup>169</sup>

In *R v. Joamie*, Judge Kilpatrick declared that his Court would rarely oppose an adjournment when a remedial sentencing plan is needed for a special needs offender. He urged the legal profession to lobby government for the funds and resources necessary to make sentencing alternatives viable for people with mental health disorders.<sup>170</sup>

Judge Kilpatrick said that gaps in services mean that few offenders are given early release or parole in the territory because they often lack access to services designed to aid their reintegration into society, such as residential treatment counselling and substance abuse counselling.

### Nunavut Legal Aid

In order to learn how legal aid services in Nunavut are affected by the challenges discussed above, NTI interviewed Jonathan Ellsworth, chief operating officer of the Legal Services Board of Nunavut, and Mandy Sammurtok, criminal counsel with Maliiganik Tukisiiniakvik. Legal aid is a cost-sharing program between the federal government and the provincial and territorial governments whereby the federal contribution to the funding is provided directly to provincial and territorial governments for the delivery of legal aid services to economically disadvantaged persons. The GN Department of Justice passes the federal funding to the Legal Services Board, which uses it to employ staff lawyers and contract with private lawyers to fulfill the territory's mandate to provide legal aid to eligible Nunavummiut in the areas of criminal, family, and civil law.

In addition to providing legal counsel, the Legal Services Board is mandated to deliver public legal education and information in the territory and to develop and support the 19 Inuit court workers currently employed at the local level.<sup>171</sup> These services are provided through three legal aid clinics in the territory: Maliiganik Tukisiiniakvik serving the Baffin region from Iqaluit, the Kitikmeot Law Centre serving the Kitikmeot region from Cambridge Bay, and Kivalliq Legal Services serving the Kivalliq region from Rankin Inlet. Maliiganik is the busiest of the three clinics because it serves 13 of the territory's 25 communities and is located in Iqaluit. At the time of writing, 10 of the 20 Legal Services Board's legal counsels were employed by Maliiganik.

In 2012/13, the three clinics opened a combined 2,934 criminal justice files and closed 1,650. Maliiganik opened 64 per cent of these files and closed 80 per cent of them. In addition, the clinic spent 130 weeks on court circuit to Baffin Island communities and carried out more than 300 bail hearings.<sup>172</sup>

Despite struggles in the past to retain staff, Ellsworth says that the GN has been responsive to the Legal Services Board's funding allocation requests to meet the growing need in the territory. The Board's ability to meet many of the basic service needs in communities has been good under the circumstances, he says, due in large part to the presence in communities of Inuit court workers who are responsible for connecting Nunavummiut to legal aid services.<sup>173</sup>

Sammurtok said mental health challenges in the population have affected the volume and type of crime she sees in her caseloads. "A lot of my clients would not be my clients if we had better support from a mental health system that existed."<sup>174</sup> She believes that greater access to mental health services and facilities in the territory would help prevent people from being streamed into the criminal justice system. Ellsworth estimates



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that as many as 50 to 70 per cent of the Legal Services Board's clients have mental health issues and that the number of files his organization takes would drop proportionately if individuals had regular access to mental health professionals who could help assess their behaviour and work to change it.<sup>175</sup>

Increased cooperation between the criminal justice system and the Department of Health would help alleviate this situation, Sammurtok believes, especially in seeking mental health assessments for offenders that may only be available on an offence-specific basis under the *Criminal Code*. Assessments unrelated to determining whether a client is fit to stand trial or whether they were criminally responsible requires client consent.

Sammurtok described a hypothetical client profile in order to illustrate how early intervention for struggling families in the territory could help prevent later criminal behaviour. She described a man who grew up in an environment of alcoholism and abuse and whose parents had been traumatized by their residential school experiences:

*So we've got this individual who has grown up thinking that that life is normal. And then we've got a system where there's no treatment available for an individual. There's no substance abuse treatment available. There's no mental health treatment, and we also live in little fish bowls where basically the RCMP know everything that's going on. And that's fine; it's good to be safe in a community. So, you've got a person who has lived this life and a lot of times, a lot of my clients say, "Oh yeah, and Mandy, uncle whoever" or "that guy down the street, he molested me." That's, a lot of times where this is going in a lot of my clients' lives. And I say it all the time: my client, although he has a victim, he's also a victim. There are no services available for my client. He didn't have anywhere to go before he got to the court system. I would always hope that the justice system would be the last stop for an individual. But unfortunately in Nunavut, the justice system is the first stop.<sup>176</sup>*

Once a person enters the criminal justice system and has a criminal record, they become less employable and are often reconvicted. Federal offenders in Canada are reconvicted 44 per cent of the time. This number is as high as 53 per cent for Aboriginal offenders.<sup>177</sup>

The key to breaking this cycle, according to Ellsworth, is greater investment in supports for young people and their families, as well as the political willpower in government to take action on these issues over the long term. "In my view it's not something that can happen overnight. We're a very reactive rather than proactive system."<sup>178</sup>

### Nunavut mental health strategy

Collaboration between the criminal justice, juvenile justice, mental health treatment, and substance abuse systems is taking place in some jurisdictions in order to address the issues cited by Kilpatrick, Sammurtok, and Ellsworth. Perhaps the most established example is the Toronto Mental Health Court, which was set up in 1998 by the Ontario Court of Justice to address the influx of accused with mental disorders. It was the first mental health court in Canada and one of the first in the world. The Court's primary aims were (1) to deal with pre-trial issues of fitness to stand trial expeditiously and (2) to slow the revolving door of recidivism as much as possible.<sup>179</sup> The Court was also designed to house the Diversion of Mentally Disordered Accused program. Through this program, alternatives to criminal sanctions are made available to individuals with mental illness who have come into contact with the law for minor offences; the hope being that treating the mental disorder reduces the likelihood of reoffending.

The mental health challenges described by Judge Kilpatrick, Sammurtok, and Ellsworth are not necessarily unique to Nunavut; however, given the historical, social, and economic context in which they are playing out, they are more pervasive than in other jurisdictions. Legal Aid Ontario determined that a majority of clients who are eligible for services under a legal aid certificate have some kind of mental health issue.<sup>180</sup> This is why in December 2013 Legal Aid Ontario released a *Mental Health Strategy* consultation paper that outlines four major steps to eliminating the legal barriers confronting Ontarians with mental disabilities. These steps are (1) training Legal Aid Ontario lawyers to assist with clients with mental disabilities, (2) embedding lawyers into social services provider settings on a trial basis to provide counsel before police get involved, (3) formally incorporating advocacy for clients with mental disabilities into Legal Aid Ontario's mandate, and (4) strengthening the Toronto Mental Health Court.<sup>181</sup>

Given the interdepartmental and cross-sector overlap on this issue in Nunavut, a similar mental health strategy is necessary to clarify the expectations, roles, and responsibilities of agencies working to improve access to justice for people with mental health disorders. Such a strategy would ideally be led by the Department of Justice and the Department of Health and involve the NCJ, Legal Aid, and NTI. The purpose of the strategy would be to (1) identify shared mental health resource needs (number of social workers, psychologists, and psychiatrists needed), (2) formalize interdepartmental working relationships and processes on mental health issues, and (3) develop formal referral mechanisms through which people can be screened and diagnosed.



### Conclusion to Part 3

Despite having the greatest mental health needs, Nunavut is the most under-resourced jurisdiction in Canada in this area. There are no resident psychiatrists living in the territory who can screen, diagnose, and prescribe medication to people with serious mental illness. Psychiatrists make infrequent visits to communities but are available on a more consistent basis to Akaisarvik Mental Health Treatment Centre patients. Most diagnoses of mental health disorders take place outside the territory. The lack of mental health professionals means that many of the offenders who come before the NCJ and Legal Aid have undiagnosed mental health disorders and/or complex trauma. Faced with this situation, the NCJ and Legal Aid must leverage the resources they have to advocate for offenders with mental health issues, but this is done on an inconsistent basis. If incarcerated, this can mean being housed at BCC, a facility that is so crowded and unsanitary that it has been deemed unfit for habitation and where obtaining access to mental health services is even more daunting.

However, there finally seems to be growing recognition in Canada and elsewhere that people with mental health needs are overrepresented in the prison population. Toronto's Mental Health Court and Legal Aid Ontario's 2013 *Mental Health Strategy* are examples of leadership on this issue. There is a corresponding, urgent need in Nunavut for cross-sector collaboration on this topic. At a minimum, the Department of Justice, Department of Health, NCJ, Legal Aid, and NTI must develop a unified strategy identifying solutions for improving access to justice for individuals with mental health needs.

### RECOMMENDATION 6

Nunavummiut lack access to consistent psychiatric care in part because there are no resident psychiatrists in the territory. Individuals requiring psychiatric diagnoses or psychological therapy generally must access these resources outside Nunavut. The Department of Health should develop a multi-year recruitment plan that focuses on recruiting and retaining resident psychiatrists and clinical psychologists. In addition, the department should explore implementing telehealth videoconferencing in community clinics or schools to connect people with the psychiatric and psychological care they need.

### RECOMMENDATION 7

There is a long-standing need for a substance abuse treatment centre in Nunavut. The lack of substance abuse treatment in the territory has far-reaching, negative impacts that contribute to higher crime rates and a greater number of incarcerations. The 2013 renovation of the Akaisarvik Mental Health Treatment Centre by the GN showed a promising political commitment to mental health. The GN must fulfill this commitment by establishing a substance abuse treatment centre in the territory.

### RECOMMENDATION 8

Nunavut needs a mental health strategy to coordinate mental health resources, to foster interdepartmental collaboration, and to set formal protocols for people with mental health needs who enter the criminal justice system. The Department of Justice and the Department of Health should take the lead on this issue in collaboration with the NCJ, Legal Aid, and NTI.



In Aug. 2006, Iqaluit RCMP Const. David Lawson participated in the grave restoration of two Mounties during the Canadian Forces' Operation Lancaster. The fallen Mounties, Const. Victor Maisonneuve and Const. William Robert Stephens, died respectively in 1926 and 1927 while stationed at Dundas Harbour on Devon Island, 1,300 km north of Iqaluit.

By Kerry McCluskey





### NOTES

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- <sup>4</sup> Dorothy Harley Eber, *Images of Justice: A Legal History of the Northwest Territories and Nunavut as Traced through the Yellowknife Courthouse Collection of Inuit Sculpture* (Québec, QC: McGill-Queen's University, 1997), 12.
- <sup>5</sup> McCaul, "Address of C.C. McCaul in Opening the Case for the Prosecution of Sinnisiak," 7.
- <sup>6</sup> K.S. Coates and W.R. Morrison, "'To Make These Tribes Understand': The Trial of Alikomiak and Tatamigana," *Arctic Institute of North America* 51, no. 3 (Sept. 1998): 221.
- <sup>7</sup> *Ibid.*, 224.
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- <sup>11</sup> Nunavut Implementation Commission, *Footprints 2: A Second Comprehensive Report of the Nunavut Implementation Commission* (October 1996), 238.
- <sup>12</sup> *Ibid.*, 239.
- <sup>13</sup> Nunavut Social Development Council, *Towards Justice That Brings Peace: Nunavut Social Development Council Justice Retreat and Conference* (Iqaluit, NU: 1998), 4.
- <sup>14</sup> *Ibid.*, 5.
- <sup>15</sup> Susan Enuaraq (Dean, Kivalliq Campus, Nunavut Arctic College), interview by Timothy Argetsinger, November 8, 2013.
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- <sup>18</sup> Paul Groarke, "Legal Volumes from Arctic College's Interviewing Inuit Elders Series," *Osgoode Hall Law Journal* 47, no. 4 (2009): 794, accessed March 26, 2014, <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1131&context=ohlj>.
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