



**NUNAVUT COURT OF JUSTICE**

**2000**

**ANNUAL REPORT**



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## Introduction

### **Nunavut –The Territory**

The new Territory of Nunavut was created on April 1, 1999 after years of negotiation between Inuit organizations and the Federal Government. The Nunavut Land Claims Agreement was adopted in 1993. The Nunavut Act, an Act of Parliament, is the legislation that brought Nunavut into existence.

The Territory of Nunavut contains 26 communities ranging in size from approximately 100 [Grise Fiord – Canada's most northerly community] to 5000 [Iqaluit - the Capital City]. Nunavut covers 1.6 million square kilometers of geography and has a population of 25,000 to 30,000, spread out over that massive landscape. Twenty percent of the population is non-Inuit. The most easterly community is north of Ottawa/Montreal and the most westerly community is west and north of Edmonton. Travel between the communities is generally by air, but seasonally by snow machine, bombardier, boat and ATV.

### **Nunavut Court of Justice**

The Nunavut Court of Justice was created on April 1, 1999. After significant consultation, discussion, drafting and re-drafting prior to the creation of Nunavut, a decision was made to create a single level trial court to serve the people of Nunavut. Many individuals involved in various levels of governments and Courts worked hard to create a viable court system for the new territory.

The Nunavut Court of Justice is composed of federally appointed judges who have jurisdiction to deal with provincial or territorial Court matters and in addition to deal with superior court matters. The Judges, therefore, have the jurisdiction to deal with any case properly brought before the Court in any community on any circuit. This provides the utmost flexibility in creating public access to the Court.

The challenge is to create Rules of practice and procedure that continue to create better access to the court for ordinary members of the public in this vast and diverse region of Canada.

The Court office and residence for all full time Judges of the Nunavut Court of Justice is located in Iqaluit, Nunavut's capital city.

In most of our communities, we are fortunate to have Elders that sit with the Court and provide advice to accused and to Judges in sentencing matters. The Elders provide an important link between Court and the community.

## Court Circuits

On March 31, 1999 the Territorial Court of the Northwest Territories had a resident Judge in Iqaluit, who traveled to and worked in the Baffin Region covering thirteen Baffin Communities on a regular basis. A well-seasoned travel schedule kept the work in the Baffin Region up-to-date with many interesting initiatives involving Elders and justice committees.

On the creation of the new Territory and the new Nunavut Court of Justice, the work load of the Court based in the Baffin increased exponentially. Two Regions were added, the Kitikmeot Region including these communities: Cambridge Bay, Kugluktuk, Kugaaruk, Gjoa Haven and Taloyoak, and the Kivalliq Region including these communities: Baker Lake, Arviat, Rankin Inlet and Coral Harbour. The new Territory also adopted all the outstanding territorial court work in these communities and much of the Supreme Court work. Upon the creation of the new Single Level Trial Court, all services previously provided out of Yellowknife in the area of Supreme Court such as Civil Registry, Sheriff, and Jury would now be provided from the courthouse in Iqaluit.

A regular Chambers date was established in Iqaluit to allow Chamber's matters to be dealt with. Beginning January 1, 2001 Rankin Inlet will have a regular Chamber's sitting at 10:00 in the morning. In due course we will hopefully increase the regular Chamber's sittings in the different communities. The judges and support staff with dual jurisdiction allows the Court to set Chamber's matters on the regular non-jury sittings to any of the communities in Nunavut.

Significant changes have been made in the circuits, splitting the Kitikmeot circuit into Kitikmeot 1 - Kugluktuk and Cambridge Bay for one week, and Kitikmeot 2 - Kugaaruk, Gjoa Haven, and Taloyoak for one week.

There have been a number of changes made in the way that circuit works to level out the workload in the Kivalliq Region. The circuit schedule will continue to be adjusted from year to year to ensure that we keep the work up-to-date in the communities that we have responsibility for.

Since the creation of Nunavut on April 1, 1999, there have only been two resident Judges. There is still a vacancy that has yet to be filled. In the absence of the third Judge, the Court relies on Deputy Judges to assist in carrying out the work of the Court. These Deputy Judges are Judges of the two other territories, who are ex-officio members of the Nunavut Court of Justice, and Judges from other provinces in Canada who use their judgement weeks or holidays to come north and help out.

Ongoing work continues between the Senior Judge of the Nunavut Court of Justice, both levels of Government and the Office of the Commissioner of Judicial Affairs to fill the vacancy of the third Judge.

## Justice of the Peace Court

The Justice of the Peace Court is an integral part of the Nunavut Court of Justice. All twenty-six (26) Nunavut communities have lay Justices of the Peace (JP) who regularly sit on bail hearings and do some of the summary conviction criminal work (sentencing and/or trials). All JPs are Inuit or long-time northerners. Sometimes JP Court proceeds in Inuktitut.

Nunavut JPs are not legally trained, but have received training in the areas of issuing process, bail, sentencing and trial work. They are classified to work at various levels, depending on the training they have completed. Often JPs sit in teams of two or three so that they have the support of others in making difficult community decisions. Because there is only one Inuit lawyer in Nunavut [and he is the Premier], the involvement in communities of Inuit JPs in terms of restorative justice and responsibility to the community for behavior is extremely important. JPs are very conscious of the important bridge they play between the justice system and the local culture of their communities. If available they also sit in the Nunavut Court of Justice and participate regularly in sentencing hearings in that Court.

As indicated throughout this report, Nunavut is a work in progress. There is also work to do in transferring youth cases, child protection cases and civil cases to JP Court, but training and experience is necessary prior to any such transfer taking place.

### **Training and Recruiting - Justice of the Peace Court**

There were eleven (11) new JPs appointed in Nunavut during 2000. There are currently twenty-five (25) applicants for appointments to be Nunavut JPs.

The JP Administrator made recruiting trips to the Kivalliq Region, specifically, Rankin Inlet and Baker Lake.

Approximately twenty-five (25) of Nunavut's JPs received training in the year 2000. One workshop in Basic JP Orientation was conducted for newly appointed JPs in Rankin Inlet. Another eight workshops, ranging in duration between two and five days were conducted in Iqaluit.

Iqaluit workshops covered the following training topics:

- Basic JP Orientation
- Specific training at different JP levels
- Youth Court training
- Senior JP discussion seminar

In addition, some JPs from communities outside Iqaluit took part in the JP Rotational Training and Visit Program -- to observe and participate in Iqaluit Court and to confer with the JP Administrator as well as the Judges of the Nunavut Court of Justice.

The JP Administrator has been working on a JP Training Manual for Nunavut's JPs -- parts of this manual are to be completed early in 2001.

- Neil Sharkey, Q.C., JP Administrator

## Staffing

Court Administration, like any other organization or business entity, was established to provide services that the people of Nunavut see as necessary or valuable.

As a result, six programs have been created that hopefully will fulfill the needs of all our various clients. These programs are Appeal, Civil, Summary Offence, Justice of the Peace, Criminal, and Sheriff.

Court Administration recognized that in providing these necessary services, its strength would come from its employees. In the priority setting paper, known as the *Bathurst Mandate* from August 1999, the Government of Nunavut under "Learning" stated in part, that:

"To achieve the dreams of Nunavut we all need to listen hard and learn well over the first years, to acquire the skills which will increase our independence and prosperity."

In playing its part, a considerable challenge was overcome, as the staff not only doubled in the year 2000, but was also required to use and understand legal concepts, terms, and procedures, and comply with all Nunavut Statutes, Regulations, and Rules relevant to their functions.

To assist in meeting the challenge the employees, guided by Inuit Qaujimatugangit (Inuit Traditional Knowledge), have created a working environment of mutual support and respect where all employees have an opportunity to contribute, to learn, to grow, to be treated fairly, to be listened to, and to be involved.

As a result, after one full year of operation, the Court Administration Office is well on its way to meeting its obligation of fulfilling the needs of all its various clients.

The Employees are:

Jeannie Alainga  
Saila Nowdluk  
Harriett Aupaloota  
Tiivi Qiatsuk  
Melissa Hess  
Leslie Akeeshoo  
Eileen Kilabuk-Weber

Atsainak Akeeshoo  
Neevee Natsiapik  
Dwayne Twerdin  
Jonathan Ellsworth  
Joe Kucharski  
Shani Watts

- Marvin Bruce, Director, Court Services

## Nunavut Court of Justice Library

The Nunavut Court of Justice Library serves as a central repository for legal information in Nunavut. The library is funded and managed by the Nunavut Justice Department, a library committee advises the librarian. The library provides reference services to the local members of the Nunavut bar, justice department staff, the judiciary, other government departments and the general public. A web site has been developed which provides information about the Nunavut Court of Justice, gives access to Nunavut legislation and tracks amendments occurring since April 1, 1999 (<http://www.nunavutcourtofjustice.ca>). The library is also responsible for distributing case law to Quicklaw, Carswell and Canlii after it has been recommended for reporting by the editorial board.

The library collection has grown from approximately 400 monographs (many of which were quite dated) to 1100 volumes (separate from the Krever collection of catalogued texts). Access to this collection of monographs has been provided to date through an access database. A library system has been purchased and will be shared by the Legislative Assembly, Arctic College and the Courthouse. This system will be searchable over the Internet once records have been entered into the database. The library has acquired two computers for the use of library patrons, one provided to the library by the Government of Nunavut and the other by the Law Society of Nunavut. Both computers are equipped with modems and can connect to Sympatico in order to access legal information available through Quicklaw, Carswell, Lexis, the Internet and a variety of legal CD ROM products.

- Rhonda O'Neil, Law Librarian

## Court of Appeal

The Court of Appeal of Nunavut came into existence just prior to the Nunavut Court of Justice, midnight April 1, 1999 as Chief Justice Catherine Fraser was sworn in as the Chief Justice of the Nunavut Court of Appeal. The Judges of the Court of Appeal of Nunavut as at April 1, 1999 were as follows:

The Honourable Chief Justice Catherine Anne Fraser	The Honourable Mr. Justice Calvin Tallis
The Honourable Mr. Justice Harry Maddison	The Honourable Mr. Justice Jean Côté
The Honourable Mr. Justice Allen Sulatycky	The Honourable Mr. Justice Ronald Berger
The Honourable Mr. Justice Edward Richard	The Honourable Mr. Justice Ralph Hudson
The Honourable Madam Justice Constance Hunt	The Honourable Mr. Justice John Vertes
The Honourable Madam Justice Anne Russell	The Honourable Mr. Justice John Bracco
The Honourable Madam Justice Virginia Schuler	The Honourable Mr. Justice René Foisy
The Honourable Mr. Justice Howard Irving	The Honourable Mr. Justice Robert Kilpatrick
The Honourable Madam Justice Beverley Browne	The Honourable Madam Justice Mary Heitherington
The Honourable Madam Justice Adelle Fruman	

In September of 1999 ten members of the Court of Appeal attended in Iqaluit for a Swearing in Ceremony. This was the first trip of the Court of Appeal of Nunavut to Iqaluit. The Swearing in Ceremony was full of well-wishers and welcoming remarks. Members of the Court enjoyed a boat trip, guided by Glen Williams, and a feast at the Anglican Parish Hall. There were no cases set to be heard on that date.

The first sittings of the Court of Appeal took place in September 2000. Chief Justice Fraser, Justice Conrad and Justice Hudson sat on seven appeals. Joining the sitting Judges were a number of Judges who traveled to Iqaluit to be sworn in as Court of Appeal Judges.

Following the Swearing in Ceremony and the sitting of the Court of Appeal, other commitments prevented most of the Court of Appeal Judges from enjoying a reception with local members of the Nunavut Bar and other dignitaries. Those who attended the reception enjoyed themselves immensely at the expense of the Court of Appeal. Some of the Judges who stayed in Iqaluit after the Swearing in Ceremony enjoyed part of an Administrative Law Seminar organized by the Nunavut Court of Justice and featured Justice Horace Krever as keynote speaker.

After new appointments and retirements the Nunavut Court of Appeal now consists of the following Judges:

**Nunavut Court of Appeal  
As of December 2000**

The Honourable Chief Justice Catherine Anne Fraser	Edmonton, Alberta
The Honourable Mr. Justice Harry Maddison	Whitehorse, Yukon
The Honourable Mr. Justice Calvin Tallis	Regina, Saskatchewan
The Honourable Mr. Justice Allen Sulatycky	Calgary, Alberta
The Honourable Mr. Justice Ronald Berger	Edmonton, Alberta
The Honourable Mr. Justice Jean Cote	Edmonton, Alberta
The Honourable Mr. Justice Edward Richard	Yellowknife, Northwest Territories
The Honourable Mr. Justice John Vertes	Yellowknife, Northwest Territories
The Honourable Madam Justice Constance Hunt	Calgary, Alberta
The Honourable Madam Justice Anne Russell	Edmonton, Alberta
The Honourable Mr. Justice Ralph Hudson	Whitehorse, Yukon
The Honourable Madam Justice Virginia Schuler	Yellowknife, Northwest Territories
The Honourable Mr. Justice Neil Wittmann	Calgary, Alberta
The Honourable Madam Justice Carole Conrad	Calgary, Alberta
The Honourable Madam Justice Adelle Fruman	Calgary, Alberta
The Honourable Mr. Justice Ronald Veale	Whitehorse, Yukon
The Honourable Mr. Justice Peter Costigan	Edmonton, Alberta
The Honourable Madam Justice Beverley Browne	Iqaluit, Nunavut
The Honourable Mr. Justice Robert Kilpatrick	Iqaluit, Nunavut

- Madam Justice B. Browne, Senior Judge



## Citizenship

The following Nunavummiut have become Canadian citizens since April 1, 1999:

- Maria Modesto, originally from the Philippines, and now living in Iqaluit, was sworn in on May 3, 1999
- Juraj Dobias, originally from the Slovak Republic, and now living in Iqaluit, was sworn in on May 3, 1999
- Nicholas Dibdin, originally from England, was sworn in on May 3, 1999
- Mila Clark, originally from the Philippines, and now living in Iqaluit, was sworn in on May 3, 1999
- Charlotte Borg, originally from Malta, and now living in Iqaluit, was sworn in on May 3, 1999
- Maria Mazurkiewicz, originally from Poland, and now living in Iqaluit, was sworn in on May 5, 1999
- Zinour Fatkhoulina, originally from Russia, and now living in Iqaluit, was sworn in on March 16, 2000
- Marcela Mrazek and her son John Mrazek, originally from the Czech Republic and now living in Iqaluit, were sworn in on March 22, 2000
- Bruce Johnson, originally from South Africa, and now living in Iqaluit, was sworn in on March 24, 2000
- Steven Atkinson, originally from England and now living in Iqaluit, was sworn in on July 1, 2000
- Bernard Aubut, originally from France and now living in Iqaluit, was sworn in on July 1, 2000
- Liu Zi Chen, originally from China and now living in Iqaluit, was sworn in on July 1, 2000
- Wm. Donald Mearns, originally from Scotland and now living in Pangnirtung, was sworn in on July 1, 2000
- Walter Oliver, originally from Scotland and now living in Iqaluit, was sworn in on August 9, 2000
- Stéphanie Yung Hing, originally from France and now living in Iqaluit, was sworn in on November 22, 2000

- Svetlana Lapshina, originally from Ukraine and now living in Iqaluit, was sworn in on November 22, 2000
- Ziaullah Khogyani, originally from Afghanistan and now living in Iqaluit, was sworn in on November 22, 2000
- Ellen Compala, originally from the Philippines and now living in Iqaluit, was sworn in on November 24, 2000
- Simon Anthony Adams, originally from England and now living in Iqaluit, was sworn in on December 4, 2000
- Antoinette Maria Hogervorst, originally from the Netherlands and now living in Arctic Bay, was sworn in by telephone on December 12, 2000. It had been impossible to arrange a time when the new Canadian citizen and the Citizenship Judge were in the same community therefore, the Citizenship Judge in Iqaluit, swore in the Canadian Citizen in Arctic Bay by telephone.

July 1, 2000 was a special day for a number of these citizens. As part of the Canada Day Ceremony in Iqaluit, four new Canadian citizens who were congratulated by a crowd of happy Canadians in Iqaluit.

### Change Of Name Project

The most often made application in the Nunavut Court of Justice was change of name. For a combination of reasons, many Nunavummiut have spelling mistakes on their birth certificates that cause unending problems throughout their lives.

Recognizing this need, the Court Administration set into place the Change of Name Initiative to assist people with these applications. The required forms were simplified, the court fee was waived, staff was trained and a special relationship was established with Vital Statistics. This initiative was publicized through brochures, radio and word of mouth. A schedule of locations where court staff would assist individuals in completing change of name applications was established. Extra staff was put on most court circuits to do this work.

This initiative involved a tremendous commitment from the court staff.

As at December 31, 2000, 180 applications had been processed.

- Eileen Kilabuk-Weber

## Special Donations

Justice Horace Krever retired from the Ontario Court of Appeal and generously donated his personal law library to the Nunavut Court of Justice. His library consists of approximately 1026 volumes and includes dictionaries, Criminal Law Casebooks, Old English Reporting Series, and the Report on the Inquiry on Tainted Blood in the Canadian Health System. The books take a prominent place in both courtrooms in Iqaluit, the Judge's Conference Room and the Law Library.

Justice Krever and his wife were able to travel to Iqaluit to receive our thanks, inspect the library and participate in the Administrative Law Seminar the week of September 18, 2000.

The Court also received a commemorative gift from the late Mr. Justice Lawrence Morin of Ontario, of a number of books from his personal library.

These generous donations are greatly appreciated.

- Rhonda O'Neil, Law Librarian

## Administrative Law Seminar

On a weekend at the end of September members from Nunavut's various tribunals and boards met in Iqaluit to participate in an Administrative Law Seminar. The idea of this Seminar originated with Justice Horace Krever's donation of his personal law library to the Nunavut Court of Justice. In order to thank him, the Court decided to host Justice Krever for a visit to Nunavut. Of course, his presence here provided a special opportunity to tap into his considerable experience. Justice Browne knew that several administrative bodies were meeting in Iqaluit in late September, and formed a committee made up of people from the Department of Justice in order to plan a seminar at which Justice Krever could make a presentation. He would eventually lead several discussions and be a part of a group of people who could make presentations about various aspects of administrative law.

Over the summer months, the committee members planned speaking topics and organized logistics such as making travel plans, setting a venue, arranging catering, and providing for English/Inuktitut translation. The committee successfully obtained financial support from the department, as well as through the sponsorship of NTI and Kakivak Association. The Administrative Law Seminar focused on the rules of natural justice in the context of Nunavut. Panels presented on: judicial review of administrative decisions; pre-hearing preparations; how to run a hearing; independence and impartiality; basic rules of evidence, and decision-making and decision-writing. Additionally, Justice Krever joined Premier Okalik for a final presentation of what lessons can be drawn by the function of administrative law in Nunavut. After each presentation, the group of approximately 50 participants were encouraged to ask questions and offer their perspectives, and discussed

how the principles being discussed were relevant to their particular administrative bodies. Finally, after meeting for two days, the group gathered for a dinner together.

Seminar participants answered a survey and overwhelmingly provided positive feedback. Not only were they pleased with the topics discussed, but indicated an interest in attending future seminars, perhaps offering more advanced presentations that could alternate with introductory topics every other year. Much work was involved in gathering contact information for the first seminar, and Nunavut's administrative bodies can make use of this foundation in planning their future gatherings. The Nunavut Water Board has taken over the role of organizing next year's seminar, and it is hoped that it will draw much interest and attendance from tribunal members and Government of Nunavut staff alike.

- Brad Proctor and Leo Caffaro, Law Students

### **The Rules of Court**

In August 1999, the Nunavut Court of Justice struck a Rules Committee with a mandate to review, and ultimately replace the Criminal and Civil Rules of Court inherited from the Northwest Territories. The Committee was comprised of the judiciary and practitioners drawn from both the private and public sector.

The first project tackled by the new Committee was the development of small claims Rules for the Nunavut Court of Justice. After approximately eleven months of laborious bi-weekly meetings, the Committee has decided to abandon its initial attempt to micro-manage the drafting of the Rules themselves.

The Committee is presently seeking funding from the Federal and Territorial Governments to hire a consultant for the purpose of drafting the Rules under the general policy direction of the Rules Committee. It is expected that this would be a two to three year project. It is hoped that the new Rules of Court will better reflect the unique challenges of Nunavut with innovative approaches designed to overcome the barriers of language, culture and geography.

- Mr. Justice Robert Kilpatrick

### **Family Support Office** **Court-Annexed Mediation**

In Nunavut, criminal law has dominated the concerns of Justice officials, women's organizations, and resident Nunavummiut. This also tends to be true of community justice, family group counseling, aboriginal justice, and related mediation and consensus-building initiatives. A number of reports in the Northwest Territories and nationally have discussed many drawbacks of adversarial proceedings in areas of civil justice and family law. A Family Support Office has been established that will be the focus of these family law initiatives.

Since procedures of criminal law are not optimally suited to civil and especially family law circumstances, an initiative is in progress to develop court-annexed mediation services in Nunavut. It is a goal of this initiative to bring together Inuit and non-Inuit persons with experience in mediation to develop a training program with a special focus on family law that is guided by Inuit Qaujimaqatqangit (Inuit Traditional Knowledge). The overall purpose of the Court-Annexed Qaujimaqatqangit Mediation Initiative is to develop court-annexed mediation services in Nunavut.

The development and implementation of this initiative will occur in stages, the first of which will emphasize family law. Family mediation services at a community level are key to the expansion of family justice services in Nunavut.

The first step in implementing this program has been to secure funding for and organize a "Development Workshop." The workshop will focus on the question of finding the common ground between Inuit problem-solving and southern "mediation." In light of those findings, develop a culturally appropriate implementation plan and training materials for alternative dispute resolution in the Family Law context in Nunavut. Advertisements have been run in local newspapers and will also be circulated through professional information networks. Additionally, advertisements on local CBC radio talk shows are going to be made in January 2001.

- Sarah McCoubrey, Law Student

### Law Student - Co-op Program

For years, University of Victoria (Uvic) law students have worked at Maliiganik Tukisiiniakvik (Legal Aid) for a semester at a time and have enjoyed much success participating in the region's justice system. During the year 2000, the Judges' Chambers of the Nunavut Court of Justice began to take on law clerks for four-month terms. The positions were posted in the Co-op Program at the Law Faculty at the University of Victoria, where the Program makes students available for work terms during the winter and summer months. To date four students, Jude Samson, Brad Proctor, Leo Caffaro and Sarah McCoubrey, have worked in various capacities for the Judges.

The work the co-op student does is quite varied and much more diverse than traditional, post-LL.B. clerkships. The students do substantive legal research for the Judges with regard to matters before the Court. Additionally, a great deal of their time is spent working on the several initiatives that are part of Nunavut's growing justice system. They participate on committees that administer new programs such as Court-annexed Mediation, Change of Name, changes to the Rules of Court, modifications of the rules governing jury selection, and Justice of the Peace training, and the Akitsiraq Law School, among others. They are periodically asked to examine areas of legal services that can be standardized within the jurisdiction, such as court reporting procedures. Aside from such ongoing committee work, the students have also been involved in helping to organize singular events. One such event was the Administrative Law Seminar.

The students have had the opportunity to travel with court parties on circuit to gain exposure to the administration of justice in the communities. All the students who worked in the Judges' Chambers feel fortunate to have been able to contribute to the evolving demands of Nunavut's justice system, and they know that the impressions that they take with them from the Arctic will remain important to them as they return to law school and eventually practice law.

### Conclusion

April 1, 1999 to December 31, 2000 has been a time of travel, hard work, new initiatives, meeting new people, introducing new Judges to old regions and getting to know new regions of our vast Territory.

It has been a year of successes and challenges as all involved in the Nunavut Court of Justice work toward the ideals and principles in the establishment of the Court and the Territory.

Many thanks to each member of the staff and others involved in the Court for their patience and perseverance as we work together to create this new Court.

- Madam Justice B. Browne, Senior Judge