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To: Standing Committee on Justice and Human Rights

From: Mark Mossey, Executive Legal Officer to Chief Justice Neil Sharkey,
Nunavut Court of Justice

CC:

Date: 1/30/2018

Re: ***A study of counselling and other mental health supports for jurors:
identifying the various sources of stress arising at every stage of jury
duty in Nunavut.***

Introduction

In advance of my February 6, 2018 attendance before the Standing Committee on Justice and Human Rights (the “Committee”), please accept this memorandum as a written presentation of the information I plan to provide to the Committee.

As my invitation emanated from my position with the Nunavut Court of Justice where I am employed as Executive Legal Officer to Chief Justice Neil Sharkey, for this memorandum to earn credibility I thought it essential to canvass a wide range of justice stakeholders in Nunavut who could relay experiences they have had with juries and the stresses jurors were observed to take on as a result of their participation in trials in Nunavut¹. To this end, I solicited input from members of

¹ I have appeared as counsel on one matter involving a jury in Nunavut, that being a Coroner’s Inquest in Igloolik in 2014 during my time as poverty lawyer with legal aid. While the inquest jury was not tasked with finding guilt or innocence, the emotional toll on the jury members was apparent and consistent with experiences others have observed with criminal juries. I have been advised by



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Nunavut's judiciary, Crown counsel, the legal aid defence bar, private practitioners, Court clerks and Deputy Sheriffs. The input was forthcoming, detailed and consistent, providing comfort that what will follow is a fair portrayal of some of the contributors to juror stress in Nunavut. Those canvassed, who I thank greatly, were universally appreciative of the opportunity to provide insight into this very significant issue facing the justice system in Nunavut.

Background: Nunavut's Uniqueness

Tasked with the jurisdictional responsibilities of both a territorial and superior court by the *Nunavut Act*, SC 1992, c. 28, the Nunavut Court of Justice (NCJ) is Canada's only single level trial court. The NCJ is also Canada's only true circuit court. With one permanent courthouse located in Iqaluit, the NCJ travels to all twenty-four (24) of Nunavut's communities² each year to hold court locally. Depending on the size of the community, the NCJ will visit each hamlet to hold court between 2 and 7 times annually. Due to the volume of files before the NCJ, each calendar week can see as many as six (6) circuit court weeks being scheduled (3 in the Courthouse in Iqaluit in addition to 3 in the communities). In 2016, the NCJ spent sixty three (63) weeks sitting in Nunavut's communities.³ In addition to circuit weeks, judges of the NCJ also preside over a high number of jury trials each year. In 2016, 26 jury trials were scheduled to take place in Nunavut with 12

the Department of Justice that the Department of Health provides access to mental health workers during inquests for jurors to consult. Nunavut does not offer the benefit of unfamiliarity due to its small population and isolated communities. It is inevitable that jurors will have an emotional connection to the matter on trial.

² When "communities" is used throughout this paper I am referencing communities other than Iqaluit.

³ The Nunavut Court of Justice Annual Report, December 19, 2017, A Statistical and Comparative Review of Court Operations in Nunavut 2016. See Chart 5.3 for Number of Scheduled Circuits, 2016.



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proceeding to trial.⁴ In 2017, preliminary data shows the NCJ saw the number of jury trials scheduled increase to 31.

The unique challenges of administering justice in Nunavut were recently touched upon by Justice Paul Bychok in a decision relating to a *Jordan* application for delay:

“Nunavut sprawls over the northern two-thirds of Canada’s vast landmass. Our 38,000 people live in 25 remote communities scattered over Nunavut’s 2,093,190 square kilometres. Since the days of Justice Jack Sissons, we have striven to make justice accessible to everyone, no matter where they live.

The Nunavut Court of Justice is based in Iqaluit and it travels regularly to each one of the other 24 far flung communities. Distances between our communities are immense: Kugluktuk is 3,392 kilometres from Iqaluit. Arctic Bay is 1,229 kilometres from Iqaluit. To get to five of our communities, the Court must stay overnight in Yellowknife. To get to Sanikiluaq, we must travel via Montreal. Flight times alone to western Kitikmeot can consume up to seven hours. Not surprisingly, the Court’s travel budget alone for 2016-17 was \$2,486,000.”⁵

As will be discussed below, remoteness, a small and dispersed population, an increased use of jury trials and infrastructure and financial concerns add to what is already a stressful situation for Nunavummiut who sit on criminal jury trials.

Contributing to the Stress

When the NCJ sits in communities outside of Iqaluit, court is not held in a formal, purposed court room. The NCJ primarily utilizes community halls, hotel boardrooms and school gymnasiums to hold court in Nunavut’s hamlets. Justice Bychok, in *Anugaa*, described the facilities the NCJ uses during circuits and the less than ideal conditions that come along with same:

⁴ See 2016 Annual Report, Supra Note 2.

⁵ *R. v. Anugaa*, 2018 NUCJ 2, Justice Paul Bychok.



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“There is only one courthouse in Nunavut and it is located in Iqaluit. Outside Iqaluit, our Court sits in school gyms, community halls and even council chambers. Many of the community halls lack functioning washrooms. Invariably every year, heating systems fail in a community hall during a circuit, leaving court participants to conduct court in their winter parkas and mittens.”⁶

While able to provide justice locally throughout the territory, the fleeting presence of the court in communities and the necessarily *ad hoc* facilities it is forced to use, was highlighted by counsel canvassed by the author as a contributing factor to jury stress. Jurors in Nunavut’s communities are not afforded comfortable jury rooms in which to deliberate. As one private counsel who responded to my request for input stated:

“The quality/lack of appropriate facilities/jury rooms causes some stress – it varies greatly from community to community – in some small communities Juries are asked to work/deliberate in less than ideal conditions.....for example, in Baker Lake – the jury room is essentially a utility closet without washrooms, windows, or comfortable chairs. It cannot be easy to work/deliberate in such conditions.”

A separate infrastructure/resource stress identified by a number of justice stakeholders, from counsel to the judiciary, was the lack of daycare facilities in the communities. As one private counsel indicated:

“Child care is not an accepted excuse for getting out of jury duty and we all know that courtrooms, usually on circuit, are filled with babies in hoods and little children running around because of difficulties getting childcare.”

A member of the judiciary also suggested to me that they had, in the past, directed Court Services, the Division of the Department of Justice that provides

⁶ See *Anugaa*, Supra Note 3, para 34.



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administrative support to the NCJ, to pay for babysitters in an effort to increase the jury pool. The effort was deemed successful on that occasion.

The childcare issue is not unrelated to broader socio-economic realities in the territory where there is high-unemployment and financial stresses add to the unique jury environment. As one counsel indicated:

“There’s also a financial component to it. Some jurors don’t have jobs, so the little bit of money they get per day is a little bonus. Some (jurors) have jobs that don’t give paid leave for jury duty to the small amount of money does not compensate for what they are actually losing.”⁷

From inadequate facilities to placing financial and family care stresses on potential jurors, it appears evident, from the input of justice stakeholders, that at baseline, prior to proceedings even commencing, jurors are presented with a stressful experience when summonsed to appear on a jury.

The plight of familiarity

Unfamiliarity is not a luxury enjoyed by Nunavummiut. If Iqaluit’s roughly 8,000 residents are taken out of the equation, Nunavut’s 24 Hamlets are populated with just fewer than 30,000 people. As one defence counsel wrote to me during this process:

⁷ In accordance with Nunavut’s Jury Fees Regulations, R-017-2009, a juror who sits on a jury for a criminal action receives \$100 per day for the first five (5) days and \$150 for the sixth and subsequent days.



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“The jury system in Nunavut is significantly different from southern counterparts in that we’re often asking people in communities whose populations are in the hundreds to sit and judge people that are their neighbors, cousins, acquaintances, etc. “

Another lawyer wrote to me and said:

“People have expressed anxiety – expressly to the Court – that they have to live with the people on trial and that may be very hard. And certainly in a community of a few hundred where everyone is related to everyone that is a real concern.”

A member of the judiciary in Nunavut echoed this sentiment in a meeting I had while writing this memorandum. During the last jury trial the judge presided over in a community the jury members were polled independently after a finding of guilt. The judge explained how during the polling each and every jury member had tears in their eyes. The judge indicated that such emotion is common after juries convict an accused in Nunavut. The judge explained this in the following way:

“communities are so small in Nunavut, it is impossible for the members of the jury to not know the accused, accused’s family or the complainant....everyone knows everyone in a small community.”

The stress a member of a criminal jury panel experiences during the actual proceeding is then compounded by the temporary presence of the Court in the communities. As one defence counsel articulated to me:

“The Court party then immediately departs the community, leaving the jurors and all community participants in the same community to deal with the fallout (if any) from the verdict. Not knowing what (if any) services are offered to juries during/after trial.”



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A representative of legal aid, in a meeting to discuss jury stresses, articulated:

“it is important to remember the legacy of residential schools and the trauma of past abuses many in the community bring with them to the jury experience. Many of the jurors sitting on a jury trial are also victims of serious crimes and hearing evidence of similar crimes adds to the juror’s stress level.”

In addition to placing anxiety on residents of a small community by summoning them to decide the fate of another community member, the low population level also leads to jury fatigue. As an example, the NCJ Sheriff’s office ordinarily summonses 250 people for each jury trial. For a community such as Pond Inlet, with a total adult population of 810, it only takes three jury trials to exhaust the entire eligible list. With an increased number of juries being elected by accused, as is their constitutional right, the jury pools in Nunavut are being taxed. Members of communities have voiced frustration to Court officers about repeated jury summons received in short intervals.

Moving Forward/Conclusion

There are significant issues adding to the stress jury members in Nunavut experience throughout the jury process. None of these appear to have easy fixes. However, the Court Services Division of the Department of Justice did advise me during this process that they are attempting to procure a new jury management system that will streamline and automate many of the jury processes. One of the components of the new management system will see an exit interview being completed by each member of a Nunavut jury. Through such interviews it is hoped Court Services will be able to compile information of juror experiences and any



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supports or resources that may be needed to ensure jurors are not left struggling in the communities once the Court party leaves.

Thank you again for providing me with the opportunity to share with you some thoughts on jury stresses in Nunavut. I will be happy to answer any questions.

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