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BACKGROUND PAPER

REPORT ON FAMILY LAW RESEARCH IN NUNAVUT

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Report on Family Law Research in Nunavut

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Presented to:

Family, Children and Youth Section
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EXECUTIVE SUMMARY

This research paper on Family Law in Nunavut was prepared for the Nunavut Department of Justice and the Department of Justice Canada, Family Children and Youth Section. The research was conducted in cooperation with Maliganik Tukisiniakvik Legal Services Clinic, part of the Nunavut Legal Services Board.

In general terms, the purposes of the research were to:

- develop data on family law matters, such as adoptions, divorces, separation, use of services;
- gather evidence concerning how families in Nunavut, particularly the majority Inuit population, manage and deal with family law matters at the community level; and
- better understand the problem of access to family law and, at the same time, increase communication about and awareness of family law, family law rights and family law-related services in Nunavut.

The research included a review of existing statistics, a detailed family history survey of 342 households in Nunavut, a service inventory conducted by telephone in 17 Nunavut communities, public meetings and interviews in five communities, and discussions and cooperation with the Nunavut Law Review Commission, Maligarnit Qimirrujiit.

CONTEXT

Chapter 2 reviews the contextual factors that have a major influence on family histories, the delivery of services, and the application of family law in the territory.

The report was undertaken at a time of major political change in Nunavut, starting shortly after the creation of a new territorial government in April, 1999. The new government has been committed to political change, in particular, the development of law and services that better reflect the lifeways of the Inuit majority and a philosophy of “Inuit Qaujimajatuqangit” (IQ), traditional and appropriate ways of doing things. Recent policy statements as well as past sociological studies clearly point to strengthening the family as an essential aspect of IQ.

The extreme climate, the relative isolation and the small, close-knit nature of Nunavut communities have a serious impact on the planning and delivery of services and the development of a common base for legal information. Inuit culture and language are vibrant and provide a normative foundation for those who seek to address family law issues. There is often considerable overlap in addressing family law issues and other serious social issues, including poverty and unemployment, overcrowded housing, and poor health. Rates of reported violence against women are extremely high, and this has a strong effect on local perceptions about the need for family law solutions.

There are significant obstacles to development of a responsive family law system within the current legal system. Again, because of isolation and distance, all communities except Iqaluit are served by a circuit court system; lawyers and court staff arrive from afar intermittently in

communities. Crowded dockets and a low priority given to family law mean that it is rare for family law cases to be heard. Further, the close association between child welfare and civil family law may discourage some people from turning to the courts to address their family law problems. These factors all contribute to overall alienation from the system. Reforms such as the development of stronger community justice committees, more and better trained justices of the peace, the hiring of family lawyers in the regions, and a unified court with more resident judges may all contribute in the long term to improving access to family justice.

A discussion of the legal context for the community-based research in Nunavut includes an overview of recent law reform in the territory and the custody and access reform process nationally. New territorial legislation has created a changed framework for family law in principle; however, there is work to be done before these changes will have any observable impact.

RESEARCH RESULTS: FAMILY LIFE

Extended families

The household structure and composition in Nunavut reflects Inuit cultural norms. Households are generally larger than in the rest of Canada. Most people live in households of between three and five persons, and nearly one third of respondents live in households of more than six people.

It is extremely common for households to include extended family members. Thirteen percent of households include a parent, stepparent or adopted parent or parent-in-law of a respondent. Just under one fifth of respondents reported the presence of a sibling or stepsibling. Almost 10 percent of respondents were living with a grandchild and just over 10 percent of households included some other type of relative. Very few people (only 3 percent of respondents) reported living with a non-relative.

One factor in the prevalence of the extended family in Nunavut may be the relative youth of people becoming first-time parents. Almost 20 percent of respondents had their first child when they were age 17 or younger; more than half had their first child before they were 21. The purpose of extended families in one household have numerous family law and information implications. For example, most people did not know that non-parents could seek custody or access, or support, for the children they are raising. The social welfare system (housing, income support) appears to operate on the basis of factual caregiving arrangements rather than legal custody.

Adoptions

Custom adoption is perhaps the most unique aspect of the Nunavut family law system: it is extremely widespread. Twenty-two percent of respondents in our survey reported having raised adopted children. In fully half the cases, respondents had raised more than one child. Another quarter of respondents reported having given a child up for adoption; fully one third of women respondents reported that they had “adopted out” a baby. Twenty-three percent of respondents reported they were adopted themselves. Of those, 93 percent reported that they were adopted through custom adoption and only 7 percent reported use of a court process.

Custom adoption operates on the basis of a distinctive legal regime, which has been recognized by the Northwest Territories Supreme Court. It differs at the level of process: the role of the court is limited to producing evidence of an adoption that took place between the parties, without requirements such as a home study. As well, custom adoptions appear to operate on the basis of a number of substantive considerations, and not just a single standard such as best interests of the child. While the Law Review Commission reports a number of concerns about custom adoption, it nevertheless appears to be the only widely used, well-understood family law institution in the territory at this time.

Marriages and Common-Law Relationships

Approximately a third (31 percent) of respondents reported living in common-law relationships, far above the Canadian norm. Even more strikingly, a very significant number of people reported that they had, at one time, been part of a common-law relationship (63 percent of respondents). At the same time, 38 percent of respondents reported that they are currently married, which is lower than the Canadian average. Fewer than half of unmarried respondents expect to marry one day.

As in the rest of Canada, marriages tend to start later and last longer than common-law relationships. Notably, the average age at which respondents reported starting either marriage (24) or common-law relationships (21) is considerably older than the age at which they are reporting first having children.

Most married (88 percent) and common-law (83 percent) respondents reported that their partner had been single before the current relationship. Twelve percent of married and twenty percent of common-law respondents reported that their partners had children from previous relationships. Almost twice the number of men reported that their partners had brought children from prior relationships into their current relationships than women did.

Separation and Divorce

Overall, rates of separation and divorce in Nunavut are lower than the Canadian average; the rate of divorce is notably lower, which may reflect access to justice concerns. In our survey, of people who were ever married, about 4 percent reported being separated, and about 4 percent reported being divorced. Five percent stated that they had been widowed. It was harder to determine the number of cases of people separating after a common-law relationship.

Social service providers reported considerable numbers of temporary separations, however, we were unable to obtain significant quantitative information about these separations. Reasons often cited anecdotally for people returning to relationships include the difficulty of leaving the community, the inability to find housing or employment, love, and concern for the children. Traditional stories or *unikattuaq* reinforce the fact that temporary separations are nothing new in Nunavut.

Although data were limited, respondents reported a variety of reasons for their own separations or divorces, including incompatibility, adultery and addictions issues. Notably different were public discussions, where the most widely discussed reason for separation is violence. At this

time, it is notable that most public services related to relationship breakdown focus on short-term safety rather than long-term independence.

Very few of those who were divorced or separated reported paying or receiving support, regardless of whether they had been married or common law. Slightly more divorced people paid or received support than those in common-law relationships.

Only half of respondents were aware of common-law spouses' rights to support and division of property after the breakdown of a relationship. In community meetings, it appeared that few people differentiated between spousal support and child support. Income disparity between men and women in Nunavut is not as extreme as in the south, and low incomes overall may contribute to the fact that support is rarely paid. Furthermore, the active role of extended families may diffuse the support obligation.

About two thirds of respondents were aware that there is a right to apply for a division of marital property, however, there have been no reported division of property cases in the territory. Since the largest asset of most families in Canada is the matrimonial home, it is notable that only about a quarter of Nunavut residents own their own home. More contentious, and more intractable, issues relate to questions of occupancy of the matrimonial home, which is very challenging in light of the acute housing shortage and waiting lists for public housing.

Children in Families

Overall in Nunavut, families with children make up a greater percentage of the population than in the rest of Canada (77 percent, and there are more children in each family), in our survey an average of 3.5. There are also notable differences in family structure: married couples with children make up 43 percent of all families with children, common-law families with children represent 27 percent of all families with children.

Lone-parent families, including divorced and separated parents, as well as those who were never married, make up a substantial group: 22 percent of all families with children. Most lone parents in Nunavut are women, about three quarters. A larger proportion of lone parents are single (never married) in Nunavut than in the rest of Canada. Almost half of lone parents live with other relatives, significantly shifting the widespread image of single parenthood as "going it alone."

We had some difficulties with our data on children's family histories, which limits the accuracy of the following figures. However, they may be broadly representative. Respondents were asked to identify whether they lived with their children, full-time, part-time or not at all. Eighty-five percent of respondents reported that they lived with a child all of the time, two percent lived with at least one child part of the time and twelve percent said at least one of their children does not live with them. Of those with at least one of their children not living with them, eight reported that they gave up the child for adoption.

Approximately 60 percent of parents living with their children all the time reported that the child's other parent was also part of the household. A significant number—approximately a third—of parents not living with their child reported that the child lived with someone other than the other parent.

Eighty percent of non-residential parents reported continuing contact with their children. The most frequent type of contact was daytime visits. Fewer people reported that they had overnight visits or merely telephone contact. Just over half the parents reported living in the same community as their children. Of those parents who had lost contact, most but not all lived in a different community. Approximately half of those living farther away stayed in touch by telephone or letter.

Overall, there appeared to be relatively low levels of dissatisfaction with arrangements concerning contact. Only four out of 32 respondents who were not living with at least one of their children all the time said they were dissatisfied with their arrangements. Eighteen reported being satisfied, and eight had no opinion. Very few—only four respondents out of 31 who answered—had ever tried to change any arrangement concerning contact with children who were not living with them, even by simply discussing it with the other parent. About two thirds of respondents were aware that they could go to court to challenge a decision about custody or access to children.

Child support has been a major territorial and federal priority for the last several years, however, only a small minority of respondents reported paying or receiving child support. Of those receiving support, most said they received it fairly regularly (monthly), but a significant number received support more intermittently.

Non-residential parents were asked why they did or did not pay child support. Parents cited a sense of responsibility for children, the fact that children are still family, and the existence of an agreement as reasons to pay support. Several reasons were given for why some parents did not pay support. The largest number of parents said that they did not pay support because they had not been asked to. Several people said they were not paying because they had no obligation to pay or because they were no longer living with the child. A couple of people said they did not pay because they were supporting a new family. Of those entitled to receive support but were not receiving it, about two-thirds had not asked for it.

These results can be compared with actual orders and enforcement activities in the Maintenance Enforcement Program (MEP). As of January 2001 there were 166 open files in the Nunavut office. Of those files, only about a third were “all-Nunavut” cases, with both the payor and the recipient living in Nunavut. Overall, fewer than half the recipients (only 81) live in Nunavut.

It appears that more people are paying support than are registering orders or agreements with the Maintenance Enforcement Office, but it is impossible to quantify the amount of transfers between parents. One factor accounting for the relative non-use of Maintenance Enforcement Services is a lack of knowledge. Only about 16 percent of respondents had heard of the MEP. A notably larger number of people (27 percent) were aware that the government provides child support enforcement services. Despite major progress in collecting arrears in the last two years, there continue to be problems with high levels of arrears and a significant number of orders that should be modified to reflect a change in circumstances.

RESEARCH RESULTS: PROCESS, SERVICES AND INFORMATION

Almost 60 percent of lone parent, separated or divorced respondents with children reported that they had never had an agreement or arrangement about their children with another person. Just as strikingly, only two people (less than 3 percent) said they had had a court order to address issues of custody and support. Of the remainder, 16 had a written agreement and 10 had an unwritten agreement (respectively, about 23 and 15 percent).

Slightly less than one third (21) of respondents said they had turned to outside assistance when they were separating; the remaining two thirds (45) said they had not sought assistance. Of those who had received assistance, nine had turned to a social worker, eight had turned to a lawyer, and four said they had turned to a friend, relative or elder (there was some overlap between these groups).

The stark reality of Nunavut life is that there are very few social services available locally in most communities. Services tend to be concentrated in the larger communities and regional centres, and even their resources are limited. Services are rarely specialized, and service providers are typically overburdened. Social workers, mental health workers, community justice committees, youth groups and church groups are the major resources available at the community level, however none of these are available in every community.

Overall, 72 percent of all respondents said they had never used any of the services we asked about for family problems. The definition of a family problem in the minds of our respondents was broader than we had anticipated and went well beyond the bounds of private family law.

There was remarkable consistency at community meetings about what services people thought were valuable. There were three main messages. There was a widespread demand for more counselling services. Participants felt that legal information, without services, would not significantly improve the family law situation. Third, at the time the survey was administered, legal services were not perceived to be available when they were needed.

Based on these difficulties, this report strongly concludes that there is a need to work towards a non-court based system, accessible at community level, to address family law issues. In the Family Law Strategy, which also emerged out of this research, the Nunavut Department of Justice committed itself (with support from the federal government) to training mediators who would have a strong basis in family law principles as well as mediation skills. Several aspects of this plan need to be worked out in greater detail.

In the survey, a lawyer was the preferred a source of information about family law issues. Practical difficulties in obtaining legal representation, including the scarcity of lawyers, conflicts of interests and the circuit system, remain staggering.

Lack of information is a major problem, but it is not the primary obstacle facing Nunavummiut as they attempt to resolve family law disputes. However, there certainly is room to expand people's knowledge of their rights, such as:

- the entitlement of all children to child support, and acceptable levels of support (child support guidelines), including the importance of non-financial contributions;

- the rights of common-law partners;
- the rights of extended family caregivers; and
- entitlement to Legal Aid for family matters.

People had a range of suggestions about how to inform people about those rights, and about how they would prefer to get information about separation and divorce. Most people recommended radio as the best tool for public legal education and information. It was clearly stated that information without options for active follow-up would not be useful. This is consistent with survey results showing that lawyers are the preferred means of obtaining information.

CONCLUSIONS

The research has shown a need for considerably more research on family law issues in Aboriginal communities. Notable differences between Nunavut and the Canadian norms raise intriguing questions about similarities and differences between Aboriginal groups. Qualitative research about IQ (Inuit Qaujimajatuqangit) and traditional family norms is definitely an area for further research. Finally, considerably more theorization and documentation relating to the impact of extended family structures of family law doctrine and services are also necessary. In the short term, however, further quantitative research in Nunavut should take a back seat to the development of services.

1 INTRODUCTION

On April 1, 1999, the new territory of Nunavut was created, carved out of the eastern part of the Northwest Territories. The existing laws of the Northwest Territories were “grandfathered” for Nunavut with a few modifications. Nunavut became eligible for funding from the Department of Justice Canada through the Child Support Team. These funds are earmarked to assist with the implementation of the Federal Child Support Guidelines. Nunavut Justice, having adopted the child support guidelines through the Northwest Territories legislation, and having used core funding to establish a territorial Maintenance Enforcement Program during 1999-2000, proposed to use its implementation funding allotment to undertake much needed family law research as a baseline for the future development of family law in Nunavut.

The Nunavut Department of Justice saw an opportunity to address an area in which little research had been done. Family law tends to be overshadowed by two principal factors. First, in the Canadian North, the pressing priorities of criminal justice reform often leaves little opportunity to address other concerns. Second, because Nunavut and the Northwest Territories have had few resources for family law, there has been a tendency on the part of governments to piggyback on the research, as well as the law, legal policy and legal models, of the rest of Canada. This is true even though the national family law reform picture is not always congruent with family life in the North, nor with the cultural distinctiveness of the territory.

1.1 PURPOSE OF THE RESEARCH

The new Government of Nunavut was particularly interested in better understanding community-level perceptions and uses of family law. While Nunavut inherited the laws of the Government of the Northwest Territories, a mandate exists for re-evaluating laws and programs to ensure that they are appropriate for the territory and, in particular, the Inuit majority. This mandate led a number of different parties to ask about the fit between, on the one hand, existing family law and family law-related services and, on the other hand, the interests and needs of the community. There was widespread recognition concerning some issues, for example, that access to family law was a problem in Nunavut. However, other problems and potential solutions were not as well understood and it was acknowledged that research would be useful. Questions to be addressed included the following.

- What are the major community-level family justice needs currently unmet?
- How should those needs best be met, in the eyes of the community?
- What services are available and which are being used at the community level?
- Can the government reconfigure existing services to make them more relevant to the life of more people in communities?
- What are the sources of satisfaction, or dissatisfaction, with existing legislation and services?
- Are there any models already in place?

- How do people want to resolve issues about family breakdown, and what role, if any, can the courts play in that process?
- What is the role of legal information in addressing access to justice issues?
- What do people know, not know, or care about knowing?
- What would be required to make family law information useful to people in the communities?
- How could the law best reinforce community values about caring for children and supporting them?
- How could family law promote security for women and children experiencing violence in the home?
- What family law institutions would help promote fairness between partners as a goal during relationship breakdown?

In general terms, the purposes of the research were to:

- develop data on family law matters such as adoptions, divorces, separation, use of services;
- gather evidence concerning how families in Nunavut, particularly the Inuit population, manage and deal with family law matters at the community level; and
- better understand the problem of access to family law and, at the same time, increase communication about and awareness of family law, family law rights, and family law-related services in Nunavut.

The list of potential research questions was long and it was clear that undertaking and completing the research would not be without difficulty. However, in the view of the Nunavut Department of Justice, finding answers to these questions—even if they were incomplete—was an important starting point in the possible reform of family law and the development of services. Hopefully, the information might help improve access to, the effectiveness of, and satisfaction with family law and family law-related services in the territory.

This report is written with two primary audiences in mind. First, it is an effort to consolidate information about family law for the use of northern policy makers and other participants in the field of family law. It is intended to provide a background for program and policy development that is rooted in the experiences of Nunavut families, rather than in the abstractions of the legal system or the presumed norm in southern Canada. Second, it is also intended to provide information about the particular northern issues in family law for southerners who are making policy with national implications. A northern reader may well be able to skip the section on context to the research findings; for a southerner, the context is essential before considering the similarities and differences between research findings from Nunavut and national norms.

1.2 PARTNERSHIP AND PARTICIPATORY RESEARCH

One of the considerable advantages to being a small government is the tremendous potential for a wide range of stakeholders to get directly involved in making decisions and recommendations about the direction of family law policy, including this preparatory research project.

As a starting point, the Government of Nunavut sought out a partnership with the Legal Services Board, which is responsible for Public Legal Education in the territory.¹ Jointly, it was proposed to dedicate significant funding under the Child Support Initiative in the first year to research and needs assessment, looking at legislation, services and information issues. Nunavut Justice is also working closely with Maligarnit Qimirrujiit, Nunavut's community-based law reform commission.

The Department of Justice Canada supported the Nunavut proposal to conduct research, and contributed significantly to its development. The advice and assistance of a researcher in the Child Support Team's Research Unit was offered and used extensively. The funding provided through the Child Support Initiative made the project possible by paying for a half-time lawyer and full-time local researcher. The local researcher, a bilingual Inuk with expertise in community development, assisted in the design and implementation of several different projects over a period of several months. As noted below in the description of the research projects, the studies were undertaken with community input and involvement. As well as this overview report, a major product of the research was the development of a new Family Law Strategy for Nunavut (see Appendix 4).

1.3 THE PROGRAM OF RESEARCH²

In 1999 Nunavut made the proposal to undertake the research, which effectively limited the time frame for the work to fiscal year 1999-2000 (April 1, 1999 to March 31, 2000). The projects described below were carried out during this time, although certain follow-up matters and tasks were completed afterwards. For instance, data input and analysis from the Household Survey was conducted in the later parts of 2000 with funding and resources provided by Nunavut Justice as well as the Department of Justice Canada Research and Statistics Division and Child Support Team. The program of research consisted of data collection from five major sources:

- review of existing data;
- a household survey;
- community and stakeholder meetings;
- a service inventory conducted in most communities; and
- interim feedback from Maligarnit Qimirrujiit.

¹ *Legal Services Act (Nunavut)*, R.S.N.W.T. 1988, c. L-4, as amended for Nunavut.

² A detailed discussion of the methodology underlying this research report, including recommended approaches for future empirical studies, is set out in Appendix One.

1.3.1 Review of Existing Data

In order to assess data needs, we briefly reviewed a wide range of existing social statistics for Nunavut. The purpose of the review was threefold. First, when possible, we wanted to avoid duplicating existing research in the design of our survey. Second, we wanted to be able to assess aspects of our research by comparing our data with other data from the rest of Canada. Finally, we wanted to contextualize family law issues in Nunavut within a broader context of social issues that affect Nunavummiut (those for whom Nunavut is home). Population trends, housing availability, the presence of violent crime, and employment all have a serious impact on the resources that individuals can draw on in the context of family breakdown, and are necessary considerations if family law issues are to be addressed holistically.

1.3.2 Household Survey

The household survey was intended to provide quantitative and some qualitative information about family relationships, and in particular the impact on families of break-ups and related stresses. Local interviewers conducted in-depth surveys in 342 households in five Nunavut communities. The communities were selected from each of Nunavut's regions, and represent different sizes of community in the territory. The survey instrument (attached as Appendix 2) was based loosely on the 1995 General Social Survey, Cycle 10. The sample included 311 Inuit, 91 percent of the total sample, slightly above the proportion of Inuit in the overall population. There were 193 female respondents and 149 male respondents. While not a completely representative sample, this broad survey provides a useful snapshot on a range of key issues.

1.3.4 Service Inventory

In order to grasp the extent of existing family-related services in Nunavut, we interviewed municipal officials in seventeen Nunavut communities. We asked officials for their views on the existence of family law problems in their communities and the services available. This information helped contextualize responses in the household survey in terms of the community-level resources available to address family problems. (The questionnaire is attached as Appendix 3.)

1.3.3 Community Meetings and Interviews

As a part of the household survey, at least one, and usually two, Nunavut Justice policy staff visited each of the five communities where the survey was carried out to hold community meetings and conduct interviews and outreach activities. Outside the capital Iqaluit, there were public meetings in each community to explain the survey and solicit information about community and individual experiences within the existing family law system. Meetings were advertised on the radio or local cable, and a number of community leaders were contacted in advance with invitations to participate. Although attendance varied from community to community, we met with a wide range of individuals, including service providers and members of the general public, women and men, and people of differing age groups. (A partial list of participants is attached as Appendix 5.)

In each community we conducted one-on-one interviews with interested individuals who had particular experiences to share. Finally, we conducted a range of outreach activities in each community, including high school and college visits, announcements in local churches, and radio

broadcasts. Depending on the context, we told people about the research, provided family law information, and solicited comments and feedback.

1.3.5 Interim Feedback from the Law Review Commissioners

As noted, family law has been identified as a priority area to ensure that the law is accessible to the Inuit majority and is consistent with IQ, the Inuit way of doing things. The Government of Nunavut established the Law Review Commission, a community-based group consisting of five commissioners from three regions, in 1999, to consult with communities and provide a comprehensive review of the territory's statutory framework in order to ensure that the laws are appropriate in their application to Inuit. In establishing the Commission, Premier Paul Okalik stated that its role was to overcome barriers in the laws as they affect Inuit. The commissioners have used a variety of strategies to look at the overall appropriateness of the law in a few key areas. The Commission has issued its first report on the changing of names.³ In the past year and a half, family law has been a priority for the Commission. Among them, the commissioners will cover every community in Nunavut. This report will help provide a statistical background and analysis for their final report.

1.4 OVERVIEW OF THE REPORT

The main body of this report consists of four main sections:

- an overview of context for family law;
- a review of the results of the research programs with respect to substantive legal issues;
- a review of the research around the legal process; and
- conclusions.

In the first major section, several contextual factors that will inevitably affect the development of family law and family law-related programs in the territory are discussed. Factors include the territory's geography, demographics and several major social indicators, and political changes in the territory, including an emphasis on IQ and family life. The report also includes a brief discussion of justice issues in the territory: institutions, including the circuit court and community justice committees, and issues such as violence against women, which tends to dominate discussions about the justice system in Nunavut. A discussion of the legal context for the community-based research includes an overview of recent law reform in the territory and the custody and access reform process nationally. As noted above, northern readers may choose to skim this section, as most of it will be quite familiar.

³ Maligarnitt Qimrujiit, *First Report to the Premier*, (Iqaluit: Territorial Legislature, 2000). There has been a long history involving the changing of names in Nunavut. In about 1960, the Government of Canada started a program of assigning numbers to Inuit, a system of "E-numbers." In the 1970s, trying to make up for that failed program, there was a rapid name registration initiative "Project Surname." Due to differing orthographies for Inuktitut, lack of knowledge of family relationships, and other problems, the majority of names were misspelled. In some cases, people's last names were recorded as their first, and so forth. *Undoing* the project, however, has created an ongoing problem. Misspelled names have long been source of friction between the government and people in the community.

The overview of the research results is broken down into two main parts: a review of substantive legal issues and a discussion of the research process.

In terms of the substantive issues, findings about the family unit include the size and largely multigenerational character of Nunavut families. The report discusses the two major ways in which people join families. First, it covers marriage and common-law unions (including the prevalence of these unions), prior relationships of participants, age on marriage and marriage expectations. Second, adoption (both customary adoption and conventional adoption) is considered separately, given its prevalence and the distinct legal regimes in place. The report goes on to consider relationship breakdown, looking again at its prevalence, the reasons for separations, and the special issues concerning temporary separations. Economic issues (spousal support and property) flowing from separation and divorce are discussed, with particular emphasis on matrimonial home issues in the context of the housing shortage. The next major section deals with issues affecting children. The first issue is family type: what are the dominant family structures in the territory? Second, in cases when parents separate or divorce, there is a review of the living arrangements of their children, the frequency and type of contact with non-residential parents, and issues of financial support for those children.

Questions about process, services and legal information make up the fourth section of the report. There are data regarding how people address issues affecting their children, and the prevalence and absence of agreements or court orders. A review of existing services, and the use of those services, provides insight into the real constraints on any reform model premised on the development of specialized services. There was a clear preference for certain types of services. Finally, a review of information about legal knowledge and legal information revealed significant knowledge gaps, a perception that family law information was important, and constructive approaches to public legal education.

The conclusions section attempts to integrate the findings from the research with the broader social context. A number of conclusions and recommendations are drawn. Some of these are aimed at the research: methodological considerations, areas for future research, and the advisability of doing more research, for example. Other conclusions and recommendations are directed toward possible areas for reform, including legislative change but particularly program and service development, including possible risks or concerns related to possible reforms.

2 CONTEXT

One of the principal reasons for this research report is that Nunavut represents a distinctive case in terms of the development of family law. It presents a unique political context, a vast geography, and an Aboriginal majority with a strong and distinctive culture. Nevertheless, the territory is situated within Canada and participates in many national institutions. Both local and national contexts have a powerful impact on the development and application of family law in Nunavut.

2.1 PROFILE OF THE TERRITORY

2.1.1 Political Context

The Territory of Nunavut—an Inuit homeland within the Canadian federation—is the product of legislation⁴ enacted pursuant to a Political Accord between the Tunngavik Federation of Nunavut and the Canadian and territorial governments. The new territory was established as an integral part of the formal resolution of outstanding Aboriginal claims of the Inuit in the Eastern Arctic and was referenced in the Nunavut Land Claims Agreement.⁵ The settlement of the land claim in 1993 and the creation of the territory on April 1, 1999 was the result of an intense, long-standing, broadly based Inuit struggle to achieve self-determination.⁶

The new Government of Nunavut is attempting to achieve a unique balance. On the one hand, it is a public government; legislators are elected by and accountable to all citizens, and the institutions of government (legislative, executive and judiciary) are similar to those in the rest of Canada. The laws and regulations of Nunavut were “grandfathered” from the Northwest Territories on April 1, 1999: rather than having an unmanageable clean slate, incremental changes within the existing structure were anticipated. On the other hand, to reflect its unique history and the population base, there is a commitment on the part of the government that Inuit traditional knowledge or ways of doing things—known as Inuit Qaujimajatuqangit—will underlie the development of all social policy and institutions in the territory.⁷ This political context will inform the development of family law policy and responses to the data set out in this report.

2.1.2 Geography

Nunavut is a territory that stretches over almost two million square kilometers (1,994,000 square kilometers). It makes up almost one fifth of Canada’s land mass. More than half of the territory is above the Arctic Circle, experiencing a period of twenty-four hour darkness every winter and a

⁴ *Nunavut Act*, S.C. 1993, c.28.

⁵ Canada, Indian Affairs and Northern Development, *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* (Ottawa: Minister of Supplies and Services, 1993) (hereinafter the *Nunavut Land Claim Agreement*).

⁶ See, for example, Jens Dahl, Jack Hicks and Peter Jull (eds), *Nunavut: Inuit regain control of their lands and their lives*, (Copenhagen: International Work Group for Indigenous Affairs, 2000). A definite classic is John Merriitt, Randy Ames, Terry Fenge, and Peter Jull, *Nunavut: Political choices and manifest destiny* (Ottawa: Canadian Arctic Resources Committee, 1989).

⁷ See, for example, the Government of Nunavut’s first major cabinet policy statement, the *Bathurst Mandate Pinasuaqtavut, that which we’ve set out to do* (Iqaluit, 1999).

period of twenty-four hour day light every summer. The vast majority of the population lives in 28 small communities scattered throughout the territory in three main regions. From east to west, the regions are Baffin Island, Kivalliq (also known as the Keewatin) and Kitikmeot.

The territory's geography has a major impact on the development of social services. The communities are extremely isolated, and can be reached only by air, boat or extremely arduous overland travel. This remoteness decreases the availability of services, considerably raises the cost of service delivery, and often makes it difficult for community members to feel as though they have input into the nature and development of local services. In the justice context, this alienation is sometimes typified by the fly-in circuit court.

Furthermore, small communities with close-knit social structures raise particular issues in legal and family law. Several reports have pointed to the importance of geography with regard to violence against women.⁸ Victims of violence often report feeling that they have nowhere to go, which adds tremendously to their vulnerability. It is well known that disputes within a community tend to involve not just the immediate parties. Instead, extended families are often involved and may take sides, a serious problem in a community where anonymity is impossible and most of the necessities of life are obtained through personal relationships. Couples face intense scrutiny and their problems are likely to be known throughout the community. Among other effects, this social milieu can lead to significant pressure to remain in the relationship. Where a couple does break up, frequently one or both of them will be forced to leave the community and the support they might otherwise gain from their social network.

2.1.3 Population and Social Indicators

Statistics Canada estimates that Nunavut's total population in the year 2000 was 27,700. The population of Nunavut is different from the rest of Canada in several ways. Perhaps most significantly, the vast majority are Inuit, 83 percent in 1996 and increasing as a proportion of the

⁸ See discussion at section 2.3.3, and John Clement and Amanda Parraig, "A Review of Reported Crime Statistics in Nunavut Communities", (Ottawa: Justice Canada Research and Statistics, 2000); and John Evans, Robert Hann, and Joan Nuffield, "Crime and Corrections in the Northwest Territories" (unpublished, 1998), Family Violence in Canada: A Statistical Profile 2000, Canadian Centre for Justice Statistics, Statscan Cat. No. 85-224, Report on Inuit Women, in Canadian Panel on Violence Against Women, Changing the Landscape, Ending Violence, Achieving Equality (Ottawa: Supply and Services, 1993); Mary Crnkovich, Lisa Addario, and Linda Archibald, "Research Report: Inuit Women and the Nunavut Justice System" (Ottawa: Justice Canada Research and Statistics); Pauktuttit, the Inuit Women's Organization, has issued numerous reports identifying problems of this type, including "Inuit Women and the Administration of Justice, Phase 1: Project Report, 1993", "Phase 1, Progress Report #1", and "Phase 2, Progress Reports #2." See also Margo Nightingale, "Judicial Attitudes and Differential Treatment: Native Women in Sexual Assault Cases" (1991) 23 Ottawa Law Review 71; Royal Commission on Aboriginal Peoples, Report, Vol. 3 Chapter 2, (Ottawa: Supply and Services, 1996) Rosemary Kuptana, "No more secrets: acknowledging the problem of child sexual abuse in Inuit communities: The first step towards healing", (Ottawa: unpublished paper for Pauktuttit, 1991); Michelle Ivanitz, "Traditional Family Law: Inuvialuit and Kitikmeot Region" (Yellowknife: unpublished paper for Ministerial Working Group on Family Law Reform, 1991); and Marie Uviliq, "Traditional Family Law: Baffin and Keewatin Regions" (Yellowknife: unpublished paper for Ministerial Working Group on Family Law Reform, 1990).

population.⁹ Inuit are one of the Aboriginal peoples of Canada, and most Inuit in Canada live within Nunavut's borders in the Canadian arctic.¹⁰

The strength and persistence of Inuit culture is often measured by the widespread use of indigenous languages, Inuktitut and Inuinnaqtun. Inuktitut is the healthiest Aboriginal language in Canada: according to the 1996 census, in Nunavut 17,660 people (71.6 percent) speak Inuktitut as their mother tongue. Some 14,740 (59.8 percent) speak it as their home language and 19,595 (79.5 percent) of the population overall can speak Inuktitut. A significant portion of the population is unilingual in Inuktitut: 3,640 people (14.8 percent) speak neither English nor French.¹¹ The widespread use of Inuktitut and Inuinnaqtun, and the significant unilingual population, has had a significant impact on the court system and the development of social services in the territory.

Another distinctive feature of Nunavut's population is the high proportion of youth. Nunavut has one of the youngest and fastest-growing populations of any province or territory in Canada. Almost half (48 percent) the population is under the age of 15, and 56 percent are 25 or younger. The relative youth of the population has a clear impact on the territory: a greater percentage of Nunavummiut are parents, households are larger and people become parents at a much younger age. These trends are discussed in more detail below.

The social realities facing Inuit are similar to those of Aboriginal peoples across Canada, and they are often very harsh. Poverty, low health status and housing shortages are all serious problems.

Inuit face much greater unemployment than the rest of Canada and very much more than non-Inuit in Nunavut. According to the Nunavut Labour Force Survey (1999), 28 percent of Inuit in Nunavut were unemployed compared to 2.7 percent of non-Inuit. Unemployment among Inuit men was slightly higher than unemployment among Inuit women (29.1 vs. 26.7 percent). In several of Nunavut's smaller communities, only 40 percent or less of the population was employed at the time of the survey.¹²

Serious health issues plague the Nunavut population and have a major effect on family functioning. It is very difficult to spend time in Nunavut without seeing the tragic reality behind

⁹ Nunavut Bureau of Statistics, <http://www.stats.gov.nu.ca>.

¹⁰ There are significant groups of Inuit in Nunavik, in Northern Quebec and in Labrador. As well, the Inuvialuit are a closely related ethnic group living in the Northwest Territories. Finally, a number of Inuit live in major urban centres, particularly Ottawa and Edmonton.

¹¹ Statistics Canada, Census 1996. Reprinted from GNWT Statistics at <http://www.stats.gov.nt.ca>.

¹² In Arviat, the employment rate was 40.3 percent; in Clyde River and Gjoa Haven, the employment rate was 34.9 percent; Hall Beach 35.8 percent and Igloolik, 38.4 percent; Sanikiluaq 39.2 percent. Employment rate is defined as persons over 16 years of age who did any paid work in the week prior to the survey or were absent from their job or business because of vacation, illness, labour dispute or so forth. The survey notes conventional definitions of unemployment tend to under-report the phenomenon in Nunavut, due to small community size and the scarcity of known jobs, which mean many of those actively wanting a job have not participated in a job search over the previous four weeks on the basis of an informed belief that there are no jobs available. Nunavut Bureau of Statistics, *1999 Nunavut Labour Force Survey: Overall Results and Basic Tables* (Iqaluit: Government of Nunavut, 1999.) Also available at <http://www.stats.gov.nu.ca>.

a suicide rate six times the national average.¹³ This staggering statistic is a clear indicator of serious mental health issues in communities. While Inuit remain physically healthy in many respects, too many people die from traumatic injuries¹⁴ and substance addictions are a tremendous problem in most communities, leading to some of the strictest alcohol regulation in Canada. Most northern communities are dry or have controlled access to alcohol. As a result, the profile of alcohol use in the territory is strange: overall rates of alcohol consumption in Nunavut are notably lower than the Canadian average, 57.8 vs. 78.4 percent.¹⁵ But, among those who drink, heavy alcohol consumption (more than five drinks when alcohol consumed) is much more common: 25.6 vs. 8.8 percent. Anecdotally, alcohol abuse is frequently cited as an aggravating factor in domestic violence incidents and a major cause of child welfare intervention in families.

There is widespread agreement that the lack of adequate and affordable housing is one of Nunavut's most pressing problems. The cost of housing in Nunavut is very high. Meanwhile, low individual and household incomes make it difficult for people to meet their housing needs without government support. Almost 60 percent of Nunavummiut live in public housing. Over 99 percent of tenants in public housing in the territory are Aboriginal, and over 96 percent of Nunavut households in core need are Aboriginal.¹⁶ There are currently 3,579 public housing units in the Nunavut Territory,¹⁷ but as of August 2000, the waiting list consisted of about 1,100¹⁸ families in Nunavut waiting for some form of housing assistance. Additionally, with 2,579¹⁹ youth between the ages of 14 and 18, it is anticipated that the potential demand for housing will increase by about 260 homes per year over the next five years.

2.2 INUIT QAUJIMAJATUQANGIT (IQ) AND INUIT FAMILIES

In its first comprehensive policy statement, the *Bathurst Mandate*, the Government of Nunavut's cabinet set out the principle that "Inuit Qaujimajatuqangit will provide the context in which we develop an open, responsive and accountable government."²⁰ It is often argued that the failure of many social programs arose out of a mismatch between imposed southern-designed programs and the Inuit way of life.

¹³ Based on an 11-year period between 1986-96, the annual suicide rate in Nunavut is 77.4 per 100,000; among Inuit, the rate is 79.3 per 100,000. In Canada as a whole the rate in 1992 was 13 per 100,000. Source: NWT Health and Social Services Publications, *Suicide in the Northwest Territories: A Descriptive Review* at <http://hlthss.gov.nt.ca/publicat/suicide/summary/sec02.htm>.

¹⁴ Department of Health and Social Services, *Northwest Territories Health Status Report 1999* (Yellowknife: GNWT, 2000) reported that the rate of accidental death in the NWT in 1994-5 was twice the national average (p.34), and noted the correlation between injury-related deaths and Potential Years of Life Lost. See <http://hlthss.gov.nt.ca/hstats/HEALTH.PDF>.

¹⁵ All statistics on alcohol, drugs and solvents from the Bureau of Statistics, Government of the Northwest Territories, *Northwest Territories Drug and Alcohol Survey 1996* (Yellowknife: GNWT) or at http://www.stats.gov.nt.ca/Statinfo/Health/alcdrug/Alcohol_Drug.html.

¹⁶ Nunavut Housing Corporation occupancy statistics as cited in Nunavut Housing Corporation Business Plan, 2001.

¹⁷ Report of the Minister's Task Force on Housing, Government of Nunavut, 2000.

¹⁸ Local Housing Organization waiting lists, August, 2000 as cited in Nunavut Housing Corporation Business Plan, 2001.

¹⁹ 1999 Nunavut Labour Force Survey, *supra* note 12.

²⁰ Bathurst Mandate, *supra* note 7.

Asserting the importance of IQ does not deny the significance of diversity among Inuit, both historically and today. There is considerable regional diversity; age, sex, religion, social position and language all considerably affect an individual's experience of, and participation in, Inuit culture. It is frequently observed that every community is different, and each has its own history, issues, goals and resources. Failure to take into account this diversity has been another major problem in the development of social programs. This problem has been exacerbated by a social science perspective—particularly marked in legal studies—that has characterized Inuit social structure as “simple” or even “anarchic” because it did not mirror Western-type institutions of government.²¹ Those same social scientists looking at Inuit life had a tendency to overlook the central role of family dynamics in maintaining order and well-being. Externally imposed policy planning tended to reproduce the assumptions of the social scientists over community input.

Risking a generalization, however, it can be argued that the family has been one of the most important pillars of Inuit life. Until the mid-20th century, Inuit lived on the land in extended family groups. One or two families would travel, gather and hunt together throughout the year. In the summer a few families might gather together. The nomadic history of Inuit, and in particular the significance of family in that history, is reflected in community life today. In all but the largest communities, the whole population will be made up of a handful of families, and there is often strong solidarity among members of a single family. *Ila-*, the root of the term for extended family, *ilagiit*, means “part of,” or “on my side, not an enemy.”²² Where there is a strong disagreement, social pressure can affect access to services and opportunities and overall respect in the community. A person may find themselves avoiding the local Co-op (store) or a particular adult education program in order to avoid meeting their spouse's family members; family members of someone “acting inappropriately” may feel at risk of reprisals if they work for a relative of a person perceived to have been wronged.

The community of Chesterfield Inlet is a clear example of the overlap between family and community. One element of our research for this report was a community meeting in each place we carried out our survey. During the meeting in Chesterfield Inlet it quickly became evident that the entire community was, in fact, one family. Everyone was descended from or married to a descendant of one couple. There were five generations of that family in the community. One of the older community members declared towards the end of the meeting that the chance to talk about family law was a chance to address problems in all kinds of relationships within the community as a whole.

The view that family breakdowns are inextricably entwined with a range of other social issues was a constant message in all of our interviews and meetings. This was often reflected in survey responses as well. The overlap is also recognized in the *Bathurst Mandate* policy statement, which envisions Nunavut in 2020 as a place where:

Self assured, caring communities respond to the needs of individuals and families; and where the raising and teaching of children and the care of those in need, ‘*Ilagiinniq*’

²¹ For a particularly egregious example, see noted legal anthropologist E.A. Hoebel, “The Eskimo: Rudimentary Law in a Primitive Anarchy” in *The Law of Primitive Man: A Study in Primitive Legal Dynamics* (New York: Atheneum, 1979, c.1954).

²² Marie Uviliq, “Traditional Family Law: Baffin and Keewatin Regions” (Yellowknife: unpublished paper for Ministerial Working Group on Family Law Reform, 1990) at 6.

(kinship) and ‘*Inuuqatigiinni*’ (community kinship), is a collective community process.²³

An approach to family law that attempts to address issues of support, custody or property in isolation from the lives of the individuals, the unique Inuit extended family structure and the larger community issues is likely to be inconsistent with Inuit Qaujimajatuqangit and therefore less effective.

Within families, Inuit have clear traditions around child-rearing, the roles and responsibilities of family and extended family members, relationship difficulties and even violence.²⁴ When possible, these traditions are noted in this report in discussions of the results of our research. In particular, we considered the active role of the extended family in child-rearing. The most common expression of this is the tradition of custom adoption. There are also a number of less formal arrangements for child care that are followed on a regular basis among family members. Another important issue is the centrality of parents in decisions about marriage and marital breakdown.

Overall, it is clear from the research, as well as the content and conclusions of this report, that there is a need for further exploration of Inuit Qaujimajatuqangit as related to family law. The research suggests there is a need to systematically explore these issues with both elders and interested community members.

2.3 THE JUSTICE SYSTEM IN NUNAVUT

2.3.1 Unified Court, Circuit Court and Family Law

Nunavut represents a unique development in the Canadian justice system because it is the first territory to adopt a unified or single-level trial court structure. As of April 1, 1999, the powers, duties and functions formerly exercised by the NWT courts, judges and justices of the peace are vested in the Nunavut Court of Justice.²⁵ As noted above, the Nunavut Court of Justice operates on a fly-in basis as a circuit court. Except for Iqaluit, the only access to adjudication is a visit to each community every three to six months by a circuit court, which includes a justice from the Nunavut Court of Justice, lawyers, interpreters and other court officials. There are numerous

²³ Bathurst Mandate, *supra* note 7.

²⁴ There is extensive literature on this subject. Jean Briggs, *Never in Anger: Portrait of an Eskimo Family* (Cambridge: Harvard University Press, 1970) is probably the best known. See also a recent work of oral history: Naqi Ekho and Uqsuralik Ottokie, *Interviewing Inuit Elders: Childrearing Practices*, Jean Briggs, editor (Iqaluit: Nunavut Arctic College, 2001), which records memories of child-rearing traditions. Other ethnographies include Minnie Aodla Freeman, *Life Among the Qallunaat* (Edmonton: Hurtig, 1978) and Charles Hughes, *Eskimo Boyhood* (Lexington: University Press of Kentucky, 1974).

²⁵ See the *Nunavut Act*, *supra*; *An Act to amend the Nunavut Act with respect to the Nunavut Court of Justice and to amend other Acts in consequence*, S.C. 1999, c. 3, amending S.C. 1993, c. 28.; *Nunavut Judicial System Implementation Act*, S.N.W.T. 1998, c.34 as enacted for Nunavut, pursuant to the *Nunavut Act*.

narrative accounts of the circuit court's activities, particularly from its early days,²⁶ that draw dramatic attention to the alien nature of the process at the community level.

For family matters, there have been additional systemic problems with the court system. These problems have been documented in numerous sources, including *The Justice House: Report of the Special Advisor on Gender Equality*,²⁷ *Report of the Family Law Working Group for NWT*,²⁸ and *Options for Court Structures in Nunavut*.²⁹ Without exception, these reports have been critical of the lack of access to justice in the family law area under the existing court structures.

The shortcomings of the justice system have various sources, many of them beyond the control of any individual. Perhaps the single most important factor accounting for the lack of access to family justice is the extent to which criminal law has been the major justice priority in Nunavut.³⁰ This prioritization clearly reflects both the reality of extensive reporting of crime in the territory and acute community concern about both crime and the justice system's response to it. However, this focus on criminal justice results in a number of problems that adversely impact the family law system.

There is an acute shortage of family lawyers. At this time, there is one full-time family lawyer employed by Legal Services Board. It is hoped that two more positions for family lawyers will be filled. No private lawyer in Nunavut is doing a significant amount of family law work. Aside from these two staff lawyers, Nunavummiut are forced to rely on legal representation from the NWT or, occasionally, from a province. Those services would be prohibitively expensive for individuals for any contested matter requiring a trial in Nunavut. In terms of community-level resources, courtworkers (working in many but not all Nunavut communities) have not yet been trained in family law. Justices of the Peace do not handle family law matters.

The circuit court structure has aggravated the difficulties in providing family justice services. Family matters have consistently been left as the last items on crowded dockets, addressed only when and if the criminal docket has been completed. Lawyers on circuit are extremely busy, especially while in the community, as they often meet their clients for the first time the same day they are to represent them. Few, if any, of the lawyers travelling with the court practice family law, which means that people with family law disputes are unable to get legal advice in their communities. Support enforcement activities, when they occurred in the past, were handled by the Crown prosecutors.

We learned in our community visits that very few people in Nunavut's communities see the visiting court as a place to address family law issues. This perception is clearly reflected in

²⁶ See W. G. Morrow, *Northern Justice: The Memoirs of Mr. Justice William J. Morrow*, W.H. Morrow, ed. (Toronto: Osgoode Society, 1995) and Jack Sissons, *Judge of the Far North: The Memoirs of Jack Sissons* (Toronto: McLelland & Stewart, 1968).

²⁷ Katherine Peterson, *The Justice House: Report of the Special Advisor on Gender Equality* (Yellowknife: GNWT, 1992).

²⁸ Ministerial Working Group on Family Law Reform, *Family Law Review Report* (Yellowknife: GNWT, 1992).

²⁹ Department of Justice Canada, "Options for Court Structures for Nunavut: A Discussion Paper" (Ottawa: 1997).

³⁰ A recent bibliography compiled by the Department of Justice Canada Research and Statistics Division provides an overview of the literature: Naomi Giff, "Nunavut Justice Issues: An Annotated Bibliography" (Ottawa: Department of Justice Canada) 2000.

practice. In 1992, according to Katherine Peterson, Special Advisor on Gender Equality in the NWT, outside Iqaluit only 10 women in the Eastern Arctic had a child support order registered with the Northwest Territories Maintenance Enforcement Program (MEP).³¹ In the last nine years, there has been a considerable improvement and about 81 recipients overall, 65 of them outside of Iqaluit, currently have orders with Nunavut's program.³² However, as our research will show, this still represents far fewer than 10 percent of those who might be entitled to receive support.

The unified court structure has the potential to considerably simplify family law matters. Custody, access, support, property and child welfare matters will all be heard in the same court. In cases of domestic violence, the same court will also be responsible for trying criminal prosecutions of offenders, making it harder to overlook violence when there have been criminal charges. Young offenders will also be tried in this court when diversion programs are unavailable or inappropriate. This combined jurisdiction may be advantageous if it simplifies questions of jurisdiction and focusses attention on issues of power and safety in family law cases that overlap with the criminal justice system. However, it is important to develop rules of court and support structures for litigants so they are able to maintain the accessibility of the inferior court in what is now a more complex superior court. Above all, there is a real risk that family law will continue to experience a low priority relative to the overwhelming demands of the criminal justice system. Finally, it should be noted that this unified court will not include the social services that are sometimes associated with unified family courts in southern Canada.

2.3.2 Rise of Community Justice

Alongside the court structure, a key emphasis within the justice system in Nunavut is the development of community justice initiatives.³³ Almost every community has a Community Justice Committee ("CJC"), although there are considerable differences between communities in terms of CJC resources, histories and aspirations. CJs are mandated to work toward reconciliation and healing when a crime has been committed (and in some communities, when individuals or couples contact them of their own initiative). Their primary tool is counselling, either one-on-one (often including an elder) or as a family group.

The CJC is made up of volunteers who meet regularly to work towards developing alternatives to the existing court system. Most of the caseload is made up of offenders who are referred by the Royal Canadian Mounted Police and, occasionally, the Crown attorneys. CJs receive support from Justice Nunavut and Justice Canada. They are in the process of negotiating diversion protocols with the RCMP, the Crown and Nunavut Justice on a community-by-community basis.

³¹ Katherine Peterson, *supra* note 27.

³² Statistics from the Nunavut Maintenance Enforcement Office were provided by Charlene Johnson, Director of Maintenance Enforcement, in an email report January 31, 2001.

³³ There is relatively little recorded about community justice initiatives to date. Notable exceptions are: Scott Clark, "Report on Community-Based Justice in Nunavut: Focus Group Consultations with Community Justice Committees" (Iqaluit: Nunavut Justice, 2000) and Nunavut Social Development Council, "Towards Justice that Brings Peace: Nunavut Social Development Council Justice Retreat and Conference" (Iqaluit: author, 2000).

Other community-based justice initiatives include the recruitment and training of a larger number of justices of the peace (89 in Nunavut in 1996),³⁴ strengthening the community constable program (right now 22 community constables serve 15 Nunavut communities), and an array of crime prevention activities. Currently, social workers supervise probation, although efforts are being made to develop community supervision separate from social services in each community.

A crucial issue is how family law services can be developed that are harmonious with these efforts and without overburdening overstretched resources. It may be that at some future date, the potential role of justices of the peace or community justice committees in delivering some of the services discussed below should be further explored. However, it cannot immediately be assumed that CJs or JPs will be the appropriate groups to handle this work.

2.3.3 Violence, Families and the Police

Nunavut has a well-documented problem with violent crime, and there are numerous useful reports about violence in general and violence against women in particular.³⁵

It is clear that violence is not a new phenomenon in the North. Several traditional Inuit stories deplore the plight of victims of violence. According to one story, the narwhal (a marine mammal depicted now on Nunavut's coat of arms) is actually a victim of violence who fled up a cliff to avoid her abuser. When it appeared he would catch her, she twisted her hair into a long plait, and lowered herself over the cliff into the sea. The famous horn of the narwhal is a remnant of her twisted hair; the mottled white skin of the narwhal is said to be marked with her bruises.

In 1996, the Northwest Territories had the highest levels of violent crime in Canada; the Canadian Centre for Justice Statistics reported an assault rate 560 percent above the national average, and a sexual assault rate 730 percent of the national average.³⁶ Canadian statistics on Aboriginal peoples also suggest that violence against Aboriginal women is far more prevalent than against non-Aboriginals. Eight percent of non-Aboriginal women reported experiencing spousal violence in the past 5 years compared to 25 percent of Aboriginal women.³⁷ The statistical difference of spousal violence against non-Aboriginal and Aboriginal men is less significant at 7 percent and 12 percent respectively.

Despite considerable anecdotal evidence of the prevalence of sexual assault in some Nunavut communities,³⁸ at least one report finds a clear history of “predominantly low levels of reporting,

³⁴ Options for Court Structures in Nunavut, *supra*.

³⁵ Two recent reports look at these issues: John Clement and Amanda Parraig, “A Review of Reported Crime Statistics in Nunavut Communities” (Ottawa: Department of Justice Canada Research and Statistics Division, 2000); and John Evans, Robert Hann and Joan Nuffield, “Crime and Corrections in the Northwest Territories” (unpublished, 1998).

³⁶ Canadian Centre for Justice Statistics, 1996 cited in Evans, Hann and Nuffield, *supra* note 35, at 3-4. These statistics are based on offenses reported to the police and subject to initial verification by the police.

³⁷ See generally *Family Violence in Canada: A Statistical Profile 2000*, Canadian Centre for Justice Statistics, Statscan Cat. No. 85-224.

³⁸ *Report on Inuit Women*, in Canadian Panel on Violence Against Women, *Changing the Landscape, Ending Violence, Achieving Equality* (Ottawa: Supply and Services, 1993).

founding and clearance rates for sexual assaults.”³⁹ Not only are relatively few charges laid, but relatively few of those charges are resolved by clearance, conviction or other processes. Perhaps because of this, and in spite of a very high overall conviction rate in the territories,⁴⁰ there is a strong perception, especially among women’s advocacy groups, that sexual assault and violence against women are not taken seriously in the territorial justice system.⁴¹ The most widely based crime statistics at this time do not reflect whether assaults are part of a domestic incident, nor do they cite characteristics of victims, including their gender. However, it is clear that the largest number of charges are laid against adult men, and anecdotal reports suggest that there are a large number of cases of domestic violence in Nunavut.

It is also notable that smaller communities, such as Chesterfield Inlet, Whale Cove, Grise Fjord, Hall Beach, Repulse Bay and Umingmaktok have significantly lower levels of reported crime. There are a number of explanations for this pattern. Informal social control may be tighter in those communities, there may also be lower levels of reporting, in part because in several of those communities there is no resident RCMP officer.

Issues of violence underlie much of the debate about family law in the territory, and will be discussed in the several sections of the research report as well.

2.3.4 Child Welfare and State Involvement with Parenting

Family law governing separation and divorce also operates in the shadow of child welfare law. While this is the case across Canada, in the North the overlap is particularly active. The rate of child apprehensions is very high. When Nunavut was a part of the NWT, the rate of children in care was the highest of anywhere in Canada. In 1997, approximately 2.2 percent of all children under 18 were in the care of the Department of Health and Social Services in the NWT, some 573 children.⁴² To the extent that people see family law as a phenomenon distinct from criminal law, it is often associated with the process of removing children from the family home.

There are numerous explanations for the high rates of children in care. The experience of Inuit parents is part of a larger pattern of Aboriginal children being removed from their families and communities. As many sources have pointed out, the widespread past removal of children has serious intergenerational effects, as many adults have limited or bad experience with being

³⁹ Clement and Parraig, *supra* note 35 at p. 5. Reports are considered to have been founded when, after investigation, it is determined there is evidence to support the initial report. Clearance rates refer to reports where a criminal charge is laid or alternative disposition takes place.

⁴⁰ Evans, Hann and Nuffield, *supra* note 35 at p. 7-8, show that the conviction rate in the Northwest Territories is almost 50 percent higher than the Canadian average.

⁴¹ See Mary Crnkovich, Lisa Addario and Linda Archibald, “Research Report: Inuit Women and the Nunavut Justice System” (Ottawa: Department of Justice Canada Research and Statistics Division) for a review of this literature. Pauktuttit, the Inuit Women’s Organization, has issued numerous reports identifying problems of this type, including “Inuit Women and the Administration of Justice, Phase 1: Project Report, 1993”, “Phase 1, Progress Report 1”, and “Phase 2, Progress Reports 2.” See also Margo Nightingale, “Judicial Attitudes and Differential Treatment: Native Women in Sexual Assault Cases” (1991) 23 *Ottawa Law Review* 71.

⁴² See Human Resources Development Canada, FPT Committee on Child and Family Services Information, *Statistical Report 1994-1997*, located at <http://www.hrdc-drhc.gc.ca/socpol/cfs/statreports/94-95x96-97/report/pdf>. See Table A and figures, p. 96.

parented, making their own parenthood a challenge.⁴³ Furthermore, although residential schools were not as pervasive in the Eastern Arctic as in the rest of Canada, and people had different experiences there, a significant number of residential school survivors make a connection between their experience of being removed from the family in order to study and their lack of confidence in their own parenting skills and a loss of skills. These factors may have a serious effect on parents' ability to assert that their care is in the best interests of the child.

2.3.5 Family Law Reform: The Territorial and National Picture

Legal jurisdiction over family law in Nunavut is divided between the federal and territorial governments. The federal government has jurisdiction over marriage and divorce under s.91 (26) of the Constitution; the territorial government also has broad family law power under the *Nunavut Act*, consistent with provincial powers over family law. The territorial government regulates custody, access, support and property division except in the context of a divorce action. The territorial government also regulates child welfare, adoption and guardianship. Over the past several years, both levels of government have been proceeding with a reform process.

2.3.4.1 The Territorial Process

After an extensive period of review, spearheaded by the Ministerial Working Group on Family Law Reform,⁴⁴ the Government of the Northwest Territories rewrote its family law in a sweeping series of enactments. In 1994, the first piece of legislation, the *Aboriginal Custom Adoption Act*⁴⁵ was passed, which creates a system of community based custom adoption commissioners who formalize adoptions carried out in accordance with customary law (see discussion of adoptions, below). The next major wave of legislation came into force in 1998, with the enactment of the *Children's Law Act*,⁴⁶ the *Family Law Act*,⁴⁷ the *Child and Family Services Act*⁴⁸ and the *Adoption Act*,⁴⁹ which governs private adoptions in the court. Only one piece of family law legislation was largely unaffected by these changes, the *Maintenance Orders Enforcement Act*,⁵⁰ which provides authority for the Director of the Maintenance Enforcement to enforce support orders and agreements.

The *Children's Law Act* addresses most major legal issues relating to children in "private" family law. It provides for children's equal rights regardless of parentage or any question of legitimacy. It deals with proof of paternity, when contested. It provides for guardianship of children and their property. The statute governs child support, establishes an obligation for parents to support their children, and mandates application of the *Federal Child Support Guidelines* by the court. It

⁴³ See e.g. Royal Commission on Aboriginal Peoples, *Report*, Vol. 3, Chapter 2 (Ottawa: Supply and Services, 1996).

⁴⁴ See *Ministerial Working Group on Family Law Reform*, *supra* note 22. See also Rosemary Kuptana, "No more secrets: acknowledging the problem of child sexual abuse in Inuit communities, the first step towards healing" (Ottawa: unpublished paper for Pauktuttit, 1991); Michelle Ivanitz, "Traditional Family Law: Inuvialuit and Kitikmeot Region" (Yellowknife: unpublished paper for Ministerial Working Group on Family Law Reform, 1991).

⁴⁵ *Aboriginal Custom Adoption Act (Nunavut)* S.N.W.T. 1994, c.26 as amended, as amended for Nunavut.

⁴⁶ *Children's Law Act (Nunavut)* S.N.W.T. 1997, c. 14, as amended for Nunavut.

⁴⁷ *Family Law Act (Nunavut)* S.N.W.T. 1997, c. 18, as amended for Nunavut.

⁴⁸ *Children and Family Services Act (Nunavut)* S.N.W.T. c.13, as amended, as amended for Nunavut.

⁴⁹ *Adoption Act (Nunavut)*, S.N.W.T 1998, c.9 as amended for Nunavut.

⁵⁰ *Maintenance Orders Enforcement Act (Nunavut)*, R.S.N.W.T. c.M-2 as amended, as amended for Nunavut.

permits “parental agreements” as well as other types of domestic contracts, which can be overridden by the court in the best interests of the child.

The *Children’s Law Act* also governs custody of and access to children. Both parents are presumed to have an equal entitlement to custody unless there is some intervening event. A person entitled to custody has “all the rights and responsibilities of a parent,” including the authority to act for and on behalf of a child. If more than one person has custody, either can exercise the rights and accept the responsibilities of a parent. The legislation provides that the entitlement to exercise custody and the incidents of custody are “suspended”, subject to court order or agreement, if the parents live separate and apart. This suspension takes place upon the consent or the acquiescence of the non-resident parent. The entitlement to access is not suspended in this situation. Access includes visitation and information about the child’s health, education and welfare.

Any person can apply for custody, but non-parents require leave of the court. When there is an application for custody or access, any determination shall be made “in accordance with the best interests of the child, with recognition that differing cultural values and practices must be respected in that determination.”⁵¹ There is an extensive list of considerations that must be taken into account in considering the needs and circumstances of the child. The court is also required to consider “any evidence” of violence by a person claiming custody or access, when that violence is against a spouse, former spouse, child or household or family member, and to consider the effects or possible effects of that conduct on the child. The court is prohibited from considering parents’ economic circumstances, and the requirement that evidence about past conduct be relevant to the ability to parent is explicit. The court has the power to make an order concerning custody, access, or any incident thereof.

There are a range of other provisions concerning custody and access, including the court’s power to order supervised access, the power to appoint a custody or access “assessor”, and access enforcement provisions for both custodial and access parents. There are also limits on the power of the court in cases of inter-jurisdictional custody disputes, and provisions for the registration of orders.

The *Family Law Act* provides for enforceable domestic contracts and for other consequences of relationship breakdown, subject to the best interests of the child. This Act represents a considerable change from its predecessor legislation. It provides for identical rights for separating couples, regardless of whether they were married or in a common-law relationship prior to separation. Common-law relationships are defined in terms of two years of cohabitation, or cohabitation of some permanence with a child. It provides for spousal support on a basis of equitable sharing of the advantages and disadvantages of the spousal relationship, recognition of both spouses’ contribution to the relationship, and recognition of the impact of custody of the children on a spouse’s earning capacity and career development. It provides a broad definition of family property, and provision for equalization of net family property between the spouses. Family home provisions address ownership and possession issues. The statute also provides for court-ordered mediation and restraining orders.

⁵¹ *Children’s Law Act*, *supra* note 47, s.17.

An application for divorce automatically stays any proceeding commenced under the *Children's Law Act* or the *Family Law Act*. Parties can apply to the court to continue a proceeding separately from the divorce proceeding.

2.3.4.2 The National Context

Nationally, since the enactment and implementation of the *Federal Child Support Guidelines*, public concern has turned increasingly to the question of justice system responses to custody and access disputes between separating parents. This problem has received serious study in many jurisdictions. In December 1997, the Government of Canada established the Special Joint Committee on Child Custody and Access. That committee conducted research and public consultations to analyze custody and access issues, and to look for better ways to promote positive outcomes for children. The public consultations, and the subsequent report, *For the Sake of the Children*,⁵² galvanized significant consensus about the need for change at the same time as it revealed widely divergent views on what changes are necessary. The Government of Canada has committed itself to some reform of the *Divorce Act*.⁵³

Throughout the system there is widespread recognition that children do not see family break-up in terms of legal regimes, but as a complicated experience of turmoil, uncertainty and instability. Legal reforms without measures responding directly to their social and emotional needs will clearly be inadequate. Effective measures to support divorcing families and ensure that children's interests are protected require community support and collaboration among a variety of disciplines. It also requires cooperation between governments, in light of the divided jurisdiction over family law.

In response to this mounting public debate, a decision was taken to undertake a federal-provincial-territorial (FPT) project to conduct multidisciplinary research and consultation to:

- identify custody and access issues that arise before, during and after family disputes;
- identify options for reforms to legislation and services;
- promote the development of integrated, multi-sectoral services to respond to the range of children's needs; and
- develop a strategy to implement these reforms and services.

The existing FPT Family Law Committee, a long-standing policy body, was assigned responsibility for the project. The Committee, made up of family law policy advisors from the federal government and each province and territory, developed a statement of principles and objectives on custody and access reform.⁵⁴ The primary objective of the project is to support

⁵² Special Joint Committee on Child Custody and Access, *For the Sake of the Children: Report of the Special Joint Committee on Child Custody and Access* (Ottawa: Parliament of Canada, 1998).

⁵³ Government of Canada, "Strategy for Reform: Government of Canada's Response to the Report of the Special Joint Committee on Child Custody and Access." Ottawa: Department of Justice, 1999.

⁵⁴ For the full text of the Principles and Objectives on Custody and Access Reform, see page 4 of the federal-provincial-territorial consultation document, *Putting Children's Interests First: Custody, Access and Child Support in Canada*, available at <http://canada.justice.gc.ca/en/cons/ConsultationDocument.pdf>.

custody and access arrangements that promote the best interests of children. In light of that objective, reforms should:

- reduce parental and extended family conflict and litigation;
- support positive relationships between children, their parents, and the extended family;
- when required, protect children from the negative consequences of high conflict and violence.

This report forms part of the background for this joint process. As noted above, with the creation of the new Nunavut territorial government, it was determined that a key priority for family law (along with establishment of a new Maintenance Enforcement Office) was to conduct research, in the form of a needs assessment, concerning family law information and services in the territory. This research also provided an early opportunity to assess recent territorial legislation already in force.

It was the view of the Nunavut Department of Justice that it would be premature to address the issue of custody and access in isolation from other family law issues. At this point, there is relatively little community-level discussion about family law, and an overly technical investigation of custody and access alone would likely have created frustration among those who wish to participate in the development of family law in the territory. As there has been relatively little research of this type in the territories, the Nunavut Department of Justice was eager to use this opportunity to gather information about the full spectrum of family law issues in an effort to refine its own priorities. The Department of Justice Canada supported this approach.

This research should contribute to the FPT process as the only paper focussing on potentially unique family justice needs in the territories. In particular, our reported research will assist in the development of planned custody and access consultations taking place in Nunavut during 2001. In Nunavut, community-level consultation is being carried out by the Law Review Commission, Maligarnit Qimirrujiit (MQ). Over the spring, the five commissioners will be visiting at least half of Nunavut's communities to conduct consultations on custody and access as well as broader family law issues. In addition, custody and access consultations will be carried out with an expanded Nunavut Family Law Working Group, which includes the two Nunavut lawyers practicing in the field, representatives of the judiciary, the Director of Adoptions, the Director of Child Welfare, the Maintenance Enforcement Director with Iqaluit Social Services, and representation from Nunavut Social Development Council and a number of social workers. The MQ Commissioners will also participate in these centralized consultations.

2.4 SUMMARY OF THE CONTEXT

There are a number of crucial contextual questions that shape family life and, in turn, family law in Nunavut. Perhaps most important is: what is the relationship between Inuit Qaujimajatuqangit and the family patterns that are reflected in the research results? Similarly, to what extent do existing legal principles and services appear to be consistent with IQ?

These fundamental questions may be broken down in terms of the areas covered in this section. First, the physical context dominates life—and service delivery issues—in Nunavut. The

distribution of the population into small, isolated and close-knit communities is a fundamental social fact underlying both the ways of individual and family life and public sector activity. In seeking to answer questions about why certain patterns exist and how to address social needs, it is essential to keep the community context in mind.

Other aspects of social context that require close attention are the serious social issues that confront Nunavummiut. The growing population and high proportion of youth will have a major impact on family formation. A number of serious social problems may contribute to and complicate family breakdown. Unemployment, lack of housing, generalized poverty and serious health issues, including depression, suicide and addictions, are widely identified as problems facing Nunavummiut, but their direct and indirect effects on family life and family law have not been adequately examined. One social problem is clearly linked to family law: the prevalence of violence against women. To date, however, the primary response to this problem has been criminalization. It is a serious challenge for family law to develop civil law responses to violence that will focus on moving forward, in a constructive way, from the harm of abusive relationships.

The existing court system, particularly the circuit court, is often criticized for failure to meet family law needs. However, recent changes, including a unified court structure and strengthened community justice institutions such as Justices of the Peace and Community Justice Committees, may create some room to improve the accessibility of the system. There have also been significant changes to family law legislation, including simplified recognition of custom adoption, vastly expanded rights for common-law partners, a better defined role for domestic contracts and significant clarification of custody and access law and factors relevant to the “best interests of the child”. In light of potential reform in federal legislation governing divorce, and the joint consultation process, it is important to consider what, if anything, is the potential impact of the evolving legislative framework; whether changes have or should have an impact on services at the territorial and community levels; and the extent of common knowledge about the court system.

3 RESEARCH RESULTS: MAIN ISSUES

In order to develop strengthened legislative or service options for the territory, there is a need for basic information about current family life: what is a typical family in Nunavut? Especially significant issues were the composition and size of Nunavut families. The study also addressed marriages and common-law relationships, both their prevalence and people's experience entering such relationships. The second major mode of family formation, adoption, must also be studied, and in particular, custom adoption. Finally, the research reviews a number of issues relating to separation and divorce, including economic issues and facts about the households of children, both after separation and in "intact" families.

The major source for this section is the household survey. When appropriate, problems with the data and any limits on findings are noted in the text or notes. All percentages are expressed in whole numbers, which may occasionally result in figures that do not add up to 100 percent. One frequent problem was cases in which respondents who should have answered questions did not answer them. In our tables, those responses are reported as "missing data" to allow the reader to draw their own conclusion about the significance of non-response. Apart from the survey results, findings from other research and anecdotes are incorporated to illustrate or explain certain findings.

3.1 THE FAMILY UNIT IN NUNAVUT

The basic structure of the family unit in Nunavut reflects Inuit cultural norms. The family structure is extended, flexible and more dynamic in its composition than in the rest of Canada. Household structure can be contrasted with the "norm" of families in Canada, which is that the dominant household form is a group of one or more parents and their birth children. The results of our survey show a much more varied household composition in Nunavut, including a wide number of family members with different relationships with children and non-birth parents, parents and their adult children, and siblings all living in the same household far more frequently.

Census data reveal that the average household size in Nunavut is slightly greater than in Canada as a whole. In our survey, we found that although most people live in households of between three and five persons, almost one third of respondents lived in households with more than six people (see Table 1). Relatively few households include only a single person or couple (of course, two-person households may or may not be made up of couples). These two household types combined constitute only about 15 percent of Nunavut households.

What is more remarkable is the varied composition of households in Nunavut. Current households reflect the extended family structure that is constantly referred to in oral histories and anthropological studies.⁵⁵ The results from the household survey suggest that a very large number of households include individuals other than parents and their biological children. A significant percentage of households include grandparents, adopted children and the respondents' adult siblings. Indeed, Inuktitut terminology differentiates between *qatangutiit*, or "immediate

⁵⁵ See e.g. Jean Briggs, *Inuit Morality Play: The Emotional Education of a Three-Year-Old*. (St. John's: Institute of Social and Economic Research, and New Haven: Yale University Press, 1998).

families,” which include the mother, father, son, daughter, grandparents, grandchildren and great-grandchildren, and *ilagiit* or “extended families,” including uncles, aunts, cousins, nephews, nieces, grandparents, great uncles, great aunts and, again, grandchildren.⁵⁶

Table 1: Distribution of Nunavut Households by Number of People

Number of people per household	Number of households (N)	Percent of total households (%)
1	19	6
2	32	10
3	53	17
4	59	19
5	52	16
6	40	13
7	39	12
8	7	2
9 or more	16	5
No answer	25	7
Total	342	100

Table 2 provides an overview of the range of relationships within Nunavut households. Several issues stand out. First, adoption is very common and far above the Canadian norm. A full 15 percent of respondents reported that their households include at least one adopted child (a fuller discussion of adoptions will follow).

Table 2: Distribution of Nunavut Household Members by Relationship to Respondents

Respondent* and at least	Gender of respondent		Total
	Female	Male	
1 husband or wife of respondent	68 35%	50 34%	118 35%
1 common-law partner of respondent	51 26%	36 24%	87 25%
1 birth-child of respondent	140 73%	77 52%	217 64%
1 adopted child of respondent	30 16%	22 15%	52 15%
1 stepchild of respondent	6 3%	14 9%	20 5%
1 child of guardian respondent	3 2%	3 2%	6 2%

⁵⁶ Marie Uviliq, *supra* note 22, at 12.

Table 2: Distribution of Nunavut Household Members by Relationship to Respondents (cont'd)

Respondent* and at least:	Gender of respondent		Total
	Female	Male	
1 birth father or mother of respondent	15 8%	20 13%	35 10%
1 adopted father or mother of respondent	1 1%		1 0%
1 stepparent of respondent	2 1%	5 3%	7 2%
1 birth-sibling of respondent	21 11%	23 15%	44 13%
1 stepsibling of respondent	6 3%	6 4%	12 4%
1 half-sibling of respondent			
1 adopted sibling of respondent	2 1%	1 1%	3 1%
1 grandchild of respondent	18 9%	13 9%	31 9%
1 grandparent of respondent	1 1%	2 1%	3 1%
1 son/daughter-in-law of respondent	6 3%	10 7%	16 5%
1 parent-in-law of respondent		1 5%	1 3%
1 sibling-in-law of respondent	5 3%	4 3%	9 3%
1 nephew/niece-in-law of respondent	7 4%	6 4%	13 4%
1 uncle or aunt of respondent	2 1%	1 1%	3 1%
1 cousin of respondent	1 1%	2 1%	3 1%
1 same-sex partner of respondent			
1 other relative of respondent	1 1%		1 1%
1 non-relative of respondent	7 4%	4 3%	11 3%
Total respondents	193 100%	149 100%	342 100%

* The characteristics of each respondent differ. One respondent may be a dependent 16-year-old, another a resident grandparent. However, this table shows the wide variety of household composition in Nunavut.

Second, there are a large number of households in which respondents reported living with either a parent or a sibling. This is notable, since all the respondents in this survey are older than 15 years of age. Thirteen percent of households include a parent, stepparent or adopted parent or parent-in-law of a respondent. Just under one fifth of respondents reported the presence of a sibling or stepsibling. Almost 10 percent of respondents were living with a grandchild

(9 percent) and just over 10 percent of households included some other type of relative. Finally, very few people (only 3 percent of respondents) reported living with a non-relative.

It is difficult to compare these results with Canadian averages because there are few reports on the prevalence of extended families. It is clear that the composition of families in Nunavut is quite different from the typical family in southern Canada. Figures for Canada show that slightly more than half of families fall into the parent/spouse/child type.⁵⁷ By contrast, almost a third of Nunavut respondents reported living with relatives in addition to, or instead of, a spouse or children.

Table 3: Distribution of Respondents by Household Composition

Respondent lives with...	Gender		Total
	Female	Male	
Spouse only	7 4%		7 2%
Spouse and own children only (<i>Classic Nuclear Family</i>)	95 49%	65 44%	160 47%
Spouse and own children and other relatives	16 8%	17 11%	33 10%
Spouse and other relatives only		4 3%	4 1%
Own children only (<i>classic single parent</i>)	22 11%	5 3%	27 8%
Own children and relatives	19 10%	5 3%	24 7%
Other relatives only	16 8%	26 17%	42 12%
With non-relatives only	2 1%	3 2%	5 2%
Alone or unknown	16 8%	24 16%	40 12%
Household Totals	193 100%	149 100%	342 100%

Note that percentages are rounded to the nearest whole number and may not add up to 100.

These results are even more marked when respondents were asked about the structure of the household into which they were born (see Table 4). As is clear from the table, one generation ago the extended family was even more a part of Nunavut households. This suggests a trend towards increasingly nuclear family units in Nunavut over the lifetime of our respondents. However, there is little evidence that the norm in Nunavut has changed so dramatically that there should be any concern about the extended family form becoming significantly less prominent.

⁵⁷ See, e.g., Vanier Institute of the Family, *Profiling Canada's Families II*, (British Columbia: Vanier Institute, 2000) at 22-23 reports that 3,975,080 families made up of two parents and their child or children out of a total of 7,838,865 families. It is difficult to make comparisons with the Nunavut data because the table does not consider the presence of extended family members.

Table 4: Distribution of Respondents' Household Composition at Birth

At birth respondent lived with...	Gender of respondent		Total
	Female	Male	
Both birth parents only, no extended family	37 19%	30 20%	67 20%
Both adoptive parents only, no extended family	26 14%	14 9%	40 12%
Birth mother only, no father, no extended family	8 4%	7 5%	15 4%
Adoptive mother only, no father, no extended family		1 1%	1 0%
Birth father only, no mother, no extended family	1 1%	1 1%	2 1%
Mother and extended family, no father	3 2%		3 1%
Father and extended family, no mother	1 1%		1 0%
Both birth/adoptive parents and extended family	91 47%	85 57%	176 52%
Mixed birth/adoptive/step parents, no extended family	3 2%	4 3%	7 2%
Extended family only, no mother/father/siblings	16 8%	6 4%	22 6%
Siblings only, no parents/extended family	3 2%		3 1%
Other/no answer	4 2%	1 1%	5 2%
Totals	193 100%	149 100%	342 100%

Finally, it is important to note that Inuit recognize an additional layer of family type relationships, which are developed through namesake relationships or *tuqluraniq*. Children, when they are born, are always named after another person, usually one who has died recently. Once named, they take on all of the relationships of their namesake. Accordingly, a small child will be called “husband” by the widow of the namesake, and “father” by the children of the namesake. These relationships, cemented by names, are widely recognized and observed today.⁵⁸ A name is thought to carry with it characteristics of the namesake as well. As well, two people named after the same person will have a special relationship. The research was not directed at questions of namesake relationships, nor their relationship to family law, but several people commented on the importance of these issues from an IQ perspective. It would be worthwhile to explore the implications and responsibilities that go with these namesake relationships in order to better understand the complex dynamics of these extended family memberships and their implications in cases of relationship difficulties.

⁵⁸ See Uviliq, *supra* note 22, at pp. 7-13.

3.1.1 Multigenerational Families and Caregiving

In our community meetings and in interviews, we were repeatedly told that extended family members frequently have considerable caregiving responsibility for the children in their households. We heard countless stories of grandparents who act as the primary caregiver for one or more of their children's children. In some cases, grandparents will adopt the child through custom adoption. In other cases, grandparents will step in during a difficult period of their children's life to look out for the grandchildren. We also heard similar accounts of siblings stepping in to look after children during a crisis. Of course, we also heard of involvement by relatives that consisted of general assistance, such as helping out with after-school care, or simply providing a friendly household where kids of all ages might stop in.

A clear factor contributing to the active role of extended families in raising children is the young age at which many Nunavummiut are becoming parents. The statistics on youth pregnancy suggest childbearing is happening much earlier in Nunavut than in the rest of Canada, including in the other territories. A recent article in the Iqaluit *Nunatsiaq News* stated there were as many as 25 grandmothers who were only 30 years of age in the town of Arviat (population 1,676).⁵⁹ Our research clearly demonstrated the youth of first-time parents in Nunavut. Seventeen percent of respondents had their children when they were seventeen or younger; more than half of the respondents were parents before they were 21 (see Figure 1).⁶⁰

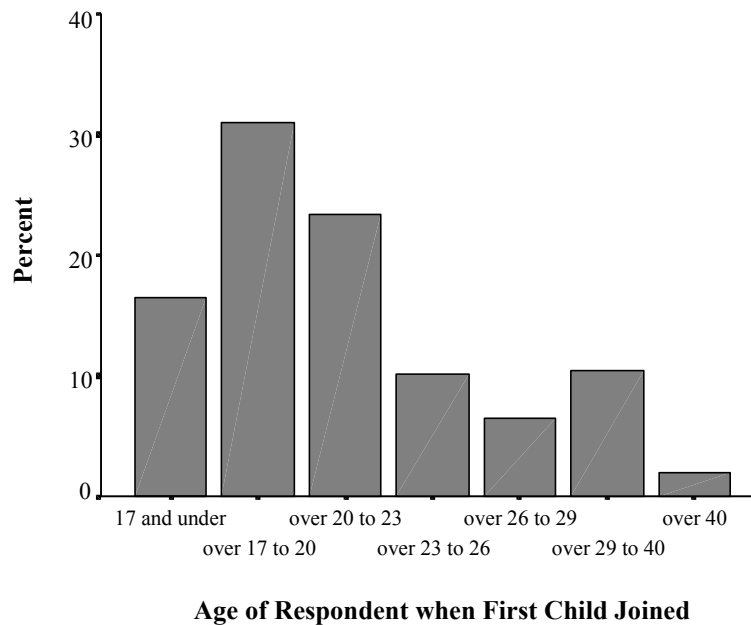
The role of extended family, especially grandparents, in raising children draws attention to a number of issues. From a custody and access point of view, some of the people in our meetings questioned the presumption that only parents automatically had a right to custody without a court order. Participants in meetings were not aware of the provision in the legislation that permits any person (including non-parents of the child) to apply for custody with leave.⁶¹ They also raised questions about social supports for grandparents. Several community members were concerned about the strain, financial and otherwise, on those who were raising their relatives' children. In cases where family members were not working in the wage economy, people were unclear about their eligibility to receive public assistance for additional children living in their homes.

⁵⁹ Jane George, "Babies Having Babies: An Explosion of Infants Born to Teenage Mothers", *Nunatsiaq News*, May 19, 2000. There are limited statistics for Nunavut on teenage pregnancy, and public health officials rely considerably on anecdotal evidence. George reports that nurses in Arviat were estimating that 15 babies would be born to the 65 girls under 19 in the community, almost 10 times the national average. She also reports an unnamed former CEO of the Baffin Regional Health Board saying that the average age at which women in the Baffin region give birth to their first child has tumbled over the years from 16 to 18 years of age to 14 to 16 years. Statistics Canada figures for the NWT in 1994 report a teen pregnancy rate of 67 out of 1000 for girls from 15-19, and 12.6 out of 1000 for girls under 15. The population estimate is based on Nunavut Statistics Community Population Estimates at: http://www.stats.gov.nu.ca/Statinfo/Deomgraphics/nunest/popest_Nunavut.pdf.

⁶⁰ Figure 1 is based on a subtraction of the number of years ago the eldest child joined the family from the age of the parent for 248 respondents. There were a number of inconsistencies in the recording of the data. Although respondents answered the year that each child joined, to a maximum of nine children, only data for the first two children were entered. It was noted that the first entry was the oldest child, and the graph is based on the date of entry to the family of the eldest child, although it is possible that the date a child joined the household could have been earlier than the date the eldest child joined (in stepparent or adoption situations).

⁶¹ *Children's Law Act*, *supra* note 46, s.20(2).

Figure 1: Distribution of Age at Which Respondents Became First-time Parents



N=248 all respondents who were birth, adoptive or step parents.

From the perspective of issues typically of concern to family law, these findings suggest that family breakdown will tend to affect a larger number of people than just the parents and children. Further, it suggests a broader support structure when people separate. The circle of people who have significant involvement in the raising of a child is large and, accordingly, so is the circle of those who have a real interest in ensuring a continuing relationship with that child after family breakdown. An important area for further qualitative research would be to consider the ways in which extended families stay involved in the lives of children after separation, the types of support they provide, and issues for both parents and other relatives in maintaining these relationships.

The relative youth of parents has other implications as well. Young parents, as a group, are characterized by greater poverty, greater probability of spending at least some time as a lone parent, and disproportionately less access to justice than parents who wait until their late twenties. In terms of family law strategies, it is clear that close cooperation with social services to ensure that younger parents have access to support and education about their family law rights will be required. There is a strong interest in working with others to help encourage young people to wait longer before taking on parenthood.

3.2 CUSTOM ADOPTION

One of the most dramatic differences between Nunavut and the rest of Canada is the prevalence of custom adoption. In the introduction, we pointed out the unique statutory regime for the recognition of custom adoption, the *Aboriginal Custom Adoption Act*, which was introduced into law in 1996. Custom adoption represents the most common point of contact between families and the legal system in Nunavut. Since 1996, it is estimated that nearly 2,000 custom adoptions

have been formalized by the courts, almost all of them from in the Eastern Arctic.⁶² By contrast, during that same period, there were an average of five departmental adoptions a year (in which the child is permanent ward of the government) and perhaps 35 private adoptions to non-Inuit. As noted above, 22.5 percent of respondents in our survey reported having raised adopted children. In fully half the cases (40 of 77) respondents had raised more than one child. Another 26 percent 62 of 237 reported having given a child up for adoption; fully one third of women respondents reported that they had “adopted out” a baby (51 of 150). Twenty-three percent of respondents reported they were adopted themselves. And of those, 93 percent (69) said they were adopted through custom adoption and only 7 percent (5) reported use of a court process.

There has been only one case on the legal effect of an adoption under the *Aboriginal Custom Adoption Act*, *S.K.K. v. J.S.*⁶³ In that case, a maternal grandmother who had adopted her granddaughter sought to obtain child support from the girl’s birth father. Justice Schuler of the Northwest Territories Supreme Court ruled at para 30:

The consequences of adoption will depend on Aboriginal customary law. Those consequences may in fact be the same as the consequences provided under... the *Adoption Act* or they may be different. They may also vary as between the communities or regions of Nunavut.⁶⁴

She further held that the court was required to apply Aboriginal customary law, and would require expert evidence on the requirements of that law in order to make a determination about child support.

It would appear that there are several substantive characteristics of custom adoption that are notably different from court-ordered adoption under the *Adoption Act*.⁶⁵ First, custom adoptions are almost invariably open adoptions, where everyone concerned, and often the whole community, knows the different parental relationships involved. Most often, the birth parent will continue to have a relationship with the child, and will even refer to the adopted child as their son or daughter. The term *qiturngaqati* has been used to mean “having the same child” and it is used to refer to the relationship between birth and adopted children.

Second, most (but by no means all) custom adoptions occur between relatives; parents, siblings and cousins all adopt on a regular basis. This was reflected in our data, where 70 percent of our adopted respondents reported adoption by relatives (see Table 5 below).

⁶² Interview, Marie Irniq, Director of Adoptions and Child and Family Services, Nunavut Department of Health and Social Services, January 19, 2001. She notes that about 10 percent of adoptions in the NWT were among Dene.

⁶³ [1999] N.W.T.J. No. 94. There is significant case law recognizing Aboriginal custom adoption in the Northwest Territories. Judge Sissons, in *Re: Katie Adoption Petition* (1961) 38 W.W.R. 100 (N.W.T.T.C.) was the first to recognize that custom adoption was part of the law of the NWT. The NWT Court of Appeal reached the same conclusion in *Re: Wah-Shee* (1975), 57 D.L.R. (3d) 743. Two later decisions of the NWT Supreme Court clarified that the court’s role in custom adoptions was “merely declaratory”: *Re: Tagornak Adoption Petition*, [1984] 1 C.N.L.R. 185; *C.(A.) v. G.(V.)* [1992] N.W.T.R. 236.

⁶⁴ *Aboriginal Custom Adoption Act*, *S.K.K. v. J.S.*, at para 30.

⁶⁵ See e.g. Mariano Aupilaarjuk, Marie Tulimaaq, Akisu Joamie, Emile Imaruittuq, Lucassie Nutaraaluk, *Interviewing Inuit Elders: Perspectives on Traditional Law*, ed. Jarich Oosten, Frederic Laugrand and Wim Rasing, (Iqaluit: Arctic College, 2000) at 144.

Third, it appears that custom adoptions only take place between Inuit. Non-Inuit may adopt by custom adoption if they are married to an Inuk. Effectively, this guarantees that an Inuk who marries a *qallunaat* does not lose her right to custom adoption.

Table 5: Distribution of Respondents by Relationship to Adoptive Parents, by Gender of Respondents

Adoptive parent's relationship to the birth parent	Female	Male	Totals
Birth mother's parents	17 34%	8 29%	25 32%
Birth father's parents	6 12%	2 7%	8 10%
Other relative of birth mother	6 12%	4 14%	10 13%
Other relative of birth father	7 14%	4 14%	11 14%
Non-relative	5 10%	7 25%	112 15%
Unknown	9 18%	3 11%	12 15%
Totals	50 100%	28 100%	78 100%

N=78 Respondents who reported being adopted as a child (custom or court adoptions)

Fourth, in most cases it is those who are “adopting out” who take the initiative and seek a family to “adopt in” the baby. It is not uncommon, especially with the considerable amounts of inter-community travel these days, that someone will be adopted out to a friend or relative who does not live in the community.

In general, we found that adoption decisions are not made on the basis of a single standard, such as the “best interests of the child.” According to one elder and many people in discussions with the MQ Commissioners, there is a widespread view that “a child should not be fought over or it will have a short life.”⁶⁶ There are many reports that adopted children are “more loved” or particularly doted on. The child’s welfare is certainly taken into account, but decisions about adoptions are more likely to be taken in light of explicit consideration of the situation of the family as a whole. Custom adoption takes place in a number of circumstances. The most common situation is one in which a young woman gives birth, and her parents adopt the child and raise it as their own. Very often, this type of arrangement occurs while the birth mother is still living in the parental home, and the birth mother will have a significant caregiving role with respect to the adopted child. In other cases, adoptions will be used as a type of family planning, for example, to ensure that there is enough space between children if one is born too close to another in time. Adoption may also be a way of helping a relative or friend who does not have any children, or does not have any children of a certain gender. There are also reported cases of older people adopting to ensure they have a caregiver as they age.

⁶⁶ Aupilaarjuk et al., *supra* note 65 at 148 quoting Imaruittuq; interview with Sandra Omik, Chief Commissioner of MQ, July 17, 2001.

There are reports of custom adoptions that, like some court-ordered adoptions, do not go as parties expected; either the adopting-out changes their mind, or the family adopting-in has difficulties they did not expect. The legal remedy in these cases is not to undo the adoption, but to have another adoption. A person can be adopted back by their birth parent, or could be adopted by a third party. In our data, approximately 5 percent of people reported being adopted more than once.

Procedurally, custom adoption differs significantly from the process under the *Adoption Act*. First, the custom adoption is formalized between the parties. A local adoption commissioner—who invariably speaks Inuktitut—will record the parties’ intent and collect all the information necessary to process an adoption using a single form. There is a custom adoption commissioner in each community, although not all of them are active and concerns have been expressed about the training of some of them. When all the information has been collected, the commissioner will send it to the court to be registered. The role of the court is to ensure that all the formalities have been observed, but not in any way to consider the merits of the adoption. When satisfied, the court will register the adoption. Once the adoption is registered, the commissioner will apply to amend the record at Vital Statistics and get an amended birth certificate.

By contrast, both private and departmental adoption are more typical of the southern norm. These adoptions require an application to the court. Due to the relative complexity of the process, in most private adoptions the person applying to adopt is represented by a lawyer, whether the adoption is contested or not. It is required that the consent of the birth parent (or, in departmental adoptions, the Director of Child and Family Services) be clearly documented. Except in the case of a stepparent adoption, it is required that a social worker complete a home study. Final decisions about adoption remain in the hands of the judge, who also has the power to impose terms on the adoption; for example, continuing access to the child for the birth parent may be sought and ordered. Ironically, the orders may attempt to replicate the terms of a custom adoption.

In summary, the institutionalization of custom adoption in Nunavut is unique in Canada.⁶⁷ It is also unique in family law processes within Nunavut. Custom adoption appears to be a well-understood legal institution that is accessible and commonly used across the territory. Decision making is seen to vest in families and within the communities, not in outside institutions. There appear to be relatively clear parameters for decisions about adoptions, and a relatively strong understanding about the responsibilities of different parties in the process. While custom adoptions are much more open than judicial adoptions, there does not appear to be a tendency to impose parental obligations on parents who have adopted out, so there has been little intersection between custom adoption and the rest of family law. Over time, it will be interesting to see whether and how other family law institutions can adapt to reflect some of these successes.

It is important not to idealize custom adoption. The Law Review Commission has been consulting on community perceptions of the strengths and weaknesses of the process. They have identified numerous concerns with adoptions, and are in the process of identifying appropriate approaches to “regulating” these adoptions to prevent problems (see report of Law Reform

⁶⁷ Clearly, the NWT also has a custom adoption process. Overall, however, according to the Director of Adoptions, only about 10 percent of the custom adoptions took place in the Western NWT before the division of the territory.

Commissioners, forthcoming). They are also consulting further on community understandings about the obligations of all parties. Their recommendations could reflect lessons—positive and negative—learned from this important aspect of family law in the territory.

3.3 MARRIAGE AND COMMON-LAW RELATIONSHIPS

Census data show that 50.3 percent of Nunavut families are made up of married couples, while 31 percent of families include common-law couples. These data are broadly consistent with our survey results. We asked survey participants directly about their marital status and their participation in common-law relationships. Note that there was a significant rate of non-response in the parts of questionnaire relating to marriage.⁶⁸

As the data in Tables 6 and 7 suggest, a large number of Nunavummiut live in common-law relationships. The prevalence of common-law relationships is far above the Canadian norm,⁶⁹ although it is somewhat lower than the rate among Aboriginal peoples across Canada.⁷⁰ At the same time, fewer people are married than the Canadian norm (and again, the rate of marriage is higher than among Canadian Aboriginal peoples generally). More strikingly, a very significant number of people reported that they had, at one time, been part of a common-law relationship: 63 percent of respondents.

⁶⁸ We are not sure why this rate should be so much greater in this particular section. Possible reasons are confusion arising from the design of the survey instrument in this section, which did not reveal itself in the training sessions but showed itself in the field, and reticence in discussing questions relating to marriage as opposed to other types of family law issues.

⁶⁹ See <http://www.statcan.ca/english/census96/oct14/mar2/htm>.

⁷⁰ See Goss Gilroy Inc., Study to Examine the Socio-Demographic Situation of Aboriginal Women, Preliminary Data Phase (Ottawa, 1994).

Table 6: Distribution of Respondents by Marital Status at Time of Interview

Legal marital status	Female	Male	Total
Legally married and not separated	62 41%	47 42%	109 41.3%
Legally married and separated	7 5%	7 6%	14 5%
Divorced	5 3%	7 6%	12 5%
Widowed	11 7%	5 5%	16 6%
Never legally married	68 44%	45 41%	113 43%
Totals	153 100%	111 100%	264 100%

N=264 Respondents reporting marital status (missing data = no answer or not applicable).

Table 7: Distribution of Respondents by Current Marital or Common-law Status

Current status	Female	Male	Total respondents	Percent of total sample
Now married, not separated, divorced or widowed	62 38%	47 39%	109 38%	32%
Married, and separated, divorced or widowed not common law	21 13%	14 12%	35 12%	10%
Common law	49 30%	38 32%	87 31%	25%
Never married and not common law	32 20%	21 18%	53 19%	16%
Missing data	-	-	-	58 17%
Totals	164 100%	120 100%	284 100%	342 100%

Table 8: Distribution of Respondents Ever Participating in a Common-law Relationship

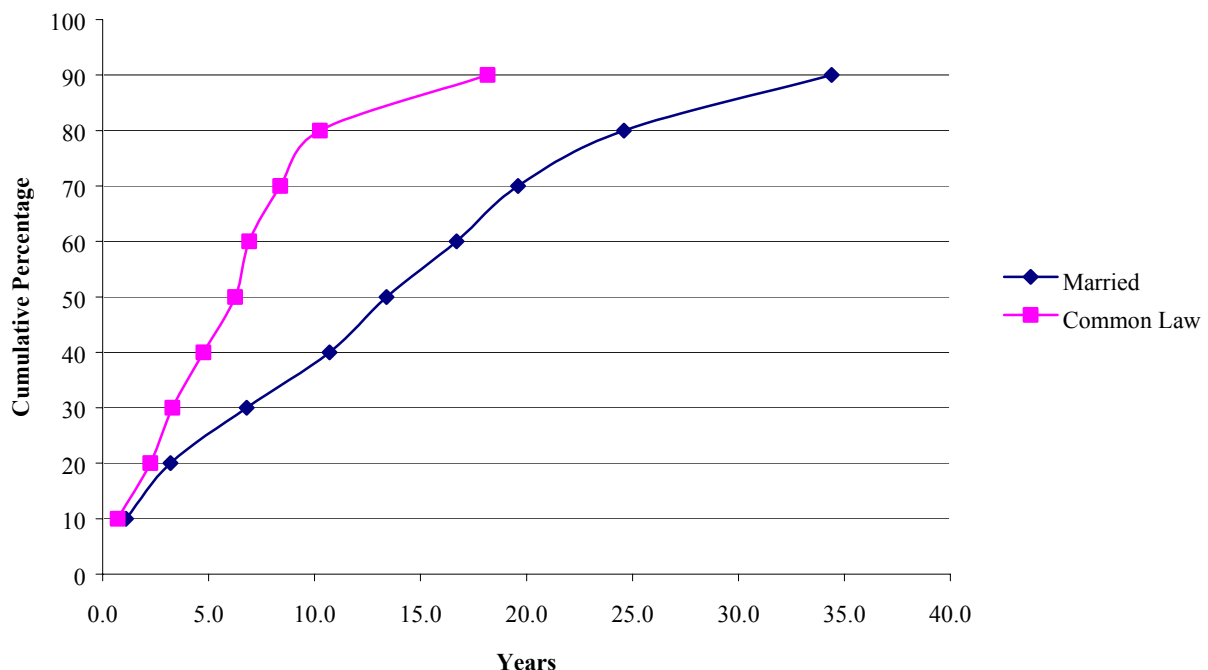
Ever common law?	Female	Male	Total respondents	Percent of total sample
Yes	8 50%	58 59%	126 54%	37%
No	68 50%	40 41%	108 46%	32%
Missing data	-	-	-	108 32%
Totals	136 100%	98 100%	234 100%	342 100%

3.3.1 Age on Beginning of Spousal Relationships

From our survey results, it was possible to observe a number of differences between respondents who were married and those who were currently in a common-law relationship. Married respondents tended, on the whole, to be older (average age 31) than respondents in a common-law relationship (average age 24).⁷¹ Moreover, if we compare the average age at which people report entering into this marriage (mean age 24) with the age they report starting this common-law relationship (mean age 21), it appears that people are waiting longer to marry.⁷² This trend is all the more notable, as it also appears that respondents are *not* waiting to have children.

Our statistics, while they should be viewed with some caution, also show that marriages in general last longer than common-law relationships. Among our respondents, the mean length of marriage was slightly more than 17 years, while the mean length of common-law relationships was just over seven years (see Figure 2).

Figure 2: Distribution of Current Relationships by Type and Length



⁷¹ The average age of divorced or separated respondents was 38 years.

⁷² We have approached this question with some reservations about the reliability of these figures. In particular, respondents are likely to have under-reported prior common-law relationships, and therefore the figures may not reflect actual first relationships, or the population sample may be very small.

3.3.2 Prior Relationships

This appeared to be one of several areas in the survey in which some respondents were uncomfortable answering questions. Significant numbers of people who ought to have answered these questions did not.⁷³ As a result, it is hard to get a strong quantitative picture of how many people had previous relationships before their current marriage or common-law relationship. It would be interesting to know why this information was considered so sensitive that people preferred not to talk about it.

There were slightly better results when we asked about the marital and relationship status of current spouses, rather than the respondent's own history. The overwhelming response of both married and common-law respondents was that their partner had been single before the current relationship.

As tables 10 and 11 show, a higher percentage of people currently in common-law relationships reported that their partner had another major relationship before the current one; however, the numbers are very low. Fewer than 10 percent of respondents in common-law relationships reported that their previous partner was married, widowed, divorced or separated. Under 5 percent of married people reported that their partner was previously married, although there is some doubt about the result, since nearly 15 percent did not answer the question. Fifteen percent of common-law respondents knew their partner had been involved in a previous common-law relationship, but only about 2 percent of married people answered that they knew their partner had been in a previous common-law relationship.

Table 9: Distribution of Respondents by Partner's Previous Common-law Relationship and by Current Relationship Status

	Currently married, separated or divorced				Currently common law			
	Female	Male	Total respondents	Percent total sample	Female	Male	Total respondents	Percent total sample
Previous common-law relationship	2 3%	1 2%	3 3%	2%	9 18%	4 11%	13 15%	15%
No previous common-law relationship	59 88%	44 88%	103 88%	76%	39 80%	34 90%	73 83.9%	83.9%
Unknown to respondent	6 9%	5 10%	11 9%	8%	1 2%	0	1 1%	1%
Missing data				18 13.3%				0
Totals	67 100%	50 100%	117 100%	135 100%	49 100%	38 100%	87 100%	87 100%

Note: The data are non-cumulative. Some people presently in a common-law relationship may also be included in the married, separated or divorced category.

⁷³ So, for example, when we asked married, married and separated, and divorced people (n=135) if this was their first marriage, 44 (32 percent) said yes and 90 either did not answer or said the question did not apply to them. When we asked the same group whether they had lived common law with their present spouse before marriage, 33 said yes, 12 said no and 90 did not answer or said the question did not apply to them. Similarly, when we asked people in common-law relationships (n=87) if they had had previous common-law relationships not leading to marriage, 12 said yes, 35 said no, and the rest did not answer or said the question did not apply to them.

Table 10: Distribution of Relationships by Partner's Marital Status at the Beginning of the Relationship

	Currently married, separated or divorced				Currently common law			
	Female	Male	Total respondents	Total sample	Female	Male	Total respondents	Total sample
Widowed	0	0	0	0	0	1	1	1
Separated	0	0	0	0	3 6%	2 5%	5 6%	5
Divorced	2 3%	2 4%	4 4%	4 3%	2 4%	0	2 2%	2
Single	62 95%	48 96%	110 96%	110 82%	44 90%	35 92%	79 91%	79
Unknown to respondent	1 2%	0	1 1%	1 1%	0	0	0	0
Missing data	-	-	-	20 15%	-	-	-	0
Totals	65 100%	50 100%	115 100%	135 100%	49 100%	38 100%	87 100%	87 100%

Note: The data are non-cumulative. Some people presently in a common-law relationship may also be included in the married, separated or divorced category.

3.3.3 Children from Previous Relationships

It is revealing to contrast these results with the much higher overall number of cases in which respondents reported that their partners had children from previous relationships. In addition, the higher response rates indicate that people are more comfortable discussing this subject.

The data in Table 11 suggest that Nunavummiut living in common-law relationships are more likely to have children from a previous relationship than those living in marital relationships. Notably more men reported that their female partners brought children from prior relationships to their current ones (about twice as many).⁷⁴ Taken together with the data on previous relationships, it suggests that, in a significant number of these cases, parents have children outside of *any* relationship. There will be more discussion of this in the section on children.

⁷⁴ Note the smaller number of male respondents overall.

Table 11: Distribution of Respondents' Partners with Previous Children

	Currently married, separated or divorced				Currently common law			
	Female	Male	Total respondents	Total sample	Female	Male	Total respondents	Total sample
Children from previous relationship	3 5%	9 18%	12 11%	9%	9 20%	13 38%	20 28%	23%
No children from previous relationship	55 90%	39 81%	94 86%	74%	34 74%	20 59%	54 68%	62%
Unknown to respondent	3 5%	1 2%	4 4%	3%	3 7%	1 3%	4 5%	5%
Missing data	-	-	-	25 19%	-	-	-	7 8%
Totals	61 100%	49 100%	110 100%	135 100%	46 100%	34 100%	80 100%	87 100%

Note: The data are non-cumulative. Some people presently in a common-law relationship may also be included in the married, separated or divorced category.

As noted above, recent legislative reforms in Nunavut (and legislation throughout much of Canada) recognize the prevalence of common-law relationships by providing almost equal entitlement to spousal support, division of matrimonial property, and a wide variety of public benefits.⁷⁵ This recognition is an effort to ensure that individuals in this very common form of relationship are not deprived of legal means to ensure that the benefits of the relationship are equally shared upon its breakdown. However, as discussed below, this legal framework appears to be of limited practical application in reality.

3.3.4 Marriage Expectations

It is interesting to question whether the legal equality between married persons and common-law couples affects the perception that marriage is still a desirable, or at least probable, state in which many people expect to find themselves at some time.

The largest group of respondents said they expected to be married one day; however, they made up less than half of the total number of unmarried people. Of the remainder, just over a quarter of respondents have no expectation of being married, and a significant number are uncertain about what their future holds (see Table 12). These results are open to a range of interpretations.

⁷⁵ Some minor differences include, for example, a time limit after the end of a relationship to apply for support or a division of property. Sandra Omik, Law Reform Commissioner, has noted that the law treats a married child as emancipated, but does not accord the same status to a young person in a common-law relationship.

Table 12: Marriage Expectations of Unmarried and Common-law Respondents

Expect to marry?	Female	Male	Total
Yes	35 39%	36 54%	71 46%
No	26 29%	17 25%	43 28%
Maybe	8 9%	3 5%	11 7%
Don't know	20 23%	11 16%	31 20%
Total	89 100%	67 100%	156 100%

N=156, single and common-law respondents and not any person who has ever been married.

3.4 BREAK-UPS IN NUNAVUT

It is hard to assess the rate or number of break-ups in Nunavut. Our sample size was too small to provide a statistically meaningful report on these issues. The number of people who said they were separated or divorced was an overall minority, which restricts our ability to confidently describe broad trends within this population. Also, as noted above, people seemed quite reluctant to discuss prior relationships, depriving us of an important secondary source of information. However, this area was an important focus for some of our qualitative work. Community meetings and individual discussions provided useful information about perceptions of break-ups.

3.4.1 Extent of Separation and Divorce

In our survey, out of 151 people who were ever married, 14 reported being separated (about 4 percent), and 12 reported being divorced (again, about 4 percent). Similarly, 16 (5 percent) reported that they had been widowed. It was harder to determine the number of cases of people separating after a common-law relationship. Far more people reported ever having lived in a common-law relationship than reported living in one currently: 63 percent (215 respondents) vs. 37 percent (126 respondents). However, a much smaller number of people in common-law relationships (only 15) actually reported being separated, and answered the related questions in the survey.

These statistics from our household survey are roughly comparable with 1996 census data for the region, which showed that 3 percent of people over age 15 were divorced, and 3 percent separated.⁷⁶ The census data showed 3.4 percent of those persons were widows. By contrast, 1996 census data for Canada, also among people older than 15, show lower levels of separation and higher levels of divorce. Some 589,000 (3.0 percent) of people Canada-wide reported that they were separated, and 1,171 (7.2 percent) reported that they were divorced. About 6 percent reported that they were widowed: 1,422,000 (6.4 percent).⁷⁷ Researchers at Statistics Canada also encountered difficulties tracking separations after common-law relationships in the national studies.

⁷⁶ For Nunavut, these figures are for the total population over age of 15: 15,240 persons.

⁷⁷ See <http://www.statcan.ca/english/pgdb/People/Families/famil01.htm>.

Two things are immediately notable when Canadian and Nunavut figures are compared. First, there appear to be fewer separations overall in Nunavut. Second, of those who have separated, fewer people in Nunavut actually obtain a divorce. This trend is consistent with the many reports of problems with access to the justice system for family law matters.

3.4.2 Temporary Separation

We also asked about people who had separated and got back together. There was considerable reluctance to discuss this matter. Among our married respondents, 60 percent of respondents did not answer these questions. Of those who did answer the questions, 15 said they had separated and then got back together with their spouse, and 34 said they had never separated. Seven of those who had experienced a temporary separation said they had separated on more than one occasion. Although we asked, we received very few answers about why people had got back together.

We heard from the people operating domestic violence shelters and from other social service providers that temporary separations are quite common. Often, and especially when violence is involved, separation will mean leaving the home community in order to find space or safety. At times, these departures will involve the assistance of social service providers because there is no way for a woman, or a woman and children, to afford to leave the community—and there are only three shelters in all of Nunavut. Social service providers attribute the reunification of families after temporary separations to a number of factors: real and often unforeseen obstacles in setting up a new life without the partner, love, a perception that children need the other parent, and loneliness, exacerbated because the separation may mean not only leaving your spouse but also the community and extended family support network.

Temporary separations in cases of violence have a place in the *unikkaaqtuaq* (traditional stories or fables) told by elders. One story tells of a woman, made desperate by repeated abuse and unable to have a child, who finally left her husband and went out into the snow to call for the moon to come and get her. The moon arrived on a dogsled and took her into the sky. She saw the sun—a burning, tattooed woman—and the stars. She lived with the *taqqiq*, the moon, and had a son. After a time, homesickness and pity for her husband made her insist on returning home. The sled took her back home, with instructions not to eat meat or burn oil made from blubber for a year after her return. Her pot and *qulliq* (oil lamp) would always be full. The woman returned to her husband, who was overjoyed to have her back. However, before the year was out he became angry because she would not eat his meat or use blubber for oil, so he began to beat her again. She tried to ignore him, but when she got fed up with being beaten, she had a tiny bite of the meat. After that, her son died from her breast milk, and her pot and *qulliq* would no longer fill up. The story ends “*Aittaa*, how sad.”⁷⁸

3.4.3 Reasons for Separation and Divorce

Of the 40 people in our survey who acknowledged being separated or divorced, a small number (16) responded to our questions about reasons for divorce or separation. Five people reported that their relationship had ended because they grew apart from their spouse. Four reported that

⁷⁸ The story “Arnaq Ningaijauvaktuq (The Woman Who Was Physically Abused)” is retold by Alexina Kublu, based on the story her father would tell her as a child, in Aupilaarjuk et al., *supra* note 65 at pp. 153-156.

substance abuse had been a factor, and four reported that their partner had been involved with someone else. One person identified violence as a factor.

Although these numbers cannot be taken as representative of the general population, they do provide an interesting contrast to the common perception in Nunavut that the main reason for marital breakdown is violence, and in particular, violence against women. Clearly, domestic violence is a significant problem in Nunavut. Comparisons with other data suggest it is seriously under-reported in our survey.⁷⁹ It is an important family law priority to make sure that the law protects and provides recourse for victims of violence. It is very important that service development is sensitive to the particular needs of survivors of violence, and that they do not, unintentionally, lead to re-victimization.

That said, almost all public discussion about relationship breakdown is concentrated on cases of violence. There may be a number of reasons why. The absence of public discussion about marital breakdown in non-violent situations may reflect an implicit social judgement that separation is unacceptable except in very extreme circumstances. Certainly many community members expressed the view that presently far too many relationships end, and that the prevalence of marital breakdown is an important social problem. Violence may also be a focus of family law discussions because the dominant public perception of “law” or the justice system equates it with the *criminal* justice system. There may well be an underlying sense that the only appropriate place for legal intervention in families is in cases where a crime has been committed between the parties.

However, even the patchy results of our survey strongly suggest that not all relationships end because of violence. This, too, has important implications in terms of services. With the exception of maintenance enforcement, most services that deal with marital breakdown also address problems of violence, including shelters and transition houses in a few communities, criminal prosecutions of assailants, and peace bonds and restraining orders. Even if these services are considerably improved, they will not meet the full range of need for separating couples, let alone lone parents. Whether or not violence has occurred in the relationship, practical issues must be addressed, such as the responsibility of caring for and supporting children, equitable division of property, and financial support for spouses who have been financially disadvantaged by the relationship. Services designed primarily to promote safety for women and children and accountability for offenders cannot be expected to fulfil all the needs of separated parents and their children.

⁷⁹ Compare, for example, the prevalence of violence nationally, documented in *Family Violence in Canada*, *supra* note 35, and the high rates of assault and sexual assault reported in Evans, Hann and Nuffield (1998) and in Clement and Parraig (2000). This may be attributed to a number of factors: use of local surveyors, particularly male surveyors, may have a limited sense of privacy in discussing these matters. A survey format may simply be an inappropriate way of probing these issues. It is important to try to grasp the extent of this problem. For example, there is a clear need, as others have pointed out, to begin to record whether or not charges of assault and sexual assault are occurring in a domestic context.

3.5 PROPERTY AND SUPPORT ISSUES BETWEEN SPOUSES

We asked a number of questions intended to elicit information about the relative finances of married and common-law couples, and arrangements for support or other transfers on separation.

3.5.1 Payment of Spousal Support

In our survey, very few persons who were divorced or separated reported paying or receiving support, regardless of whether they had been married or common law. There was a difference between the responses of those who were divorced as opposed to those who had separated from a common-law relationship. However, the sample size is too small to be reliable. Most divorced people did not answer the question (8 of 12); of those who did, two said they had paid or received support, and two said they had not. A larger number of those who had separated from a common-law relationship answered (12 of 15). Of those, 11 had not paid or received support and one had paid or received support.

The low response rates and the limited number of cases in which support was paid or received were consistent with our expectations. A number of factors led us to predict there would be few cases in which support was being paid or received. Lack of legal information and the relative equality of income are both relevant.

3.5.2 Knowledge of Legal Rights

In the household survey, we asked about a number of legal rights, including rights to support and property. Due to a problem with survey design, only people who had used services (a social worker, church group, or lawyer, for example), answered the questions about legal information (31). We asked about the right to apply to the court for a division of property. Of those who responded, 19 said they knew about the right. About two thirds of those who responded (22 of 31) thought this was important legal knowledge. When asked, almost every respondent said the right to apply for a division of property was important for reasons related to equality and fairness between people who were married or living common law. A handful people said they viewed the right as an important means to achieve equality, a “way to get what belonged to you” after separation, or to establish rules for an income provider after family breakdown.

Notably fewer respondents (16 of 31) said that they knew persons in common-law relationships could apply to court for support. Eleven said they did not know. More than 80 percent (26 of 31) said they thought this was important knowledge for people to have. People listed a range of reasons why they thought it was important. Most gave reasons relating to the well-being of children. A few saw this as a way of meeting the needs of a common-law partner after divorce and of addressing hardship. One or two people offered a rationale related to fairness. Two people thought the information was important simply because it was not well known and people should know their rights.

In general, from meetings and personal interviews, we found there was very little understanding of the law or underlying concept of spousal support at the community level. If anything, the survey would appear to overstate the level of familiarity with the law. Most people in the community meetings, including community leaders, seemed unfamiliar with the term “spousal

support” or with the principle that marital property should be divided to reflect equal contribution during the relationship.

Nonetheless, in our meetings, people expressed agreement with the notion that a marriage or a common-law relationship is, among other things, an economic partnership, and that equal sharing within the relationship is appropriate. Certainly some of the literature suggests that equal sharing and recognition of equal contribution from both spouses is consistent with IQ.⁸⁰ A well-known image for marriage in Inuit culture is that spouses make up the two wings of a bird; it cannot fly without the contribution of each and a balance between them.⁸¹ There is a strong norm of interdependence in traditional Inuit life, and this appears to be highly valued today.

3.5.3 Relative Income

Another factor with a clear effect on spousal support, and very likely a connection with the low levels of support paid or received, is the relatively low income disparity between men and women in Nunavut, and the relatively low overall income of a significant proportion of Nunavummiut.

Approximately 20 percent of respondents among both common-law and married couples reported that their partner earned “about the same” as they did. Just over 35 percent of respondents in both married and common-law couples reported an extreme difference in income, a relationship in which their partner earned much more or much less than they did (see Table 13). Although it is risky to generalize based on the small sample size, it appears that more married women than those in common-law relationships have incomes either much higher or much lower than their partners. Overall, as in the rest of Canada, a larger proportion of women than men, in both types of relationships, reported earning less than their partners.

⁸⁰ See, e.g., Nancy Wachowich (in collaboration with Apphia Agalakti Awa, Rhoda Kaujak Katsak and Sandra Pikujak Katsak), *Saqiyuk: Stories from the Lives of Three Inuit Women* (Montreal: McGill-Queens University Press, 1999); *Final Report of the Canadian Panel on Violence Against Women*, *supra* note 38; Mary Crnkovich, ed., *Gossip: A Spoken History of Women in the North* (Ottawa: Canadian Arctic Resources Committee, 1989).

⁸¹ Nunavut Implementation Commission, “Two Member Constituencies and Gender Equality: A Made in Nunavut Solution for an Effective and Representative Legislation” (Iqaluit: 1994).

Table 13: Distribution of Respondents by Reported Relative Income, by Gender

Partner earns...	Married and not separated, divorced or widowed				Currently common law			
	Female	Male	Total respondents	Total sample	Female	Male	Total respondents	Total sample
...Much less than self	10 19%	3 8%	13 15%	10%	14 29%	11 29%	25 35%	29%
...A bit less than self	2 4%	8 22%	10 11%	7%	4 8%	5 13%	9 13%	10%
...About the same as self	13 25%	6 17%	19 22%	14%	10 20%	7 18%	17 24%	20%
...A bit more than self	8 15%	10 28%	18 21%	13%	7 14%	6 16%	13 18%	15%
...Much less than self	15 29%	8 22%	23 26%	17%	6 12%	2 5%	8 11%	9%
Don't know	4 8%	1 3%	5 6%	3.7%	1 2%	1 3%	2 3%	2%
Missing data	-	-	-	47 34.8%	-	-	-	13 15%
Totals	52 100%	36 100%	88 100%	135 100%	49 100%	38 100%	71 100%	87 100%

Note: The data are non-cumulative.

These results are considerably different from southern Canadian norms, where the wage gap between women and men is more pronounced. Statistics Canada reported, as of 1998, that women earn 64.4 percent of what men do.⁸² Furthermore, in southern Canada the gap between women and men also plays itself out in the income distribution between married and common-law couples.

However, the results are less surprising in light of the relative employment (and education) rates of women and men in Nunavut. At least one study suggests that Inuit women are making the adjustment to wage economies more easily than male partners, and that women have been doing better, especially in better paid government and office jobs.⁸³

Further, the overall level of poverty among the Inuit majority and the patchwork nature of many Nunavummiut's economic strategies (a minority of people receive wages for full-time employment, almost as many receive income support, and about a fifth report multiple sources of

⁸² See statistics from Labour and Income Dynamics Survey reported at <http://www.statcan.ca/English/pgbd/People/Labour/labor01a.htm>.

⁸³ One recent qualitative study of women's work experience in Nunavut is Colleen Purdon, "Inuit Women in Iqaluit, Nunavut: Draft Site Report" in *First Nations and Inuit Women Speak about Diminishing Conflicts Between their Cultural Context and their Education/Work Context* (forthcoming); see also Nunavut Labour Force Survey, 1999, *supra* note 12.

income; see Table 14) may be factors that explain the relative lack of income disparity between the sexes and between different types of relationships.

Table 14: Distribution of Respondents' Income By Source

Source of income	Female	Male	Total
Full-time wages	55 30%	51 35%	106 32%
Part-time wages	30 16%	21 14%	51 15%
Income support	40 22%	34 23%	74 22%
Family members	20 11%	5 3%	25 8%
Traditional activities	4 2%	9 6%	13 4%
Part-time and income support	7 4%	2 1%	9 3%
Part-time and traditional activities	5 3%	4 3%	9 3%
Full-time and traditional activities	2 1%		2 1%
Traditional activities and income support	5 3%	7 5%	12 4%
Other (including "not working")	16 9%	15 10%	31 9%
Totals	184 100%	148 100%	332 100%

Finally, the extended family household composition may tend to shift the focus of wage comparisons between the two individuals in a conjugal relationship. The presence in the household of other wage-earning or child-rearing adults is likely to have a profound effect on the resources of the family as a whole.

In summary, our research shows that relatively few people pay or receive spousal support in Nunavut. Nevertheless, there appeared to be strong community support for laws providing for support and division of property as a matter of fairness and as an important resource for children. Limited support claims certainly reflect a general lack of knowledge about rights to spousal support or division of property. As well, and as discussed below, there are clear issues concerning access to the courts. However, the scarcity of support claims may also reflect broader social factors, regardless of the rights of married and common-law spouses on breakdown. In particular, there are unlikely to be significant transfers between spouses in the majority of cases when there are relatively low income disparities between spouses and relatively low incomes. As Nunavut changes in the years ahead—particularly with the development of a larger Inuit middle class (or elite)—it is likely that this right will become more important. At this point, it does not appear to be a priority concern in family law.

3.6 MATRIMONIAL HOME

In situations where income levels are low, typically the major economic issue in family breakdown is the disposition of the matrimonial home. For many families, the home will be the only real asset and will take the place of any other property settlement.

Nunavut and the Northwest Territories have established the broadest property rights of any jurisdiction in Canada for common-law spouses, providing the same rights as for married persons in terms of occupancy and ownership of the matrimonial home. Nevertheless, some notable differences stand out in the patterns of home ownership between common-law and married couples. By far the largest percentages of both groups rent their homes (three-quarters of respondents reported living in rented housing). This is not surprising, as most of the 60 percent of Nunavummiut living in public housing live in rental housing (with the exception of about 500 “access units” for which mortgage payments are geared to income). However, among our respondents, slightly more married people lived in houses they owned (approximately 20 percent of married persons compared to 15 percent of common-law couples). A more significant difference was that a considerable number of common-law respondents (about 7 percent) reported living in someone else’s house (see Table 15). Overall in Nunavut the rates of home ownership are less than half the national average. Census Canada reports that nationally 64.5 percent of householders report owning their own home (with and without a mortgage), while 36 percent rent.⁸⁴

Table 15: Distribution of Respondents’ Housing Type by Type of Union and by Gender

Housing Type	Currently married, not separated, divorced or widowed				Currently common law			
	Female	Male	Total respondents	Total sample	Female	Male	Total respondents	Percent total sample
Owned	13 26%	8 26%	21 26%	16%	5 10%	8 22%	13 15%	15%
Rental	34 68%	23 74%	57 70%	42%	42 88%	22 60%	64 75%	74%
Other person’s house	-	-	-	-	1 2%	5 14%	6 6%	7%
Other	3 6%	0	3 4%	2%		2 2%	2 2%	2%
Missing	-	-	-	54 40%	-	-	-	2 2%
Totals	50 100%	31 100%	81 100%	135 100%	49 100%	38 100%	85 100%	87 100%

Note: These figures are non-cumulative.

⁸⁴ Selected Dwelling Characteristics From Canada Census, reported at <http://www.statcan.ca/English/pgbd/People/Families/famil099.htm>.

In this context, while it is necessary to provide a mechanism for equitable division of the marital interest in the home and protect against inappropriate dispositions, the majority of Nunavummiut are affected far more directly by the law concerning possession of the home. Significantly, the family home provisions of the new *Family Law Act*⁸⁵ apply to rental and public housing in the territory. There is a right to apply to a court for exclusive possession of the home. Factors to be taken into account include the best interests of any children, availability of other accommodation, the parties' finances, violence, and existing court orders.

This is a subject about which we have heard considerable community concern. As with other family law issues, it does not appear that people have significant information about their legal rights. More importantly, lack of access to the courts and delay may have a major impact on asserting a claim to occupancy of the home to which a spouse may be entitled, and/or which may be in the best interests of the child.

Practical issues also create difficulties in asserting rights to exclusive occupancy. First, the court is required to consider the availability of alternative accommodation. In light of Nunavut's housing crisis, it may be very difficult to order someone out of the home when the alternative is homelessness or moving into the already overcrowded homes of relatives. Local housing organizations (LHOs) have responsibility for the administration of housing within the community, and most LHOs have emergency criteria for moving people up the waiting list for available units. In most cases, according to Housing Corp personnel, those criteria would be used to assist a homeless parent and children.⁸⁶ It is not clear whether that same priority would be used for a single individual in order to maintain the children and custodial parent in the existing home. Further, there are limits to the ability of these local bodies to prioritize since there is "not a vacant useable social housing unit in Nunavut."⁸⁷

The housing shortage, and the dependence on local committees to allocate what housing there is, may also be problematic for some individuals seeking a separation. It can create an opportunity for members of the housing committee, particularly if they are friends or relatives of the spouse resisting separation, to exert pressure in favour of staying in the relationship. This issue was not reported to us directly in community meetings, but it has been a problem in other Aboriginal communities⁸⁸ and is consistent with concerns expressed by Pauktuttit (the Inuit Women's Association) and others about difficulties for women in small close-knit communities who are seeking assistance to get out of violent relationships.

These practical issues will not, of course, be resolved by legislation. However, changing the legislation to further the objectives of the existing scheme may be worth considering. The ability to stay in the family home is clearly an important determinant in custody and access disputes; it is also an important safety issue. In light of the significance of this issue, it is important to consider options that promote speedy and readily obtained, decisions about possession of the home. It may even be appropriate to devolve these decisions, subject to review by the Nunavut Court of Justice, to local decision makers such as JPs or CJs if they are ready to take on this

⁸⁵ *Family Law Act*, *supra* note 48 ss. 47-56.

⁸⁶ Email, Chris D'Arcy to author, January 26, 2001.

⁸⁷ *Ibid.*

⁸⁸ See e.g. M.E. Turpel, "Home/land" (1991) 10 *Canadian Journal of Family Law* 17.

responsibility. CJs, if they have a sufficiently diverse composition, may be an appropriate forum to work out these decisions, as they may be able to creatively and inclusively negotiate a workable plan for where a non-custodial parent might stay. Decisions by a local authority (JP or CJC) about exclusive possession should be enforceable as decisions of the court, subject to judicial review.

3.7 CHILDREN AND THEIR FAMILIES

Children are a treasured part of Inuit life. The current population boom means that more families have children, and there are more children in each family. Overall, in Nunavut, families with children make up a greater percentage of the population than in the rest of Canada. Census data from 1996 indicated that 11,835 children were living at home in Nunavut in 5,275 families. The average number of children at home in the census year was 2.2, and everyone agrees that this number has risen since then. By contrast, nationwide, Statistics Canada reports that families with children make up 67 percent of all families, with on average, 1.2 children at home in those families.⁸⁹

Our survey is consistent with the figures from the census. Eighty-one of our respondents (about 23 percent) did not report any children. Seventy-seven percent (261), well above the Canadian level, of all respondents reported having children. Moreover, among our respondents with children, they reported having a larger number of children: 3.5 children on average, or a mean of three children.

3.7.1 Structure of Families with Children

There are also substantial differences between family types in Nunavut and the rest of Canada. In Nunavut, according to our survey, there are two thirds as many common-law families with children (61, or 27.4 percent of all families with children⁹⁰) as there are married couples with children (96, or 43 percent of all families with children). Lone-parent families, including divorced and separated parents, as well as those who were never married, make up a substantial group (49, or 22 percent of all families with children) (see Figure 3).

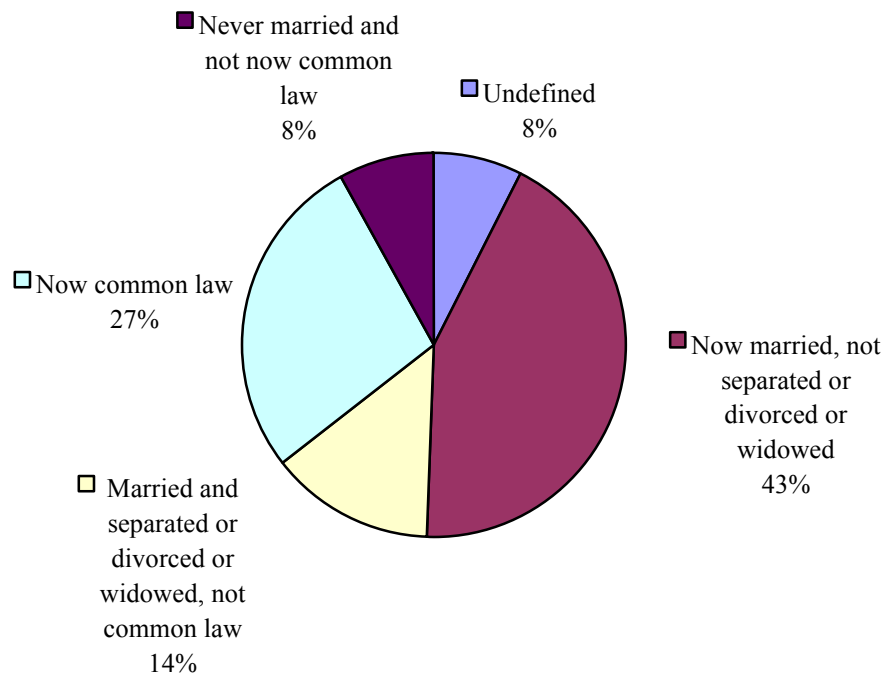
By contrast, in Canada as a whole, married couples with children make up 69 percent of families with children, while common-law families make up 8.5 percent of those families, and lone parents make up 22 percent of families.⁹¹

⁸⁹ Government of Northwest Territories Statistics, “Marital Status and Families” at http://www.stats.gov.nt.ca/Stainfo/Census/census96/_1996census.html, and Statistics Canada, 1996 Census: Marital Status, Common-law Unions and Families (*The Daily*, Thursday October 14, 1997).

⁹⁰ There were 17 respondents, or 7.6 percent of the sample, whose marital status is undefined. Accordingly, the percentages in the above paragraph do not add up to 100.

⁹¹ Statistics based on Vanier Institute of Canada, *supra* note 58 at pp. 22-34.

Figure 3: Family Structures of Families with Children



Although we cannot measure the trend directly, our results suggest significant changes in family type over time in Nunavut. The majority of respondents in our survey who, at the time of their birth, lived with both parents reported that they had lived with both parents throughout their entire childhood (80 percent, or 197 of 247 respondents). Furthermore, 85 percent of those people said their parents had been legally married.

3.7.1.1 Lone-Parent Families

In Nunavut, as in Canada as a whole, lone-parent families are far more likely to be headed by women than men. Although absolute numbers are too small to be reliable, in our survey it appears that three quarters of lone-parent households (34 of 46) are headed by women. This compares to Canadian figures showing that four out of five lone-parent families are headed by women.⁹²

Our survey provides a snapshot of the marital status of those who are currently lone parents. While some are divorced (3 of 51) or separated (5 of 51), a far greater proportion of respondents were never married and are not now living common law (18 of 51) or are widowed (13 of 51) (see Table 16).⁹³ By contrast, in Canada in 1991, only 22 percent of lone-parent families were headed by people who were single, never married.⁹⁴

⁹² See Colin Lindsay, *Lone-parent Families in Canada*. (Ottawa: Statistics Canada, 1992).

⁹³ A significant number of lone parents (9) did not identify their marital status, more than identified themselves as divorced or separated.

⁹⁴ Vanier Institute of the Family, *supra* note 58 at pp. 70-71.

Table 16: Distribution of Single-parent Respondents by Marital Status

	Conjugal Status								
	Once married, now separated, divorced or widowed			Never married and not common law			Undefined*		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
With Children only	7	4	11	9	1	10	6	0	6
With other relatives	7	3	10	7	1	8	5	1	6
Totals	14	7	21	16	2	18	11	1	12

N=51 respondents who identified themselves as having children, and not having a spouse in the household.

* Undefined includes those respondents who did not identify their marital status, and also includes those who defined their status as currently married or common law (N=3, all living with relatives).

Another distinctive characteristic of lone-parent families in Nunavut is the high proportion of those families living with another adult relative, almost half (24 of 51). There are a number of potential implications of this. First, the caregiving burden likely falls less heavily on the lone parents who live with their families. Second, the financial burden of parenthood may also be distributed among a larger group, even when the non-resident parent is not contributing.

In the rest of Canada, lone-parent family type has been strongly correlated with a range of important social trends:⁹⁵

- Lone parents as a group tend to have significantly lower household incomes than either common-law or married couples with children.
- Children born to common-law unions are over-represented among children who experience the break-up of their families.

3.7.1.2 Blended Families

In Nunavut, a slightly higher percentage of people report living in “blended families” relative to the Canadian average. In 1995, of the approximately one in ten couples with never married children living at home, at least one of the children was being raised by a biological or adoptive parent and a stepmother or usually stepfather. Of that 10 percent, one in three had children with different parents.⁹⁶ We did not get a precisely comparable figure. However, our survey showed that 8.1 percent of respondents reported having raised a stepchild. And, as noted in Table 11, at least 32 (9.4 percent) of respondents reported that a partner had children from previous relationship. Taken together, these figures indicate that a significant number of Nunavut children are growing up in blended families. Also, in terms of their own childhood experiences, a very large number of people reported having had a half-sibling (34 percent).⁹⁷

⁹⁵ See Canada, Department of Justice, *Selected Statistics on Canadian Families and Family Law, second edition*. CSR-2000-1E, Ottawa 2000, particularly pp. 6-7 and 12-13.

⁹⁶ Vanier Institute of the Family, *supra* note 58, pp. 66-67.

⁹⁷ Thirty-one people (9 percent of the sample) did not answer the question.

3.7.2 Children's Living Situations

Although the initial survey was designed to obtain the information that would allow us to make statements about the number of children living with one, two or no parents, our data on people's children were less complete than anticipated. Surveyors were asked to go through a series of questions with respondents about their children. If there was a significant difference in the life history of one or more children (different parent, left home, adoption, guardianship, etc.), the same questions were asked again for each child or children with the different life history. Surveyors were asked to indicate how many children were covered in each such section. Considerably fewer of these "other children" sections were completed than anticipated. Unfortunately, therefore, we are limited to making statements that relate directly to our respondents and expressing our results in a sometimes roundabout fashion.

In order to use any of the data in this section, we were required to make statements about the number of respondents in a given situation, rather than the number of children affected. Also, because we had serious concerns about the approximately 40 "other children" sections, we made the decision to report only on information in the first section filled out about the respondents' children, thus unavoidably losing significant data, in order to be consistent.

In retrospect, the design of the survey was more complex than it should have been.

Respondents were asked to identify whether they lived with their children all, part or none of the time. Of the first set of responses, 222 said they were living with a child all the time (85 percent), six were living with at least one child part of the time (2 percent) and 32 (12 percent) reported that at least one of their children does not live with them.⁹⁸ Of those reporting that at least one of their children does not live with them, eight reported that they gave up the child for adoption.⁹⁹

Of those people who said at least one child lived with them all the time, 123 answered that the child or children's other parent also lived in the household. Sixty-three said the other parent did not live in the household, and seven said the other parent was deceased. A significant number of people did not answer that question (43), which precludes a clear statement about what percentage of parents have children who do not live at home. However, this result suggests a large number of respondents—more than a third, perhaps even half—have children who are currently not living with both of their parents.

Respondents reported that a large percentage of the children who did not live with them, or didn't live with them all the time, were also not living with the other parent. On the contrary, it appears that almost half of the 38 respondents¹⁰⁰ who identified themselves in this group reported that a child who did not live with them lived with a relative other than a parent. Sixteen reported that at least one child lived with the other birth or adoptive parent. Three reported that at least

⁹⁸ Seven respondents did not answer the question, and we believe most of those respondents did not report having children at all.

⁹⁹ Only 23 respondents provided an answer.

¹⁰⁰ Ten did not answer with whom else they were living.

one child was living with a spouse.¹⁰¹ Seven reported that at least one child lived with another relative (a sibling, a grandparent or aunt). Three reported that the child lived with a non-relative.

Arrangements for caregiving and for the financial support of children not living with both parents are, at least potentially, matters that would be decided with reference to responsibilities under family law. The data suggest a number of significant trends. First, there are very few cases in which parents report joint-parenting arrangements. It is also interesting to note that not one of the respondents who had at least one of their children living with them part of the time, or who reported very significant visitation with the child or children to whom the first section applied, described their relationship with the child and the other parent as one of “joint custody.” In community meetings as well, nearly everyone was unfamiliar with this term. Of course, it is also notable that none of the respondents who had a child living with them part of the time reported having gone through the court system. At meetings, people did not tend to differentiate between legal and physical custody, and used the term “custody” simply to denote the residential arrangements of the children.

Also, the results underline the significance of taking the extended family into account in decisions about custody and access. Clearly, it can be anticipated that extended family members may be doing more than applying for rights to access. Whether or not these cases go to court, a significant number of non-parents have physical custody of children who do not live with their parents.

3.8 CONTACT WITH NON-RESIDENTIAL PARENTS

One of the key issues in family breakdown situations is the extent to which children continue to have contact with parents with whom they are not living. The data are flawed in that considerable numbers of respondents did not answer these questions. However, we were able to sketch some broad conclusions.

Respondents in our study tended to report that in most cases, contact continued between children and their non-residential parents. Nevertheless, about 20 percent of respondents reported having lost all contact with at least one of their children. This is about the same as the national rate. One major national study reports that about one sixth of fathers report that they have lost all contact with their children, and about one quarter of mothers report that their child has no contact with the father.¹⁰²

The most frequent type of contact reported was daytime visits. Fewer people said they had overnight visits or merely telephone contact. Nationally, survey results have shown that when children do not have in-person contact with their non-custodial parents, they also do not have

¹⁰¹ There is no way to know with certainty whether this spouse was also the parent, however, the format of the question (see household survey questionnaire Children B1 and C1) suggests that the spouse would be someone who was *not* a parent of the child.

¹⁰² Celine LeBourdais, Heather Juby and Nicole Marciel-Gratton, *Keeping Contact with the Children: Assessing the Father/Child Post-separation Relationship from the Male Perspective* (Ottawa: Department of Justice Canada, Family, Children and Youth Section: CSR-2000-3E).

telephone or letter contact.¹⁰³ Although the sample is small, about half of the parents who lived far from their children reported staying in touch by telephone and letter (see Table 17).

Table 17: Non-residential Parent Contact by Type of Contact and by Gender of Respondent*

	Female	Male	Total respondents	Total sample
Daytime visits	5 42%	2 18%	7 30%	22%
Telephone/letter	2 17%	4 36%	6 26%	19%
No contact	3 25%	4 36%	7 30%	22%
Overnights	2 17%	1 10%	3 10%	9%
Missing data	-	-	-	28%
Totals	12 100%	11 100%	23 100%	32 100%

N=32 respondents who reported having children who did not live with them all the time.

* The table reflects only information from the first children section filled out by respondents.

It was our hope to be able to report on the amount of time that respondents spent with their non-resident children. However, the data set is too small and appears to be inconsistent on this point. Unfortunately, we were not able to determine the average amount of time respondents spent with their non-resident children in a month or during the year.

3.8.1 Long-distance Access

We were able to collect data on one factor that clearly affects continuing parental access, namely, the relative proximity between the household of children and non-resident parents. Because of the large distances and considerable expense involved with necessary air travel, relocation issues are particularly poignant and intractable. Our results show that about half of the respondents in our survey who did not live with their children could only reach the place where their children live by airplane (see Tables 17 and 18).

¹⁰³ Ibid.

Table 18: Distribution of Non-resident Parents' Contact by Distance

	< 10 km (this community)	Nearby community, ground accessible (10 hours)	Northern community (NU/ NWT, air access)	In Canada or US outside NU/NWT	Total respondents	Total sample
Daytime visits	5		2		7	
Row percent	71%		29%		100%	-
Column percent	50%		22%		32%	22%
Telephone/letter		1	4	1	6	
Row percent		17%	67%	17%	100%	-
Column percent		50%	44%	100%	27%	19%
No contact	3	1	3		7	
Row percent	43%	14%	43%		100%	-
Column percent	30%	50%	33%		32%	22%
Overnights	2				2	
Row percent	100%				100%	-
Column percent	20%				9%	6%
Missing data	-	-	-	-	-	-
						31%
Totals	10	2	9	1	22	32
Row percent	45%	9%	41%	5%	100%	-
Column percent	100%	100%	100%	100%	100%	100%

Family lawyers in Nunavut have reported that one of the biggest issues for separating parents is negotiating access when a parent wants to leave the community in which he or she had been living with their spouse. Lawyers told us there was relatively little room for compromise on this point in most families, as there were often insufficient resources for regular visits over long distances. At community meetings in Pond Inlet and Coral Harbour, we heard frustration and expressions of loss about children who had left the community with one parent and were not going to be able to come back with any regularity.

Interestingly, there was no strong relationship between the cases in which one parent reported that the child lived far away and those in which the parent reported they had no contact with that child or children. There were as many cases of no contact reported when the child lived in the same community as cases when the child lived far away. One obvious conclusion is that the relationship between the parents, and between the parents and the children, remains a crucial issue in terms of continuing parental contact.

Nevertheless, distance is important in that most parents living far away reported that they had no contact, or only contact by telephone and letter.¹⁰⁴ There was only one case in which a parent reported that their child or children had not only left the community, but left the North. This was somewhat surprising, as there appears to be community concern about children leaving the North when parents separate, and about the potential results of doing so, especially for Inuit children. This factor also is recognized in the law, as courts are mandated to consider children's

¹⁰⁴ All (7) parents who lived far away no longer saw their children. More likely, this should be interpreted as seven out of nine parents, since in two cases the parent reported that one or more children lived *both* in their own community and in a distant community.

continuing connection with their culture and family networks by the *Children's Law Act*. This bind is more critical than that facing many parents and children elsewhere in Canada when one parent wants to relocate to a place far away, since there are very few options for relocation that do not involve airplane travel. Despite clear discontent with the status quo on this subject, it is also clear that this issue is not litigated. There have been no written decisions under either the *Children's Law Act* or the *Divorce Act* on the subject since 1998, when the new legislation was passed in the territories.

3.8.2 Satisfaction and Efforts to Change Arrangements

Overall, respondents displayed relatively little dissatisfaction with their arrangements concerning contact. Only 4 of 32 respondents who were not living with at least one of their children all the time said they were dissatisfied with their arrangements. Eighteen reported being satisfied, and eight had no opinion. Too few people responded to this question to reliably report on the reasons why they were or were not satisfied. Most who said they were satisfied reported being able to see their children whenever they wanted and had a continuing sense of being a family. Of those not satisfied, one said it was because the mother would not allow him to see his child, and the other said his child lived too far away (two did not answer).

Finally, those same parents were asked whether they had ever tried to change the living arrangements of their children. Few (only four respondents out of 31 who answered) had ever tried to change any arrangement concerning contact with children who were not living with them. Although they were asked, none of them gave reasons why they had, or had not, tried to change arrangements.

We asked separated or divorced survey participants if they knew that a person could go to court for a decision about custody or access. The majority of respondents (22 of 31) said they knew that one could go to court, and only six said they did not know. A slightly larger group answered a question about the importance of knowing about the existence of the court as a recourse; 29 said they thought this information was very important, and only three said they didn't consider the availability of a court determination important to them.

In summary, parents did not express widespread dissatisfaction with contact arrangements between non-residential parents and their children. Most visits are occurring during the daytime with fewer parents reporting overnight visits or just telephone contact. In a considerable number of cases, however, non-residential parents report losing touch with their child or children. Lawyers and community members agree that one important reason for loss of contact is the problem of distance, particularly intractable in Nunavut's isolated communities. However, distance alone does not account for the loss of contact or other problems.

3.9 PAYMENT OF SUPPORT

Child support has been an important priority of family law efforts in Nunavut in the last 10 years. The development of the Maintenance Enforcement Office has been the only family law initiative to be consistently funded and institutionalized. The Government of the Northwest Territories enacted the *Child Support Guidelines*, which have been grandfathered into Nunavut law, and both levels of government have allotted significant resources to the dissemination of the Guidelines and to public awareness campaigns to promote their use. Nevertheless, it is clear that

child support is not being paid in the majority of cases in which parents are not living with their children; the Guidelines are not well-known, and there is little use of enforcement services relative to the number of potential cases involving support obligations.

In our survey, a small minority of parents reported receiving support for at least one of their children. Only seven reported receiving financial support, while 18 respondents said they received no support. Four parents reported receiving various kinds of material support other than money, and 20 said they did not receive any type of material support.¹⁰⁵ Non-financial support has been emphasized in family law reform recommendations to date as being culturally appropriate, consistent with the duty to provide for the family in traditional ways (for example, with meat), and particularly suitable if people have low incomes.¹⁰⁶ However, our results suggest that the practice is not very common in Nunavut.¹⁰⁷ This may be an area in which public education could be useful and would also be perceived as culturally appropriate.

A larger minority of non-resident parents, by contrast, reported paying support for at least one of their children. Fifteen parents not living with their child or living with their child only part of the time reported that they paid support. Seventeen of that group said they had not paid support.¹⁰⁸ In that group, exactly the same proportion of people said they had contributed or not contributed material support. Respondents also reported that a minority of their spouses contributed support for children under age 18: eight said their spouse did provide support and twelve said their spouse did not.¹⁰⁹

There was slightly greater consistency between payors and recipients in terms of the frequency of support payments. The largest number of people in both groups said they received or paid support regularly, defined as at least once a month.¹¹⁰ A smaller number in both groups said they paid or received support “fairly regularly,”¹¹¹ at least several times in a year. Still fewer were the people who said they paid or received support “occasionally” or when the payor was employed.¹¹²

Non-residential parents were asked why they did or did not pay child support. Parents cited a sense of responsibility for children, the fact that children were still family, and the existence of an agreement as reasons to pay support. Several reasons were given for why some parents were not paying support. The largest number of these parents said that they were not paying support because they had not been asked to. Several people said they did not pay because they had no obligation to, or because they were no longer living with the child. A couple of people said they did not pay because they were supporting a new family. It is interesting to note that of those who

¹⁰⁵ Thirty-four did not answer each of these questions.

¹⁰⁶ See Peterson, *supra* note 27, and Ministerial Family Law Reform Working Group, *supra* note 28.

¹⁰⁷ It is possible that the question was not well understood. We know the surveyors understood the question, but if people did not understand or ask for clarification, this phenomenon may have been under-reported.

¹⁰⁸ Of this group, 10 did not answer the question.

¹⁰⁹ Five people did not answer this question.

¹¹⁰ Four of nine recipients said they received support regularly. Eleven of 22 payors said they paid regularly.

¹¹¹ Three of nine recipients said they received payments at least several times a year; five of 22 said they paid on that basis.

¹¹² Two recipients reported receiving support occasionally, and six payors reported paying less than several times a year.

were entitled to receive support but were not receiving it, about one third (seven respondents) had asked for support and two thirds had not asked for it (13 respondents).

3.8.1 Actual Orders and Enforcement Activities

These results can be compared with actual orders and enforcement activities in the Maintenance Enforcement Program.¹¹³ As of January 2001 there were 166 open files in the Nunavut office. Of those, only about a third (56) are “all-Nunavut” cases, in which both the payor and the recipient live in Nunavut. Overall, fewer than half the recipients (only 81) live in Nunavut. Of the Nunavut recipients, one fifth (16) of them live in Iqaluit and the rest are scattered throughout the territory. The majority of files (85) are reciprocal enforcement cases, where the recipient lives in another jurisdiction. Far fewer cases involve reciprocal enforcement by another jurisdiction of a Nunavut order, in which the payor lives out of jurisdiction and the recipient is a Nunavut resident (25 files, or 15 percent).

This information raises a number of points.

First, while it is difficult to calculate precise numbers, it appears that somewhere between three and eight times more people are actually paying support than are registering orders or agreements with the Maintenance Enforcement Office.¹¹⁴ Depending on how one interprets the “no answer” respondents, it appears that between 12 percent and 28 percent of respondents receive support for a child. By contrast, recipients registered with MEP make up about five percent of the one third of Nunavut families (approximately 1,750) in which a parent does not live at home.

This is encouraging because it suggests that more children in Nunavut are receiving the support that is due to them, or some of it, than just the small number of cases enforced with government assistance. Of course, little information is available about the amount of payments or the regularity of payments in these cases, so it is impossible to know whether people outside the system are actually receiving amounts comparable to what would be ordered by the courts, or comparable to amounts that could be collected through the program.

The statistics on reciprocal enforcement are also thought-provoking. Almost half of the people using the program to obtain support do not, in fact, live in Nunavut. This raises questions about how to develop the territory’s main family law program in a manner that serves primarily Nunavummiut, without interfering with federal commitments.

It is also notable that few Nunavummiut are enforcing orders against those outside the territory. There is a community perception that many of the single women’s children are conceived during relations with people “passing through” the community, a significant number of whom are from the south. We have heard that these single mothers—and their parents—felt unable to get support from these absent fathers. There was strong support for using the law to enforce the

¹¹³ All statistics from the Nunavut Maintenance Enforcement Office were provided by Charlene Johnson, Director of Maintenance Enforcement, in an emailed report on January 31, 2001.

¹¹⁴ Based on a comparison between the rate of respondents who reported receiving child support and the percentage of the population represented by the files in the Maintenance Enforcement Office. The difference, between three and eight times, reflects the margin of error in our survey.

responsibility of these “hit and run” fathers, even among persons who were generally more ambivalent about enforcing support obligations. Given the legal and logistical complexity of finding these fathers, proving their paternity, asserting a claim against them in their province and enforcing it, there is a significant need for services to deal with this demand.

One factor accounting for the relative non-use of Maintenance Enforcement Services is a lack of knowledge about them. Respondents were asked how much they knew about the Maintenance Enforcement Program, and about government activities to enforce child support collection. In general, there is little public awareness of these services. Only about 16 percent of respondents said they had heard of MEP.¹¹⁵ A notably larger number of people were aware that the government provides child support enforcement services: 27 percent (see Table 19).

Table 19: Distribution of Respondents’ Familiarity with Maintenance Enforcement and Child Support Services

	Heard about the services?		Percent of total sample
Maintenance Enforcement Program	Yes	56 19%	16%
	No	236 81%	69%
Child Support Services	Yes	93 32%	27%
	No	199 68%	58%
Total respondents		292 100%	342 100%

Although people were unfamiliar with the existing maintenance Enforcement Services, many respondents who had experienced separation (21 of 30) said they were aware that the law required parents to support their children. Even among that group of separated parents, barely half (16 of 29) said they knew about any enforcement services provided by the government. Almost all the respondents (28 out of 31) thought that the services were very important. People gave various reasons for this, including the difficulties of supporting children as a single parent, the high cost of raising children, and the obligation of each person to work to support their children.

These results strongly suggest a need for the Maintenance Enforcement Program to make its services better known in the territory. In addition, the name “Maintenance Enforcement” is clearly not one that many Nunavummiut recognize or associate with the activities of the office. It may be preferable to give the services a new name that will be more easily recognized and identified by people in communities.

It was also clear that addressing the possible negative perceptions of child support or the Maintenance Enforcement program is important. While the principle that parents should support their children was strongly embraced, we heard repeatedly that people in communities think it is unfair for people with little money to be asked to pay large amounts. They were very concerned that low-income people were racking up large debts that they would never be able to pay back.

¹¹⁵ Of all respondents, including the 49 who did not answer.

This was clearly identified as the major problem with MEP, and indeed, with the principle of child support. In addition, several people raised serious concerns about cases when a person is required to pay large amounts under a previous order and is unable to support himself or his new family.

To a large extent, the problem of inability to pay is heavily focussed on arrears. The majority of payors (47) were in significant arrears. Average arrears owed to custodial parents for all 166 files amount to almost \$10,200 dollars, or a total of \$1,690,417. Major efforts and vigorous enforcement since the inception of the Nunavut office a year ago have made a considerable dent in this problem.¹¹⁶ At this point, a large number of the MEP files in Nunavut are showing current payments. Of 56 Nunavut files, for example, monthly payments are being made in 43 of them.

For the credibility of the system alone, these issues should be addressed. Payors need to have their orders or agreements modified to take into account their actual circumstances. There have been almost no modification orders made in the last several years. It would be useful to publicize the possibility of obtaining a variation in a court order; and also to allow payors and recipients to agree to forgive a portion of the arrears or to accept material support, such as food, in place of financial contributions. These arrangements should be recognized by the Maintenance Enforcement Office as well as registered with the court. For years, too, there have been no default hearings in Nunavut. It is hoped that the first hearings will begin this year. As they become more routine, they will provide an opportunity for payors to alter untenable orders as well as an effective collection mechanism for those payors who willfully disregard their support obligation.

In summary, research results in the area of child support are somewhat disturbing. A minority of custodial parents report receiving child support, and a slightly larger minority of non-custodial parents report paying it. The major emphasis among those surveyed was on financial support for children, not other forms of support, such as foodstuffs. The Maintenance Enforcement Program is involved in only a minority of cases in which support is actually being paid. MEP has considerably expanded in the last 10 years, and is now quite successfully receiving payments on its open cases. However, research revealed disturbing information about the program, notably that Nunavummiut recipients are not the primary beneficiaries of the program at this time and that widespread public knowledge about the program is lacking.

¹¹⁶ On March 1, 2000, the total arrears were \$1,939,809.17. As of January 31, 2001, they were \$1,690,416.90. This is a reduction of \$249,392.27.

4 RESULTS OF RESEARCH PROGRAM: PROCESS, SERVICES AND INFORMATION

Underlying the main issues in the study is the central question of process. Even in the survey context, respondents openly shared information with us about how they had reached arrangements to address issues concerning support for and custody of their children. This provides a useful quantitative element to the abundant comments we received in community meetings. There are clear implications for the development of law and services.

4.1 RESOLVING CUSTODY AND SUPPORT ISSUES

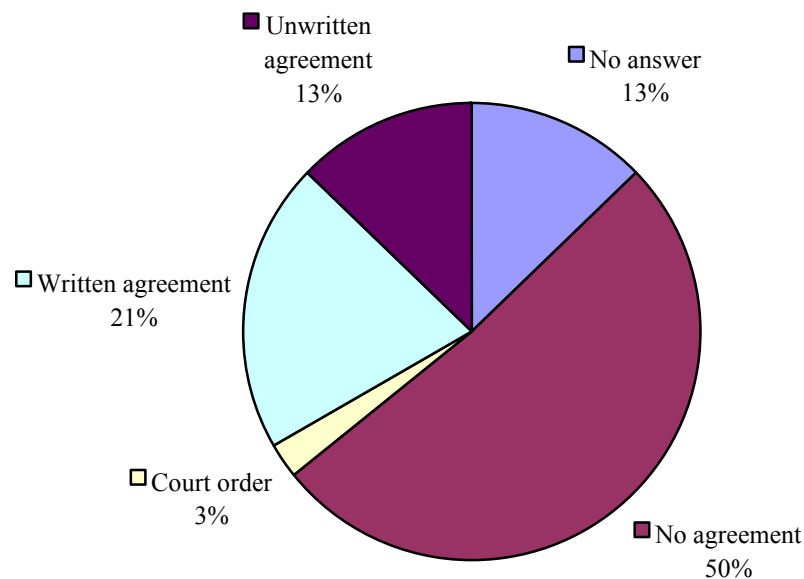
In our study, 78 parents were not living with at least one of their children. This is more than the number of people who identify themselves as separated or divorced, and likely includes lone parents and some people who are no longer in a common-law relationship but do not identify themselves as “separated.” We asked them if they had ever had an agreement with another person about the custody or support of their children. Ten did not answer. For the rest, the results were quite striking: almost 60 percent (40) said they had never had any such agreement. Just as striking, only two people (less than 3 percent) said they had had a court order to address issues of custody and support. Of the remainder, 16 had a written agreement and 10 had an unwritten agreement (respectively, about 23 and 15 percent)¹¹⁷ (see Figure 4).

These somewhat dramatic statistics should be viewed in light of national research that also tends to show surprising results about the many cases resolved without court involvement. Two recent surveys suggest that about a quarter of separated parents in Canada have no initial agreement regarding issues of custody, access or support.¹¹⁸ The survey relating to child support found that most parents without arrangements had not sought child support at all, either for economic reasons, because the children were adults, or because of the hassle involved in reaching an agreement. The findings on this point have quite dramatic implications for the court system.

¹¹⁷ We also asked whether the actual arrangements for spending time with children had mirrored agreements or court orders. However, we received responses from only 12 of the 27 respondents to whom the question might have applied: seven said the time was close to what the court ordered, four said it was more than what was ordered, and one said it was less.

¹¹⁸ *Report to Justice Canada Child Support Team*, Canadian Facts, “Survey on Arrangements Dealing with Custody and Access,” unpublished background paper and Canadian Facts, “Survey of Parents’ Views on the Child Support Guidelines,” *Report to Justice Canada Child Support Team*, unpublished background paper.

Figure 4: Distribution of Respondents' Arrangements Regarding Children



The fact that few child support agreements are made raises several questions. We do not know exactly what occurs when there is no agreement in place. Are children's needs met? Was there a clear unwritten understanding? Was there duress, or flight? It seems likely that this result reflects what has been widely described as a classic Inuit cultural trait, that is, non-confrontation.¹¹⁹

Factors that would affect a person's decision to go to court in a family law case were discussed at length in community meetings. All participants agreed that few people went to court. Aside from practical difficulties, there was a perception that fighting over children was bad for them—might even kill them—and therefore should be avoided whenever possible. A number of participants in the stakeholder consultation suggested other factors as well.

- Imbalances of power between spouses when one has been a victim of violence or has been intimidated by their partner. One lawyer described witnessing a repeated pattern of a mother who, when alone in his office, could clearly express what she wanted, but who would not be comfortable saying anything at all when her spouse was present.

¹¹⁹ See, for example, the very interesting ethnographic work of Phyllis Morrow, "Yupik Eskimo Agents and American Legal Agencies: Perspectives on Compliance and Resistance", 1996 2 *Journal of the Royal Anthropological Institute*, 405.

- Intergenerational effects of residential schooling, or child welfare involvement in the family. One commentator noted that some Inuit parents may lack the confidence to claim custody of their children because they doubt their own parenting ability, and have often been told directly or implicitly that they are not fit parents. She suggested this was a common problem acute in interracial disputes about custody.
- Children have an exceptionally large role. Several people expressed the view that there are few disputes because most people consider that children should decide where they want to live, though at a much younger age than is the norm in the rest of Canada. Most participants in the session said they thought it was not uncommon for a five-year-old child to make a decision about where he or she should live.¹²⁰

Certainly, these results confirm the widespread perception that most people in Nunavut do not turn to the courts to deal with questions concerning to their children. The national custody and access study showed that about a third of parents nationally go to court.¹²¹ This is 10 times the proportion of people who go to court in Nunavut. If the legal regime that is in place—the *Divorce Act* and the *Children's Law Act*—is affecting the majority of Nunavummiut, it is not doing so by means of judicial decision-making. If at all, it affects people in the ways they internalize norms about fair and reasonable arrangements for their children. It is just as likely, however, that other non-statutory norms, cultural and otherwise, may be at play. Consistency in informal arrangements would tend to suggest a strong set of norms; lack of consistency may reflect competing norms as well as widely differing circumstances.

The question of whether people sought assistance when they were separating also reveals a high level of autonomy. We received 66 six answers to the question. Slightly fewer than one third (21) of respondents said they had turned to assistance when they separated; the remaining two thirds (45) said they had not sought assistance. It is possible that the question was not as broadly understood as we had intended, but nevertheless, this seems to suggest that the majority of people did not have any expectation of receiving any outside assistance when they separate. Of those who had received assistance, nine said they had turned to a social worker, eight to a lawyer, and four to a friend, relative or elder (there was some overlap between these groups). Two had sought assistance from a court worker and one sought help from the community liaison officer, a former type of Hamlet official who often provided a link to different government services.

¹²⁰ Stakeholder consultation on June 13, 2001.

¹²¹ Canadian Facts, Survey of Arrangements, *supra* note 118.

4.2 FAMILY LAW SERVICES

The question of process or lack of it leads directly to the question of services, or lack of them. The stark reality of Nunavut life is that there are very few social services in most communities. Services tend to be concentrated in larger communities and regional centres, and even their resources are limited. Services are rarely specialized, and service providers are almost always overburdened. The result is that most Nunavummiut do not have access to services as they are conventionally understood. In this study we also tried to grasp what informal or general services may be filling gaps where there are no specialist services.

4.2.1 Family Law Services Available in Nunavut

For the service inventory, we conducted telephone interviews with Senior Administrative Officers in most Nunavut communities, excluding the very smallest and the regional centres (see methodology for detailed discussion). We asked about their perception of how often people in their communities had difficulties with separation and divorce, and what services existed for people experiencing such difficulties. Most officials thought that separation was a relatively common issue, although divorce was much less so. The majority (11 of 17) knew of individuals or families experiencing difficulties with separation or divorce. The most commonly cited problem in their view was violence (16 of 17 respondents), and about half mentioned problems in certain cases with custody, access and support issues. Their perspectives are important as, with the Hamlet Council, the Senior Administrative Officers continue to play a major role in community planning and budgeting.

The results also revealed a drastic shortage of services. Social services, including child protection and supervision of probation as well as any other priorities, are provided by a social worker in most communities (14 out of 17). However, several communities reported serious problems with retaining social workers: six communities reported that during the previous two years they had no social worker for periods of one month to one year. Seven of 13 Administrative Officers who currently have a social worker in town said that person addressed family problems, two said they did not and four did not know whether the social workers provide family support services.

Almost as many communities reported having a community wellness or mental health worker (12 out of 17). Community wellness and mental health workers provide a combination of substance abuse and other mental health services. Another four communities have a counsellor resident in town. A handful of communities reported somewhat more unusual institutions, such as the Family Resources Centre run by the Ilisqsiq Society in Clyde River, or the Men's Wellness Group in Pangnirtung. There are other communities, such as Whale Cove in the Keewatin, where there is no RCMP, no full-time social worker, no guidance counsellor, no day-care, and no safe house for victims of violence.

The most commonly cited services were those for people experiencing violence: six out of 17 communities had safe homes, and another two communities outside of regional centres had a shelter. Another community reported having a "makeshift" shelter. Several people mentioned that the RCMP provides a family law service. One administrative officer said the Community Justice Committee provides services for people with family law difficulties.

In terms of services for youth, students may have access to a guidance counsellor (in 10 of 17 communities) or to a youth committee (10 of 17 communities), a major source of program planning for youth out of school. Fewer than half of the youth committees had a staff person responsible for coordinating these groups. By and large, the committees focus on recreational programming for youth and do not offer support services for young people having difficulties with life events such as family breakdown. In our visits to the high schools, it became very clear that teenagers desperately need information about the family law process, not only as individuals affected by their parents' relationship difficulties, but also as parents themselves. The schools, specifically the classroom through curriculum development, continue to be one of the only ways to reach youth and children in all communities.

The other universal community institution, in every Nunavut hamlet or town, is the church. The church in most communities is Inuit-run, unlike many other programs. We heard considerable anecdotal evidence of church groups getting involved in counselling couples experiencing marital breakdown. However, several informants noted clear limits to the services provided under church auspices, since separation is contrary to the religious principles of each major organized group. Several people said they personally would not turn to the church with a question related to separation or divorce for that reason.

Outside of these services, there were a handful of other groups (an elder's group, a caregiver's committee), but most of the other administrative officers reported no other services in the communities.

This lack of services has one clear implication for legislative reform. Any reform that tends to mandate services as a prerequisite to divorce or court involvement is likely to create a major barrier for people from smaller communities in the North. From a northern perspective, any mandatory services would be impossible to provide on a routine basis. There is no mediation in place; parental education programs would have to be limited to a videotape presentation accessible to all; counselling is inconsistently available and, in many cases, counsellors have limited expertise or a conflict of interest.

4.2.2 Use and Knowledge of Family Law Services

In the household survey, we asked about knowledge and use of several major types of services specifically for family law purposes. The responses revealed a consistent lack of awareness of such services.¹²²

The majority of people knew only social workers and church groups as service providers when a person is having a family law difficulty. About half of our respondents were aware that Legal Aid represents people in family matters. Strikingly, more people were familiar with the possibility of obtaining family law assistance from a Community Justice Committee than with Maintenance Enforcement Services. This is notable because CJC's officially have neither family law authority nor any training in these issues. Nevertheless, their presence in the community evidently attracts a certain number of people and causes them to be considered a resource (see Table 20).

¹²² Fifty people did not answer these questions.

Table 20: Distribution of Respondents' Awareness of Selected Family Law Services

Have you heard about...		Female	Male	Total respondents	Percent of total sample
Legal Aid for family matters	Yes	94 56	64 52	158 54%	46%
	No	74 44%	60 48%	134 46%	39%
Maintenance Enforcement Services	Yes	36 21%	20 16%	56 19%	16%
	No	133 79%	103 84%	236 81%	69%
Child Support Services	Yes	55 33%	38 31%	93 32%	27%
	No	114 68%	85 69%	199 68%	58%
Social workers as family counsellors	Yes	124 73%	78 63%	202 69%	59%
	No	45 27%	46 37%	91 31%	26%
Church groups as family counsellors	Yes	94 55%	81 65%	175 60%	51%
	No	75 44%	43 35%	118 40%	35%
Community Justice Committees in family matters	Yes	74 44%	50 40%	124 43%	36%
	No	94 56%	74 60%	168 58%	49%
Total		168	124	292	342

We further asked what services had actually been used by the respondents for a family-law-related matter. Again, use was minimal, but this is not surprising in light of the overall rate of relationship breakdown.

Overall, 72 percent¹²³ of respondents said they had never used any of the services we asked about. Of the remainder, by far the largest group had used the services of a social worker (people could say they used more than one services, so some are double-counted) (see Table 21).

¹²³ Sixteen people did not answer this question.

Table 21: Distribution of Services Used by Respondent by Type and by Gender

	Female	Male	Total respondents (multiple responses permitted)	Percent of total sample
Social Services	31 60%	12 44%	43 54%	13%
Legal Aid	18 35%	7 26%	25 32%	7%
Church Groups	9 17%	5 19%	14 18%	4%
Maintenance Enforcement	10 19%	3 11%	14 18%	4%
Community Justice Committees	4 8%	5 19%	9 11%	3%
Court	4 8%		3 5%	1%
Other		2 7%	2 3%	1%
Total	52	27	79	342

We asked what people had used their services for, and got a much wider range of responses than anticipated. The definition of a family problem in the minds of our respondents was broader than we thought. We can say people used services for matters ranging from criminal charges against their child, foster care issues, violence, counselling and mental health issues as well as custody, access and support issues. Other people did not want to go into the specifics of their problem, and answered, for example, “husband/wife problem” or “kids” when asked why they had used the services. Accordingly, uses resisted categorization. In light of the fact that people are not *able* to seek out specialized services, it is not surprising that they also define their family problems in general terms. This is an important example of difficulties faced when attempting to do a narrow consultation on a specific legal or service issue in the North.

4.2.3 Priority Services

There was remarkable consistency at community meetings about which services people thought were valuable. There were three main messages. The service most people identified as useful for people experiencing marital difficulties was counselling. There is a widespread demand for more counselling services. Second, there was not a demand for legal information as such. Participants felt that information, without services, would not significantly improve the family law situation. Third, when the survey was administered, legal services were not perceived to be available when they are needed.

There was considerable discussion about the importance of having counselling available, particularly as a resource for people considering separation. However, we noted that people differed in terms of what they saw as the purpose of this counselling. Some, certainly, saw counselling as a time to encourage parties to do what was necessary to try to stay together or get back together. People expressing this view were often among the older people at meetings. Others seemed to see counselling during a crisis as a way of bringing about behaviour change: if part of the problem was because someone was drinking, using drugs or even abusing their

partner, then counselling was considered a way to change that harmful pattern. Men and women of different ages held this view. Often speakers expressed the goal of seeing a relationship survive, but only with “healing.” Some among this group also emphasized the importance of safety. Still others appeared to see counselling during a relationship crisis as an opportunity to provide support for people in a painful time in their life, without a strong sense that the couple should necessarily get back together as a resolution to their marital difficulties.

Although we did not explore it in detail, there did not appear to be a consensus in terms of form. People did not appear to be advocating specifically for either couples counselling or individual counselling. We did not have discussions about safety or power imbalances in counselling contexts. This issue was not raised at the community level. Nor did we discuss mandatory counselling or information sessions. Considerable opposition would likely arise to any type of mandatory program, especially considering the widespread concern about violence.¹²⁴ Also, as discussed above, *any* mandatory service program would pose significant logistical problems amounting to a barrier to access to justice. Finally, since relatively few people enter the court process, any mandatory program would still only reach a limited number of people.

In terms of the demand for legal services, people expressed frustration both at not knowing their legal rights, but more importantly, at feeling unable to get any remedy from the family law system.¹²⁵ Many people expressed doubts about receiving information in the form of an advertisement or a pamphlet which did not include access to services that would enable them to exercise the rights described. People who had an understanding of their rights reported feeling completely stymied in trying to find a way to achieve their goals in terms of support for their children or other family law issues without assistance.

A desire for representation was not necessarily expressed as a desire for adversarialism. Indeed, the adversarialism of the justice system is still considered, by anyone who raised their voice on the subject, as one of its problems.

People were quite consistent in terms of the types of cases in which they wanted a lawyer. Those were cases in which the other party was out of the community and often out of the jurisdiction; cases of women seeking support for their children; or cases in which the person needing a lawyer was a respondent in a proceeding someone else had initiated. For the women seeking support, they looked to the lawyer (and the law) as a means of vindicating rights. For the others (the

¹²⁴ The American Psychological Association, for example, has pointed to research indicating serious problems with couples counselling in domestic violence situations: see American Psychological Association Presidential Task Force on Violence and the Family, *Violence in the Family: Report of the APA Presidential Task Force on Violence and the Family* (Washington: Presidential Task Force on Violence and the Family, 1996). Executive Summary available at www.apa.org/pi/viol&fam.html.

¹²⁵ See also Sharon Gullberg, *Child Support Law Information Needs of Aboriginal People in the Northwest Territories, Phase 2* (Ottawa: Department of Justice Canada, Child Support Team, BP24E); Law Courts Education Society of British Columbia, *Northern BC First Nations Communities Child Support Needs Survey* (Ottawa: Department of Justice Canada, Child Support Team, BP21E). Gullberg’s paper, according to its terms of reference, addressed only information needs of the Western Northwest Territories. Her conclusion about training intermediaries to deliver legal information is supported by our research, but findings differed significantly in terms of the nature of demand for legal information or identification of appropriate intermediaries.

majority), it appeared that they were seeking representation to handle an overwhelming process rather than trying to assert a certain right based in law.

The practical difficulties in obtaining legal representation remain staggering. The acute shortage of lawyers, discussed in section one, is still the biggest obstacle. The Legal Services Board hired two full-time family lawyers in the year 2000. After less than a year, they had almost 250 new open cases between them.¹²⁶ However, even having a family lawyer in each region leaves significant remaining problems in ensuring adequate representation. Conflict of interest remains a very big issue. Many people who might otherwise have asserted family law interests have been barred because the same clinic represented their spouse in a criminal matter—often, one where they were the victim. Short time frames for the exchange of documents do not take into account the isolation of the communities in terms of legal resources, and the inevitable delays in obtaining counsel have the potential to result in significant prejudice. Cost is a significant issue for those who are not eligible for Legal Aid.

Problems in obtaining representation also are tied directly to the general access to justice issues that consistently plague the North. Because courts sit so seldom in most communities, opportunities to have a matter heard with all parties present are infrequent. The Law Review Commission has observed that the process of handling uncontested family disputes frequently involve motions between counsel when the parties are not present. Since these matters are heard outside of communities, community members have even less opportunity to understand the process or to have input. Despite the training of interpreters, language is also a barrier for many, as currently only one lawyer in Nunavut speaks Inuktitut. Not all the lawyers working with Inuit have achieved cross-cultural competence and there can be significant misunderstandings. The reason is that if victims of violence have a negative experience in court, they may not continue to see the court as an appropriate place to resolve matters in a satisfactory way.

Based on these findings, we strongly believe there is a need to work towards a non-court based system, accessible at community level, to address family law issues. In the Family Law Strategy (Appendix Four), which also emerged out of this research, the Nunavut Department of Justice committed itself, with support from the federal government, to train mediators. There will be a strong emphasis on training mediators in accordance with Inuit Qaujimajatuqangit principles on the basis of a collaborative approach between southern-trained mediators and respected community members. The development of a non-court process at the community level has the potential to contribute significantly to the ability of most Inuit to do more than merely get legal information about family matters, namely, to actually obtain some kind of relief through agreements enforceable by the court.

Several aspects of this plan need to be worked out in further detail, on the basis of consultations conducted by MQ and the department. As indicated by the service inventory, most services in Nunavut are not “free-standing” but incorporated into a general position. Community mediators with a family law background may form part of another group, for example, the Community Justice Committees. According to the Chief Commissioner, the CJs in the North Baffin area expressed considerable interest in getting involved in family matters, if they felt they had sufficient authority. Other committees, however, have expressed considerable reservations about

¹²⁶ Interview, Bonnie Tulloch, Executive Director of the Legal Services Board, June 13, 2001.

taking new authority and, in particular, getting involved in domestic disputes.¹²⁷ One Social Worker at our consultation suggested that these mediators work with Plan of Care Committees that are supposed to be established under the *Child and Family Services Act*.

4.3 LEGAL INFORMATION

A social worker in Pond Inlet best expressed our major conclusion about public legal information. She asked: “What good are rights on a poster or a pamphlet if there is not at least a number to call to help you use them?” Lack of information is a major problem, even if it is not the primary obstacle facing Nunavummiut as they attempt to resolve family law disputes. Despite the relatively high levels of knowledge expressed in responses to questions on the household survey, we were repeatedly struck by the need for more public information on a range of family law issues and people’s rights. Important issues include:

- the entitlement of all children to child support, and acceptable levels of support (child support guidelines), including the importance of non-financial contributions;
- the rights of common-law partners;
- the rights of extended family caregivers; and
- entitlement to Legal Aid for family matters.

People had a range of suggestions about how to inform people about these rights, and about how they would prefer to get information about separation and divorce. While a significant number of people did not identify their preferred way of obtaining information, among those who did there were clearly preferences: most people would seek information about divorce from a lawyer, or a social worker. Very few people would try to obtain this information from a minister, a church group or a courtworker (see Table 22).

¹²⁷ For example, the CJC in Sanikilluaq preferred to go slowly, even within the criminal law area.

Table 22: Distribution of Respondents' Preferred Means of Obtaining Information

Preferred information source		Total respondents (multiple responses permitted)	Percent of total sample
Lawyer	Yes	119 43%	35%
	Not indicated	158 58%	46%
Social worker*	Yes	97 35%	28%
	Not indicated	178 65%	52%
Elder	Yes	67 24%	20%
	Not indicated	207 76%	61%
Friend	Yes	58 21%	17%
	Not indicated	216 79%	63%
Family	Yes	42 15%	12%
	Not indicated	232 85%	68%
Courtworker*	Yes	28 10%	8%
	Not indicated	247 90%	72%
Church group	Yes	20 7%	6%
	Not indicated	254 93%	74%
Community Centre	Yes	16 6%	5%
	Not indicated	258 94%	75%
Other	Yes	11 4%	3%
	Not indicated	263 96%	77%
Totals		274 100%	342 100%

* N=275 Respondents.

In terms of media for communicating information about family law, communication by radio was strongly advocated. There is a very wide radio audience in Nunavut. It is also cost effective and largely Inuit operated. This was definitely a preferred form of communication. Television and newspaper had roughly an equal number of supporters. The cost of both is considerably higher than of radio. Furthermore, newspapers have a more limited audience, since there are significant literacy barriers. The Internet was not seen as a liable option. Considering the

relative scarcity of Internet connections in the territories, their slowness, and the high cost of the service outside of Iqaluit and Rankin Inlet, where the only Internet service providers are located, this is not surprising.

Respondents also had a range of creative suggestions for getting information out, including fridge magnets with phone numbers, use of community organizations and networks, brochures, community meetings, and so forth (see Table 23).

Table 23: Distribution of Respondents' Preferred Media for Obtaining Information

Media		Total respondents	Percentage of total sample
Internet	Preferred	51 16%	15%
	Not preferred	262 83%	77%
Newspaper	Preferred	136 43%	40%
	Not preferred	177 57%	52%
Posters	Preferred	70 23%	20%
	Not preferred	239 77%	70%
Radio	Preferred	210 69%	61%
	Not preferred	104 33%	30%
Television	Preferred	143 46%	42%
	Not preferred	171 54%	50%

5 CONCLUSIONS

During this time of political reinvention, there is a major drive to ensure that law and services are appropriate for the Inuit majority and consistent with Inuit Qaujimajatuqangit. There is a strong commitment to broad-based Inuit participation in both legislative and program reform, with community participation and direction linked to culturally and linguistically accessible programs. Equally is the need to address family justice goals in a holistic manner.

The strength and well-being of families almost always reflects underlying social and personal conditions. The distribution of the population into small, isolated and close-knit communities is a social fact underlying both individual and family ways of life and public sector activity. A large proportion of the population of Nunavut confronts serious social issues that intersect with family law. These issues may contribute to and complicate family breakdown: young parenthood, domestic violence, unemployment, under-housing and generalized poverty, and serious health issues, including depression, suicide and addictions. Changes to family law and its processes stand little chance of ameliorating these conditions except to the extent they are integrated into a broader network of general community resources.

The legal framework of family law has undergone tremendous changes in the last five to ten years. With the creation of Nunavut, changes to the formal justice system include a unified court structure and strengthened community justice institutions, including expanded roles for justices of the peace and community justice committees. To date, however, these developments have not had a significant impact on family law issues. At the same time, broad legislative change has occurred in family law. Territorially, the first legislation to officially recognize custom adoption was enacted and is in force throughout the territory. In 1998, legislation came into force that provides for vastly expanded rights for common-law partners, broader scope for domestic contracts, and significant clarification of custody and access law and the factors relevant to a “best interest of the child” determination. The federal and territorial child support guidelines came into effect, providing a fair and simplified means of calculating amounts of child support owed in individual cases.

Our research shows, however, that at this point these major changes have not necessarily affected family life in reality. It shows that in most cases, families are not turning to the courts when breakdowns occur. Nor, indeed, do they look to the law in many cases when formalizing the creation of new families. It is also notable that the law remains silent, by and large, with respect to the relationship between extended family members, which is so crucial in Nunavut.

5.1 RESEARCH RESULTS: CHANGING FAMILIES

Our results clearly showed the centrality of the extended family in Nunavut. In different households a wide range of relationships go far beyond the nuclear family. Just under half of Nunavut households include extended family members such as grandparents, adult siblings, and others. It is striking that this broad social phenomenon receives so little legal recognition. It may not be appropriate to engage in law reform to change this situation, but there is certainly an opportunity to publicize existing rights—particularly the rights of non-parents to apply for support or custody when appropriate—to validate the work that is being done within these larger family units. Because so many people have significant involvement in the raising of a child, it is

important to be cautious about reforms that could negatively affect their real interest in ensuring a continuing relationship with that child after family breakdown.

The extremely young age at which many Nunavummiut become parents for the first time is consistent with the inter-generational family pattern. It is also problematic in several respects, as young parenthood is frequently associated with greater poverty and lack of access to justice. There is a strong need to bring family law education into the school curriculum, and to ensure that any planned legal outreach takes place both at the high school and college levels in order to improve the chances of these young parents having access to the family law system.

One major area in this study was the institutionalization of custom adoption in Nunavut, which is extremely prevalent in the territory. About one quarter of Nunavummiut are adopted by traditional custom. Furthermore, our research suggests that custom adoption is well-understood and commonly used across the territory. Decision making is seen to be vested in families and within communities, not in outside systems. There appear to be relatively clear parameters for decisions about adoptions, and a relatively strong understanding of the responsibilities of different parties in the process. But while custom adoptions are much more open than judicial adoptions, parental obligations have not been imposed on parents who have adopted out, so there has been little intersection between custom adoption and the rest of family law.

One indicator of the limited role of the formal legal system in family life is the increasing numbers of common-law relationships. Common-law relationships are far more common in Nunavut than in the rest of Canada. Within Nunavut, common-law relationships are qualitatively different from marriages in several respects. They appear to begin at a younger age and not last as long as formal marriage. By and large, partners have a greater level of income equality in common-law relationships than marriages, and far more frequently live in shared households than married people. From a research perspective, we encountered difficulties gathering important information about common-law relationships. For example, people rarely identified themselves as participants in former common-law relationships, and they tended to define common-law relationships in ways not always consistent with legal definitions (such as two-year duration requirements.)

5.2 RESEARCH RESULTS: SEPARATION AND DIVORCE

The research showed slightly lower levels of both separation and divorce in Nunavut than in the rest of Canada. There was only limited information gathered about respondents' relationship history and about the causes of separation. However, many informants discussed with us significant issues associated with temporary separations and decisions by individuals to get back together.

At present, the research shows that few people pay or receive spousal support in Nunavut. Nevertheless, there appeared to be strong backing for the principle of support and division of property as a matter of fairness, and as an important resource for children. Limited support claims likely reflect a general lack of knowledge about rights to spousal support or division of property, and a lack of access to the courts. The scarcity of support claims may also reflect broader social factors, particularly fewer payments between spouses because of low income

disparities between spouses, low overall incomes, and the complex economics of extended family units.

A much more problematic issue regarding separation is the question of housing. The housing shortage in Nunavut is itself a major family law issue. A person leaving a relationship literally has almost nowhere to go. This problem is exacerbated when there are power struggles and imbalances in the relationship, particularly if only one person wants to get out of it and there are children involved. This is a clear instance in which early community-level intervention may be a useful way to address one of the main practical issues facing separating couples. It is possible that civil order of protection proceedings, including remedies such as orders excluding a perpetrator of violence from the home, may assist in minimizing the displacement of children in a violent family break-up.

The important issue of violence in relationships was not extensively explored in our study. Although there remains a shortage of services to meet the needs of victims of violence, it is clear that, to date, this is one of the major areas of family law service development. Better integration between criminal law programs to protect family members from violence and civil remedies should be explored. Strengthening access to justice to address practical issues such as the responsibility of caring for and supporting children, the equitable division of property, and financial support for spouses who have been financially disadvantaged by the relationship, can only benefit all separating couples and also help victims of violence gain independence from their batterers.

Research showed that Nunavut families include more children, on average, than most average households in the rest of Canada. Furthermore, children are raised in a variety of family types. Although the proportion of children who are being raised in two-parent families is roughly comparable to the rest of Canada, far more of them are being raised by common-law parents than in the rest of Canada—almost three times as many as a proportion of the population. Lone parents are still mostly female, in Nunavut as in the rest of Canada, although there are a number of significant differences from Canadian averages. A large proportion of lone parents do not identify themselves as ever having been married or in a common-law relationship. This may account for results that suggest that “blended families” are very common across the territory (comparable to the Canadian average) even though the separation and divorce rates are lower than in the rest of Canada. Also notable is the fact that about half of lone-parent families live with other adult relatives.

A significant number of parents report having children who do not reside with both parents. The sample size made it difficult to draw firm conclusions about children’s relationships with non-residential parents. Where visits are continued, most are daytime visits, and fewer parents report overnight stays or only telephone contact. In almost one fifth of cases, however, non-residential parents report losing touch with their child or children. Lawyers and community members agree that one important reason for loss of contact is the problem of great distance between Nunavut’s isolated communities. Parents surveyed did not express high levels of dissatisfaction with contact arrangements between non-residential parents and their children.

Results, however tentative, concerning child support are somewhat disturbing, both in terms of levels of support being received and the effectiveness of existing services. A minority of

custodial parents report receiving child support, and a slightly larger minority of non-custodial parents report paying it. The Maintenance Enforcement Program has considerably expanded in the last 10 years and is currently quite successful at receiving payments for its open cases. However, research revealed disturbing information about the program. MEP is involved in only a small percentage of cases in which parents report that support is actually being paid, and notably, Nunavummiut recipients comprise only a minority of recipients at this time. Finally, public knowledge about the program is very limited.

One of the most striking findings of the research is the low frequency of court use and also the infrequency of any arrangement between parents related to the care of children after separation. This problem did not appear to be merely a question of people's knowledge of legal rights, for many respondents suggested they were familiar with at least broad legal principles on key issues like child support or the division of property. Overall, respondents reported relatively little contact with services. The most likely reason for this is the scarcity of services available at the community level. Faced with a choice between a social worker (who may also be a parole officer) or child welfare worker, the church, the RCMP and a court worker with only criminal law expertise, it appears that a large number of people resolve their problems without external support. At the same time, it was surprising that so few respondents said they had turned to informal networks such as friends or family.

5.3 APPLICATION OF FINDINGS

There has been relatively little research on private family law issues among Aboriginal groups in Canada. Instead, much of the existing family law research in this area addresses the near-crisis of child welfare in different jurisdictions. From our literature review, this appears to be the first large-scale study in a predominantly Aboriginal population on issues of family formation and make-up, separation and divorce, and related services. In civil law, existing information has not yet been disaggregated for the Aboriginal population at large or for particular groups.¹²⁸

This study suggests a number of important differences between the norms operating among the predominantly Inuit population in Nunavut and norms across the country as a whole. To some extent, the data we collected may be consistent with those for other Aboriginal groups. Low levels of engagement with the civil legal system, the prevalence of extended family households, problems caused by housing shortages and poverty, and a shortage of accessible services are all common issues in Aboriginal communities. It is possible that some of the implications of these data for policy development—briefly explored in this paper—may also have application for other Aboriginal groups.

That said, it would be inappropriate to assume too many similarities between the results of this study and any among other groups in Canada. As every major study of Aboriginal peoples in Canada has concluded, it is always a mistake to underestimate the significance of differences between First Nations, and between First Nations, Inuit and Métis. In particular, the geographical, political and social context of Nunavut is unique. Not all Aboriginal persons live in isolated and relatively homogenous communities. Most groups are organized on a different

¹²⁸ See also Goss Gilroy Inc., Study to Examine the Socio-Demographic Situation of Aboriginal Women, Preliminary Data Phase, cited *supra* note 70.

political model, and most have some vestige of band-style organization. No other Aboriginal people have such a significant voice in the laws governing their territory. It goes without saying that community histories vary as do histories of colonization.

The results in this survey offer a strong argument in favour of additional research in a range of Aboriginal communities and regions across Canada. As is widely recognized, most Aboriginal peoples and individuals feel their experiences are already too much the subject of research, and that too often no action results, or actions are taken that do not involve them. Accordingly, it is important to consider how to strike a balance between developing a sufficient research base to ensure that the needs of Aboriginal peoples are considered regarding family law, while ensuring that the research is, and is perceived to be, relevant to the affected groups.

5.4 IMPLICATIONS FOR POLICY AND PROGRAM DEVELOPMENT

It is an inescapable conclusion that the civil family law regime now in place (the *Divorce Act*, *Children's Law Act* or *Family Law Act*) is not affecting the majority of Nunavummiut by means of judicial decision making. If at all, it affects people as they internalize norms about fair and reasonable arrangements for themselves, their former partners, and their children during transitions in their family relationships.

It is just as likely, however, that non-statutory norms—cultural and otherwise—may be at play. Consistency in existing working arrangements would tend to suggest a strong set of norms; lack of consistency would reflect competing norms as well as widely differing circumstances. Although these informal norms are sometimes visible—adoption, and the participation of extended family members—our research did not reveal consistent patterns relevant to family breakdown. Except in the area of child support, the research in this paper is inconclusive about whether families in Nunavut are regulating their break-ups in a way that is consistent with the law or the principles underlying it. Additional, focussed qualitative research would be necessary in order to better understand the factors at play when decisions are made about the well-being of children and obligations between partners upon separation.

It is a strong conclusion of this report that there is a need to work towards a non-court based system, accessible at the community level, to address family law issues. In order to improve access to the system, it will be necessary to improve both public and legal education and family law services.

A number of aspects of the data strongly suggest that an essential element of a successful program will be an ongoing presence in most Nunavut communities. People are most likely to use programs that are close at hand and that allow face-to-face contact. The success and ubiquity of the custom adoption process in the territory suggests this conclusion, as do the relatively infrequent use of and scant knowledge of more centralized services. Benefits of such a presence would include improved information at the community level and also the improved ability of people to get the relief and support to which they are entitled.

In the Family Law Strategy (Appendix Four), which also emerged out of this research, the Nunavut Department of Justice committed itself—with support from the federal government—to train community based mediators. There will be a strong emphasis on training mediators in

accordance with Inuit Qaujimajatuqangit principles on the basis of a collaborative approach between southern-trained mediators and respected community members.

Mediation is an approach that offers significant benefits in the context of Nunavut. It has the advantages of decreased formality and adversarialism relative to the formal court system. And it may preclude some conflict of interest faced by overloaded social service providers or courtworkers who are expected to represent a person. Obviously, in a family law context and where violence may be a significant issue, there will need to be safeguards in place. Moreover, community mediation alternatives—no matter how much they may improve access to justice and transform people’s experience of the justice—cannot replace legal representation and court resolutions in some cases.

There is a need for more lawyers practicing family law in Nunavut. This is a priority in both the short and long term. In time, it is to be hoped that there will be Inuit lawyers who will help change the face and language of the practice of law in the territory and strengthen its presence there. It is also probable that as this change of personnel takes place, both as front-line legal representatives, professionals and para-professionals, and policy workers, that the direction of family law will continue to evolve.

A matter for future consultation is how—in practice and in principle—new community family law resources will balance statutory norms with Inuit Qaujimajatuqangit and other non-statutory norms. It is hoped that in doing so they will be able to achieve a holistic or pluralistic approach to problem solving, children’s well-being and fairness in family law issues.

APPENDIX ONE
METHODOLOGY AND RECOMMENDATIONS FOR FUTURE RESEARCHERS

This research project employed a variety of methodologies. Results varied for the four components. A more detailed discussion of these sources follows, along with some discussion of pitfalls and possible improvements for future researchers, particularly those planning to do quantitative work in the North.

1. Review of Existing Statistics: Sources

Our review included 1996 Census data on families and households, the NWT Drug and Alcohol Survey (1998) and the 1999 Nunavut Labour Force Survey. We also relied on earlier compilations of data, including Justice Canada's Report on Selected Crime Statistics 2000 (which provides a community-level view of charging and clearance data from the Royal Canadian Mounted Police); the Government of Nunavut's Report on Housing in Nunavut 2000; and other data compiled by Nunavut Statistics and the NWT Bureau of Statistics prior to the division of the northern territory into two jurisdictions.

We were unable to take advantage of several important national studies that touch most directly on family law issues. In particular, the General Social Survey, including Cycle 10 on Families and Friends (1995) and the National Longitudinal Study on Children and Youth (a biennial survey since 1994) do not cover Canada's territories. High cost and other logistical difficulties involved in conducting quantitative research in the North have meant that there is a significant shortage of data concerning family life in the territories. For this reason, the Government of Nunavut determined that a quantitative study focussing on details of family relationships and family breakdown would be a useful planning tool and could contribute to bridging the gap between what is known in southern Canada and what is known in the North.

2. Household Survey

The Sample

The survey was administered through in-person interviews with 342 individuals in five Nunavut communities.

Based on the GSS methodology, only one individual, older than 15 years of age, was interviewed in each household. In each household, the interview subject was chosen on the basis of whose birthday was next in the year relative to the interview date. Overall, there were 193 female respondents and 149 male respondents; the eldest respondent was 82 years of age.

The five communities were chosen to be as representative as possible of geographical differences in Nunavut. Each of Nunavut's regions was represented. The survey was conducted in two communities on Baffin Island, two communities in the Kivalliq (Keewatin) Region and one community in the Kitikmeot. The communities ranged from Nunavut's largest community, Iqaluit (the capital, pop. 4,627),¹²⁹ to one of the smaller communities, Chesterfield Inlet (pop. 363). As most of Nunavut's population live in communities of between 1,000 and 1,500 people, we chose two communities in two different regions with populations in that range: Pond Inlet (pop. 1,276), in the Baffin Region and Cambridge Bay (pop. 1,387) in the Kitikmeot

¹²⁹ All population statistics in this section from Nunavut Bureau of Statistics, "Nunavut: Community Population Estimates, 1997/1998/1999" (Iqaluit: 1999).

Region. Finally, Coral Harbour in the Kivalliq Region with a population of 822, was chosen to represent the small-to-mid-size communities in the territory.

The sample size in each community was roughly proportional to the percentage of Nunavummiut living in a community of comparable size. The initial intention was to have 500 completed surveys. Out of the total population, we estimated that approximately 20 percent of respondents should be from Iqaluit, because approximately 5,000 people live there. Twenty percent of the respondents should be from Cambridge Bay, as approximately 5,000 people live in the two regional centres. Just under 10,000 Nunavummiut live in the eight large communities that are not regional centres, each with populations between 1,000 and 1,500 residents. Consequently, approximately 30 percent of respondents should be from Pond Inlet. The seven mid-sized communities with populations between 500 and 1,000 make up another 20 percent of the territorial population, so twenty percent of our sample was taken in Coral Harbour. Finally, small communities with populations less than 500 people make up about 10 percent of the population of Nunavut, and Chesterfield Inlet constituted ten percent of the intended sample.

For a number of reasons, the final breakdown of responses did not precisely match the original structure of the survey. In a few communities, particularly Cambridge Bay, we had considerably lower response rates than expected. That Cambridge Bay was one of the two last communities visited may explain the lower response rates. However, it may also reflect problems with recruiting surveyors. In Iqaluit, data collection was terminated after a serious incident when a surveyor was locked in a house and threatened by an intended respondent. We were delighted that the surveyors in Pond Inlet and in Chesterfield Inlet fully met the target numbers of surveys.¹³⁰ For the purposes of this overview report, data have not been broken down by community. The results, while not sufficiently broad-based to be representative of Nunavut as a whole, still provide a meaningful sample on many important questions relating to family life.

Survey Instrument

The survey was based, to a large degree, on the General Social Survey (the GSS), Cycle 10 “Family and Friends” conducted by Statistics Canada. The 1995 GSS surveyed a wide variety of family issues, including household composition, marriages, common-law relationships, family history and changing family roles. It examined attitudes and opinions on a range of questions relevant to family life, and sought detailed financial information on family members. Certain adaptations were required in order to administer a survey similar to the GSS in the North. We chose not to pursue some of the lines of research relating to attitudes, perceptions and finances of the respondents. We also added more questions than were directly relevant to family law issues per se. We asked questions about contact between children and their parents, financial and material support, and public legal education. As much as possible, we attempted to identify areas in which it was important to incorporate culturally different norms. For example, questions about adoption and guardianship were refined to differentiate between court-ordered adoption, custom adoption and informal guardianship arrangements.

The final significant change to the survey was to adapt it from a Computer-Assisted Telephone Interview instrument to a paper questionnaire in order to facilitate in-person interviews.

¹³⁰ Iqaluit, 72 respondents; Cambridge Bay, 27 respondents; Pond Inlet, 151 respondents; Coral Harbour, 66 respondents; Chesterfield Inlet, 26 respondents.

The survey instrument was translated into Inuktitut, but not into Inuinaqtun, the dialect of western Nunavut. Surveyors were provided with a copy of the Inuktitut translation for reference.

The Interviews and Surveyors

Bilingual Inuit surveyors were selected from within the communities where we carried out the survey. In most cases, we relied on recommendations from the Hamlet Office as to the individuals to hire. While this may have had some disadvantages in terms of people having to share private information with familiar people, those disadvantages were, in our view, outweighed by the combined advantages of significantly reduced cost and increased confidence on the part of interviewees. We were extremely pleased that the surveyors outside of Iqaluit reported no difficulties in convincing respondents to participate in the survey. In our view, the use of local surveyors facilitated the exchange of information and the perception that this survey would be useful for Nunavummiut.

Survey designers travelled to each community to conduct a one-day workshop with the surveyors to familiarize them with the survey instrument. Surveyors were then asked to conduct interviews on a random basis. Depending on the community, we achieved this random basis in a variety of ways. In Iqaluit, we simply used a randomized dwellings list provided by the Research and Statistics Division of the Government of Nunavut. In the smaller communities, where the sample represented a larger proportion of the households, we used a more approximate form of randomization. For example, in Pond Inlet, 150 surveys were to be conducted in a community of 325 dwellings. Accordingly, we asked the surveyors to visit every second household in an area of the map and divided the map between three surveyors. A comparable approach was used in all the other communities: every fourth dwelling in Chesterfield Inlet, and so forth. Surveyors were paid for each completed survey.

Data analysis

A contractor entered the data from the completed surveys into an SPSS database of her own design. Considerable work was required, thereafter, to evaluate the aggregate data and to manipulate them in order for them to be responsive to our key issue concerns.

3. Service Inventory

The service inventory was conducted by telephone during a short period of time before the household survey was undertaken. Researchers developed the questionnaires based on their knowledge of services in a number of different communities. The questionnaires were then given to municipal officials, either the Senior Administrative Officer (the SAO) or the Assistant SAO (the ASAO), and in some cases, both. Because in most cases, the SAO was a qallunaat (non-Inuit), and the ASAO an Inuk, we were interested in knowing whether there were significant differences between knowledge of services and perception of issues between the two groups. This did not materialize to an appreciable degree.

We completed interviews in 17 of Nunavut's 23 communities, not including the five communities where the household survey was conducted because in those communities we were able to get a more complete picture for ourselves. We also excluded the very small communities with populations of less than 150. Because of difficulties contacting the appropriate officials, we missed the Kivalliq regional centre of Rankin Inlet.

4. Focus Groups and Individual Interviews

In each community that we visited for the purpose of conducting the survey, we also used a range of qualitative research strategies and outreach activities.

Perhaps most important, we conducted community meetings. The meetings were held in either community centres or the Hamlet Office. Before going to the community, we contacted a number of individuals there and advertised the meetings on the local radio. Attendance varied considerably, from a large group of 40 individuals in Pond Inlet to a small group of five in Cambridge Bay, where the meeting was rescheduled because of an elder's funeral. A wide variety of individuals actually attended the meetings: some community activists, certainly, but also an array of people of different ages (from babies to great grandparents) who heard about the meetings on radio or through announcements or word-of-mouth.

Meetings were loosely structured, with a short presentation on the basic tenets of Nunavut family law (child and spousal support, custody and access decision making, and the rights of common-laws) followed by an open session for questions and comments. Meetings were conducted mostly in Inuktitut, although translation to English was available for the lawyer and anyone else who needed it.

We also conducted one-on-one interviews with interested individuals, including social workers, CJC members, lawyers, the Senior Judge, the Director of Adoptions and Child Welfare, and church ministers. In the course of our outreach activities, we also met with a sizeable number of concerned individuals, including parents and grandparents, youth, teachers and others. Finally, we benefited from feedback and information provided by MQ and the Nunavut Family Law Working Group, which, as noted before, elsewhere, is a group that includes representatives of Health and Social Services and the Department of Justice, family law practitioners, the judiciary, the public trustee and public guardian.

These meetings provided important information for planning purposes. There were wide-ranging comments that shed light on crucial aspects of the development of family law in the territory.

5. Recommendations for Future Research

In undertaking such a large task, inevitably mistakes were made, but also successes enjoyed and lessons learned.

In retrospect, we made a serious error in choosing such a complex survey instrument as the basis of the household survey. We chose this tool with the goal of comparability between Nunavut and the rest of Canada in mind. However, we underestimated the significant difficulties involved in adapting a CATI-based instrument to a paper survey for door-to-door interviewing and in coding and analyzing the data. As well, the survey was broader than it needed to be, resulting in a certain amount of wasted effort. More narrowly defined research goals would have prevented this problem. We also made a serious mistake in not designing the database contemporaneously with the survey to allow for more straightforward analysis. If a comparable project is undertaken in the future, it would be wise to have someone with quantitative research and programming expertise involved at a much earlier stage.

A notable success, from which the project benefited, was the involvement of Inuit in adapting the survey instrument, identifying communities to visit, organizing and facilitating community meetings, and administering the survey as well as commenting on the final report. At each stage, community-level knowledge about what to ask, how to ask it and when, was essential to identifying important information and creating conditions in which people were comfortable sharing it. In future, it would be desirable, if possible, to continue this involvement in writing the final report. Also, since adapting an existing survey produced unexpected difficulties, it would be worthwhile to attempt to build the survey instrument itself, using even more of a participatory approach.

Another success—and one of the difficulties of this project—was to tie the research project directly to the goal of program and policy design. One of the frequent objections of Inuit and other northerners to large-scale research undertakings is their sense that there is nothing for them to be gained from it. Because there have been tangible results from the research (in terms of the development and training of mediators and the creation of the Family Support Office), it is hoped that those who gave their time as participants will feel that their contribution led to a concrete result for community benefit.

In light of the community distrust for research endeavours in general—and the considerable needs identified in this paper—we do not recommend that further quantitative research be undertaken in the near future. Any quantitative research that does take place should focus on the subgroup of the population that has experienced separation and divorce in order to gain more information about those areas with which family law is primarily concerned; in doing so, however, factors such as the extended family structure or the role of custom adoptions should not be neglected.

The one area clearly requiring additional research is qualitative work with elders and mature interviewees to look at traditional and contemporary approaches and principles in family law. With such work, it might be possible to report more definitely on the different norms concerning separation, decisions about children, obligations to support family members, equality between spouses, problem solving, violence and healthy families. It would be invaluable to be able to look at how these norms interact with the formal legal system.

MQ will follow this research with a consultation process to evaluate our findings and proposals for law reform. However, when that consultation is wrapped up, the real challenge—requiring most of the family law energy in the territory—will be to put these findings into action in programs and policies that suit the North.

APPENDIX TWO
SURVEY INSTRUMENT, HOUSEHOLD SURVEY

Questionnaire—Family Law Survey

Hello I am _____ from Nunavut Department of Justice. We are doing a survey about families and family law in Nunavut.

We would like to ask you to complete this survey.

All your answers will be confidential. We will group the information you provide with information from lots of other people, and your name will not be associated with it. Also, if there is a question you do not want to answer, you are not required to answer it.

Your participation is essential if we are to get a good picture of families in Nunavut. Because we are a new government, we need statistics about our people that are relevant to our people in order to design services and laws that meet our families most important needs.

Consent to survey _____

We would also like to ask your permission to contact you at some time in the future—perhaps five years from now—to follow up on this information.

Consent to follow-up _____ No consent to follow up _____

Name of person completing survey:

Phone number:

Address:

Thank you very much for participating.

SECTION—PROFILE OF RESPONDENT

We would like to start with some questions about yourself to help us place you demographically.

1. How old are you?
Age (yrs)_____
2. Male/Female (interviewer please note)
3. Are you an Inuk?
Yes___/ No ___ If no, what is your ethnic background_____
4. What is the highest level of formal education you have completed?
Some elementary school
Elementary School
Some high school
High School Diploma
Some college
College Diploma
Some apprenticeship or trades training
Trades Certification
Some university
University Degree
Graduate University Study
5. What is your main source of income?
Full-time wage employment
Part-time wage employment
Income Support
Traditional activities (hunting, trapping, crafts)
Other family member provides family income (specify)_____
6. What is your first language?_____
7. What other languages do you speak?_____
8. What is your place of birth?_____

SECTION—HOUSEHOLD MAKE-UP

We would like to ask some questions about the people living in your household today.

Can you give the first name of each person in your household?

	Person's first name	Relationship to Respondent
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		

How is that person related to you:

Husband/wife

Common law

Son or daughter

Is s/he your

- birth child

- adoptive child

- stepchild

Child for whom you are a guardian

Father or mother

Is s/he your

- birth parent

- adoptive parent

- step parent

Brother or sister

- step

- half

- adopted

Grandchild

Grandparent

Son-in-law or daughter-in-law

Father-in-law or mother-in-law

Sister-in-law or brother-in-law

Nephew or niece

Uncle or Aunt

Cousin

Same-sex partner

Other relative

Non-relative

SECTION—CHILDREN (FEMALE RESPONDENT)

(Please do not count foster-children for this section)

- 1 Have you ever raised step-children? By step-children we mean children from a former union of a spouse, or common law spouse?
Yes How many have you raised? _____
No
- 2 Excluding any step-children, have you ever adopted children in a process involving the courts?
Yes How many have you raised? _____
No
- 3 Excluding any step-children, have you ever adopted children by a custom adoption?
Yes How many have you raised? _____
No
- 4 Have you been a guardian of any children?
Yes How many have you raised? _____
No
- 4a How long did the guardianship last (answer for each child)
(#mos, #yrs) _____
- 5 Have you ever birthed a child?
Yes
No
Yes, and gave the child up for adoption _____
- 6 Do you have any grandchildren?
Yes How many? _____
No
- 7 Starting with the oldest, what is the first name of each child you ever raised or birthed? Include those who may have died.

First Name	Age	Sex	How joined	Age joined
#1 _____	____yrs	M/F	Birth/Adopted/Step/Guard	____yrs
#2 _____	____yrs	M/F	Birth/Adopted/Step/Guard	____yrs
#3 _____	____yrs	M/F	Birth/Adopted/Step/Guard	____yrs
#4 _____	____yrs	M/F	Birth/Adopted/Step/Guard	____yrs
#5 _____	____yrs	M/F	Birth/Adopted/Step/Guard	____yrs
#6 _____	____yrs	M/F	Birth/Adopted/Step/Guard	____yrs
#7 _____	____yrs	M/F	Birth/Adopted/Step/Guard	____yrs
#8 _____	____yrs	M/F	Birth/Adopted/Step/Guard	____yrs

IF NO KIDS, PLEASE PASS TO THE SECTION ON MARRIAGE

REVIEW THE FOLLOWING QUESTIONS (part A, B, or C) FOR EACH CHILD

CHILD NAME:

- 1 Does (Child Name) live in your household all the time, part of the time, or not at all?
All the time—Please answer part A, D and E
Part of the time—Please answer part C, D and E
Not at all—Please answer part B, D and E
Deceased—Please answer part D and E only

PART A -IF (CHILD NAME) LIVES IN THE HOUSEHOLD ALL OF THE TIME:

- A1 Does (Child Name)'s birth or adopted father live in this household?
Yes
No
No, birth father is deceased

- A2 Has (Child Name) always lived in your household?
Yes
No

If yes to A1 and A2, please move to section D

- A3 Before joining your household, what was (Child Name's) situation?
Living with one birth parent
Living with both birth parents
Had a guardian or guardians
Was adopted by another family
Has lived in my household since birth

- A4 Has (Child Name) left your household since joining it?
Yes
No

- A4a If yes, why?
Was adopted
Went to live with other parent after marriage breakdown
Went to live with another person after marriage breakdown
Who was that person _____
Social Services intervened
Went to live with friends, or alone
Went to live with a partner or spouse
Respondent asked child to leave household
Has not left household since joining it sometime after birth
Other Specify _____

- A5 How long was (Child Name) away from your household?
_____ months _____ years

A6 How many times was (Child Name) living away from your household?
_____ times

If birth father lives in household, please resume questionnaire at Part D

IF BIRTH FATHER DOES NOT LIVE IN HOUSEHOLD:

A7 Does (Child Name) have contact with her/his birth or adoptive father by... (check all that apply)

Overnight Visits

Daytime Visits

Telephone or letter

No contact at all (IF NONE, SKIP THE NEXT THREE QUESTIONS)

A7a If there are visits, how much time did (Child Name) spend with the birth or adoptive father in the past 12 months?

_____ months or

_____ weeks or

_____ days

No time

A7b How much time did (Child Name) spend with the birth or adoptive father in the past month?

_____ days

_____ weeks

_____ hours

No hours in the past month

A7c During the past 12 months, how often did the birth or adoptive father have contact with (Child Name) by letter or telephone when Child Name was not living in her household?

Daily

At least once a week

At least once a month

Less often than once a month

Not at all

A8 Is the household of the birth or adoptive father within:

10 km (in this community)

A nearby community that can be reached by ground travel (up to 10 hours)

Another community in Nunavut or the NWT that can be reached by plane only

In Canada or the United States, but outside Nunavut or the NWT

Outside Canada or the United States

A9 Do you receive financial support for (Child Name) from the birth or adoptive father?

Yes

No

- A10 Do you receive material support, other than financial support for (Child Name) from the birth or adoptive father?
 Yes
 No
- A11 Does support cause a problem between you and the child's birth or adoptive father?
 Yes
 No
 What kind of problems?
- A12 Are you satisfied with the amount of financial support you receive for (Child Name) from the birth or adoptive father?
 Yes
 No
- A13 If you receive support, how often do you receive support?
 Regularly—at least once a month
 Fairly regularly—several times a year
 When he's working or hunting successfully
 Occasionally
- A14 If you do not receive support, did you ever request support?
 Yes
 No

PART B—IF (CHILD NAME) DOES NOT LIVE IN THE HOUSEHOLD AT ALL:

- B1 Who does (Child Name) live with?
 Child's birth or adoptive father
 A relative of the child Specify _____
 Other Specify _____
- B2 What was the reason (Child Name) left your household?
 Was adopted
 Went to live with other parent after marriage breakdown
 Went to live with another person after marriage breakdown
 Who was that person _____
 Social Services intervened
 Went to live with friends, or alone
 Went to live with a partner or spouse
 Respondent asked child to leave household
 Other Specify _____

- B3 Do you have contact with (Child Name) by... (check all that apply)
- Overnight visits
 - Daytime Visits
 - Telephone or letter
 - No contact at all—How old was (Child Name) when you last had contact ____ yrs

If no contact at all, please skip the next three questions.

- B3a How much time did (Child Name) spend in your household in the past 12 months?
- ____ months or
 - ____ weeks or
 - ____ days
 - No time

- B3b How much time did (Child Name) spend in your household in the past month?
- ____ days
 - ____ overnight stays
 - ____ weeks
 - ____ hours
 - No hours in the past month

- B3c During the past 12 months, how often did you have contact with (Child Name) by letter or telephone when Child Name was not living in your household?
- Daily
 - At least once a week
 - At least once a month
 - Less often than once a month
 - Not at all

- B4 Relative to your own household, does (Child Name) live within:
- 10 km (this community)
 - A nearby community that can be reached by ground travel (up to 10 hours)
 - Another community in Nunavut or the NWT that can be reached by plane only
 - In Canada or the United States, but outside Nunavut or the NWT
 - Outside Canada or the United States

- B5 Are you satisfied or dissatisfied with the amount of contact you have with (Child Name)?
- Satisfied
 - Dissatisfied
 - No opinion

- B6 Why are you satisfied or dissatisfied? _____

- B7 Have you ever tried to change the child's living arrangements, or the amount of contact you have with (Child Name)?
- Yes
 - No

B8 What means did you use to change the amount of contact?
Went to court
Made an agreement directly with the person caring for the child
Made an agreement using a go-between Who _____
Made an agreement with the child
Other Specify _____

B9 Do you contribute financial support for (Child Name)?
Yes
No

B10 Do you contribute other kinds of material support for (Child Name)?
Yes
No

IF YES

B10a How often do you contribute support?
Regularly—at least once a month
Fairly regularly—several times a year
When working or sewing regularly
Other Specify _____

B10b Why do you contribute support for (Child Name)?
Responsibility to kids
Court Order
Agreement
Other (specify) _____

IF NO

B10c Why do you not contribute support for (Child Name)?
Was not asked to pay support
No court order
Agreement
Paying for kids in my new family
Have no obligation to pay—Why not? _____
Other (specify) _____

PART C IF (CHILD NAME) LIVES IN HOUSEHOLD PART OF THE TIME

C1 Who else does the child live with?
Child's birth or adoptive father
A relative of the child Specify _____
Other Specify _____

- C2 Why does (Child Name) live in the household only part of the time?
 Joint/shared custody
 School-related reasons
 Job-related reasons
 Other reasons Specify _____
- C2a If this is joint custody, do you and the other parent share:
 Residential custody of (Child Name)
 Making major decisions about (Child Name)
 Information about (Child Name)
- C3 How much time did (Child Name) spend in your household in the past 12 months?
 _____ months or
 _____ weeks or
 _____ days
 No time
- C4 How much time did (Child Name) spend in your household in the past month?
 _____ days
 _____ overnight stays
 _____ weeks
 _____ hours
 No hours in the past month
- C5 During the past 12 months, how often did you have contact with (Child Name) by letter or telephone when (Child Name) was not living in your household?
 Daily
 At least once a week
 At least once a month
 Less often than once a month
 Not at all
- C6 Is (Child Name)'s other household within:
 10 km (this community)
 A nearby community that can be reached by ground travel (up to 10 hours)
 Another community in Nunavut or the NWT that can be reached by plane only
 In Canada or the United States, but outside Nunavut or the NWT
 Outside Canada or the United States
- C7 Do you contribute or receive financial support for (Child Name)?
 Yes, I provide financial support
 Yes, I receive financial support
 No, I neither provide nor receive financial support
- C8 Do you contribute or receive other kinds of material support for (Child Name)?
 Yes, I provide material support
 Yes, I receive material support
 No, I neither provide nor receive financial support

C9 Does financial or material support cause problems between you and (Child Name's) father?
Yes
No

C10 If you do not receive support, does this cause a problem for (Child Name)?
Yes Why?
No Why not?

IF SUPPORT IS PAID

C11 How often do you contribute support?
Regularly—at least once a month
Fairly regularly—several times a year
When working or sewing regularly
Every once and a while

C12 Why do you contribute support for (Child Name)?
Responsibility to kids
Court Order
Agreement
Asked to pay support by the person caring for the child
Other (specify) _____

IF NO SUPPORT PAID

C13 Why do you not provide support for (Child Name)?
Was not asked to pay support
No court order
Have the kids a lot
Paying for kids in new family
Have no obligation to pay—Why not? _____
Other (specify) _____

C14 Are you satisfied or dissatisfied with the child's living arrangements?
Satisfied
Dissatisfied
No opinion

C14a Why are you satisfied or dissatisfied? _____

C15 Are you satisfied or dissatisfied with the amount of contact you have with (Child Name)?
Satisfied
Dissatisfied
No opinion

C15a Why are you satisfied or dissatisfied? _____

C15b Have you ever tried to change the child's living arrangements, or the amount of contact you have with (Child Name)?

Yes

No

C15c What means did you use to change the living arrangements or the amount of contact?

Went to court

Agreement with the person caring for the child

Agreement with the child

Used another person as a go-between Who _____

Other

**PART D: WHERE (CHILD NAME) IS NOT LIVING WITH BOTH PARENTS.
(If one parent has died, or children are living with both parents, please move to E)**

D1 Did you ever enter an agreement with another person about the custody or support of (Child Name)?

Yes, but we never wrote it down

Yes, we have a written agreement

No, we had no agreement

No, the court made an order

D2 Did you get outside advice about custody of your children, or financial support?

Yes

No

D3 If yes, from whom:

Parent

Elder

Friends

Social Worker

Courtworker

Lawyer

Other (specify) _____

If there was an agreement or a court order about custody

D4 Would you say that, overall, the time you spend with your children is;

Close to what was agreed/the court ordered?

Less time than what was agreed/the court ordered?

More time than what was agreed/ the court ordered?

**PART E: FOR ALL PARENTS
(ANSWER ONLY ONCE FOR ALL CHILDREN)**

- E1 Overall, how satisfied are you with the amount of time you spend with your children?
Very satisfied
Somewhat satisfied
Not very satisfied
Not satisfied at all

E1a Why _____

- E2 I think I'm a better mother than my mother/mother substitute was?
Strongly agree
Agree
Disagree
Strongly disagree
No opinion

SECTION—MARRIAGES

- 1 What is your current legal marital status? Are you
...Legally married and not separated?
...Legally married and separated?
...Divorced?
...Widowed?
...Never legally married?
- 2 Have you ever been a partner in a common-law relationship (Common law partnership means having a sexual relationship while sharing the same usual address for at least a year)
Yes
No—Skip section on “Common Law Partnerships”—Move to Legal Information
- 3 Where do you and your partner live?
A house we own
A house we rent
Another person's house
Other _____

Please remember that you do not have to answer any question. The next two questions may be difficult to answer for some people. This question refers to the marriage.

- 4 Overall, would you say that your relationship is...
Very happy
Fairly happy
Not too happy

- 5 Would you say that your spouse/partner earns
 ...much less than you do
 ...a bit less than you do
 ...about the same amount you do
 ...a bit more than you do
 ...much more than you do
 ... don't know

IF SINGLE OR COMMON LAW ONLY:

- 6 Do you think you will ever marry?
 Yes
 No

Why or why not? _____

(Single and common-law, never married please pass to the COMMON LAW section)

PART A—IF MARRIED, MARRIED AND SEPARATED, OR DIVORCED

- A1 In what month and year were you married?
 mm___/yy___
- A2 What was your partner's marital status before entering into this marriage? Was it
 Widowed
 Divorced
 Single
 Don't know
- A3 Did your spouse live common law with anyone else before entering into this current
 marriage?
 Yes
 No
 Don't know
- A4 Does your spouse have children from previous relationships that you did not raise?
 Yes
 No
 Don't know

If spouse has children, please ask:

- A4a How many?
 ___ children
 Don't know

- A4b Are any of these children 18 years of age, or younger?
Yes. If so, how many? _____
No

If spouse has children 18 or under, please ask:

- A4c Does your spouse provide financial support for these children?
Yes
No
- A4d During the past 12 months, how often did you spouse see (this/those) children? Was it:
Daily, with regular overnight stays
Daily, but not usually overnight
At least twice a week, including overnight stays
At least once a week, including overnight stays
At least once a week, but rarely overnight
At least once a month
Less than once a month
Not at all
- A5 Did you and your spouse live common law before entering into this marriage?
Yes
No
- A6 In what month and year did you and your current spouse begin to live together?
mm___/yy___

Temporary Separations

- A7 Have you ever separated from your spouse, and gotten back together?
Yes How many times _____
No

If got back together after separation

- A7a Why did you get back together after separation? (Check all that apply)
Lack of money
Promise to change behaviour
Love
Children wanted to be with other parent
Social pressure (from neighbours, parents etc)
Other: (specify) _____
- A8 Is this your first marriage?
Yes
No – If no, and currently married, resume at B1

**IF CURRENTLY MARRIED AND NOT SEPARATED OR EVER DIVORCED, PLEASE
PASS TO COMMON LAW SECTION**

A9 In what month and year did you separate from your current marriage?
____mm/____yy

A10 What was the major reason that marriage ended (check all that apply)
Grew apart
Respondent was involved with someone else
Spouse was involved with someone else
Violence
Substance problems (alcohol, drugs)
Couldn't have children
Other: (specify)_____

A11 After separation, did you stay living in the same place?
I moved out of the home
My partner moved out of the home
Both of us moved out of the home

A12 Are you divorced now?
Yes
No

A12a Have you applied for divorce
Yes
No
Why or why not:_____

A12b When did the divorce become final?
____yy/____mm

IF SEPARATED AND HAS CHILDREN

A13 Overall, what was the effect of your separation on your relationship with your children?
Very positive
Positive
Negative
Very negative
No effect

A13a Why?_____

A14 Did you pay or receive spousal support at the end of your marriage?
Yes
No

A15 Did you seek legal advice after separation, to assist you with questions relating to custody and access, or financial support?
Yes
No

A16 Did you seek advice from anyone other than a lawyer?
From whom did you seek advice? _____

IF NOT FIRST MARRIAGE:

B1 In what month and year was your first marriage?
____mm/____yy

B2 What was your first husband/wife's marital status before entering into that marriage?
Widowed
Divorced?
Single (never legally married)?

B3 Did you and your first spouse live common law before entering into this marriage?
Yes
No

B4 Did your first marriage end in...
Separation and then divorce or annulment
Separation and then death of spouse
Death of spouse—Please resume at B9
Divorce or annulment without separation
Other Specify _____

B5 In what month and year did the last separation happen?
____mm/____yy

B6 In what month and year was the divorce or annulment final?
____mm/____yy
n/a

B7 What was the major reason that marriage ended (check all that apply)
Grew apart
Violence
Respondent was involved with someone else
Spouse was involved with someone else
Substance problems (alcohol, drugs)
Couldn't have children
Other: (specify) _____

B8 Overall, did divorce what was the effect on your relationship with your children?
Very positive
Positive
Negative
Very negative
No effect
No children at the time of the divorce.

B9 Is your current marriage your second?

Yes

No

B10 In total, how many times have you been legally married?

___ times

SECTION—COMMON LAW PARTNERSHIPS

(If Respondent is now married (not separated or divorced) please start at question 9)

1 Are you now living with a common law partner (Common law partnership means having a sexual relationship while sharing the same usual address for at least a year, or living together in a relationship of some permanence with a child)

Yes

No

If no to #1, MOVE TO SECTION ON CHILDHOOD!

2 In what year and month did you and your partner begin to live together?

___mm/___yy

3 What was your partner's marital status before entering into this union? Was it...

Widowed

Separated

Divorced (or had previous marriage annulled)?

Single

4 Did your partner live common law with anyone else before entering into this union?

Yes

No

5 Where do you and your partner live?

A house we own

A house we rent

Another person's house

Other _____

Please remember that you do not have to answer any question. The next questions may be difficult to answer for some people.

6 Would you say your relationship is...

...very happy

...fairly happy

...not very happy

- 7 Would you say that your spouse/partner earns
 ...much less than you do
 ...a bit less than you do
 ...about the same amount you do
 ...a bit more than you do
 ...much more than you do
- 8 Does your partner have any children from a previous relationship that you did not raise?
 Yes
 No
 Don't know

If partner has children, please ask:

- 8a How many?
 _____ children
 Don't know
- 8b Are any of these children 18 years of age, or younger?
 Yes. If so, how many? _____
 No
 Don't know

If partner has children 18 or under, please ask:

- 8c Does your spouse provide financial support for these children?
 Yes
 No
- 8d During the past 12 months, how often did you spouse see (this/those) children? Was it:
 Daily, with regular overnight stays
 Daily, but not usually overnight
 At least twice a week, including overnight stays
 At least once a week, including overnight stays
 At least once a week, but rarely overnight
 At least once a month
 Less than once a month
 Not at all
- 8e During the past 12 months, how often did your spouse have contact by letter, email or telephone with (these/this) child? Was it:
 Daily
 At least once a week
 At least once a month
 Less than once a month
 Not at all

- 9 Have you had a previous common law relationship that was not followed by marriage?
Yes
No

IF NO PLEASE PASS TO SECTION ON CHILDHOOD

- 10 In what month and year did you begin your first common law relationship that was not allowed by marriage?
____mm/____yy
- 11 When would you say that the relationship ended?
____mm/____yy
- 12 What was the major reason that the relationship ended (check all that apply)
Grew apart
Death of partner
Violence
Respondent was involved with someone else
Spouse was involved with someone else
Substance problems (alcohol, drugs)
Couldn't have children
Other: (specify)_____
- 13 After separation, did you stay living in the same place?
I moved out of the home
My partner moved out of the home
Both of us moved out of the home
- 14 Overall, has this separation had a very positive, positive, negative or very negative effect on your relationship with your children?
Very positive
Positive
Negative
Very negative
No effect
No children at the time of the divorce.
- 15 Have you been a partner in any other common law relationships that were not followed by marriage?
Yes
No
- 16 How many relationships in total?
____relationships
- 17 Did you pay or receive financial support for your own needs or the needs of your spouse the end of any common law relationship?
Yes
No

- 18 Did you seek legal advice after any separation from a common law partner, to assist you with questions relating to custody and access, or financial support?
Yes
No
- 19 Did you seek advice from anyone other than a lawyer?
From whom did you seek advice? _____

SECTION—YOUR CHILDHOOD

I would like to ask a few questions about your own childhood.

1. Who were the people you lived with in your first household? (select all that apply)
Birth mother
Birth father
Adopted mother
Adopted father
Mother's parent(s)
Father's parent(s)
Brothers or sisters of a parent
A guardian
Brother or sister
Half-brothers or sister
Non-relatives (specify)
2. Were you ever adopted?
Yes How many times _____
No
- 2a How old were you when you were adopted? ____ yrs
- 2b Were you adopted by custom or through a court procedure?
Custom Adoption
Court procedure
- 2c What, if any, was the relationship between your birth mother and your adoptive parent(s)
Adoptive parents were birth mother's parents
Adoptive parents were birth father's parents
Adoptive parents were sister or brother of birth father
Adoptive parents were relative (_____) of birth mother
Adoptive parents were relative (_____) of birth father
Adoptive parents were not relatives, but from same community
Adoptive parents were not relative and not from the community

If you did not live with either of your birth parents in your first year,

3. Did you ever live with either of your birth parents?
Yes, with both (pass to question 6a)
Yes, with my birth mother (pass to question 6)
Yes, with my birth father (pass to question 6)
No (pass to question 11)

**If lived with both birth or adoptive parents at birth, ask:
(If one parent only, pass to question 6)**

4. Were your parents legally married?
Yes
No
5. Did you live with both parents the entire time you were growing up?
Yes If yes, pass to question 16
No If no, pass to question 7

If only lived with only one birth or adoptive parent at birth, ask:

6. Did your parents ever live together?
Yes How old were you when your parents lived together?
From ___ to ___ years
No
- 6a. If yes, were your parents ever legally married?
Yes
No
7. Did either of your parents die when you were a child?
Mother How old were you? ____
Father How old were you? ____
No
- 7a. Were you living with the parent at the time of their death?
Yes
No
8. Did your parents ever separate or divorce?
Yes How old were you when your parents separated? ____ years
No (Please resume at question 9)
- 8a. Did your parents go to court to get a legal divorce?
Yes
No
- 8b. Were you living with both parents at the time?
Yes
No

- 8c Who did you live with after your parents separated? (pls check all that apply)
- Mother
 - Father
 - Maternal Grandparents
 - Paternal Grandparents
 - Other (specify)_____
- 8d Did you continue to have contact with both parents after separation?
- Yes
 - No
- 8e Did any parent that you were not living with provide for you financially after separation?
- Yes
 - No

If respondent did not continue to live with a parent, skip to question 11
If respondent DID CONTINUE to live with a parent...

9. Did the parent you were living with have a common law relationship with someone other than your other parent?
- Yes How many (other) relationships? _____
 - No
10. Did the parent you were living with ever remarry?
- Yes How many times _____
 - No
11. Was there any time when you were growing up, when your household included only one adult?
- Yes For how many years or months did that last ____yy/ ____mm
 - No
12. When you were growing up, was there a woman, other than your mother, who you think of as having raised you?
- Yes How many? _____
 - No
13. What was her relationship to you? (if more than one, check all that apply)
- Grandmother
 - Stepmother
 - Father's partner
 - Aunt
 - Sister
 - Foster mother
 - Adoptive mother (if adopted as an older child)
 - Other

14. When you were growing up, was there a man, other than your father, who you think of as having raised you?
 Yes How many? ____
 No

15. What was his relationship to you (if more than one, check those which apply)
 Grandfather
 Stepfather
 Mother's partner
 Uncle
 Brother
 Foster father
 Adoptive father (if adopted as an older child)
 Other

All Respondents

16. Did you ever run away from home?
 Yes How many times ____
 No

17. What was the main source of income of your mother or the woman who raised you?

Source of Income	Mother figure 1	Mother figure 2	Mother figure 3
Full time wages			
Part-time wages			
Occasional wages			
Traditional activities (sewing, skins, etc.)			
Income Support			
Money from other family members (specify)			
Other (specify)			

18. What was the main source of income of your father or the man who raised you?

Source of Income	Father figure 1	Father figure 2	Father figure 3
Full time wages			
Part-time wages			
Occasional wages			
Traditional activities (sewing, skins, etc.)			
Income Support			
Money from other family members (specify)			
Other (specify)			

19. How many sisters and brothers with the same parents did you have? ____

20. Did you have any half-sisters or half-brothers (one parent the same)?
Yes How many? ____
No
21. Did you have any step-sisters or step-brothers (children of your parent's partner)?
Yes How many? ____
No

The next few questions are quite personal. Let me remind you that your answers will be kept confidential, and that you do not have to answer any question.

22. Looking back, how happy were you when you were growing up?
Very happy
Fairly happy
Not very happy
Unhappy
23. Did child welfare ever intervene in your family?
Yes
No
- 23b When child welfare got involved, was it close in time to any major event in your family history?
Adoption
Parents' separation
Separation between a parent and his/her new partner
Death of a parent
Other
Did not happen close to any other event
24. Were people using drugs and alcohol in your household growing up? Give your answer on a scale of one to ten, where one is none and ten is intense, frequent abuse. ____
25. Was there violence in your household growing up? Give your answer on a scale of one to ten, where one is none and ten is a intense, frequent violence. ____

SECTION—PUBLIC LEGAL EDUCATION

I'd like to ask you a few questions about your knowledge of the law and available services.

1. Have you ever heard about...
Legal Aid for family matters
Maintenance Enforcement Services
Child Support Guidelines
Social Workers as family counsellors
Members of Church Groups as family counsellors
Community Justice Committees for family matters

2. Have you ever used any of the following services...If so, can you tell us why you used the service? If you have used the service for different things, please tell us the most recent.

Service	Use	Purpose

ASK ONLY PARTICIPANTS WHO HAVE SEPARATED OR DIVORCED...
(Others, resume at #6)

3. When separating/divorcing did you seek any advice...
- | | | | |
|------|--|-------|---|
| From | <input type="checkbox"/> A friend | About | <input type="checkbox"/> Custody of Children |
| | <input type="checkbox"/> A family member | | <input type="checkbox"/> Access to children |
| | <input type="checkbox"/> A social worker | | <input type="checkbox"/> Financial Support for Children |
| | <input type="checkbox"/> Minister/Priest | | <input type="checkbox"/> Violence/Safety |
| | <input type="checkbox"/> Lawyer | | <input type="checkbox"/> Adoption |
| | <input type="checkbox"/> Courtworker | | <input type="checkbox"/> Re-marriage |
| | <input type="checkbox"/> Church group member | | |
4. Did you know that...
- The law requires both parents continue to provide for the children after separation or divorce.
Yes ___/No ___
 - That the Government of Nunavut provides services to enforce orders and agreements to pay child or spousal support
Yes ___/No ___
 - Either parent can go to court to ask for physical custody or to visit their children.
Yes ___/No ___
 - A common law partner can apply to court for financial support for himself/herself or children on separation
Yes ___/No ___
 - A spouse—either married or common law—can apply to court for a division of property.
Yes ___/No ___

5. Do you think it is important that people in Nunavut know...
 - The law requires both parents continue to provide for the children after separation or divorce.
Yes ____/No ____ Why?
 - The Government of Nunavut provides services to enforce orders and agreements to pay child or spousal support
Yes ____/No ____ Why?
 - Either parent can go to court to ask for physical custody or a chance to visit their children.
Yes ____/No ____ Why?
 - A common law partner can apply to court for financial support for himself/herself or children on separation
Yes ____/No ____ Why?
 - A spouse—either married or common law—can apply to court for a division of property
Yes ____/No ____ Why?

8. If you and the people you know needed information about divorce or separation, such as child support, custody and visitation where would you go to get the information...
 - Lawyer
 - Courtworker
 - Social Worker
 - Community Centre
 - Church group or Minister
 - Elder
 - Friend
 - Family
 - Other (specify)

9. What do you think would be the best way to get information to people in Nunavut?
 - Radio
 - Television
 - Internet
 - Newspaper articles
 - Posters

APPENDIX THREE
SURVEY INSTRUMENT, SERVICE INVENTORY

1. Do you know of individuals or families in your community who are experiencing difficulty with separation and divorce?
2. Problems deciding custody and access of children?
3. Problems with financial support from another parent?
4. Problems with violence?
5. Are there services for those people? What are the main services?
6. Can I ask specific services in community?
7. Does the social worker deal with family law problems?
8. Has there been a social worker working in your community continuously for the last two years?
9. Do they work full time?
10. Is there a youth worker in the community?
11. What activities do they provide?

12. Do they work full time?

13. Is there guidance counselor in the community? Do they get involved ? How?

14. Are there active church groups in your community?

15. Do they get involved if families are having a problem? How?

16. Are there active women's groups in your communities?

17. Are there drugs and alcohol counseling services?

18. Do people look for legal advice to resolve any separation or divorce issues?

19. Where do they go for legal advice? (Court worker, JP. Lawyer)

20. Are there any other services?

21. Do families experience difficulties with separation or divorce for which there are no services?

APPENDIX FOUR
NUNAVUT FAMILY LAW STRATEGY

FAMILY LAW STRATEGY

Background—what is the status quo?

In Nunavut, there are relatively few resources for people with “family law” problems. Not everyone wishes to engage with the law to determine their rights or responsibilities upon a breakup; in many cases informal family arrangements work best and last longest.

However, our findings suggest that those people who choose to turn to the law have very few, poorly understood, options. Those who have gotten involved in the law for family matters have experienced a very low level of success. On the basis of community consultations (to be described and analyzed in a later paper), and very preliminary data from a community-based study, we have drawn some conclusions about the state of family law.

Underlying Legal Principles

One key question we asked was whether disengagement from the family law system was a consequence of a sense that the underlying principles of family law were profoundly out of kilter with family life and Inuit culture. However, we found that there are relatively high levels of acceptance of basic family law principles. It appeared in our meetings that most people felt the best interest of the child should govern decisions about children; parents who have money should support their children, even if they are not living with them; and partners in a marriage or common law relationship contribute equally, even if differently.

One clear difference is the extent to which extended family continues to have a key role in filling the gaps of either inadequate parenting or absent parents. There is very little recognition for this role in existing information campaigns or services.

Child Support

As noted, there was considerable community support for recognition of a parental obligation to support children. It was our conclusion that child support is a much higher priority issue than custody; access; or spousal support. An indication that there was relatively strong support for extending the common reach of child support principles was a clear message that grandparents and other extended family caregivers should be able to receive support if they were raising children.

Another clear message was the sense that child support was unreasonable where it is being enforced against people who do not have any money. It was important to recognize and acknowledge non-monetary forms of material support for children, including providing country food.

Concern was also expressed about the potential for child support to be mis-used by a parent, and for child support to be a reason either to leave a marriage or to have more children.

Custody and Access

As noted, custody and access does not appear to be a priority issue. Where parents live in the same community, custody and access do not seem to be a major problem (unless there are child

protection issues involved). However, access and/or custody can be a problem where there are large distances—if one parent takes child(ren) to a community far away, there is often little that the other can do because of cost of exercising access.

Also, where different provinces are involved, there is real confusion about “which has the more powerful law” and opportunities for participation in court decisions across provincial boundaries.

Spousal Support

As in southern Canada, the concept of spousal support is not necessarily well understood nor does it receive universal support. While the principle of equal contribution during marriage is well-understood and seemed to be accepted, the legal consequences that flow from that principle were less well understood or supported. We had relatively limited discussions about spousal support.

Matrimonial Home

There was clear recognition that often a person leaving a marriage will lose access to the matrimonial home. When the person leaves with children, or because of violence, there is a perception that this can be very unfair as well as placing a real strain on their families and/or the shelter system. However, there was also a sense that this problem is hard to solve, due to the housing shortage and the reality of violence that interferes with people asserting a right to continuing occupancy. Often, there was no place for either spouse to go.

Obligation to Seek Child Support

Income Support does not appear to enforce the obligation to seek support against parents or former spouses who may have a right to support. They do collect support in the cases where it is being paid through the Maintenance Enforcement Office. However, income support workers appear to clearly recognize that child support is not a right that is easily exercised by people in communities and in practice they do not require people to seek support.

Legal Information

Overall, there is a relatively low level of legal information in the communities.

People do not know when there is a legal right to support (particularly in the case of common-law relationships, or people who had children after very brief relationships, or extended family members raising children). The vast majority does not know what level of support they would be entitled to, and are unfamiliar with the child support guidelines as a means of calculating support. They know very little about legal options surrounding custody and access, in particular, do not seem to consider the court a resource if one parent has taken a child or children without their agreement to live in another place.

Child support itself was not necessarily well-understood. There is a clear perception in many cases that child support is a government program to support children, rather than an obligation on parents. Child support posters, though prominently displayed in many communities, were not identified with any message about financial support for children.

For a very significant number of people, the function of the Maintenance Enforcement Office was also an unknown; this is not entirely surprising, since very few people (under 200) have court orders.

While communities expressed a need for legal information, the people in our meetings were equally clear about the requirements for useful legal information. The actual information needed to be quite straightforward and not overwhelming. More importantly, it must be information backed up by services, so a person could ask questions and get some assistance. Information that sets out rights without providing assistance asserting them was not seen as useful.

This conclusion corresponded very precisely with our findings about the family law process as a whole.

Process

The most significant finding of our research was the existence of a large number of people who have attempted unsuccessfully to use the family law system, or who were facing problems within the system. It appears that they have been stymied at every point by a range of systemic obstacles; most fall out of the process well before they get to court.

- First, a significant number of people are discouraged before they ever get to court in that in many cases, asserting family law rights will be perceived as provoking a dispute that does not otherwise exist. The strong association between court and the coercive power of the criminal law is another powerful factor preventing some people from bringing forward their family law issues. It is not a venue where people see themselves as proponents.
- Second, there is a recognized lack of services to provide counselling to couples who want to stay together.
- Third, where people are splitting up, there are very few resources to draw on in trying to work out family law rights and obligations.
- There is a huge shortage of lawyers—the backlog at legal aid is 70 unassigned family law cases in the legal aid system for Nunavut alone; there are only two family law lawyers, both of whom work for legal aid.
- It appears people do not turn to courtworkers for family law matters. Courtworkers don't have significant knowledge or training about family law matters, and are often caught in a conflict of interest if they have represented someone in a criminal matter.
- Social Workers are overburdened, and their involvement with families tends to be limited to the traumatic area of child welfare. People did not seem to see social workers as a resource.
- Fourth, people get lost in the process—agreements are not finalized, people do not make it into court, orders don't get filed with Maintenance Enforcement, etc.
- Fifth, most orders that are actually filed with Maintenance Enforcement are in default; the majority of them are in serious default.

- Sixth, most people in the court process don't appear to understand it. For example, payers who don't understand how to vary orders requiring them to pay sums far in excess of their incomes. Or payees don't know what to do once they have an order, or after an adjournment for more information. Neither party seems to know what to do if there is a court in another jurisdiction involved. In all, the process itself appears to take attention away from the issues and out of the control of parties.

Conflict

Not all the cases where people are applying for legal aid are highly contested; many are relatively low conflict. Instead, in many cases, legal aid clients are people who need assistance with the process and with knowledge about their entitlements. Currently, there is no intermediate process to deal with the needs of these people.

That said, a high number of cases involve domestic violence. This is significant in a number of ways.

- Often, where violence is in issue all other "family law" issues are left aside in an overwhelming concern for immediate safety and "pulling life back together". Taking steps towards finality in relationships is often not welcomed as people try to assess the possibilities for change and reconciliation.
- Violence provides an important reason that people will be unwilling to assert legal rights on behalf of themselves or their children; they may wish to achieve a complete separation or be intimidated out of any confrontation.
- In many cases there is also an involvement of the courts in the criminal sense. While there is a clear need for additional safeguards to address power imbalances in these cases, it is also clear that being forced back into court in order to resolve family law issues is likely to be a significant deterrent to any involvement with family law.

Objectives of a Family Law Strategy:

- Build awareness of the rights and obligations of partners on separation.
- Develop an accessible “middle tier” of service assisting people to work out family law issues “in the shadow of the law”.
- Working with communities and other government departments, attempt to ensure that there are community-based family law services for counselling and mediation.

Elements of the Plan:

Legal Principles

This is not a primary area for change. Existing principles are relatively well-accepted, and there has been a major reform in the family law area over the past ten years in the NWT.

Two areas where change may be in order are:

- A revision to the Rules of Court and forms to create earlier options for settlement and to assist unrepresented litigants.
- Developing enhanced options for fast action to protect against and prevent domestic violence through victim-focused legislation along the lines of Saskatchewan or Manitoba. Under this legislation, someone experiencing domestic violence could apply to a judge or JP to get a protection order or other rights, including exclusive possession of the home.

Legal Information

- Increase basic knowledge at the community level about legal entitlements and responsibilities under Family Law Act, Children’s Law Act and Maintenance Enforcement Act at the community level.
- Ensure legal information is provided in English, Inuktitut and Inuinaqtun and in formats that are useful for people with difficulty reading.
- Ensure that legal information action-oriented and is tied, as clearly as possible, to a “next step” in the process. This will require improved integration of services, and new services.

Process

- Improve the integration of services and “one-window” approach to family law matters by expanding the functions of the existing Maintenance Enforcement Office so that it is reconfigured as a “Family Support Office”.
- With additional staff, improve mechanisms to promote disclosure, mediation and settlement before cases go to court. Over time, expand the scope of these opportunities to include community-level services in conjunction with the Family Support Office.

Specific outcomes of these expanded services would be

- Increase the number of cases where persons who seek child or spousal support are able to get an agreement or an order providing support.
- Reduce the backlog at legal aid by providing a channel for low-conflict cases to be resolved.
- Increase parties' sense of control over the process by leaving court as a last resort.
- Increase the number of orders being effectively enforced—there is clear evidence that people follow the terms of agreements to a far greater degree than they do orders imposed by a court.
- Increased availability of services in Inuktitut.
- Develop a fast-track into legal aid in certain circumstances:
 - to provide a legal review of agreements on a basis of presumed eligibility.
 - to assist with high conflict cases.
 - to provide representation to clients where there is violence.
 - ensure existing orders reflect a real ability to pay .
 - expand use of alternative dispute resolution at early stages to resolve default and arrears matters by consent before they are brought to a hearing.

Services

Right now, the government invests in two major services: Legal Aid, delivered by the Legal Services Board, and Maintenance Enforcement.

The services provided through the Legal Services Board provide full legal assistance to a limited number of people. Availability of these services are very limited, however, because of income restrictions and a shortage of family lawyers in Nunavut (and the NWT). The result is a considerable backlog. With only two lawyers practicing family law in Nunavut, there can often be conflicts of interest as well.

Maintenance Enforcement is also in a double bind. Currently, the office is overwhelmed by workload stemming from the transition from the NWT and a large number of defaulting payers. At the same time, it is widely acknowledged that there are far fewer orders or agreements registered with the office for enforcement than there are people, especially children, entitled to receive support in Nunavut.

Our findings strongly support the conclusion that lack of access to the family law system is ultimately rooted in a lack of accessible and appropriate services; more specifically, a lack of integrated front-end services. The primary function of this report is to recommend a direction for developing these services, and a legal information campaign that supports them. It is

acknowledged that additional resources will be required to change this situation. In a pilot phase, those funds could clearly come from the federal funds under the Child Support Initiative.

A “Family Support Office”

It may be possible, using federal funding, to expand the services of the Maintenance Enforcement Office in order to provide assistance to individuals. Several jurisdictions—particularly British Columbia—have expanded court-annexed services to provide assistance to couples who are experiencing family breakdown and who do not have access to lawyers. In British Columbia, two-thirds of families in Provincial Court are unrepresented.

The BC Family Court Counselor program is particularly notable. Trained mediators meet with couples (first separately) to discuss their issues and to provide advice about legal options, rights and responsibilities. If both parties are willing the counselors will work with the parties to develop agreements that can be filed with the court for enforcement purposes. We could use federal funding to hire an experienced and respected person to provide information and to assist people to negotiate agreements “in the shadow of the law”.

It will be important from a community service point of view to ensure that people can receive services in Inuktitut as well as English. More broadly, to help ensure that the process is as comprehensible for people unfamiliar with the larger legal system, I would recommend that we recruit an Inuk for the position, with an expectation that some training in both family law and mediation would be required.

By focusing our attention on services to assist people to come to agreements, we may help to defuse the perception that the legal system is about creating disputes. We will almost certainly be able to achieve results that are better understood, using a process more in the control of parties.

In our case, it may make more sense to develop services of this type as an extension of the Maintenance Enforcement Office, rather than the family court, since the family court is not very active at this time. This integration would promote a sense of continuity of service, as people could turn to the same place to receive information about support and other family law issues, to get assistance in negotiating agreements or with legal referrals, and to have agreements or orders enforced.

Given the low levels of understanding of the maintenance enforcement function, we also recommend a shift in the profile of the office to reflect the change. Instead of being a “Maintenance Enforcement Office” it could be re-named as a “Family Support Office” or “Child Support Office”. People already understand these concepts; if we expand the range of services, we may be in a position to live up to the name and to fill the promise of significant integration.

In the interests of integration, we recommend work with the Legal Services Board to develop a “fast-track” to legal advice for those who have had a problem with the mediation model. It may also be desirable to arrange such a fast-track to assist people to get independent legal advice on the terms of any agreement that is reached. This would reduce the lawyers’ role in uncontested cases to one of oversight, hopefully reducing the workload and resultant backlog accordingly. For a fast-track to be effective, it will likely require cooperation between lawyers in different

regions, as we continue to have very few lawyers in Nunavut. The Legal Services Board may also wish to consider a system of presumed eligibility for a first visit to Legal Aid.

“Default Hearings” and Mediated Settlements

There has been a hiatus of some years since default hearings have been conducted in Nunavut. That hiatus has left numerous files on the books with significant arrears.

One of the key issues is helping people—often those with relatively little ‘court savvy’ get out of difficulties with historical support obligations where those problems are interfering with current payments, or are wrongly incurred. There are also problems where a person is in contemptuous arrears due to intentional non-payment.

As we re-introduce the practice of conducting default hearings, we will want to consider the following issues:

- How do we ensure that court and the adversarial process remain a last resort?
- Development of a non-adversarial process to address problems with arrears at first instance;
- Issues with the rules of civil procedure to ensure that hearings can be conducted with a minimum of formality—unrepresented debtors and the Maintenance Enforcement Officer appearing on her own behalf.

Public Legal Education and Information Accompaniment

We need to begin to organize a campaign of public legal education that would be complementary to the development of a single-stop child support office. The key goal in the development of PLEI will be to try to produce materials that people can use.

A key emphasis in the development of PLEI materials is to have a next step—in the words of one participant in Pond Inlet, “A phone number where a person can find out more.” This demand, for an accessible source of information and direction in the legal system, can be met to some degree by the development of a “Family Support Office” with new staff tasked to be able to answer family law questions from the public.

There are target areas where there is a clear need for clear information:

- The rights of common-law partners. Common laws have rights in law almost identical to legally married persons. There is very little public understanding of this point. Lack of knowledge on this point has caused people to fail to pursue basic rights like child support, let alone spousal support or any division of property. We need to be sure to have this information to help prevent confusion where there is apparently conflicting advice in other sources (e.g., the child support guidelines say they are only for people who are divorcing).

- Grandparents, or other extended family members, can apply for child support where they are actually raising the child. There is a fairly large number of cases where grandparents are just “taking care” of a child, without any intention to adopt. Their right to support, and their ability to obtain it through an agreement, is important information to put in the hands of the public.
- The functions of the maintenance enforcement office.
- The message that child support is a child’s right—the current child support posters may be too oblique (informal focus testing revealed that a wide selection of people did not know what they were saying).
- How family law matters are addressed between provinces—what is the effect of a court order from a different province, first steps in how to challenge it.
- We also need PLEI materials that go one step further, that is, provide tools to people to change their own relationships in law.
- Better distribution of child support guidelines—many individuals can use and understand the guidelines. They are already available in French and Inuktitut. It is important to clarify that these guidelines apply to common-law couples as well.
- Self-help (or mediated) divorce kits—We are proposing to develop a divorce kit to help people apply for divorces without legal assistance. This task has been assigned to the summer student being hired in the Policy Department. Hopefully, the availability of services to help negotiate agreements will allow these kits to be useful to individuals who have minor children as well as people with no children or only adult children.
- Self-help (or mediated) court application kits.

Legislative/Regulatory Change

The Rules of Civil Procedure are directed towards an adversarial process, ending up in court. It may be possible to work on forms, and indeed the process as a whole, to simplify matters for unrepresented litigants.

The Law Review Commission will undertake continuing family law consultations, including issues related to custody and access. There will be coordination with the joint FPT Custody and Access Consultation.

We do not anticipate a change to the legislation.

Short-term project activities:

Spring 2000

First proposal submitted to Child Support Initiative to secure \$210,000

Summer 2000

Policy summer student does groundwork for:

- Development of Self-Help Divorce Kit and PLEI pamphlets to support the opening of a Family Support Office.
- Proposal for Revision of Rules of Court.
- Assistance in developing Mediation approach for default hearings in Enforcement Office, including some trial mediations in the Iqaluit area.

Recruitment of Family Support Office Counselor.

Bench and Bar Committee seeks funding for proposal to develop appropriate community mediation in Nunavut. Possible resources include the Aboriginal Justice Initiative and federal PLEI funding.

Development of “fast-track” protocol with Legal Services Board.

Fall-Winter 2000-01

Family Support Office Counselor receives training—likely, alongside other Justice Officials.

Maintenance Enforcement Office—in new, larger quarters—re-opens as Family Support Office staffed by Maintenance Enforcement Officer and Family Support Office Counselor.

Default process underway in a limited number of communities through circuit court.

Nunavut Law Review Commission continues consultation on family law issues.

Policy work to recruit appropriate family law counselors/mediators; develop appropriate community and interdepartmental linkages.

Long Term Strategy—Community Outreach.

Pilot Training and Deployment of Community Family Law Workers.

The Bench and Bar Committee on Mediation has been developing a specific proposal to research and develop Nunavut-appropriate family law mediation. If they are willing, we would like to work with them, in a cooperative manner including Inuit participation, to add elements to their work to date.

As part of the process, we may be able to bring trained mediation-educators up to Nunavut to conduct some training for existing staff in Courts, Administrative Agencies, and other Justice

Divisions. This cost could potentially be underwritten by the Department. While here, they may be able to undertake research and consultation about appropriate training for community-level mediators. One appropriate end-product of this work be the development of a two to four week training course for community-level family law mediators.

We would support a proposal—most likely by the designated Public Legal Education agency, the Legal Services Board—to deliver this course on a pilot basis. For the first session, we may wish to start with a limited number of communities to develop the course and organize and support the services to be delivered at the family level. Participants would be recruited from community justice committees, counselors, teachers, social workers etc. It is our understanding that there may be federal government resources available for this training under broad PLEI auspices.

Depending on the success of this project, we recommend as Phase II.

Victims of Violence Legislation

To develop Victims of Violence Legislation would require significant consultation with affected groups, and, before it could be brought into force, significant education of relevant professionals, including JP's or Judges, Peace Officers, Courtworkers, and Lawyers. It would also require an advertising campaign to get out the message that there are some short-term legal options for victims, and how these options can be accessed. Once again, there is significant role for policy coordination in this regard.

Phase II—Trained Community Family Law Workers in all communities

Phase II would be a modified version of the pilot project, in that we would attempt to put at least one person in each community who has an understanding of basic family law rights and responsibilities, and the mediation process.

In implementing this project, it would be worthwhile to set the following targets:

- Pilot course—spring 2001 (7-10 participants).
- Second Course—fall 2001.
- Third Course—winter/spring 2002.

It should be a priority over time to develop linkages with the Department of Health and Social Services, and potentially, with the Department of Education to consolidate family services at a community level. In terms of family law service reform, there has been a clearly expressed demand for counseling to help couples work out their difficulties when it is possible, as a necessary compliment to services on family breakdown. There are some very interesting projects underway already which could be quite complimentary, for example:

- Couples counselling in Cambridge Bay—currently the Wellness Director is seeing more than twenty couples having difficulties.
- The Family Centre in Clyde River—the services and space in this place could quite logically be expanded to include information about family law.

- Strong interdepartmental and community level linkages will be the key to sustainable community level services.

Ongoing activities of the Family Support Office at that time will be:

- providing information to clients
- conducting mediations to develop agreements between parties
- performing enforcement activities
- financial management of cases registered with the Program

A final element of this strategy will be to evaluate the effectiveness of both the Family Support Office and the Community Mediators after a reasonable period of time has elapsed. Key outcomes will be: number of people trained and retained as Community Mediators, successful mediations completed (also including a view to compliance with obligations), number of cases in Maintenance Enforcement, number of cases in default.

APPENDIX FIVE
PARTIAL LIST OF MEETING PARTICIPANTS

COMMUNITY MEETING PARTICIPANTS

Pond Inlet

Alice, Social Worker
Joseph, Youth Group
Allen, Roman Catholic Church
Sarpina, Ladies Auxiliary Group
Leslie, Courtworker
Roger, Justice of the Peace
Sarah, Assistant, Senior Administrative Officer
Celia, Surveyor
Silas, Surveyor
Mary, Surveyor
Sandra, Law Review
Elizabeth, Interpreter

And approximately 20 other members of the public

Chesterfield Inlet

Brenda, Social Worker
Eli, Mayor
Situni, Roman Catholic Church
Marion, Arctic College
Donna, Surveyor
Hillary, Surveyor
Julia, Interpreter

And approximately 15 members of the public

Coral Harbour

Rosie Tanuyak, Adult Educator
Emily Beardsall, Community Wellness
Armand Angootealuk
Mary Matoo, Ladies Group
Annie Eetuk
Susie Angootealuk
Imelda Angootealuk
Elisapee Ningeonan, Ladies Auxiliary
Heather Kolit

Cambridge Bay

Kim
Elik
Sandra

Iqaluit Consultation (2001)

Marie Irniq, Child and Family Services, Director of Adoptions

Ruby Rafuse, Child and Family Services

Social Worker, Hall Beach

Iqaluit Social Services

Patrick Smith, Keewatin Legal Services

Doug Sage, Baffin Regional Health and Social Services

Sandra Omik, Maligarnit Qimirrujiit (Nunavut Law Review Commission)

Jonah Kelly, Maligarnit Qimirrujiit (Nunavut Law Review Commission)

Louise Anaija, researcher, Nunavut Court of Justice

Peter Allison, Maliiganik Tukisiiniakvik

Justice Robert Kilpatrick, Nunavut Court of Justice

Joan Mercredi, Nunavut Justice Legal Division

Simona Arnatsiaq, Nunavut Social Development Council

Kelly Mahoney, Nunavut Court of Justice, recorder

Basil Alexander, Nunavut Court of Justice, recorder

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