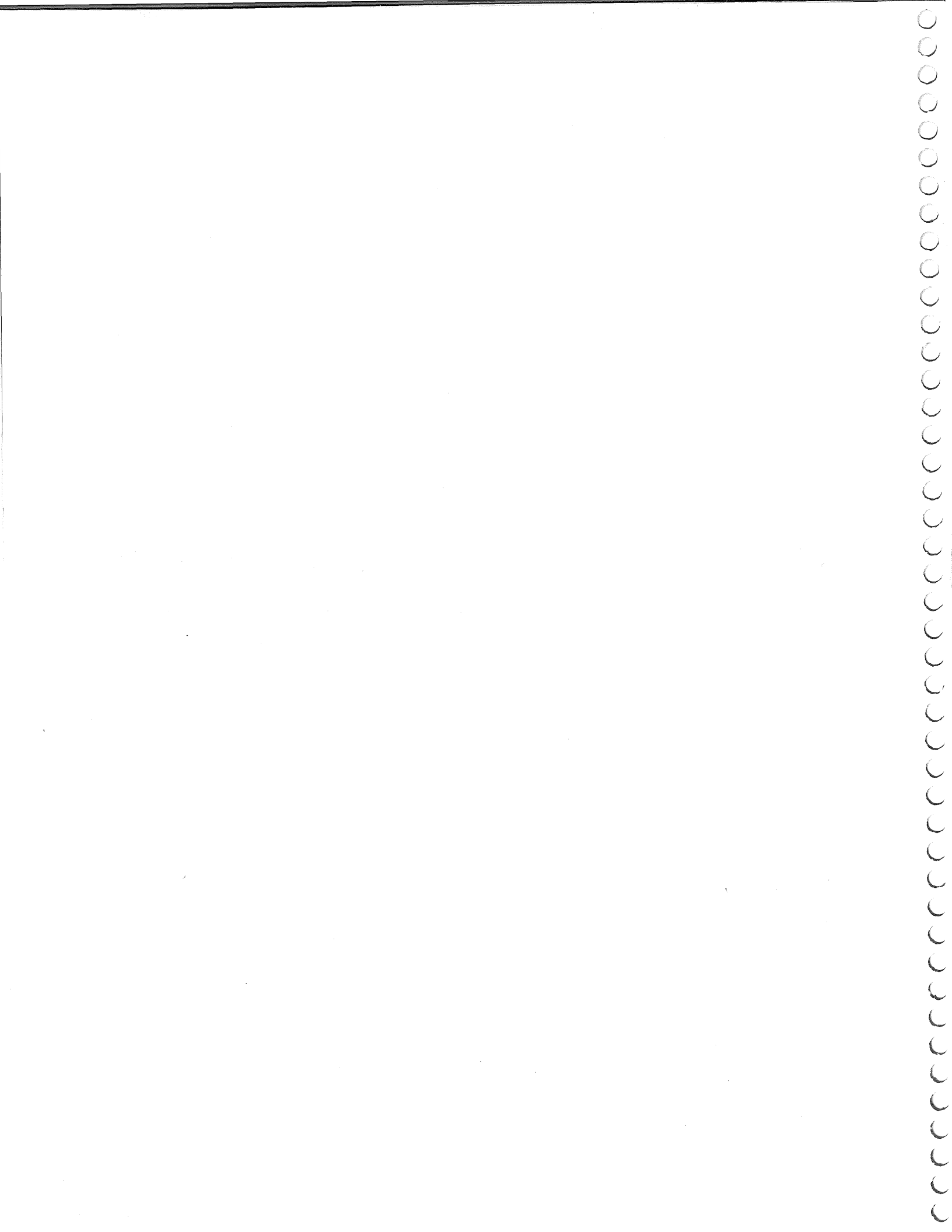


**LEGAL SERVICES BOARD
OF THE
NORTHWEST TERRITORIES**

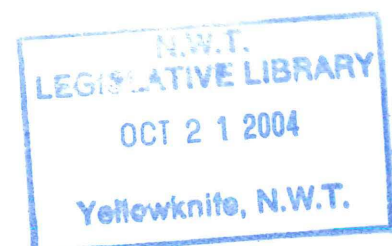
2003 – 2004 ANNUAL REPORT





**LEGAL SERVICES BOARD
OF THE
NORTHWEST TERRITORIES**

2003 – 2004 ANNUAL REPORT



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OF THE NORTHWEST TERRITORIES**

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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. While the Board has, over the years, operated regional legal services clinics throughout the Northwest Territories and what is now Nunavut, there are currently no regional committees. The Board does operate a legal aid 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*, RSNWT 1988 c. F-4.

Funding for the Legal Services Board

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. The GNWT receives funding for legal aid programs, aboriginal court workers and public legal education, through the Access to Justice Agreement with the Federal Government. The most recent funding agreement was effective April 1, 2003 and provides for base funding of \$1,569,595 for these three areas and additional monies through an Investment fund in the amount of \$402,732. The Investment Fund is special funding provided over a three year period starting April 1, 2003 to meet unmet needs in Legal Aid services through innovation. The base funding has been reduced from previous levels. Any deficit in the Legal Services Board budget is covered by monies appropriated 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 2003/04 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
Sheila MacPherson	Representing the Law Society
Karen Hoeft	Representing Yellowknife Region
Shirley Kisoun	Representing the Beaufort Delta Region
Gilbert Thrasher	Representing the Beaufort Delta Region
Judy Tutcho	Representing the Sahtu Region



Meetings

The Legal Services Board of the N.W.T. met on five (5) occasions:

1. April 4-5, 2003 in Yellowknife
2. September 4-5 2003 in Inuvik.
3. December 12, 2003 in Yellowknife
4. February 14, 2004 in Yellowknife (special meeting)
5. March 20-21, 2004 in Yellowknife

Duties of the Board of Directors

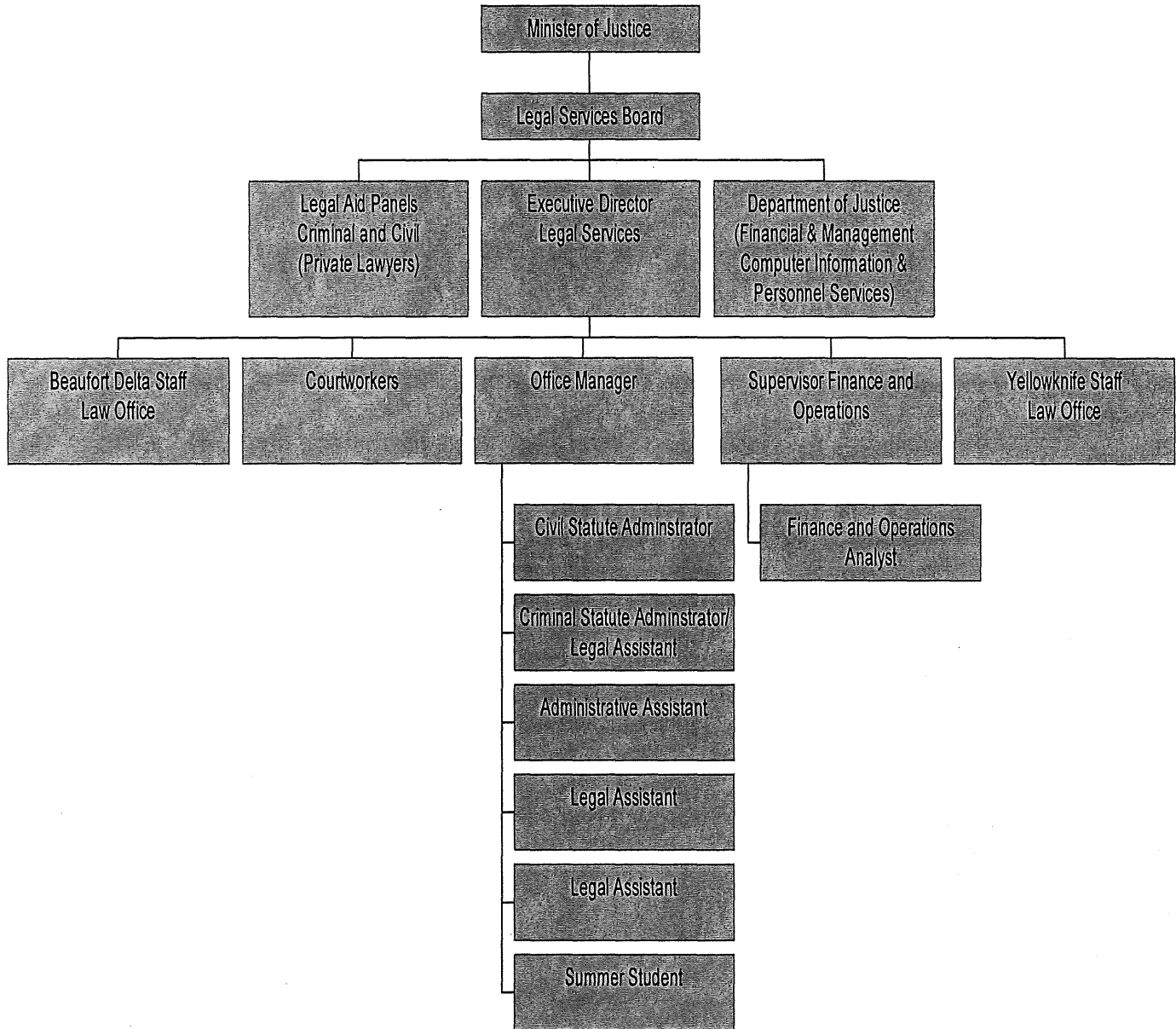
The duties of the Board are prescribed under section 8, of the *Legal Services Act*. It states that the Board shall:

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, 2004



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 – Youth Criminal Justice Act (Canada) Youth Justice Act (NWT)

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.

While the *Act* provides that 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. Pursuant to Board policy these matters are not covered except in unusual circumstances at the discretion of the Executive Director.

Examples of civil related matters that have received legal aid coverage are: Workers Compensation appeals, residential tenancy appeals, and wrongful dismissal in certain cases.

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.

After 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: 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 of civil or family case their 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. The Executive Director assigns to approved applicants, a lawyer from the legal aid panel. 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 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 are assigned to the sittings of the Territorial Court in Yellowknife, Hay River, 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.

The Board currently has no such committees.

Yellowknife Legal Aid Clinic Staff Lawyers

The Yellowknife clinic continues in operation with two family lawyers and two criminal lawyers. The staff criminal lawyers provided legal aid services in the Yellowknife area, Rae-Edzo, Wha Ti, Rae Lakes, Snare Lake and Luksel'ke and on occasion in other communities. The family lawyers provide services to clients across the territory.

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 within the Access to Justice Agreement. The amount of this year's contribution amounted to \$198,173.

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.

Basic legal information is routinely provided by the staff and lawyers at our legal aid clinics, on an on-going basis. 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

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 Human Resources Division of the Department of Justice provides 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.

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 - 2003-2004

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*. The Board had one lawyer who remained on contract until February 2004 at which time she became a permanent employee and member of the public service. By the end of the year all staff lawyers were members of the public service. Staffing is now the responsibility of the Executive Director.

Federal Funding Initiatives

In addition to its base funding the Board, through the Department of Justice, obtained funding under the Investment Fund to assist with meeting unmet needs for the period 2003 to 2006. Unmet needs were identified in seven initial areas for the first year with the flexibility to shift to new areas over the life of the agreements.

The seven areas are:

- Access to Legal Aid in rural and remote areas
- Making the Beaufort Delta Court Workers members of the public service
- Making staff lawyer's members of the public service
- Recruiting, hiring and retaining family staff lawyers
- Investing in computer hardware and software
- Official language services
- Recruit hire and retain an Investment Fund Resource Officer

At the end of one year of the funding cycle the Board has reported to the Federal Government and satisfied all reporting requirements under the Investment Fund Agreement. The Board has been able to address all the unmet needs over the past year using the funds.

Beaufort Delta Legal Services Clinic

The Legal Services Board ceased contributing to the operations of the Beaufort Delta Legal Services Society as of March 31, 2003 and all employees were moved into the public service under the direction of the Executive Director of the Legal Services Board. The Beaufort Delta Legal Aid Clinic is staffed with one family lawyer, one criminal lawyer, one court worker and an administrative assistant. There are three other court workers providing services in the Beaufort Delta Region. All these employees report to the Executive Director of the LSB. The Beaufort Delta

Legal Services Society continued in existence but had no mandate with respect to the legal aid clinic.

Executive Director

This position was vacated in February 2004. The Board immediately appointed an Acting Executive Director.

Family Law Backlog

The family law backlog continued to present problems and continuing efforts were made to reduce the number of files outstanding. Preliminary work was started to look into the possibility of establishing a separate family law clinic to assist with the backlog.

Contributions by the NWT Law Society Members

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 advice. 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

<u>Origin of Application</u>	<u>2002/2003</u>	<u>2003/2004</u>
Provinces & Territories	8	15
Beaufort Delta Region	272	312
Ft. Good Hope (Sahtu Region)	24	39
Ft. Smith (South Slave Region)	117	110
Hay River Office (South Slave Region)	175	179
Rae-Edzo (N. Slave/Treaty 11 Region)	93	74
Fort Simpson (Deh Cho Region)	60	89
Yellowknife	625	704
Total	1374	1522

Number of Applications Received By Case Type

Adult Criminal	626	766
Youth Criminal	86	62
Family	609	633
Civil	53	61

Number of People Assisted Under Presumed Eligibility

<u>Counsel</u>	<u>Adult</u>	<u>Youth</u>	<u>Show Cause</u>	<u>Total</u>
Beaufort Delta – Staff Lawyers	334	113	3	450
Yellowknife – Staff Lawyers	234	51	32	317
Legal Aid Panel Lawyers	1328	368	139	1835
Total	1896	532	174	2602

2003/2004 Financial Report

ITEM	Actual Expense	Revised Budget	Year Variance
Legal Services Board Administration			
Staff Wages and Benefits	441,545	331,000	(110,545)
Executive Director - total costs	130,661	145,000	14,339
Total Office	65,304	70,000	4,696
Total Administration	637,509	546,000	(91,509)
Court Workers			
Staff Wages and Benefits	832,140	807,000	(25,140)
Total Office	103,263	117,000	13,737
Total Court Workers	935,404	924,000	(11,404)
Board Costs			
Honoraria	25,013	25,000	(13)
Travel, Accommodation, Meals	10,346	25,000	14,654
Interpreters	-	-	-
Other	-	-	-
Total Board Costs	38,361	50,000	11,639
Public Legal Education			
Lawline	5,716	10,000	4,284
Projects	1,992	-	(1,992)
Other	845	-	(845)
Total Public Legal Education	8,553	10,000	1,447
Yellowknife Staff Lawyer Office			
Administration	55,557	65,000	9,443
Staff & Clinic Lawyers	697,457	543,000	(163,457)
Legal Aid Fees & Disbursements	1,574,061	1,972,000	397,939
SUB - TOTAL	3,946,901	4,101,000	154,099
TOTAL	3,946,901	4,101,000	154,099

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

