



# Creating Access to Justice in Nunavut

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Accessible, effective, and fair systems of civil, family, and administrative justice are fundamental and far-reaching components of democratic societies. They provide structured processes crucial to the maintenance of citizens' rights and the peaceful resolution of private disputes. In Canada, civil justice systems have developed independently in each province and territory as well as federally. Each system tends to operate as if the matters of law with which it deals are discrete and contained. International research has increased recognition that our justice systems must be more responsive to the interrelated way that legal problems actually occur in people's lives. "Justice for Nunavummiut: Partnerships for Solutions", a report drawn from the *Civil Justice System and the Public* research, provides a compelling illustration of this point (available at <http://fcj-fcjc.org/publications/cjsp-en.php#20>). In April 2009, as a co-author of this report, I was invited to take part in a Nunavut Branch Canadian Bar Association Learning Event in Iqaluit. Here I touch briefly on a few of the many key issues underlined by our research and by participants at this recent event.

## *The Inuit Qaujimajatuqangit Vision of Justice*

At its creation in 1999, Nunavut was governed by the territorial laws of the Northwest Territories. The Nunavut Land Claim Agreement (NLCA), however, guarantees Inuit the right to co-manage or to participate in the development of social and cultural policies. There is a constitutional commitment to *Inuit*

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*Qaujimajatuqangit* (IQ) — a concept meaning *that which has long been known by Inuit*.

In keeping with this, the Nunavut Department of Justice Vision Statement (2008) is: “To serve the public by promoting and protecting a peaceful society and by adhering to the principles of *Inuit Qaujimajatuqangit*. To build public confidence in the justice system by respecting the role of community members in maintaining harmony. To promote the rule of law by providing a full range of legal services to the Government of Nunavut and designated boards and agencies, and access to justice for Nunavummiut.”

Many serious challenges relating to justice in a most fundamental sense must be met in attaining this vision. Dedicated Inuit and non-Inuit Nunavummiut are working together on creative approaches that blend Inuit tradition and perspectives with the common law and statutory legal framework inherited from the Northwest Territories. Much is being achieved toward the reconciliation of these very different worldviews in the creation of a justice system that addresses contemporary issues and is distinctly Inuit. However, the justice system alone cannot overcome the social and infrastructure deficits Nunavut faces.

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### Nunavut in Context: What is Justice?

The intersections of Inuit colonial history, culture, Canadian geography, and political jurisdictions have significant social consequences for Nunavummiut and major implications for creating viable access to justice. Both traditional Inuit customs and Nunavut today must be understood alongside the geographic realities of a territory close to two million square kilometres and spanning three time zones. This alone makes the delivery of social and legal services expensive and complicated.

The acknowledged negative legacy of colonial policies includes significant barriers to Inuit access to civil justice processes that persist to this day. Forced settlement, forced relocation, residential schools, identity issues, and other attempts at control and assimilation remain unresolved points of tension as one research participant explained:

*Back in the sixties, on through to most of the seventies there was ... a concerted effort ... to slaughter dogs. Back then Inuit were very dependent on dog teams to get around and they weren't as static as they are today, where they just remain in the community. They mostly survived out on the land in a more or less nomadic way, relying on animal migration ... The*

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*other issue is relocation ... Sixty years ago we had Northern Quebec Inuit relocated from the lower Quebec region to the high ... I guess Canada figured, well, you have starving Inuit in northern Quebec. Why don't we transport them here where there is a considerable amount of wildlife, and, at the same time, establish Canadians in the area. It's still an ongoing issue.*

Civil justice process is now being utilized as an avenue for addressing some of these issues and establishing pathways to reconciliation. At the same time, trauma from loss of language, tradition, and family is the major contributor to substance abuse, suicide, family violence, and unemployment far higher than the national average. These problems lead to criminal charges that dominate court resources and court dockets especially during circuit visits to communities.

At present, the Territory does not have the health and social services essential to treatment and healing.

Consequently, Inuit are often sent outside the Territory for treatment, resulting in further alienation from traditional life. Without social services necessary to address the root problems, courts have no alternatives to incarceration.

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Changing the domination of criminal matters on court dockets is therefore difficult for the justice community to do and there are neither the time nor enough resources for family and other civil law matters.

Within the social context of contemporary Nunavut, achieving the IQ vision of justice calls for re-defining both western and traditional Inuit concepts of what *justice* means in practice. Fundamental to this is recognition that legal justice cannot occur unless basic social justice is also present. Civil, family, and administrative laws can play a vital and positive role in this process. At the core, the rule of law intends to provide a set of rules that prevents injustices and disputes by laying out citizens' rights and responsibilities. The justice system role is to find peaceful resolutions when disputes arise about the application and interpretation of those rules. Criminal prosecution should be a last resort — not the primary focus — of enacting *justice*. Regardless of the technical area of law involved, previous Inuit experience of Canadian *justice* is, however, heavily punitive. As research participants remarked:

*We are a different culture who are living Inuit ways, and we practice our traditions — our customs — without any idea of breaking a law or not breaking — or not performing as part of the civil law areas.*

*Well they're pleading guilty to crimes they didn't commit because they're told by their lawyer who's come in the night before that, 'if you plead not guilty and you're found guilty, your sentence is going to be much longer than if you plead guilty'.*

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*I think people's experiences with the law in Nunavut have mostly been through their interface with the criminal justice system. When you have a seminar — or a meeting, on administrative law — they bring with them the baggage of criminal law.*

*There are lots of issues around [what] social services has the right to and what the individual has the right to in situations of child apprehension ... And trying to explain that ... I represent the parent in an apprehension matter — but I'm still one of the lawyers and the other lawyer is trying to take the kids — because I'm part of the system I can't really be trusted either.*

### Working for Justice in Nunavut

Within the Nunavut justice community, many Inuit and non-Inuit work with extraordinary dedication to bring about social and legal justice. Under-resourced, under-compensated, and very over-worked, every day they take on daunting challenges and unthinkable caseloads. Within this difficult social context, staff burnout and high turnover are inevitable. The number of Inuit working within the legal system is gradually increasing; nevertheless, many positions are still filled by southerners, who have no prior knowledge of Inuit culture or language, often on a very transient basis that does not allow for the acquisition of this knowledge.

These conditions often interfere with programme continuity and development, but despite the many difficulties, access to justice in Nunavut is increasing. A *Human Rights Act* and a direct access tribunal are now in place. Simplified

small claims rules have been established. The unique Akitsiraq Law School Program graduated a cohort of Inuit students now practising law, and another cohort is planned. A Legal Services poverty law programme has addressed barriers to accessing legal aid for civil matters and is working to provide assistance in civil and administrative matters.

Considerable progress has been made in the area of family law, where awareness of rights and entitlements among Inuit is markedly increased. The innovative *Family Abuse Intervention Act* (FAIA) combines principles of IQ and legal system process with the aim of assisting people in need of protection from family violence. FAIA includes several options for court orders including community intervention. This initiative provides for a Community Justice Outreach Worker (CJOW) in all 25 communities to assist with this process. Meeting the demand for family law assistance still requires significantly increased resources.

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### *Tamapta* – Building our Future Together

On Nunavut's 10th anniversary, Premier Aariak emphasized the importance of Nunavummiut working together to achieve the vision of a territory with a bright future, happy families, and self-reliant communities. As part of the anniversary events, justice stakeholders from across the Territory came together to discuss and brainstorm possibilities for future action on the many access to justice challenges still to be met. Participants also underscored the importance of working together around a united vision within and across the silos of government, community, and jurisdictional boundaries.

Importantly, increased cultural understanding is still very much needed. To find healing and healthy ways to manage rapid change and development, many more Inuit must be included in discussion and decision-making that find ways to evolve the values and principles of IQ in the contemporary context. Civil and administrative justice have a vital part to play. But the IQ vision of justice for Nunavummiut can only be achieved when territorial and federal social and legal justice stakeholders join together with Inuit families and communities in finding innovative solutions to issues of family violence addictions, child protection, mental and physical health, housing, and unemployment.

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