



## **Sustaining Justice**

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**The imperative of Civil Justice in Boom-Bust Communities**

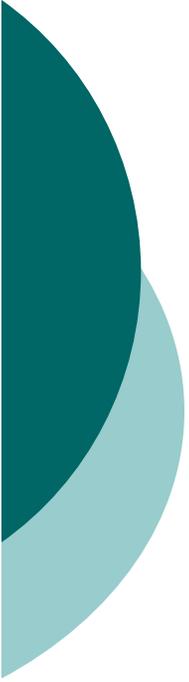
Drawn from

**Justice for Nunavummiut: Partnerships for solutions**

*A report from the **Civil Justice System and the Public** project*

Canadian Forum on Civil Justice

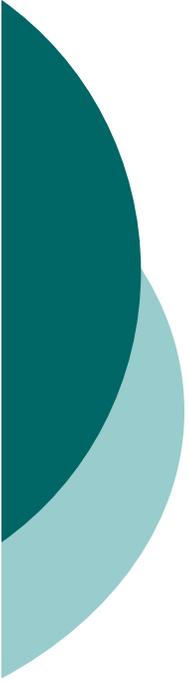
Travis Anderson



## Background to Report

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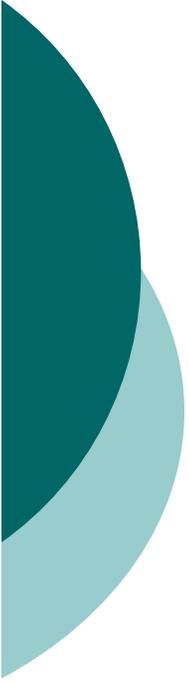
- CJSP is a national project designed to look at user experiences of the Civil Justice System in Canada
- Civil Justice in this context is non Criminal law
- Family, tort, contract etc.



## Research Method

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- CFCJ researchers sought out participants across Canada and conducted in depth interviews with a wide cross section of individuals
- This included individuals accessing court services, court staff, judges, lawyers and ancillary services.



## CJS&P summary

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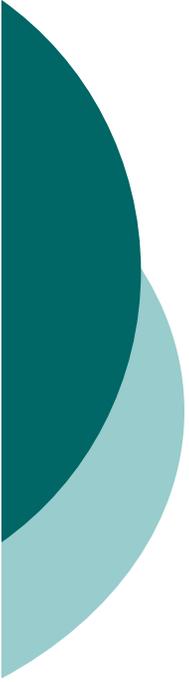
- Almost 200 participants
- Each interview transcribed and coded
- Started recognizing themes
- Many of the challenges to accessing civil justice were magnified in remote areas



## Follow up research

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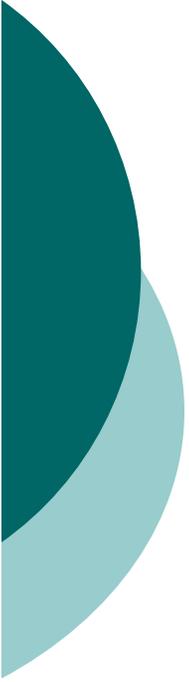
- Prepared reports on specialized topics and work-shopped
- Purpose was to check our findings with participants, community members, “bring back” research and bring people together



## Research in Nunavut

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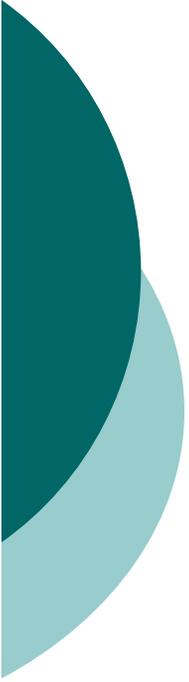
- In 2006 we wrote a draft report on civil justice in Nunavut and conducted workshops
- 1 in Rankin Inlet
- 2 in Iqaluit
- 2 in Ottawa



# Challenges in Nunavut

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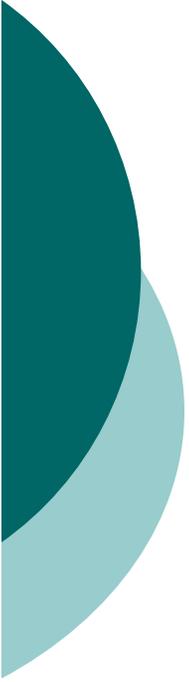
- Colonial history
- Geographic realities
- Jurisdictional Complexities
- Rapid Development



# Re-thinking “Justice”

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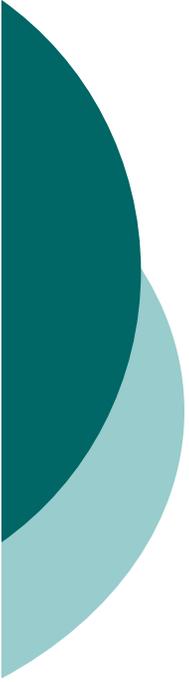
- *We are a different culture who are living Inuit ways, and we practice our traditions – our customs – without any idea of breaking a law or not breaking – or not performing as part of the civil law areas. We definitely are not realizing that [we have] done something wrong to you. It's not so in our culture, but it could go against the government.... The system doesn't communicate – they don't educate, they don't try to educate the community. [Inuit Elder]*
- *[The civil justice system] is still too adversarial in my opinion and it's totally foreign up here – the people aren't as adversarial as in the south. Where law takes the precedence – here they go by honesty. [Member of the public, social service worker]*



# Experience of Justice

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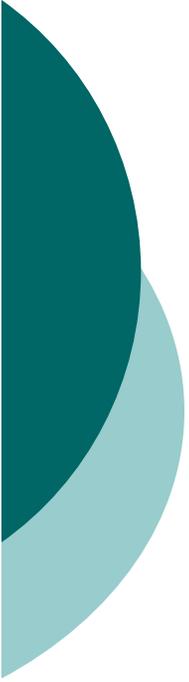
- Intersection of factors has created significant problems
- Experienced as punitive
- Justice is something done to you
- Post trial resolution



# Specific Issues

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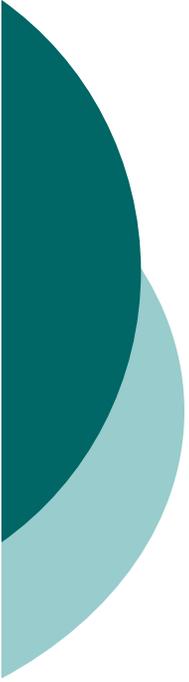
- 1. Access to public legal education and information
- 2. Access to legal services and legal professionals
- 3. Litigants with unequal power
- 4. Enforcement of court rulings, laws and entitlements
- 5. Issues specific to Family Law
- 6. Issues specific to Civil Law
- 7. Issues specific to Administrative Law
- 8. Geographic parallels and variations



# Access to Public Legal Information

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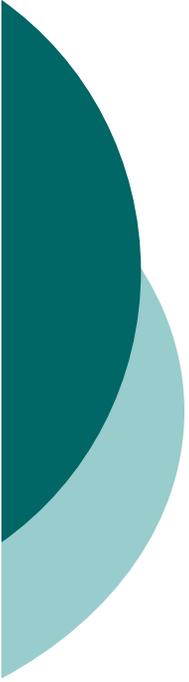
- *I think people's experiences with the law in Nunavut have mostly been through their interface with the criminal justice system. When you have a seminar – or a meeting, on administrative law – they bring with them the baggage of criminal law.... I think that's changing a little bit, and I think that people are beginning to now understand that there is a civil responsibility that people have – to behave in an ethical and proper way towards each other. When this doesn't happen, more and more people are beginning to understand that there are some avenues that they can go through. [Justice community member]*
- *I asked whether people would like to see the Wills Act changed. ... Some people didn't know that there was a Wills Act to begin with. So they said "How can we tell you how we would like it to change [if] we do not know what it's like now?" That's a very good point. One lady asked me what is the date of this Wills Act and ... I told her the date. And she said "well how come I've never heard about this act after all these years?" ... We did get some ideas of how to change the Wills Act, but what we realized is that we really should advise the public about the current laws. [Justice community member]*



# Accessing Legal Services

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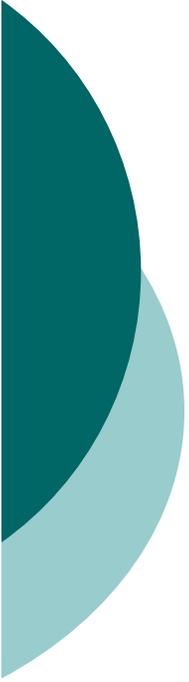
- *An informed public can be demanding but it is the only way changes can be brought into being. Inuit have a right to know and not continue to be kept in the dark – especially if it raises awareness and empowers individuals and communities to take action. Creative solutions that work for Inuit need to be found. Keeping the population ignorant of its rights is just wrong and continues to propagate the colonialist mentality. [Inuit Services Worker]*



# Power Differences between Litigants

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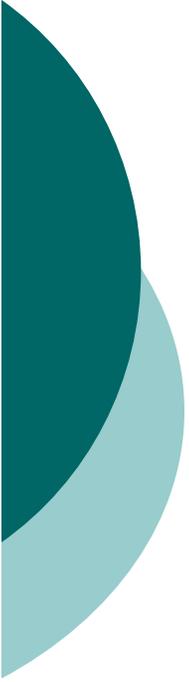
- *The blocks to [accessing the courts] are still there.... there is no competent advocacy for these people when they have to face large corporations or the government. [When they are self represented and have to] face the lawyers for these [organizations] ... it's just like a massacre.... [It's] based on the adversarial system despite the values of Nunavut [which] are to restore harmony to the community. As soon as you initiate a complaint – the respondent – if it's a government or a large corporation – immediately shuts down and becomes adversarial. And there's no bloody way of working your way out of that. If you open up communication with that system and try to establish a trust with that system, they still feel accused. ... They're going to protect the system. And if they don't protect the system they get fired. And if you get fired here, you're out of town in seven days. You lose your housing. And it's as simple as that ... The consequences are very serious. So you're immediately into an adversarial situation, and over time it's possible to break some of those barriers down. But it takes a lot of effort and a lot of time. You're looking at a systemic issue. [Member of the justice community]*



# Enforcement of Court Rulings

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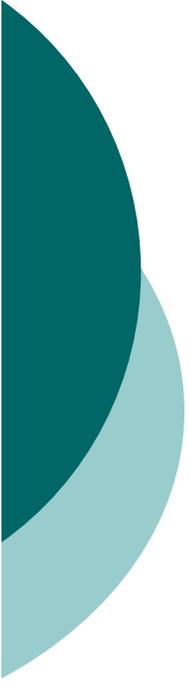
- Maintenance Enforcement Program



# Issues Specific to Family Law

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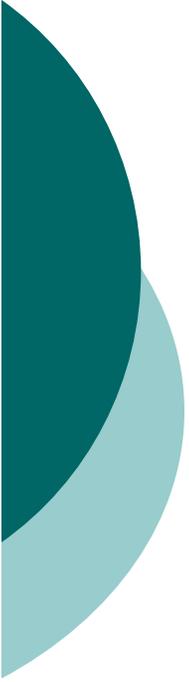
- *P1: It would help if the court worked more with Elders.*
- *P2 That this should happen and in a timely way so that the issues are addressed during the delay waiting for the court. This could avoid all kinds of confusing Orders.*
- *P3: How does a 'no contact' Order work in a small community?*
- *P2: Well it will be breached. There will be more charges.*
- *P4: It's setting them up.*
- *P2: Yes. And in places with no housing, no one to help with the children, no one to bring fish*
- *P4: Nowhere to shop without breaking the Order.*
- *P5: And often for very simplistic reasons. The alternative home, if there is one, is half a block away. They're bound to breach. It's incredibly punishing if the person is innocent! Of course they will go ballistic.*
- *P2: When children are apprehended, children over seven are told they can't have contact with the parents. Kids leave school and go home. The parents are in trouble. A child hugs Dad in the store – he's in trouble. The simple geography of the communities does not permit the standard remedies. The southern timelines mean nothing. The system here is moving as fast as it is able but the timelines don't work here.*
- *P1: The delays again. And when the date is close people are very sad. Then another delay. Some even commit suicide just before [because] they are so afraid. The delay can cause suicide. [Conversation among Community Workshop Participants]*



# Issues specific to Civil Law

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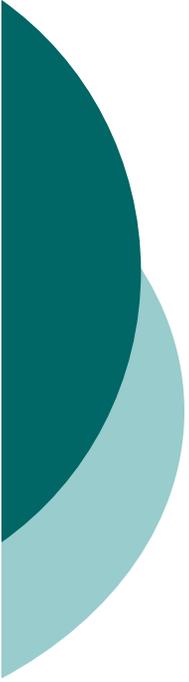
- *How broad a scope are we taking on civil justice? Is it just access to court? Or is it about social justice? For legal aid clients, access to social justice is a much bigger concern than access to court. Civil justice can be one tool – a blunt one – for gaining [social justice]. But even if we had a working civil court system it wouldn't solve the social justice issues, which are largely issues of politics and resource allocation. What is the scope of this [research project]? [Community Workshop Participant]*
- *Living here, people must work problems out within the community. They must continue to live with each other. In the South, the civil courts are for problems between people who do not know each other. Civil justice is not for poor people anywhere. The civil justice docket expands in Iqaluit as businesses use it. [Community Workshop Participant]*



# Parallels

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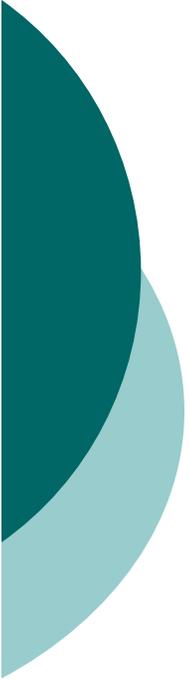
- Easy access to clear, straightforward information about legal rights, options and processes provided with written, visual and oral options.
- Available and affordable access to legal counsel when necessary.
- Adequate legal aid coverage in terms of both financial eligibility and scope of coverage.
- Alternative dispute resolution options for solving non-criminal legal problems in less adversarial ways (such as mediation, arbitration, judicial dispute resolution). In this regard recent initiatives in Nunavut have the potential to provide groundbreaking models for other jurisdictions.



## Parallels cont.

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- 'Unbundled' legal assistance, advice and representation when full legal counsel is either unavailable, unaffordable or unnecessary (such as, duty counsel, legal service centers paralegal assistance, community legal workers, court workers).
- Changes to legislation, rules of procedure, or other court and legal processes that are identified as not effective in bringing about equitable resolutions.
- The presence of, and liaison with, social service resources to address underlying social problems associated with legal matters.



# Going Forward

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- *Philosophically speaking, the driving force behind Nunavut is to be able to develop programs that are based on Inuit philosophy. It has only been just recently that there seems to be a consensus developing about what that means.... And there are some principles of justice ... that are beginning to evolve.... They're wonderful principles ... that [are] not inconsistent with the principles of what the rest of Canada would like. ... One of the main components of the principle of justice of Inuit culture is to restore harmony within the community. Well, if you resolve an issue through mediation - and if people are happy with that result – then that is Inuit cultural philosophy. ... [to] see if there's some way that harmony is restored within the community, to see if this restores the relationship between the two people that are combating with each other - so that they can live in the same community together ... To see if there is some way in which the person – who in a sense was wronged – believes that whatever has happened has helped that person to heal a bit. And the person who has done the wrong – if there is such a thing – that that person understands what's happened and has an opportunity to rehabilitate so they don't do it again, and that the general values of society – of respect, of harmony and peace – are reinforced. ... Well who in Canada wouldn't like those values? [Justice community member]*