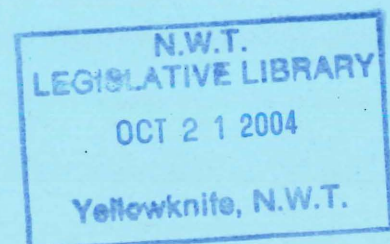
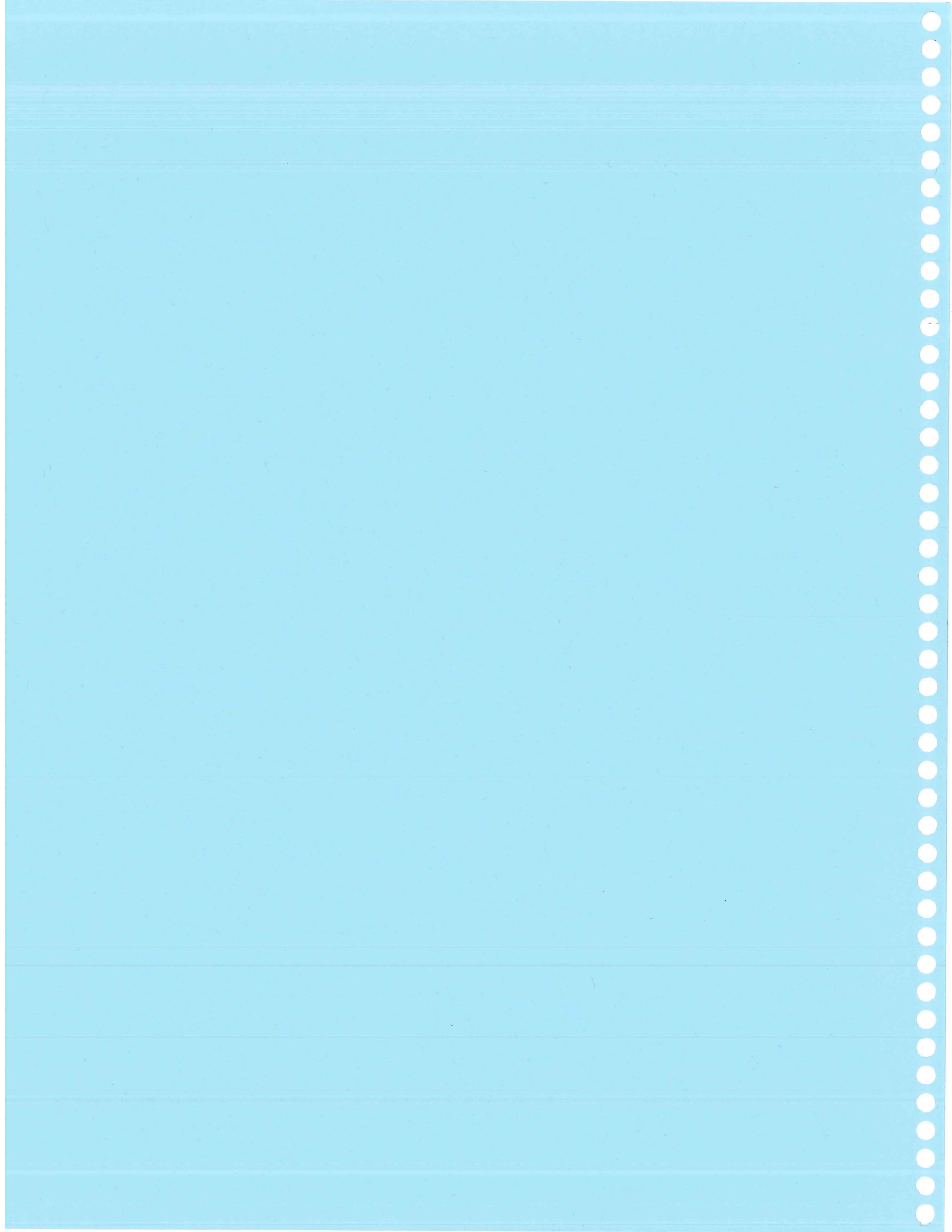


**LEGAL SERVICES BOARD
OF THE
NORTHWEST TERRITORIES**

2002 – 2003 ANNUAL REPORT





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 OF THE NORTHWEST TERRITORIES**

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Table of Contents

History of Legal Aid	Page 1
Legal Services Board	Page 1
Established as a Corporation of Law.....	Page 1
Address of the Board.....	Page 1
Legislative Objectives	Page 1
The Board of Directors	Page 2
Board Members.....	Page 2
Meetings.....	Page 2
Duties of the Board of Directors.....	Page 3
Mandate of the Board of Directors.....	Page 3
Organizational Chart	Page 4
Legal Aid Coverage	Page 5
Financial Eligibility for Adults.....	Page 5
Financial Eligibility for Youth, Minors and Infant Children.....	Page 6
Youth Matters.....	Page 6
Adult Matters – <i>Criminal Code</i>	Page 6
Civil Matters.....	Page 7
Family Law Matters.....	Page 7
Residency and Reciprocity.....	Page 8
Appeals	Page 8
Legal Aid Assignments	Page 8
Panels.....	Page 8
Choice of Counsel.....	Page 9
Circuit Counsel.....	Page 9
Regional Legal Services Centres/Clinics	Page 9
Formation of Committees.....	Page 9
Yellowknife Legal Aid Clinic Staff Lawyers.....	Page 10
Court Worker Program	Page 10

Public Legal Education & Information	Page 10
Finance and Administration	Page 10
Government Canada and Government of NWT Agreement.....	Page 10
Personnel.....	Page 11
Audits.....	Page 11
Overview of the Legal Services Board – 2002-2003	Page 11
Staff Lawyers.....	Page 11
Beaufort Delta Legal Services Clinic.....	Page 11
Executive Director.....	Page 12
Family Law Backlog.....	Page 12
Contributions by the NWT Law Society Membership.....	Page 12
Legal Aid Tariff.....	Page 12
Number of Applications Received From Court Worker Offices.....	Page 13
Number of Applications Received By Case Type.....	Page 13
Number of People Assisted Under Presumed Eligibility.....	Page 13
2002 – 2003 Financial Report	Page 14
Office Locations and Contact Numbers	Page 15

HISTORY OF LEGAL AID

The provision of Legal Aid first became a territorial responsibility in 1971 when the Federal Government transferred the responsibility for the administration of justice to the Northwest Territories. In 1971, the *Legal Services Ordinance* (now Act) established the Legal Services Board. The board is responsible for legal aid, court worker and public legal education and information services throughout the Northwest Territories. Legal services are provided, in an integrated program using staff lawyers, regional legal services clinics and private lawyers. Currently the Beaufort Delta Legal Services Society operates a clinic in Inuvik and the Legal Services Board operates a clinic in Yellowknife.

LEGAL SERVICES BOARD

Established as a Corporation of Law

The *Legal Services Act*, R.S.N.W.T. 1988, c.L-4 establishes a corporation called the Legal Services Board of the Northwest Territories. The Board reports to the Minister of Justice and is a public agency listed in Schedule A of the *Financial Administration Act*, R.S.N.W.T. 1988, c. F-4.

The cost of administering the *Legal Services Act* and providing legal services and other programs under the *Act* is paid out of moneys appropriated for these purposes by the Legislature.

Address of the Board

The head office of the Board is the 3rd Floor of the Panda II Centre, Yellowknife, NT, with a postal address of Box 1320, Yellowknife, NT X1A 2L9.

LEGISLATIVE OBJECTIVES

The objects of the Board are set out in section 7 of the *Legal Services Act*:

1. To ensure the provision of legal services to all eligible persons;
2. To ensure that the legal services provided and the various systems for providing those services are the best that circumstances permit; and
3. To develop and co-ordinate Territorial or local programs aimed at:
 - (a) reducing and preventing the occurrence of legal problems, and
 - (b) Increasing knowledge of the law, legal processes and the administration of justice.

THE BOARD OF DIRECTORS

Board Members

The members of the Board of Directors are appointed by the Minister of Justice of the Government of the Northwest Territories in accordance with section 3, of the *Legal Services Act*. The Act provides for representation on both a regional and interest basis. In accordance with that section, the 2002/03 Board was composed of the following:

Danny Beaulieu	Chairperson, Representing the South Slave Region
Margaret Mackenzie	Representing the North Slave/Treaty 11 Region
Reg Tolton	Representing the Public Service
Eric Menicoche	Representing the Deh Cho Region
Elaine Keenan Bengts	Representing the Law Society (until August 2002)
Jim Brydon	Representing the Law Society (from September 2002 – March 5, 2003)
Sheila MacPherson	Representing the Law Society (March 5, 2003 to present)
Bernice Martin	Representing Yellowknife (until August 2002)
Shirley Kisoun	Representing the Beaufort Delta Region
Clarence Wood	Representing the Beaufort Delta Region (September 2002 – December 2002)
Gilbert Thrasher	Representing the Beaufort Delta Region (March 13, 2003 to present)
Shirley Harley	Representing the Sahtu Region (until December 2002)

Meetings

The Legal Services Board of the N.W.T. met on four (4) occasions:

1. May 10-11, 2002 in Yellowknife, NT
2. June 20, 2002 in Yellowknife, NT
3. September 17, 2002 in Yellowknife, NT
4. November 15-16, 2002 in Yellowknife, NT

Duties of the Board of Directors

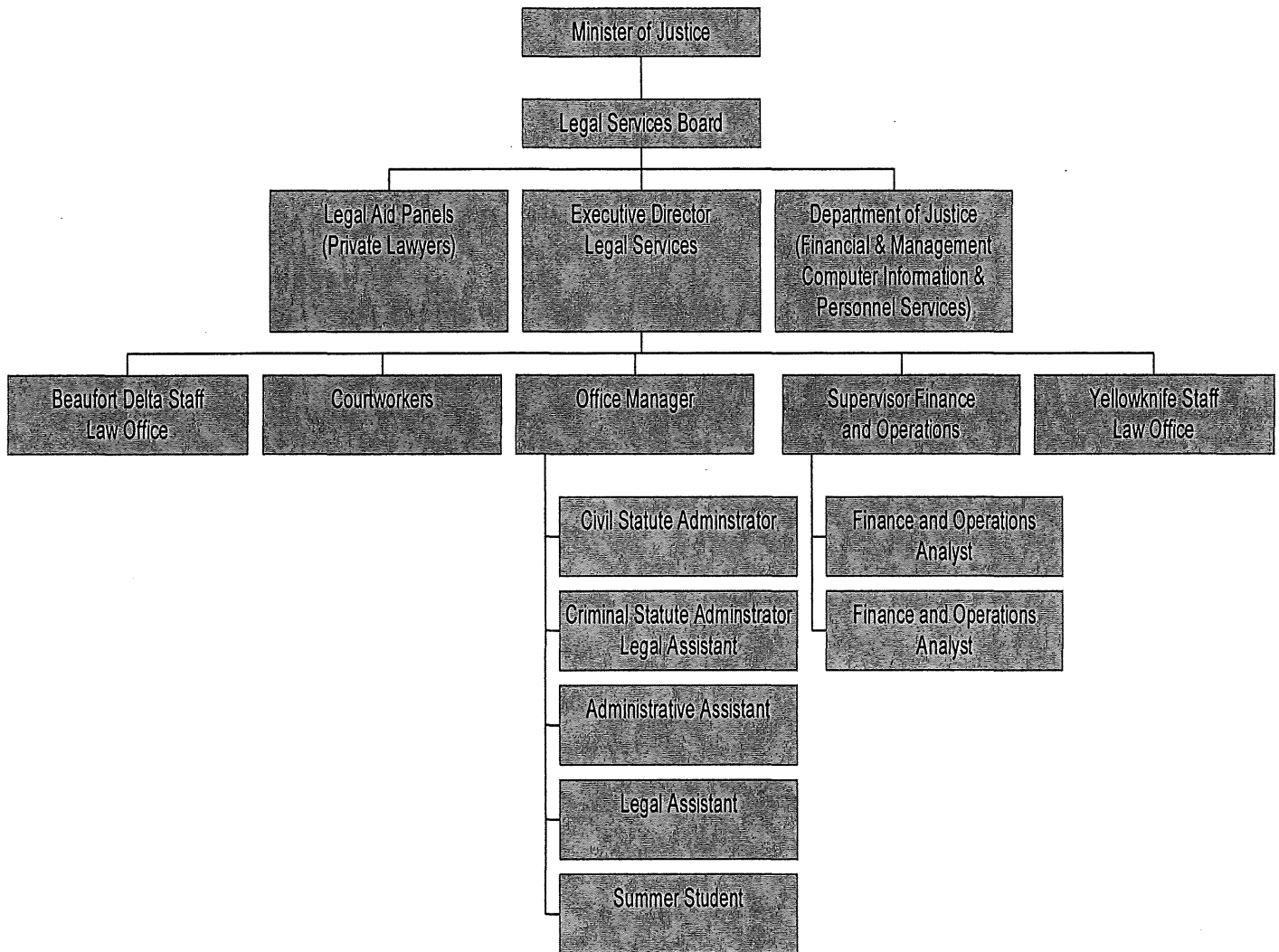
The duties of the Board are prescribed under section 8, of the *Legal Services Act*. It states that the Board shall:

1. Administer this *Act* and regulations;
2. Make every endeavor to attain the objectives of the Board;
3. Keep under review the legal services provided and performance of the regional committees;
4. Co-ordinate the provision of legal services; and
5. Publish details of the legal services available.

Mandate of the Board of Directors

The Board sets policies for the provision of legal services, arranges contracts with regional legal services clinics, hires the Executive Director, signs service contracts with lawyers who provide legal aid, maintains a panel of private lawyers for eligible clients for criminal, family, civil matters and hears appeals in cases where eligibility has been denied. The Board has additional prescribed powers under section 11, of the *Legal Services Act*.

Legal Services Board of the NWT Organizational Chart March 31, 2003



LEGAL AID COVERAGE

Legal Aid Applications

Most people who receive legal aid assistance must complete a legal aid application. The Board uses a standard form and court workers are trained to take the applications in person or by telephone. Depending upon their financial situation applicants may be required to provide detailed financial information to back up the information provided on the form. This information is used to determine an individual's eligibility for legal aid.

The exception to this process is in the area of "Presumed Eligibility" which arises only in the context of criminal law. Clients who appear in court on docket days are presumed to be eligible for legal aid and are provided assistance for preliminary or straightforward matters that duty counsel can deal with in a summary fashion. If the lawyer determines that the matter requires a preliminary inquiry, trial or a more complex sentencing, the client will be asked to apply for legal aid in order to have legal aid continue to provide counsel.

Once the application has been completed and all the required financial information has been provided the staff review the applications in detail to determine an applicant's eligibility for legal aid. When an applicant is determined to be eligible he is either assigned to duty counsel in the case of a criminal matter or goes into a rotational assignment process in the case of family and civil law matters. If an applicant is not financially eligible a notice of denial is sent to the applicant immediately. All applicants have the right to appeal a denial to the Legal Services Board.

In certain situations, the staff may determine that, using the criteria set out in the Act and Regulations, an applicant is able to make a contribution to the cost of their legal coverage. In these cases a conditional authorization for legal aid is given to the applicant. Usually applicants have a certain time period in which to make their contributions. Some applicants are assessed a contribution which is to be paid on the completion of their file as it is expected that there will be a financial gain for the client at the end of the matter. This often arises in cases involving division of matrimonial property and some wrongful dismissal cases.

Contributions and recoveries are deposited into the Government of the NWT Consolidated Revenue Fund and are not available to the Department of Justice or the Legal Services Board.

Financial Eligibility for Adults

Every applicant is required to disclose their income, assets, liabilities, expenses, including that of their spouse and any dependents before eligibility can be determined. Subject to the *Legal Services Act* and *Legal Services Regulations*, an applicant who receives all or most of her income from income support is eligible for legal aid coverage. If hiring a lawyer privately would reduce an applicant's income to

the point that he would be eligible for income support the Board may extend legal aid coverage and may require the applicant to make a contribution to the expenses.

Financial Eligibility for Youth, Minors and Infant Children

In determining whether a youth as defined by the *Young Offenders Act*, (Canada) (12 years of age but less than 18 years of age) or a minor within the meaning of the *Age of Majority Act*, is eligible for legal aid, the Legal Services Board does and must consider the financial eligibility criteria of the youth's parents or guardians. The Board does, however, apply flexible rules and policies when making a determination. For example, if a youth or minor's interests conflict with that of the parent(s) then the Board will extend coverage.

The Legal Services Board has an arrangement with the Superintendent of Child and Family Services to recover the costs of appointing legal counsel for children when the court has ordered that the children require their own lawyer.

Youth Matters - *Young Offenders Act* (Canada), *Young Offenders Act* (N.W.T)

Legal services are provided to eligible youth who are charged with offences under the *Criminal Code* and who are required to make an appearance before a Territorial Youth Court Judge or if a matter is brought before the NWT Supreme Court or Court of Appeal. On occasion, legal aid coverage may be extended to cover matters in the Justice of the Peace Court. As stated earlier, the provision of legal aid services is contingent upon the applicant maintaining financial eligibility.

Legal aid coverage is not provided for youth for criminal or other statutory offences where the matter(s) are proceeding by way of summary conviction unless:

1. There is a reasonable possibility that upon conviction the youth may be incarcerated by way of open or closed or secure custody;
2. There is a reasonable possibility that upon conviction, the youth's livelihood may be prejudiced; or
3. There exists in the opinion of the Executive Director, special circumstances.

Adult Matters – *Criminal Code*

Although an applicant may be financially eligible for legal aid, the Board or Executive Director can refuse to provide legal aid coverage for certain offences set out in the Act and Regulations:

1. First offence impaired driving charges unless there are combined *Criminal Code* charges;

2. Offences under the *Motor Vehicle Act* unless the charges are second or subsequent offences for careless driving;
3. Summary conviction offences where the accused has already been approved for legal aid three times for summary conviction offences during the past year;
4. Summary conviction offences where the accused has been ordered by the Board to contribute to the cost of legal aid and has not done so; and
5. For the offence of consuming liquor by a minor under the *Liquor Act*, unless there are charges under the *Criminal Code* or *Liquor Act* arising out of the same set of circumstances.

Civil Matters

The *Act* authorizes the provision of legal aid services on a discretionary basis for all civil matters except civil cases that involve issues concerning: defamation; estates of living or deceased persons; incorporations, formation or dissolution of companies, societies or partnerships; real property transactions; realtor (a person or body claiming to be entitled to restrain interference with a public right) or representative actions; arbitrations or conciliations in respect of any matter; proceedings related to elections; and any other prescribed matter. The Executive Director may refuse to authorize legal aid if the aid requested is of a civil nature in which a lawyer would ordinarily act on a contingency basis.

In addition, legal aid may be extended to an individual consisting of the commencement, defence or continuation of proceedings in a civil matter if a lawyer in a written legal opinion states that it is reasonable in the circumstances for the proceedings to be commenced, defended or continual.

Examples of civil related matters that have received legal aid coverage are: Worker's Compensation appeal; residential tenancy appeals, etc.

Family Law Matters

Generally, legal aid is provided to eligible applicants in matters that involve family breakdowns. However, legal aid coverage is not provided for a divorce when there are no associated issues concerning maintenance, child custody, and access, or for division of property unless there are exceptional circumstances.

Once an application has been made for legal aid assistance involving a family law matter, a request goes out to one of our family/civil law panelists for a legal opinion. The writer must advise the Legal Services Board as to the merits of the matter. If the opinion is that there is not merit in proceeding with the matter, the applicant will be provided with a Notice of Denial of Legal Aid with an explanation.

Some examples of family law matters that have received approval are: paternity declarations; child maintenance; access and custody of children; maintenance variations from the perspective of the custodial and non-custodial parents; divorces that are not exempted; and restraining orders to name a few.

Residency and Reciprocity

Subject to section 44, of the *Legal Services Act*, a person not ordinarily resident in Canada is not eligible for legal aid coverage.

The Legal Services Board of the NWT is a participant in the Inter Provincial Reciprocity Agreement that allows legal aid coverage to be extended to an applicant for a civil or family matter arising in another Canadian jurisdiction.

An applicant who resides in the NWT may apply for legal aid in the event that he or she becomes involved in a matter elsewhere in Canada. The legal aid application is processed and eligibility is determined in the NWT and the file is forwarded to the legal aid office in the other jurisdiction. As long as the other jurisdiction covers the type civil or family case that legal aid program will provide legal services. Likewise the NWT program will cover civil and family matters in the NWT for a non-resident eligible applicant.

APPEALS

There are a number of situations in which an applicant or a lawyer has a right of appeal from a decision made by the Executive Director. If an applicant is denied legal aid because it was determined that she is not financially eligible, the matter is not covered or there has been an opinion that there is no merit in the application or if an applicant client is assessed a contribution, she can appeal the decision by providing written notice of her intention to appeal and the Executive Director shall bring the matter before the Board for an appeal hearing.

Lawyers also have the right to appeal the Executive Director's taxation of an account. Written notice is required and the Executive Director is required to bring the matter to the Board for an appeal hearing.

LEGAL AID ASSIGNMENTS

Panels

The *Legal Services Act* requires work to be assigned to members of the Panel in rotation on a fair and equitable basis. An applicant who is approved for legal aid is assigned a lawyer from the legal aid panel by the Executive Director. Lawyers located in communities other than Yellowknife are given priority for legal aid assignments in their community and the surrounding area because it is economically practical to do so. The eligible recipient does not have the right to choose a lawyer to represent them with one exception.

Choice of Counsel

The choice of counsel exception is for those charged with offences for which the maximum penalty, if convicted, is life imprisonment. There is however no choice of counsel where the applicant is charged with a break and enter under the *Criminal Code* or a trafficking offence under the *Narcotic Control Act* where life imprisonment is the maximum sentence. An applicant who has choice of counsel can choose any lawyer resident in the Northwest Territories who is willing and able to take the case.

Circuit Counsel

The *Legal Services Act* requires the Board to have at least one lawyer (circuit counsel) accompany the Supreme and Territorial Court on all circuits where a lawyer may be required for the delivery of legal aid on the circuit. In addition, duty counsel is assigned to the sittings of the Territorial Court in Yellowknife, Hay River, and Inuvik. Applicants for such services are subject to the same criteria as all other applicants who need legal services.

REGIONAL LEGAL SERVICES CENTRES/CLINICS

Formation of Committees

The *Legal Services Act* provides that the Legal Services Board may appoint "regional legal services committees" to provide legal services and court worker services in the various regions of the Territories. These "committees" are known as legal services clinics, legal services centers, law centers or legal aid clinics.

Only one regional legal services committee received contribution payments from the Legal Services Board in 2002/2003, the Beaufort Delta Legal Services Society. This incorporated society had a contract with the Legal Services Board which provided funding and delegated some responsibility for the provision of legal services to that particular region. It is the Legal Services Board's responsibility to oversee the operation of the clinic. Contribution payments are public funds for which there is full accountability to the Legal Services Board and the Department of Justice.

The society had court worker positions in Inuvik, Fort McPherson, Tuktoyaktuk and Holman.

Policy dictates that the Legal Services Board hire the Lawyer/Director on direct contract to the Board and assign these lawyers to the regional legal services clinics. Recruitment and hiring is done in partnership with the clinics.

Yellowknife Legal Aid Clinic Staff Lawyers

In 2002/2003, a law office was maintained within the Board's office in Yellowknife. The Staff lawyers provided legal aid services, mostly in criminal law, in the Yellowknife area, Rae-Edzo, Wha Ti, Rae Lakes, Snare Lake and Luksel'ke.

COURT WORKER PROGRAM

In the Northwest Territories, court workers provide a wide range of assistance to people who have legal and justice problems. Usually they deal with people in their own language. They provide information and referrals as well as assist people in applying for legal aid by filling out legal aid application forms and conveying them to the Legal Services Board. Court workers also act as paralegals and represent individuals who do not have a lawyer. They advocate in Justice of the Peace Court, Youth Court, and Territorial Court in bail hearings, guilty pleas, and sentencing and in some cases, trials.

The federal government provides a major financial contribution for the Court Worker Program. The amount of this fiscal year's contribution amounted to \$164,218.

PUBLIC LEGAL EDUCATION & INFORMATION

Effective April 1, 1996, the Legal Services Board assumed responsibility for Public Legal Education and Information in the Northwest Territories. Since that time, public legal information has been disseminated in a number of manners, both formally and informally.

The most obvious manifestation of our efforts is the Law Line, a call-in information line staffed by local lawyers. The service operates Tuesday and Thursday evenings, from 6:00 to 8:30 pm and is available toll-free to residents of the Northwest Territories and Nunavut. Volunteer lawyers are provided with a reference binder, and are asked to limit their responses to basic legal information, rather than providing legal advice.

The staff and lawyers at our legal aid clinics routinely provide basic legal information. In addition, we publish a variety of pamphlets which provide information regarding individual rights and remedies, court proceedings, and local resources which are available to our clients.

FINANCE AND ADMINISTRATION

Government of Canada and Government of NWT Agreement

The legal aid needs of the NWT resident population is financially supported by the Federal Government's Access to Justice Agreement.

The Access to Justice Agreement has three components:

1. Legal Aid Program
2. Court Worker Program
3. Public Legal Education and Information Program.

The Federal contributions under the Access to Justice Agreement are placed on deposit in the Government of the NWT's Consolidated Revenue Fund and is consequently not available to the Department of Justice or the Legal Services Board.

Personnel

The employees of the Legal Services Board are appointed and employed under the *Public Service Act* and are public servants in the Department of Justice. Consequently, the Legal Services Board is subject to the provisions of the Human Resources Manual of the Government of the Northwest Territories. The Finance and Administration Division of the Department of Justice provide personnel services to the Board. It is the responsibility of the Board to consider what employees are necessary for the proper conduct of the Board's business.

The staff lawyers employed by the Board, including the Executive Director, are contract employees of the Board.

Audits

Because the Board does not hold separate funds, it is not audited separately from the Department of Justice. The Territorial Audit Bureau audits both the Board and the Department of Justice for compliance with the Territorial/Canada legal services agreements.

OVERVIEW OF THE LEGAL SERVICES BOARD - 2002-2003

Staff Lawyers

The Legal Services Board has traditionally hired Legal Aid Staff lawyers on a private contract basis. The contracts were renewed every year or every second year depending on the circumstances. The contracts did not provide medical, dental or other standard benefits. After the Board received recommendations from government sources, the Board resolved to move towards including staff lawyers as employees pursuant to the *Public Service Act*. This initiative was developed this year to take effect as of April 1, 2003. Hiring of staff lawyers from that point on would be the responsibility of the Executive Director.

Beaufort Delta Legal Services Clinic

The Legal Services Board contributes to the operations and maintenance costs of the Beaufort Delta Legal Aid Centre which is operated by the Beaufort Delta Legal

Services Society. The Society runs an office in Inuvik with two (2) staff lawyers, one court worker and one administrative staff member. In addition there are three (3) court workers located in other communities in the region. In order to consolidate legal services, work was undertaken during this fiscal year to have all Beaufort Delta Legal Aid Clinic employees become members of the Public Service and employees of the Legal Services Board as if April 1, 2003.

Executive Director

This position was vacated in early 2002. The Board appointed an interim acting Executive Director and formed a Personnel Committee to begin searching for and recruiting a new Executive Director. The position was filled in February 2003.

Family Law Backlog

The family law backlog continued to present problems and continuing efforts were made to reduce the number of files outstanding.

Contributions by the NWT Law Society Membership

The Legal Services Board is very appreciative of the contribution made by the members of the private bar. Private lawyers frequently work long hours for a fixed per diem rate. Many lawyers provide immediate assistance to individuals who are not subsequently approved for legal aid. Private lawyer volunteers serve on the Law Line operated by the Board. Many lawyers take telephone calls at all hours of the day and night from individuals who have been arrested or need other emergency advise. For this work, the Board thanks the members of the private bar.

Legal Aid Tariff

<u>Experience</u>	<u>Hourly Rates</u>	<u>Daily Rates</u>
Student at law	\$46	\$237
Less than 4 years	\$70	\$405
4-6 years	\$81	\$501
7-10 years	\$99	\$593
11 & more years	\$117	\$700

The rates are the same regardless of the level of court.

Number of Applications Received From Court Worker Offices

Origin of Application	2001/2002	2002/2003
Provinces & Territories	23	8
Beaufort Delta Region	240	272
Ft. Good Hope (Sahtu Region)	54	24
Ft. Smith (South Slave Region)	82	117
Hay River Office (South Slave Region)	155	175
Rae-Edzo (N. Slave/Treaty 11 Region)	53	93
Fort Simpson (Deh Cho Region)	18	60
Yellowknife	518	625
Total	1146	1374

Number of Applications Received By Case Type

Adult Criminal	479	626
Youth Criminal	57	86
Family	569	609
Civil	41	53

Number of People Assisted Under Presumed Eligibility

Counsel	Adult	Youth	Show Cause	Total
Beaufort Delta – Staff Lawyers	523	199	18	740
Yellowknife – Staff Lawyers	123	32	8	163
Legal Aid Panel Lawyers	1493	594	201	2288
Total	2139	825	227	3191

2002/2003 Financial Report

ITEM	Actual Expense	Revised Budget	Year Variance
Legal Services Board Administration			
Staff Wages and Benefits	423,538	377,700	(45,838)
Executive Director - total costs	230,754	165,000	(65,754)
Total Office	31,110	168,000	136,890
Total Administration	685,403	710,700	25,297
Court Workers			
Staff Wages and Benefits	462,829	480,000	17,171
Total Office	47,558	117,000	69,442
Total Court Workers	510,388	597,000	86,612
Board Costs			
Honoraria	14,200	-	(14,200)
Travel, Accommodation, Meals	21,609	50,000	(28,391)
Interpreters	-	-	-
Other	-	-	-
Total Board Costs	35,809	50,000	14,191
Public Legal Education			
Lawline	6,051	10,000	3,949
Projects	1,705	-	(1,705)
Other	845	-	(845)
Total Public Legal Education	8,601	10,000	1,399
Yellowknife Staff Lawyer Office			
Administration	22,184	65,000	42,816
Contributions to Clinics			
Beaufort Delta	300,000	300,000	-
Total Contributions	300,000	300,000	-
Admin Support to Clinics	10,388	40,000	29,612
Staff & Clinic Lawyers	473,664	483,000	9,336
Legal Aid Fees & Disbursements	1,717,485	1,352,000	365,485
SUB – TOTAL	3,763,921	3,607,700	(156,221)
TOTAL	3,763,921	3,607,700	(156,221)

OFFICE LOCATIONS AND CONTACT NUMBERS

Legal Services Board of the NWT

Panda II Centre – 3rd Floor
P.O. Box 1320
Yellowknife NT X1A 2L9
Tel: (867) 873-7450
Fax: (867) 873-5320

Legal Aid Staff Law Office

Panda II Centre – 3rd Floor
P.O. Box 11028
Yellowknife NT X1A 3X7
Tel: (867) 873-7450
Fax: (967) 873-0526

Beaufort Delta Legal Services

151 MacKenzie Road
P.O. Box 1100
Inuvik NT X0E 0T0
Tel: (867) 777-2030
Fax: (867) 777-3211

Hay River Court Worker

105 – 31 Capital Drive
Hay River NT X0E 1G2
Tel: (867) 874-2475
Fax: (867) 874-3435

Rae Court Worker

General Delivery
Rae NT X0E 0Y0
Tel: (867) 392-6386
Fax: (867) 392-6387

Fort Smith Court Worker

P.O. Box 170
Fort Smith NT X0E 0P0
Tel: (867) 872-2759
Fax: (867) 872-3602

Yellowknife Court Worker

P.O. Box 1320
Yellowknife NT X1A 2L9
Tel: (867) 873-7450
Fax: (867) 873-5230

Fort Simpson Court Worker

P.O. Box 178
Fort Simpson NT X0E 0R0
Tel: (867) 695-7315
Fax: (867) 695-7355

Tuktoyaktuk Court Worker

P.O. Box 200
Tuktoyaktuk NT X0E 1C0
Tel: (867) 977-2260
Fax: (867) 977-2154

Fort McPherson Court Worker

P.O. Box 304
Fort McPherson NT X0E 0J0

Holman Island Court Worker

P.O. Box 157
Holman Island NT X0E 0S0
Tel: (867) 396-3511
Fax: (867) 396-3256

Inuvik Court Worker

P.O. Box 1100
Inuvik NT X0E 0T0
Tel: (867) 777-2030
Fax: (867) 777-3211

Fort Good Hope Court Worker

P.O. Box 239
Fort Good Hope NT X0E 0H0
Tel: (867) 598-2762
Fax: (867) 598-2525

