



### Who Responded?

**36 individuals responded in total.**

23	Resident Lawyers
4	Non-resident Lawyers
3	Court worker/ Social Worker/Crown Witness Coordinator
4	Court Registries staff

### Methodology

In August of 2014, the Access to Justice Committee prepared a survey to receive data identifying barriers to accessing justice in the Northwest Territories. The survey listed several potential barriers identified by members of the Committee and various related reports. The survey also included open ended questions inviting participants to include additional barriers and potential responses to the identified barriers.

Originally intended for distribution to members of the Law Society of the Northwest Territories, distribution was expanded to others involved in front-line work related to Justice including Court Workers, Social Workers, Crown Witness Coordinators, Court Registries staff members and Administrative Tribunal staff members.

On November 28<sup>th</sup>, 2014, the survey was first distributed by e-mail to all Active and Inactive members of the Law Society of the Northwest Territories and shortly thereafter was distributed to key contacts in the other groups noted above. The survey was promoted in the weekly e-bulletin sent to all LSNT members, and a second stand-alone email was distributed in early 2015 to encourage a higher response rate. The survey was sent to approximately 450 individuals.

A total of 36 responses were received: 25 responses by December 23, 2014 and 11 responses by January 10<sup>th</sup>, 2015. This is a response rate of approximately 8%.



## Top 5 Barriers

Rank	Barrier	Number of Responses
1.	People cannot afford a lawyer but do not qualify for legal aid	25
2.	There are inadequate resources and support for self-represented litigants	17
3.	It is difficult to find lawyers because they often have conflicts, some areas of legal expertise are not available through local lawyers, and small communities do not have local lawyers	15
4.	The justice system is too complicated	15
5.	People have mental health issues that are not accommodated well by the justice system	13

## Results, sorted by rank

Rank	Barrier	Number of Responses
1.	People cannot afford a lawyer but do not qualify for legal aid	25
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3.	It is difficult to find lawyers because they often have conflicts, some areas of legal expertise are not available through local lawyers, and small communities do not have local lawyers	15
4.	The justice system is too complicated	15
5.	People have mental health issues that are not accommodated well by the justice system	13
6.	People do not know about different options to resolve their disputes (e.g. Community justice committees; mediation; Domestic Violence Treatment Options Court; Wellness Court)	12
7.	Laws and procedural rules are not written in plain language	12
8.	There is a lack of programs and services such as: access / parenting coordinators; high conflict parenting supports or programs; treatment programs	9
9.	People don't know how to use Small Claims Court	9
10.	Legal information for the public is not available on the internet	8
11.	People are intimidated by / don't trust lawyers	6
12.	People do not know how to access Justice services in Yellowknife, or other communities	5
13.	People do not have access to the internet to find legal information	5
14.	People do not have access to a toll free legal help line	5
15.	People do not know that the justice system can help solve their problems	4
16.	People are not attending meetings with their lawyers because they lack childcare (et alia)	4
17.	People think lawyers are too expensive and try to handle their legal matter themselves	4
18.	There are not enough trained community advocates	4
19.	There are language barriers	3



## Respondents indicated their priorities related to:

Civil/Family Law: 17  
Criminal Law: 6  
Both: 11

## Findings

The top 3 identified barriers all relate to the issue of self-represented / un-represented individuals in the justice system.

Participants who selected *People cannot afford a lawyer but do not qualify for legal aid* as a top barrier were proportionate to the respondents in total: 14 resident lawyers selected this; 5 non-residents; 2 court workers and 2 registries staff.

The second identified barrier, *There are inadequate resources and support for self-represented litigants*, also had reasonably proportionate responses: 11 resident lawyers selected this; 1 non-resident; and 3 registries staff.

The third ranked barrier, *It is difficult to find lawyers because they often have conflicts, some areas of legal expertise are not available through local lawyers, and small communities do not have local lawyers*, was distributed as follows: 9 resident lawyers; 3 non-resident lawyers; 1 social worker; 1 court registries staff.



## APPENDIX A: Additional Barriers

### WRITTEN RESPONSES TO QUESTION #3:

#### *Can you think of other barriers in accessing the Justice System?*

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##### BARRIER: THE LEGAL PROCESS

- Legal processes are too complex (2 responses)
- Courtroom formalities create barriers, or make it unapproachable and foreign to the public. (2 responses)
 

ie: Judges are addressed very formally; lawyers and judges are gowned; sheriffs can be intimidating. Laypeople feel incapable of participating in the environment, and indeed they are afraid of getting into trouble if they misstep. In this environment it would be rare for the average person to feel that the courts of there to "help"; formal language and procedures often leave justice participants confused and excluded. Courts are especially unfriendly to children despite the welcomed introduction of CCTV facilities throughout the NWT.
- Lawyers "take too long" to contact with their clients prior to Court; lawyers are unable to meet regularly with justice participants (such as accused persons and witnesses) due to time and budget constraints, remote locations and lack of means to communicate (people who do not have access to phones etc.) (2 responses)
- Limited and varied permission / or lack of permission for accused individuals or their out of town counsel to appear by phone (2 responses)
  - results can include: frustration, delay in varying release conditions on the consent of the Crown; agents are not always able to answer judicial questions resulting in further adjournments.
  - there is a need to address alternate means of proving identification - for example the amended release document can be faxed to the community detachment where the individual will have to show up with a piece of ID to sign the changes.
- Supreme Court forms are not:
  - available in downloadable format or fill-in PDFs
  - available for all functions required by the Rules (ie. Memo to Judge)
  - simple and friendly
- Practice directions not being incorporated into rules, forms with amendments not updated instead noted in a practice direction.
- There is no ability to fax file or file documents via internet - existing process takes more time and effort Rule 720 of the Supreme Court Rules (re: attendance at court to transact business and when fax filings are permitted. (2 responses)
- Court website must be fully overhauled.

**BARRIER: LACK OF HUMAN RESOURCES**

- Not enough lawyers:
  - outside of Legal Aid
  - that are affordable
  - that practice family law
  - in other communities outside Yellowknife
- Large backlogs for Legal Aid applicants (meaning that many months may pass before applicants are put in touch with a Legal Aid lawyer, during which time their family situation might have worsened.)
- There are few alternatives to litigation that are advertised in communities outside Yellowknife where there is also a lack of lawyers (ie. Difficult to coordinate mediation, counselling, etc.... in many communities).
- Lack of access to services in the communities.
- Lack of truly independent, impartial, well-trained justice workers in smaller communities (such as victim services, community justice).

**BARRIER: JUSTICE SYSTEM DOES NOT OFFER APPROPRIATE SOLUTIONS**

- There is a lack of true coordination between different agencies involved in the criminal justice system (victims services, social services etc)
- The justice system does not take into consideration diagnoses such as FASD and PTSD. Have a look at the BC Justice pilot project in 2005 – 2006.
- The lack of an in-jurisdiction treatment and assessment facility for mental health patients. (2 responses) Currently, it seems that only the most severe mental health cases are being sent south for treatment, while those who are deemed “less severe” are left to the criminal justice system. There are many individuals who find themselves frequently in front of the courts who are much better suited being dealt with and assisted by health and social services.
- With some clients there could be greater success if treatment was mandated rather than voluntary.
- Youth would very often be better dealt with by other means than the criminal justice system. Youth would greatly benefit from counselling with their families, and whose families may also benefit from parenting support programs, but are not in the system.
- Defence and Crown are not often aware of the programs that are available to assist youth.
- Many youth who come through the court system whose criminal behavior is at least in part caused by long term inadequate housing and care – they have couch surfed for most of their teen lives, have no stable homes and no means. The “toolbox” available in the criminal courts to help address these sorts of issues is very limited, and what happens is that often these youth just get put on various probation orders they can’t follow or don’t have the capacity to follow until they have breached enough to be sent into custody. This is an unacceptable solution to the problem.



- there are social barriers particularly in small communities; is the adversarial approach to resolution of civil claims adequate? Does it undermine the community by pitting parties against one another? Can harmony be restored? Is this a possible role for mediation? Should there be more mediation in civil matters?

**BARRIER: INDIVIDUALS ARE ILL EQUIPPED TO PARTICIPATE IN THE JUSTICE SYSTEM**

- There is a lack of education (2 responses) or limited education making most plain language materials ineffective.
- There is a lack of available free assistance to resources.
- Cultural differences / barriers (2 responses) and language barriers prevent people from seeking help or fully understanding the options available.
- Literacy issues. (2 responses)

**BARRIER: PEOPLE LACK KNOWLEDGE**

- People are not aware of their responsibilities and that ignoring the system will adversely impact them.
- People generally interact with the system only as objects of state action (ie. Criminal law or family law apprehension) and are not aware that they may benefit as subjects (ie. Suing for assault, using system to distribute assets on death).
- People are not aware of their legal rights. (2 responses)
- There is a certain segment of the public that has very little knowledge of the justice system, and how it can assist them. They do not realize the options they have available to them. It is also difficult for them to participate in the justice process (to communicate with their legal aid lawyer, for example) when they do not have access to a phone, computer or transportation. This is only exacerbated when there are mental health or capacity issues at play. Then there is another segment of the public who do have a basic understanding of the justice system and the avenues that can assist them, but they do not qualify for legal aid and can't afford private counsel. This is where a different set of barriers come into play, such as the difficulties self-represented litigants face in navigating the system.

**BARRIER: OTHER**

- There are physical barriers for handicapped - HR Court House has an elevator, electronic doors and an exterior wheelchair ramp, but to get to the ramp one must first get onto the sidewalk which has about an 8 inch curb to overcome. The wheelchair slope at the north end of the curb is still quite a bit higher than the street. The most wheel chair friendly way to scale the curb is to go around it through the Riverview Lodge parking lot on the far end of the building, quite a jaunt from the Handicapped parking stall. Court held in community halls present similar hurdles and are often not kept snow free in winter months, which would make it difficult for people with mobility issues to attend court.
- Homelessness
- Addiction issues



- Monetary – cost of lawyers, court fees etc.
- People are distrustful of system and of players in that system, even those trying to help them.

## APPENDIX B:

### Suggestions to eliminate or reduce barriers

#### **RESPONSES TO QUESTION #4: *Do you have suggestions for eliminating or reducing barriers in accessing justice?***

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##### **TECHNOLOGY-BASED SOLUTIONS**

- Need for easier, people-friendly, comprehensive websites (3 responses)
  - refer to provincial family law websites
  - need fillable forms online (4 responses)
  - information about procedural steps
  - do-it-yourself information and links
  - instructions in plain language
- Increased use of technology for making court appearances by telephone or video (2 responses)
- Better legal information for accused people in the communities
- Better and earlier access to legal aid – all too often, accused individuals get to speak to a fly-in defence counsel for 5 minutes on their first appearance and then don't speak to another defence counsel until it is almost time for trial.
- A dedicated phone, perhaps set up at the band office, where people could call Legal Aid to speak to a lawyer.
- Using audio and video materials to explain processes, with common scenarios and explaining the steps individuals must take (2 responses).

##### **ADDRESSING THE UNDERLYING CAUSES OF CRIME**

- Address issues of addiction (2 responses).
- Get a residential treatment centre.
- Address issues of mental illness and get a residential mental health / psychiatric centre.
- Create options for alternatives in sentencing and diversion.
- People need to get education (basic and advanced) to increase opportunities for work and then to support families through better food and housing.



## PUBLIC LEGAL INFORMATION

- Use plain language:
  - in all public legal information (4 response)
  - for all laws and court rules
  - in all guides for the public
- create plain language guides:
  - in different formats including print and online (especially for self-represented litigants, family law and small claims) (5 responses)
  - in official languages
  - in graphic novel format
- guides / literature:
  - should include contact information for who to call when there are questions or further info needed ...
  - discuss the interlock program, E.P.O.s, civil claim, family law, changing conditions on release documents, peace bond applications, what it means to be a surety, what options do I have after judgment is granted, child protection orders; alternative dispute resolution options.
  - may allow people to find the information that applies to them and they may be able to go over the material in private without having to ask questions.
  - Many don't even know what questions to ask. Pamphlets may help them define what their individual needs are and point them in the right direction prior to engaging a Court Clerk.
  - Increased communications to the public regarding the justice system and the legal services and avenues available.
- Judges and lawyers alike need to be taught to use clear, plain language when speaking with individuals in or about court.
- Offer CLE on using plain language in writing / speaking to the public through the Law Society
- Forms should be easy to use and easy to fill out (2 responses)
- Information sessions should be held (ie. at public library)
- Educate the general public about alternatives to the legal system to resolve their disputes
- Increase the legal component in high schools on the justice system and how to access it would increase knowledge an people would be more likely to use justice system to solve problems
- Create a legal information centre staffed part time where lawyer(s) could provide summary advice that builds on and expands the existing Tuesday afternoon walk in advice clinic (2 responses)
- In terms of family law, send lawyers to communities throughout the year, not to litigate, but to meet with clients and community members, face-to-face, and answer some questions in person

## SYSTEMIC CHANGES

- Reduce the number of circuits. Lawyers have inadequate preparation time, which leads them to default to not guilty pleas and to set matters down for trial. Often these matters collapse late, or are adjourned





late in the day, or they are run without adequate preparation. Reducing the number of circuits by a third while retaining the same number of lawyers, judges and staff would significantly improve the quality of the justice services provided to the public, and would be healthier for the quality of life of all participants.

- Allow more flexibility at the court registry – including hours of operation (presently not open early or late or during the lunch hour – makes it difficult for members of the public, or lawyers who practice in court regularly, to conduct business).
- Increase opportunities to resolve conflicts through mediation / arbitration in family and community based disputes would also assist in preventing recurrent issues (2 responses).
- Review / revise Rules of Court to:
  - Simplify processes
  - Rules and forms should all be simplified and in plain language (3 responses)
  - Review Rule 720
  - incorporate practice directions into Court Rules / align rules with current practices
  - review of court schedules to update and increase templates for prescribed forms
- Alienating formality, including gowning and use of stilted language between lawyers and judges in court proceedings should be abandoned.
- Adopt processes similar to those used in Edmonton's domestic violence court so phone calls are made to complainants prior to court appearances to provide support – telling complainants of their entitlements to Legal Aid (other supports) and if self-represented asking if they needed a ride or childcare. Prior to instituting these check in phone calls many women were not accessing lawyers or if self-represented not showing up for these appearances (and then having their EPO thrown out).
- Have better information available from the Court registry.
- Create a fully developed civil duty counsel system /expand the walk in clinic (2 responses) which includes multistage contact, including adequate translation services. A focus on preventative services will never eliminate all situations.
- Increase funding for legal aid.
- Change the existing legal aid system by:
  - offering legal aid to higher income persons
  - have a fulltime free Legal Aid Clinic
  - increasing the availability of legal aid, for instance, in Human Rights complaints
- Family matters should be addressed in a more non-traditional setting / not formal as this makes it more stressful for clients.
- End the mandatory Parenting after Separation course. It offers only general and limited information that most participants already have since most participants taking the course have already seen a lawyer.
- Offer /expand civil mediation (2 responses) program in the Small Claims Court, contract cases, landlord/tenant with trained mediators.
- Encourage lawyers to provide pro bono (2 responses) or limited retainer agreement arrangements with clients.



- Offer insurance to cover a lawyer's fees if needed in the future.

#### **INCREASE ALTERNATIVE SUPPORTS / SERVICE PROVIDERS:**

- Increase the availability and range of supports (4 responses) to people before, during and after their involvement with the justice system including:
  - Trained advocates, legal aid support for civil matters (2 responses);
  - more justice workers in the communities (3 responses);
  - trained community advocates to assist participants in quasi judicial /administrative tribunal settings, particularly where one party is not represented and the other party has counsel; and to support complainants, particularly with mental health issues or low literacy levels, who find it very difficult to access the system
- Have greater coordination between the various agencies and actors within the system so we can capitalize on our strengths.
- Have better training for court workers in communities (2 responses) – the level of knowledge of the court workers in the communities is very variable. Training should include sufficient training on the court process. They should also have regular contact with Legal Aid and the Crown's office in order to facilitate effective assistance for accused individuals.
- With regard to family law matters, where people who do not qualify for Legal Aid cannot afford to retain a lawyer, have supports such as family law counsellors who can help them fill out pleadings and complete affidavits so that they could represent themselves.

#### **OTHER**

- Have CPD and discussion amongst private practitioners on unbundling legal services and working with self-represented litigants.
- Address shortage of lawyers in the NWT (3 responses), particularly in the area of family law by increasing recruitment efforts.
- Criminal counsel/duty counsel should review file(s) with clients prior to attending court to reduce a lot of court time. Communities have very long dockets and if lawyers were to call clients prior to attending the communities, this would make their jobs easier and create fewer delays during circuit court days. Earlier contact with clients would allow more time to run scheduled trials and eliminate trials being adjourned time and time again.
- Private lawyers should have more affordable rates.
- In child protection matters parents should always be encouraged / supported / given a right to contact legal counsel (2 responses), even early on in matters to support and empower parents as well as ensure that they are apprised of their rights. There is a large power difference in these situation. Even when parents are on board with the Director's position, they should still be encouraged to consult and retain counsel.