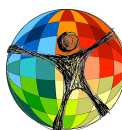


Recent Amendments to Nunavut's Liquor Act: A Sensible Approach to Alcohol Related Harm?



INTERNATIONAL HUMAN RIGHTS INTERNSHIP WORKING PAPER SERIES



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Table of Contents

About the Working Paper Series.....	2
Table of Contents	3
Preface	5
Chapter 1: The Past	7
1. The Story of Peter Joamie.....	7
2. The Story of Lucy Akpalialuk.....	8
3. The History of the Liquor Act.....	10
4. Describing the Harm	12
Chapter 2: The Present.....	16
1. Re-Telling the Story of Peter Joamie	16
2. Re-Telling the Story of Lucy Akpalialuk.....	18
3. The Nunavut Liquor Act: Addressing the Harm?	21
4. What We Heard: The “Inuit Way”	23
5. What We Suggested: The Task Force’s Final Report.....	25
6. What Was Done: The Passing of Bill 64	26
Chapter 3: The Future	31
1. Inuit Qaujimajatuqangit (IQ): An Intelligent Way Forward.....	31
2. Defining Traditional Inuit Conceptions of Law.....	32
3. A New Liquor Act that Reflects IQ	36
4. The Moral of the Story of Peter Joamie: The Problem of Focusing on Crime and Punishment.....	39
5. The Moral of the Story of Lucy Akpalialuk: The Problem of Favoring Individual Over Collective Rights	40
Epilogue	43
Bibliography	45

Articles	45
Books	45
Reports.....	46
Cases.....	46
Government Documents.....	47

Preface

Maybe we can talk in the interval between now and arrival. You are getting advice about clothes and weather? In terms of necessities, my house is well stocked with dishes pots pans etc. Unless you have a favorite cooking device you probably do not need to bring anything in that vein. There are three "major" grocery stores here but food is all flown in or brought in by ship so freshness is iffy. I am of the opinion that there is a current drought of good coffee beans in town as beans are being supplanted by Keurig(sp?) type dispensers...I do not know if you drink but you need to comprehend the arcane rules here if you do.¹

A federal prosecutor sent me this email shortly before my arrival in Iqaluit. The prosecutor was housing me for the summer, and this was my first introduction to Nunavut's Liquor Act² and alcohol in the territory. Later that summer, while working at Nunavut Legal Aid, I saw many people harmed by alcohol misuse. Most of the criminal files that I worked on seemed to involve alcohol and violence in some way. And while most people in Iqaluit drank responsibly, alcohol seemed to be a problem.

At the end of the summer a lawyer asked me to research legal issues pertaining to the Liquor Act. He was representing Lucy Akpalialuk, a young woman who had been arrested under the Act for bootlegging. Her lawyer was preparing a Charter application. Had Lucy Akpalialuk's rights against unreasonable search and seizure and arbitrary detention been violated? And if so, what remedy could she hope to receive? Around this same time the Nunavut Legislative Assembly was debating Bill 64, An Act to Amend the Liquor Act. Many

¹ Personal communication with a Nunavut federal prosecutor (April, 2013).

² Liquor Act, R.S.N.W.T. 1988, c. L-9 as duplicated for Nunavut by s.29 of the Nunavut Act, S.C. 1993, c.28 [Liquor Act].

Nunavummiut³ were eager for the Act to pass as it would liberalize the liquor laws and allow the opening of retail liquor outlets in the Territory. Others feared that increased access to alcohol would increase crime rates and other harms associated with alcohol misuse. I began to wonder to what extent Bill 64 actually reflected the competing perspectives of Nunavummiut.

This paper discusses Bill 64, An Act to Amend the Liquor Act, and the legislative process which led to its passing. In Chapter 1 I discuss the past. I introduce the stories of Lucy Akpalialuk and Peter Joamie, two cases that recently played out in the Nunavut Court of Justice. Both of these stories involved alcohol, and both shed light on the myriad issues that currently surround alcohol in the Territory. I then examine the history of the Liquor Act and discuss what lessons can be learned from the past. I also qualify and quantify alcohol related harm in Nunavut. In Chapter 2 I discuss the present. I recount what happened to Ms. Akpalialuk and Mr. Joamie in court. While the Liquor Act addressed the issue of bootlegging that arose in Ms. Akpalialuk's case, it failed to address the alcohol related harms in Mr. Joamie's story. I analyze the process which led to the passage of Bill 64, and I highlight the disconnect between the harm reduction strategies that Nunavummiut proposed, and the strategies that were ultimately adopted. Chapter 3 outlines a possible future. I describe the concept of Inuit Qaujimajatuqangit (IQ), a term which refers to traditional Inuit knowledge, and the need to incorporate IQ into governance structures. I canvas elder perspectives on "Inuit law." This perspective emphasizes community health. I argue this perspective could inform and enrich the Liquor Act, and I propose amendments that better reflect IQ. I conclude the current Act reflects Western liberal values that emphasize individual rights. A more holistic and community-centered approach is needed to address the harms that arise when alcohol is misused.

³ Nunavummiut refers to the inhabitants of the territory of Nunavut. The word derives from the Inuktitut words 'Nunavut' which means 'our land,' and 'miut' which means 'people.' (Oxford Dictionaries, online: <<http://www.oxforddictionaries.com/definition/english/Nunavummiut>>) I will use Nunavummiut throughout this paper to refer to all of the inhabitants of Nunavut, with a particular emphasis on the Inuit who were the first inhabitants of the territory and continue to represent approximately 85% of the population (George W. Wenzel, "From TEK to IQ: Inuit Qaujimajatuqangit and Inuit Cultural Ecology" (2004) 41:2 Arctic Anthropology 238 at 239).

Chapter 1: The Past

1. The Story of Peter Joamie

On January 16th, 2010, Peter Joamie went to a house party in Iqaluit. People were drinking. A lot. Peter joined the festivities and drank. K.C., a young woman in her mid-twenties, was also at the party. She too was drinking. So much so that she passed out on the couch in the living room. Sensing an opportunity, Peter pulled down her pants and panties, dropped his pants and put on a condom. When two other women came into the living room they found Peter getting on top of K.C. The women intervened. The RCMP was called, and Peter was arrested for sexual assault. The police noted that Peter was drunk at the time. He was also cooperative with police. He entered a guilty plea to sexual assault, and he is now before this court to be sentenced.⁴

So begins the story of Peter Joamie as Justice Kilpatrick relates it in *R v. Joamie*. In reality, the story begins long before January 16th, 2010. It begins some twenty years earlier when Peter was born into what Justice Kilpatrick described as a “violent and abusive home.”⁵ Peter’s biological mother drank alcohol during her pregnancy, and Peter was born “damaged” as a consequence. When he was one month old his biological parents gave him up for adoption. When Peter was two years old he witnessed his biological father’s suicide. He lived with his adoptive mother who described him as a “sickly infant.” When he was four he was diagnosed with Fetal Alcohol Spectrum Disorder (FASD). He had a hard time in school, and during his adolescence he was sent to the Ranch Ehrlo facility in Saskatchewan to work on learning and behavioral issues.⁶ With this help he achieved a grade ten education. The Court also noted “At age 23 years, Mr. Joamie has no previous employment history.”⁷

⁴ *R v Joamie*, 2013 NUCJ 19 at paras 1-4, (available on CanLII) [Joamie].

⁵ *Ibid* at para 16.

⁶ *Ibid* at para 20.

⁷ *R v Joamie*, *supra* note 4 at para 25.

Aside from his father's suicide, however, Justice Kilpatrick found there was "no suggestion that Mr. Joamie was subject to any form of social dysfunction during his formative years."⁸

Peter's history does not excuse his behavior, and it does not lessen the seriousness of his offence. However, an offender's personal history is a relevant consideration during sentencing. This is particularly true in light of Peter's aboriginal status, section 718.2(e) of the Criminal Code⁹ and the principles the Supreme Court articulated in *R v. Gladue* and *R v. Ipeelee*. Justice Kilpatrick identified Peter's history as one of the mitigating circumstances in his sentencing decision, noting that young Inuit men living in remote northern communities often experience "systemic disadvantages."¹⁰ Peter's history reveals a traumatic childhood, diminished capacity resulting from FASD, a childhood spent with a foster family, an adolescence spent in Saskatchewan, and a young adult life unemployed. This history of systemic disadvantage and chronic alcohol-related harm provides context that can be helpful when considering what laws, policies, government, community and individual action can be taken to reduce alcohol related harm. The story of Lucy Akpalialuk, a young Inuit woman accused of bootlegging, also provides helpful context.

2. The Story of Lucy Akpalialuk

Constable Allen of the RCMP Drug Section was staking out the First Air Cargo offices on the afternoon of April 20, 2012. He had received a tip from a confidential informant a few days earlier that Lucy Akpalialuk would be receiving a large shipment of permitted alcohol from southern Canada. In response to this tip, Cst. Allen filed a request for Lucy's recent permit history with the Iqaluit Liquor Licensing Branch pursuant to the Access to Information and Protection of Privacy Act.¹¹ Lucy's permit history revealed that she had purchased 114

⁸ Ibid at para 19.

⁹ Criminal Code, R.S.C. 1985, c. C-46, s. 718.2(e) suggests that all available sanctions other than imprisonment that are reasonable should be considered in light of the circumstances of the offender. Particular attention should be paid to the circumstances of aboriginal offenders.

¹⁰ Joamie, *supra* note 4 at paras 26-27.

¹¹ Access to Information and Protection of Privacy Act, S.N.W.T. 1994, c.20, as duplicated for Nunavut by s.29 of the Nunavut Act, S.C. 1993, c. 28.

mickey bottles and two 60 ounce bottles of vodka and 24 cans of beer between March 20, 2012 and April 17, 2012.¹² The type, frequency and volume of liquor suggested that Lucy was bootlegging contrary to section 84 of the Territorial Liquor Act.

That afternoon, Lucy left the Air Cargo office with several boxes and loaded them into her car. Cst Allen approached Lucy, identified himself as a peace officer, and asked her to identify herself. Lucy gave her name and date of birth which matched the name and date of birth of the liquor import permits Cst. Allen had seen. He seized the boxes, arrested Lucy and brought her to the RCMP detachment for questioning. Lucy's four year old child, her mother and younger brother, were in the car at the time of the arrest. Lucy's family would not see her for some time.¹³

At the RCMP detachment Lucy was given a phone and an opportunity to speak to a lawyer before she was placed in cells. Cst. Allen opened the seized box and discovered the alcohol she was looking for. He then became involved with another investigation, after which he went to his son's birthday party. Cst. Allen returned to question Lucy nine hours later. Lucy did not want to give a statement. She asked to speak to her lawyer many times. Cst. Allen pressed her, and eventually Lucy confessed.¹⁴

Cst. Allen's arrest and subsequent treatment of Lucy Akpalialuk seemed to comply with the Liquor Act, the Criminal Code, the Canadian Charter and the common law confession rule. However, one mustn't forget that while Cst. Allen attended his son's birthday party, Lucy sat in a small concrete cell. And maybe Lucy's child sat at home, still shaken from the sight of her mother's arrest. Remembering the imposing man who took her mother away and the look of confusion and fear on her grandmother's face. Wondering when her mother would come home. How can we reconcile the stories of Peter Joamie and Lucy Akpalialuk with the story of alcohol and the Nunavut Liquor Act? In order to understand the Act, we must first consider its history.

¹² Though no retail liquor outlets currently exist in Nunavut, people are allowed to lawfully import alcohol from other provinces by purchasing a liquor import permit pursuant to the Liquor Act.

¹³ R v Akpalialuk, 2013 NUCJ 12 at paras 3-13, (available on CanLII) [Akpalialuk].

¹⁴ Akpalialuk, supra note 13 at paras 13-16.

3. The History of the Liquor Act

"You can't understand any North American liquor laws unless you trace them back to Prohibition." - Mark Hicken, wine lawyer and advocate¹⁵

As with liquor acts in other Canadian jurisdictions, Nunavut's Act can be traced back to the Temperance Movement and the Prohibition Era.¹⁶ In the early 1800's, temperance societies began to form in Canada. Members, who were concerned with the harmful effects that alcohol was having on their communities, encouraged, educated and sometimes embarrassed people to moderate their drinking, limit their consumption to beer and wine, or abstain from alcohol altogether.¹⁷ In many ways, "temperance" is still reflected in Nunavut's current legislation. Bill 64 encourages responsible drinking through education and the promotion of less intoxicating substances such as beer and wine. This "temperance" approach favors individualism. It recognizes that alcohol is ubiquitous, and it counts on individuals to regulate their own drinking. Some Nunavummiut support this approach, claiming that overly restrictive regulations treat people like children and penalize responsible drinkers. According to this perspective, people have a right to drink, and the government should not control the availability of alcohol.¹⁸

Prohibition represents another approach. The Prohibition Era grew out of the temperance movement. It reflected changing perceptions regarding individual autonomy. Prohibitionists believed that people could not be trusted to drink responsibly, and communities ought to determine if alcohol could be consumed. Prohibition was common in Canada in the early 20th Century. Between 1900-1920, most jurisdictions in Canada closed legal drinking establishments through local plebiscite processes. While the overall crime

¹⁵ Andre Mayer, "Canada's weird liquor laws", CBC News (May 17, 2011), quoting wine lawyer and advocate Mark Hicken, online: <http://www.cbc.ca/news/canada/canada-s-weird-liquor-laws-1.1004724> [Mayer].

¹⁶ Nunavut, Nunavut Liquor Act Review Task Force, A New Approach: Halting the Harm, Final Report and Recommendations (Nunavut: document prepared by North Sky Consulting Group, 2012), at 52 [Final Report].

¹⁷ Final Report, supra note 16 at 32.

¹⁸ Nunavut, Nunavut Liquor Act Review Task Force, What We Heard: A public consultation report (Nunavut: document prepared by North Sky Consulting Group, 2012) at 11 [What We Heard].

rates fell during prohibition, the illegal manufacturing of alcohol and illegal drinking establishments flourished, as did the bootlegging industry.¹⁹ Many communities in Nunavut still favor total prohibition. Like the prohibitionists of the past, they see the harm that results from alcohol abuse, and they don't trust individuals to moderate their drinking.²⁰ And just as bootlegging flourished under Prohibition, bootlegging is ubiquitous in restricted communities in Nunavut today.²¹

Nunavut's Liquor Act outlines three community alcohol policies (or levels of restriction) that currently exist in the territory. "Open" or "wet" communities have no restrictions on alcohol beyond those imposed by the Act. There are no retail liquor outlets in Nunavut, but people may import alcohol with government issued permits. "Restricted" communities impose restrictions on who can import and consume alcohol. "Prohibited" or "dry" communities impose a complete ban on the sale, transportation and consumption of alcohol.²² Beginning in the 1970's, many communities in Nunavut began to opt for restricted or prohibited status pursuant to the plebiscite process sanctioned under the Northwest Territories Liquor Act (R.S.N.W.T. 1988, c. L9, s. 48 - 50).²³ Pond Inlet enacted the first liquor restriction in Nunavut in June 1976.²⁴ By 2006, of the 26 communities (hamlets) in Nunavut, 14 had opted for restriction status, 8 for total prohibition, and only 4 remained open.²⁵

What lessons can be learned from the past? That answer depends on whose past you're considering. From the federal (Canadian) perspective, the lesson seems to be to liberalize the liquor laws. To address the problem of bootlegging which arose under Prohibition, Canada enacted the Importation of Intoxicating Liquors Act (IILA) in 1928. The law, which forbade the transportation of alcohol between provinces, was meant to thwart bootlegging and devolve federal responsibility relating to liquor to the provinces.²⁶ Most

¹⁹ Final Report, *supra* note 16 at 32.

²⁰ What We Heard, *supra* note 18 at 11.

²¹ *Ibid* at 10.

²² Colleen M. Davidson et al, "Community-driven alcohol policy in Canada's northern territories 1970-2008" (2011) 102:1 Health Policy 34 at 36 [Davidson].

²³ Darryl S. Wood, "Alcohol controls and violence in Nunavut: a comparison of wet and dry communities" (2011) 70:1 International Journal of Circumpolar Health 19 at 20.

²⁴ Davidson, *supra* note 22 at 36.

²⁵ *Ibid* at 39.

²⁶ Mayer, *supra* note 15.

provinces have since passed legislation that makes the manufacturing, sale and distribution of liquor less restrictive.²⁷ Bill C-311, An Act to Amend the Importation of Intoxicating Liquors Act,²⁸ now permits direct-to-consumer shipments of wine. This federal bill represents a further liberalization of Canada's liquor laws. However, the IILA does not apply in Nunavut.²⁹ And while the rest of Canada seems to favour liberalization of liquor laws, since the 1970's most communities in Nunavut have favoured restriction. What accounts for this difference? A closer look at how alcohol is harming people in Nunavut is instructive.

4. Describing the Harm

"When I started to drink I did not know it could do so much harm. Today I know better."
-Elder, Unrestricted Community³⁰

Alcohol is causing a lot of harm in many communities in Nunavut, and this harm is taking many forms. Research has shown that alcohol consumption is rising in Nunavut, and binge drinking is well above the national average.³¹ Understanding the nature of the harm that can result from this risky form of drinking is critical to understanding what kind of alcohol policies and legislation is appropriate for this particular jurisdiction.

One form of harm relates to physical and mental harm. Fetal Alcohol Spectrum Disorder (FASD), a preventable condition caused by the consumption of alcohol during pregnancy, has been identified as a significant concern in Nunavut. In 2002, the Nunavut Department of Health and Social Services estimated that 30% of women in the territory drank alcohol during their pregnancy, and 85% of those children now show symptoms of

²⁷ Final Report, *supra* note 16 at 33.

²⁸ Bill C-311, An Act to amend the Importation of Intoxicating Liquors Act (interprovincial importation of wine for personal use), 1st Sess, 44th Parl, 2012, (assented to 28 June 2012).

²⁹ Pursuant to s. 26, Nunavut Act, S.C. 1993, c. 28, the Nunavut Legislature has authority to make laws respecting the importation of liquor into the territory from any other place in Canada. Section 71 of Nunavut's Liquor Act also establishes a strict regime that forbids any person to "consume, possess, purchase, sell, transport, import or use liquor in Nunavut unless authorized to do so by this Act of the regulations."

³⁰ Final Report, *supra* note 16 at 11.

³¹ *Ibid* at xiii.

FASD.³² The health care costs associated with caring for children with FASD into adulthood is now estimated at \$1.5 million per child.³³ The Nunavut Chief Coroner has also found that between 1999 to 2007 alcohol was involved in 23% of all accidental deaths and 30% of all homicides.³⁴ Research has also found a correlation between alcohol and suicide in the territory. Nunavut now has a suicide rate 11 times the national average.³⁵ Jack Hicks has found that between 1999 and 2009, 35% of female and 25% of males suicides had alcohol in their system at the time of death.³⁶ The incidence of alcohol related suicides was also higher in unrestricted communities. During this same period, alcohol was involved in 61% of the suicides in unrestricted communities, whereas it was involved in only 23% and 9% in restricted and prohibited communities respectively.³⁷

Alcohol also contributes to crime. Front line RCMP officers have suggested that alcohol is involved in 90-95% of the call-outs they receive.³⁸ According to the Nunavut Department of Justice, six of the seven murders in the territory in 2001 involved alcohol, as well as 77% of violence against police officers.³⁹ The levels of violence in Nunavut are also well above national averages. In 2002, the Department of Health and Social Services found that violent crime rates were 5 times the national average in the territory, and sexual assaults were 6 times more prevalent. Alcohol was involved in the majority of these incidents.⁴⁰ In July 2013, Statistics Canada reported that Nunavut continues to have the highest per capita rate of violent crime in the country.⁴¹ While crime rates have decreased nationally in recent

³² Final Report, supra note 16 at 12, citing Tarnow, N. (2010). A New Approach to the reduction of Alcohol and Drug Abuse, Suicide, Domestic Violence and Crime in Nunavut: A Specific Strategy for 2010-2013. Department of Justice, Government of Nunavut).

³³ Ibid.

³⁴ Ibid at 14.

³⁵ Ibid.

³⁶ Ibid citing: Jack Hicks, "The painful transition: Explaining and preventing suicide by Inuit youth," Nunavut Tunngavik Inc., Spring 2012, at 16-23, Online: <http://www.tunngavik.com/files/2012/04/9834.20-NTI_Springonline.pdf>.

³⁷ Ibid at xiv.

³⁸ Ibid at 15.

³⁹ Final Report, supra note 16, citing: N. Tarnow, "A New Approach to the reduction of Alcohol and Drug Abuse, Suicide, Domestic Violence and Crime in Nunavut: A Specific Strategy for 2010-2013" (2013) Department of Justice, Government of Nunavut).

⁴⁰ Ibid at 17, citing: NTI Submission to the Nunavut Legislative Assembly Standing Committee on Government Operations and Services on the Liquor Act, May 6, 2003.

⁴¹ Statistics Canada reported that in 2012 the homicide rate in Nunavut was 9.5 times the national average. Sexual assault was 8.4 times more prevalent, and major assaults were 9 times the national average. (Statistics Canada, Police reported crime statistics in Canada, 2012 (Ottawa: StatCan, 25 July, 2013) at 39: Table 7, Police-reported crime for selected offences, by province and territory, 2012) [StatsCan].

years, in Nunavut the crime rates continue to climb.⁴² The Baffin Correctional Centre (BCC) also noted that between 2008-2012, 90-95% of all incarcerated offenders were intoxicated when they committed their offenses. And of the 1300 individuals incarcerated during this period, 1243 (95.6%) had issues with drug or alcohol dependency.⁴³ Increased crime rates also have significant financial implications for the GN who must fund policing and incarceration. These expenses have also increased in recent years.⁴⁴

Bootlegging is also a prevalent crime in the territory, the proceeds of which are estimated to exceed \$10,000,000 per year.⁴⁵ Nunavummiut have repeatedly stated that bootlegging poses a particular threat to community health as bootleggers often targeted vulnerable populations such as underaged drinkers and people with substance abuse problems.⁴⁶ One community member explained: "Those people (commercial bootleggers) are destroying people's lives, families, and whole communities for their own profit. They should be made to pay a price as high as the pain for which they are responsible."⁴⁷

Families are also being harmed by excessive alcohol use. A 2007-2008 Inuit Health Survey found that 16% of respondents indicated that someone in their household had an alcohol problem, and 28% that someone in their childhood home had issues with alcohol.⁴⁸ Educators have also reported that alcohol related absenteeism is widespread in some high schools in certain communities. Alcohol has also been attributed to decreased workplace productivity and absenteeism.⁴⁹

⁴² The overall crime rate fell by 3% nationally, the crime rate rose by 2% in Nunavut during this same period. While the violent crime rate fell by 3% nationally, Nunavut experienced a 2% increase during this same period (StatsCan, supra note 41 at 29: Table 2a, Police-reported crime rate, by province and territory, 2012).

⁴³ Final Report, supra note 16 at 18.

⁴⁴ For example, the Baffin Correctional Center (BCC) has been chronically overcrowded for the last 10 years. In response to this crisis, the GN has approved the construction of a new temporary jail that would house 50 inmates. This facility is expected to cost \$8.7 million to \$15 million dollars. In October 2013, Nunavut's Justice Minister Daniel Shewchuck conceded that this capital expenditure was nearly double what was originally anticipated, and additional funding might still be required. ("Costs could double for temporary jail in Iqaluit", CBC News North (25 October, 2012) online: CBC News <<http://www.cbc.ca/news/canada/north/costs-could-double-for-temporary-jail-in-igaluit-1.1149379>>) This temporary facility will require a staff of 12, and it will house inmates for 10 years, during which time the GN will construct a replacement for the BCC ("Iqaluit City Council approves new jail", CBC News North (March 27, 2013) online: <<http://www.cbc.ca/news/canada/north/iqaluit-city-council-approves-new-jail-1.1339293>>).

⁴⁵ Final Report, supra note 16 at xiv.

⁴⁶ What We Heard, supra note 18 at 51.

⁴⁷ Ibid at 49.

⁴⁸ Final Report, supra note 16 at 20.

⁴⁹ Final Report, supra note 16 at xiv.

Alcohol related harm, though sometimes hard to quantify, is resulting in significant social and economic costs to Nunavut.⁵⁰ But is alcohol itself the problem, or is it merely a symptom? Elders provide a helpful perspective on Nunavut's past and people's relationship to alcohol in the territory. Some elders believe that Nunavut's problems with alcohol began in the 1950's when the Canadian government moved Inuit families off the land into permanent settlements and sent Inuit children to residential schools. These actions resulted in the gradual erosion of traditional Inuit lifestyle and cultural values. Children no longer learned traditional skills, and they could not make a livelihood off the land as they once had. Many Inuit were left with a feeling of purposelessness, and this ultimately led to alcohol abuse.⁵¹ One elder stated:

Our grandparents didn't drink alcohol; life was good. We survived on the land. We listened to our elders. They taught us survival skills. I was counseled by my elders. Today young people have too much drugs and alcohol. Trying to teach them about their culture is tough.⁵²

This description of the problem seems to capture the real issue. Rather than focusing squarely on the availability of alcohol or the punishment of bootleggers (the focus of the current Liquor Act), a careful approach to alcohol policy might begin by looking at the underlying causes of alcohol related harm. As one community member said: "The root cause of much of the alcohol abuse is pain; direct personal pain and intergeneration pain."⁵³ What are the sources of pain? Could a more responsive Liquor Act have a healing effect? Another look at the stories of Peter Joamie and Lucy Akpalialuk reveals many sources of pain. These stories also reveal the ways in which the Act currently addresses this harm.

⁵⁰ According to the Canadian Centre on Substance Abuse (CCSA), the total costs of substance abuse in Nunavut in 2002 was 62.7 million dollars, 27.6% (or 17.3 M) of which was specifically associated with alcohol abuse. (J. Rehm et al, "The Cost of Substance Abuse in Canada 2002" (2006) Canadian Centre on Substance Abuse, Ottawa, at p.11, online: <<http://www.ccsa.ca/2006%20CCSA%20Documents/ccsa-011332-2006.pdf>>.

⁵¹ What We Heard, supra note 18 at 8.

⁵² Ibid.

⁵³ What We Heard, supra note 18 at 9.

Chapter 2: The Present

1. Re-Telling the Story of Peter Joamie

“The Court accepts that Mr. Joamie genuinely regrets his involvement in the offense. He has been in tears throughout much of the sentencing hearing.”⁵⁴

After reviewing Peter Joamie’s history, Justice Kilpatrick proceeded with his sentencing. The defence suggested that a non-custodial sentencing disposition would be appropriate as Peter suffered from FASD. Kilpatrick J. noted that pursuant to s. 718.1 of the Criminal Code, Courts must engage in a two-step process in order to arrive at a proper sentence for people suffering from FASD. The first step involved assessing the diminished moral blameworthiness of the individual in light of their cognitive impairment through the use of forensic medical and psychiatric evidence.⁵⁵ In the second step of the analysis, the judge had to consider what alternative treatment options were available that might better treat the accused and reduce the risk of their re-offending.⁵⁶ Justice Kilpatrick quickly concluded that both parts of the analysis would be difficult, if not impossible, in Nunavut. He noted that Nunavut’s Chief Medical Officer indicated that Nunavut did not have the diagnostic services necessary to make a FASD diagnosis.⁵⁷ The Department of Health’s failure to provide diagnostic services meant that the Court would have to order an out-of-territory forensic assessment, thus transferring the cost from the Department of Health to the Department of Justice. Either way, Justice Kilpatrick reasoned, the taxpayers would end up footing the bill.⁵⁸

⁵⁴ Joamie, *supra* note 4 at para 28.

⁵⁵ *Ibid* at para 34.

⁵⁶ *Ibid* at para 35.

⁵⁷ Joamie, *supra* note 4 at para 41.

⁵⁸ *Ibid* at para 42.

Kilpatrick J. also found that even if diagnosis was available, there were currently no treatment programs available to help people already suffering from FASD in the territory. Justice Kilpatrick noted that the Territorial Manager of Community Wellness that the Department of Health was entirely focused on community awareness of FASD and prevention, adding:

There are no programs or services of any kind at the community level to assist those citizens now suffering from FASD. There are no structured living facilities in the Territory to assist those severely damaged citizens who are in need of remedial treatment and support. The Territorial position for an FASD Coordinator was eliminated in 2011.⁵⁹

Ultimately, Justice Kilpatrick ruled that Peter Joamie could not benefit from the remedial provisions outlined in 718.1 of the Criminal Code. The defence was unable to provide any kind of medical evidence regarding Peter's FASD. Furthermore, Justice Kilpatrick reasoned the Defendant's use of a condom suggested "a fairly high level of cognitive functioning."⁶⁰ The defence was also unable to propose any meaningful programs to help Peter address the issues associated with his FASD and re-integrate the offender into the community. Therefore, rather than pursuing a restorative approach Justice Kilpatrick focused on the sentencing principles of deterrence and denunciation.⁶¹ Peter received a custodial sentence of 12 months at the Baffin Correctional Center, followed by 12 months probation.

Despite the prevalence of FASD in Nunavut, this was the first case to formally address the issue of sentencing principles as they relate to offenders with FASD.⁶² That not a single resource was available in Nunavut to help an offender with FASD deal with the underlying

⁵⁹ Ibid at para 43.

⁶⁰ Ibid at para 57.

⁶¹ Joamie, *supra* note 4 at para 58.

⁶² Ibid at para 61.

issues that brought him before the court was telling.⁶³ Also telling was the fact that although alcohol played a major role in this case, Nunavut's Liquor Act was never mentioned. The Act, which is ostensibly designed to reduce alcohol related harm, only regulates the sale and distribution of alcohol. It does not regulate the harm that results after the fact. While the Liquor Act failed to capture Peter's story, it was front and centre in the story of Lucy Akpalialuk.

2. Re-Telling the Story of Lucy Akpalialuk

At trial the defence argued that the investigating authorities violated Lucy's section 8 Charter right against unreasonable search and seizure as the police did not have reasonable grounds required by section 107 of the Liquor Act before effecting their search. Section 107(1)(a) of the Liquor Act provides that a peace officer may search any vehicle in which the peace officer "has reasonable grounds to believe that liquor is unlawfully kept or had, or kept or had for unlawful purposes." Section 107(2)(a) provides that peace officers may then seize any liquor that is being kept contrary to the Act. The defence argued that at the time of Lucy's arrest, Cst. Allen only had evidence of lawful activity: Lucy was in possession of alcohol with a valid government issued permit. This lawful activity could not by itself give rise to "reasonable grounds" that Cst. Allen required to search and seize. He would have to conduct a further investigation to establish proper grounds to believe that Lucy was in possession of the alcohol for the unlawful purpose of selling it.⁶⁴

Justice Kilpatrick rejected this argument, referring to section 127 of the Liquor Act which allows "common sense" inferences to be drawn from the quantity, type and volume of liquor in the accused's possession.⁶⁵ In this case, government records showed that on four

⁶³ Justice Kilpatrick also acknowledge the broad systemic failures of the government to care for those who are most vulnerable, noting: "The Court's ability to structure a fit sentence is limited to those sentencing tools and sentencing resources provided by government. The Court cannot work miracles. It is the Government of Nunavut that has a legislative and constitutional mandate to determine funding priorities and allocate scarce public resources." (Ibid at para 60).

⁶⁴ Akpalialuk, supra note 13 at para 20.

⁶⁵ Ibid at para 22.

occasions over the course of a month, Lucy had purchased 114 mickey bottles, two 60 ounce bottles, and 24 cans of beer. Justice Kilpatrick noted this information was “compelling” evidence that illegal sale of alcohol was occurring.⁶⁶ And while the Constitutional validity of section 127 was not argued,⁶⁷ it is possible that section 127 inferences could give rise to discriminatory application of the law in contravention of section 15 of the Charter.⁶⁸

The defence also argued the police violated Lucy’s section 9 Charter right (arbitrary arrest and detention) when they arrested her on suspicion of possessing alcohol for the purposes of illegal sale contrary to section 84 of the Liquor Act. Section 111 of the Act provides that a peace officer may arrest without a warrant a person who the officer “finds committing” an offence under the Act. Defence argued that Cst. Allen did not find Lucy committing the offence of possession of alcohol for the purpose of selling. The arrest was premature, and further investigation was necessary to catch Lucy in the act of selling alcohol. Justice Kilpatrick also rejected this line of reasoning, holding the offence was complete the moment Lucy came into lawful possession of alcohol with the requisite intent to sell it. Her intent, Kilpatrick J. reasoned, could be inferred from her permitting history.⁶⁹

While Kilpatrick J. found reasonable and probable grounds to arrest, he also found that the arrest was unnecessary. Section 495(2)(d) and (e) of the Criminal Code indicates that officers may not arrest persons for summary conviction offences unless an arrest is necessary to establish identity, secure or preserve evidence, to prevent the continuation of the offence, or to ensure that the accused will attend court. None of these criteria were met in Lucy’s case, and the officer’s non-compliance with section 495(2) of the Criminal Code meant that Lucy’s right against arbitrary detention under s 9 of the Charter had been violated.

⁶⁶ Ibid at para 23.

⁶⁷ Ibid at para 22.

⁶⁸ Over the course of the summer I met several residents of Iqaluit who purchase their yearly supply of beer and wine and had it shipped up on the summer sealift. These large quantities of alcohol often exceeded the large amounts cited by Justice Kilpatrick in Ms. Akpalialuk’s case, and yet these shipments did not attract the common sense inference that gave rise to the seizure of Ms. Akpalialuk’s alcohol. These summer shipments were expensive, and only people with money could make them. The 114 mickeys of vodka, on the other hand, were often the drink of choice for impoverished Nunavummiut who could not afford more expensive forms of alcohol such as beer and wine. When shipping costs are a major expense, it’s far more affordable to drink vodka than wine or beer. The Liquor Act would seem to capture the drinking habits of those with less money, while leaving more affluent consumers of beer and wine unchecked. This issue was never raised at trial.

⁶⁹ Akpalialuk, supra note 13 at para 36.

Ultimately, Justice Kilpatrick ruled that Lucy's confession (obtained during her arbitrary arrest) was inadmissible pursuant to s. 24(2) Charter. Her liquor permits, on the other hand, were admissible and her purchasing history lead to "an irresistible inference that the liquor was being possessed unlawfully by the defendant for the purpose of sale."⁷⁰ Lucy was accordingly convicted of unlawful possession of liquor for the purpose of sale contrary to section 84 of the Liquor Act.⁷¹

Justice Kilpatrick's use of s 495(2) of the Criminal Code left the actual provisions of the Liquor Act unchallenged. These provisions led to a conviction based on lawfully purchased government liquor permits and the "irresistible" inference that flowed from this lawful activity. Was such a result justified given societies' interest in curbing bootlegging and alcohol related harm? This case highlights the tension that exists between individual autonomy and privacy, and society's collective interest in curbing alcohol related harm. Justice Kilpatrick noted: "All citizens have a profound interest to ensure that the legal rights fundamental to a free and democratic society are preserve and protected."⁷² However, he also stated the offence of unlawfully keeping liquor for sale was an "extremely serious offence" that is driven by profit and preys on vulnerable people such as underaged drinkers and alcoholics.⁷³

How can one reconcile Peter and Lucy's stories? On the one hand, Peter's story illustrates the kind of harm that can result from alcohol abuse. A young man "damaged" by alcohol attempted to sexually assault a vulnerable inebriated woman. This story suggests that some forms of restriction might be necessary to guard against certain harms. On the other hand, Lucy's story highlights the ways in which police powers can be used (and over-extended) pursuant to the Liquor Act.⁷⁴ How does the Liquor Act actually address alcohol

⁷⁰ Ibid at para 90.

⁷¹ Akpalialuk, *supra* note 13 at para 91.

⁷² Ibid at para 79.

⁷³ Ibid at para 75.

⁷⁴ Ultimately, Lucy was convicted based on inferences drawn from evidence of lawful activity (government issues liquor permits). As discussed, the inferences an RCMP officer or judge draws regarding the kind and quantity of alcohol might target marginalized Inuit populations who haven't the resources to purchase more expensive (and less suspicious) forms of alcohol such as wine and beer.

related harms? Did Bill 64 begin to address the broader policy issues that Peter and Lucy's stories raise? The remainder of this chapter explores these two questions.

3. The Nunavut Liquor Act: Addressing the Harm?

The current Act was adopted in 1999, at the time of Nunavut's division with the North West Territories (NWT). The law was originally proclaimed in the NWT in 1988, though many of the sections date back several decades prior to its promulgation.⁷⁵ While the NWT Act has undergone many amendments since 1988, Nunavut's Act has remained mostly unchanged. The most notable change to the Act occurred in 2003 when the penalty for bootlegging was increased.⁷⁶

The Act currently focuses on the sale and distribution of alcohol, and penal sanctions for contraventions of the Act.⁷⁷ While the Act carefully regulates the availability of alcohol, none of its provisions address the underlying issues and harms associated with alcohol abuse. Section 50 of the the Act does establish Alcohol Education Committees (AEC).⁷⁸ However, the effectiveness of these education committees have been undermined by inadequate support and resources. As one committee member stated: "We do not educate, we are simply a rubber stamp. We simply approve or deny orders, nothing else. We have no training, support, or resources to educate."⁷⁹

The Liquor Act clearly addresses the issue of bootlegging as evidenced by Lucy Akpalialuk's story. However, the Act fails to address the broader societal harms identified by community members, police, health care professionals and elders in Chapter 1. In March 2010, Finance Minister Keith Peterson created the Nunavut Liquor Act Review Task Force

⁷⁵ What We Heard, supra note 18 at 15.

⁷⁶ Ibid.

⁷⁷ Part 1 of the Act addresses liquor licenses and permits, as well as the local plebiscite process for restricting or prohibiting alcohol in certain communities. Part 2 deals with the administration of revenue which flows from the Act, and the regulations governing liquor stores in the territory. Part 3 deals with individual eligibility to purchase and consume alcohol in the territory, and the sanctions that can be imposed for the illegal transportation, sale, manufacture or consumption of alcohol.

⁷⁸ AEC's are community-based groups of elected members who have a mandate to control and approve who can consume alcohol in restricted communities. In addition, AEC's are also mandated to provide education on the ways in which to prevent alcohol abuse (What We Heard, supra note 18 at 105).

⁷⁹ What We Heard, supra note 18 at 28.

(Task Force) as a response to this harm. The Task Force, composed of NGOs, MLAs, GN Health Department Representatives, Liquor Licensing Board officials and youth representatives, had a mandate to provide to the Minister with “meaningful recommendations for changes to the Nunavut Liquor Act that will reflect the dynamic needs of Nunavummiut.”⁸⁰ The Task Force was asked to focus their recommendations on the sale, distribution and licensing of alcohol, the penal consequences for contravening the act, and strategies that could be used to promote responsible drinking.⁸¹ The ultimate goal was to reduce alcohol related harm.

During a 16-month consultation process, the Task Force visited every community in Nunavut and met with groups and individuals who were affected by alcohol and the Act.⁸² The Task Force then produced a public consultation report entitled “What We Heard.” While this consultative approach was laudable, the limits regarding the Task Force’s narrow mandate quickly became apparent.⁸³ People wanted to talk about all of the ways in which alcohol related harm might be reduced, but the Task Force was only mandated to make recommendations on the sale and distribution of alcohol and the penal consequences for contravening the Act. This narrow mandate revealed two distinct weaknesses in the GN approach to legislative reform: First, the mandate foreclosed the possibility of a territorial-wide prohibition on alcohol.⁸⁴ Second, the mandate foreclosed the possibility that prevention, treatment and support programs could fall under the purview of the Act.⁸⁵ This second point raises an important question: What was the purview of the Act?

⁸⁰ What We Heard, supra note 18 at vii.

⁸¹ Ibid.

⁸² These groups included Hamlet Councils, Alcohol Education Committees, youth groups, church groups, justice workers, teachers, social workers, health workers, legal representatives, licensees, RCMP and other stakeholders. Nearly 1000 people participated in these consultations (What We Heard, supra note 18 at 1).

⁸³ Ibid at vii.

⁸⁴ The mandate assumed that alcohol should (and will) be available in some communities. This assumption foreclosed the possibility of total prohibition in Nunavut. As discussed in Chapter 1, since the 1970’s many communities have opted for prohibition. During their consultation process, some Nunavummiut also told the Task Force that allowing alcohol in some communities might undermine their efforts at keeping alcohol out of their restricted or prohibited communities. However, while some Nunavummiut held that society had a right to prohibit individuals from drinking for the health of the community, others expressed a divergent opinion: that people ought to have a choice whether or not to drink, and the government should not control the supply and consumption of alcohol (What We Heard, supra note 18 at 11).

⁸⁵ The mandate failed to address many of the underlying issues related to alcohol harm. The Task Force noted: “People continually called on government to implement more effective treatment programs including more local and traditional treatment options, and improved support for alcoholics who are trying to overcome their addictions.” (What We Heard, supra note 18 at 46). In addition, the Task Force also noted the “lack of harm reduction objectives and principles is viewed as a primary weakness of the Act; many feel that the Act is a reflection of western and not Inuit values.” (Final Report, supra note 16 at 54) However, the Task Force was

The Act lacks clear objectives. It does not contain a preamble or explicit indication of its legislative purpose. During the consultation process the Task Force stated that, broadly speaking, the Nunavut Liquor Act is designed to promote social responsibility in the sale and consumption of alcohol. It is meant to minimize harm to individuals, families and communities while also minimizing the cost to the government and taxpayers. However, the Task Force also acknowledged: “The Nunavut Liquor Act does not identify a clear set of objectives and principles.”⁸⁶

This lack of clarity might explain the disconnect between what Nunavummiut told the Task Force, and the legislative amendments that ultimately appeared in Bill 64. Community members articulated one set of values and priorities (sometimes referred to as the “Inuit way”) and the Task Force made recommendations that reflected this “Inuit way” in part. The Government of Nunavut ultimately adopted amendments which did not incorporate the lion’s share of the Task Force’s recommendations. These amendments were even further from the Inuit way. A closer examination of what Nunavummiut said, what the Task Force recommended, and what the GN ultimately adopted as law, reveals the extent of this legislative disconnect.

4. What We Heard: The “Inuit Way”

As one might expect, there was not a general consensus among all Nunavummiut regarding all aspects of the Act. The largest disagreement among Nunavummiut had to do with prohibition. Some members felt that all communities in the territory should have prohibited status. Alcohol had resulted in unacceptable harm in communities, and

clear that recommendations regarding the establishment of prevention, treatment and support programs for communities and regions “while having considerable merit, fall outside the normal purview of a Liquor Act.” (ibid at xx).

⁸⁶ What We Heard, supra note 18 at 61. Objectives that have been identified in other jurisdictions include the promotion of public health and safety, the prevention of crime and nuisance, and the protection and vulnerable people from harm. None of these objectives are explicitly identified in the Act, and this lack of clarity regarding legislative purpose is significant. If legislators and government officials are uncertain regarding the Act’s legislative purpose, the development and implementation of policies will also lack focus and coherence. Citizens will have different conceptions regarding the meaning, purpose and application of the law. (Ibid) Legislators won’t know how to legislate, and people won’t know how the law applies to them.

community health and wellbeing should trump an individual's right to drink. Other members expressed an opposite concern: that many Nunavummiut consume alcohol responsibly and the GN should not impose punitive restrictions. Prohibition does not work. It is paternalistic and an affront to an individual's right to drink.⁸⁷ Rather than restricting alcohol (which only encourages illegal bootlegging) efforts should be made to liberalize the liquor laws and make less intoxicating substances like beer and wine more easily available.

While there was no general consensus on all points, there were many areas of agreement between these two positions. It was generally held that communities (hamlets) should have the power to make decisions on alcohol control and regulations in their local communities through the local plebiscite process.⁸⁸ There was also a general feeling that the current Act reflects Western values rather than an Inuit approach, often referred to as the "Inuit way." The Inuit way seems to favor community health and wellbeing over individual privacy rights.⁸⁹ In accordance with the Inuit way, most Nunavummiut favored stricter sanctions and increased police search and seizure powers to deal with the bootleggers who prey on the vulnerable. However, many were careful to point out that the Inuit way involves more than punishment and retribution. Rather, the approach seeks to promote the overall health of the community. Often, re-integration of individuals through teaching and changing harmful behaviors is the appropriate course of action.

This restorative approach would require the GN to enact effective treatment programs in local communities, access to traditional treatment options and support for alcoholics and their families.⁹⁰ Many individuals expressed a concern regarding the current practice of sending people out of the territory for treatment to overcome their addictions. In addition, adequate supports must be in place for individuals upon their return to the community. The Inuit way would also allow elders and family members to actively intervene and collaborate with healthcare providers to support those people suffering from alcohol addiction.

⁸⁷ Final Report, *supra* note 16 at 22.

⁸⁸ Final Report, *supra* note 16 at 22.

⁸⁹ *Ibid* at 18.

⁹⁰ *Ibid* at 45.

Unfortunately, individual privacy interest often thwarted these efforts.⁹¹ The suggestions that emerged from the community consultation process called for a complete transformation of the Liquor Act to address the broad systemic issues associated with alcohol abuse.

5. What We Suggested: The Task Force's Final Report

The Task Force produced a 195-page report entitled "Halting the Harm" in response to what they heard in the communities. While the Report reflected many community recommendations, it failed to address the restorative approaches (or the "Inuit way") that most Nunavummiut had called for. The Report had more than 50 recommendations, including cracking down on bootlegging and liberalizing access to beer and wine while restricting access to hard liquor. While acknowledging that most Nunavummiut had called for an integrated approach to address alcohol harm, the Task Force noted that treatment and other proposed support programs fell outside of their mandate.⁹² However, the Task Force did recommend sweeping changes to the Act. It recommend that the current Nunavut Liquor Act be replaced by a new act with a clear objective and focus on harm reduction.⁹³ The Task Force also recommended that bootleggers be shut down by interfering with supply markets and increasing penalties.

Perhaps most significantly, the Task Force recommended that a new Crown Corporation called the Nunavut Liquor Corporation be established to amalgamate the Nunavut Liquor Licensing Board, the Nunavut Liquor Commission and the Liquor Enforcement Division.⁹⁴ Currently the tasks of liquor licensing, distribution and enforcement are divided among these various agencies. An amalgamated Nunavut Liquor Corporation would integrate these functions, and allow the government to become the sole supplier of alcohol in the territory. To that end, the Task Force recommended that access to beer and

⁹¹ Ibid at 46.

⁹² Final Report, *supra* note 16 at xx.

⁹³ Ibid at 105-106.

⁹⁴ Ibid at 153.

wine should be liberalized through the opening of government run liquor stores in unrestricted communities. The importation permit system should be abolished, and the government should establish a monopoly over the sale and distribution of all alcohol in the Territory.⁹⁵

Finally, the Task Force called for a new well resources Social Responsibility Function should be incorporated into the Nunavut Liquor Corporation's mandate. This added mandate would make funds available to local Alcohol Education Committee education and harm prevention programs. These recommendations were broad, but they did not go as far as Nunavummiut had suggested during the consultation process. When the GN finally passed Bill 64, the resulting legislation was even further from the "Inuit way."

6. What Was Done: The Passing of Bill 64

"The people were visited by the task force. They identified what they wanted and now this government is saying the exact opposite. If the government is going to do that to their people, it's not going to be very good in the future." - MLA Johnny Ningeongan⁹⁶

On September 17, 2013, Nunavut's Legislative Assembly passed Bill 64, An Act to Amend the Liquor Act, by a vote of 13-5. Introduced by Keith Peterson, Minister of the Department of Finance, the Bill's purpose was summarized as funding social responsibility campaigns from the Liquor Revolving Fund, opening designated liquor stores in Nunavut, increasing the personal import limits for individuals, and increasing fines for contraventions of the Act.⁹⁷ In total, the Bill included amendments to 6 sections of the Liquor Act. These amendments were far less than the 50 Task Force recommendations, and modest when compared to the sweeping changes that Nunavummiut had called for.

An amendment to section 59.1 of the Act indicates that "sums in the Liquor Revolving Fund may be used for expenses related to education campaigns promoting the social

⁹⁵ Final Report, *supra* note 16 at 114.

⁹⁶ Nunavut, Legislative Assembly of Nunavut, Unedited Transcript (Nunavut Hansard, 17 September 2013) at 59[Hansard].

⁹⁷ Bill 64, An Act to Amend the Liquor Act, 3rd Sess, 3rd Leg, Nunavut, 2013 (assented to 17 September 2013) at Summary [Bill 64].

responsible use of liquor, up to the prescribed amount.” This section is only aimed at prevention, and does not address the issue of current alcohol related harm, addiction and treatment options that many Nunavummiut were requesting. While education and prevention are laudable goals, they would not help Peter or his victim. Furthermore, s 59.1 might be too vague to achieve its legislative purpose.⁹⁸ MLA Curley underlined his concern regarding social responsibility programs: “The bill speaks some ideas that there would be some increased funding for all that stuff, but the government has not at all put forward an action plan on exactly how that’s going to work.”⁹⁹

The amendments to subsections 65(a.1) and 70(1), that allow the purchase of alcohol from designated liquor stores in the territory, were also debated. MLA Tapardjuk raised the issue of liquor stores opening in communities which neighbor restricted communities. He cited a letter from the Mayor of Hall Beach that expressed concerns that a liquor store might open in neighbouring Igloolik. MLA Tapardjuk explained “Hall Beach is very close to Igloolik that there would be a flow of alcohol to Hall Beach.”¹⁰⁰ Again, individual rights to consume alcohol and the interests of wet communities who had an interest in liberalizing liquor laws might have a negative impact on the health and collective rights of neighboring communities.

The amendment to section 114, which increased the maximum penalty for bootlegging from \$50,000 to \$100,000, met with less opposition. As MLA Curley suggested, “the only thing that [the alcohol committee] agreed on was for bootleggers to pay more fines.”¹⁰¹

⁹⁸ MLA Tagak Curley explained during the debate: “It doesn’t say that they will be or it doesn’t say that it shall be used. It says that it may be used. They shouldn’t say “may.” Maybe it would be better that if there is no policy in place, it doesn’t say may.” (Hansard, supra note 96 at 52.) When the Hon. Keith Peters was pressed to specify precisely how the liquor fund would be used he stated “the expenses will be related to the purchase and selling of alcohol in Nunavut. (Ibid at 55) While not explicitly committing the funds to preventative programs, Mr. Peterson did indicate that he “believe[d] that those funds could be used for supporting alcohol education committees.” (Ibid at 56).

⁹⁹ Hansard, supra note 96 at 63.

¹⁰⁰ Ibid at 58.

¹⁰¹ Hansard, supra note 96 at 47.

Despite this one area of agreement, deep divisions remained regarding the Act's proper legislative scope,¹⁰² the way in which harm was characterized and the appropriate way to respond to it. Hon. Peterson was clear that liberalizing alcohol access and bringing supply and distribution under government control was the best way forward, stating "this ability to change how we sell liquor in Nunavut will be the foundation for reducing harm and for removing the bootlegging market."¹⁰³ The debate revealed the dissonance between Western liberal and Inuit values. Hon. Keith Peterson summarized his understanding of the Task Force recommendations:

The overall theme of their recommendations was to liberalize alcohol in Nunavut; particularly the beer and wine....Regardless of what we think, the alcohol is out there. It's causing a lot of harm to our communities. So this is an effort, as I said, to liberalize access to alcohol, put focus on beer and wine.¹⁰⁴

Others who supported the Bill also stressed the importance of individual autonomy and freedom of choice. MLA Elliott stated:

I have a lot of faith in my constituents that are representing, I believe in them to make the best decision for their lives, and I do find it funny sometimes that a lot of members who do talk about being repressed by others and not being treated like adults and equals who want to do the same to other people.¹⁰⁵

This comment reflects an underlying tension that was present throughout the debate. The tension had to do with language, history, culture, values and ways of seeing the world and the role of law and legislators.¹⁰⁶ At the end of the debate, MLA Curley referenced

¹⁰² MLA Nigeongan expressed his concern at Bill 64's "piecemeal" approach stating "the first recommendation of the task force was that the government should repeal the current Liquor Act and introduce a new statute...the task force was cautioned that making amendments on amendments would only exacerbate the current problems." (Ibid at 45) On the other hand, Hon. Keith Peterson held that in response to the Task Force "the government focused on the need to take a measured approach to changing the liquor control regime in our territory. Bill 64, as introduced, reflects that intention." (Ibid at 43).

¹⁰³ Ibid at 44.

¹⁰⁴ Ibid at 64.

¹⁰⁵ Ibid at 71.

¹⁰⁶ MLA Elliot's comment might also suggest the subtle ways in which Inuit perspectives are sometimes discounted by qallunaat (non-Inuit) society and the cultural friction that results. One month after making this statement, Ron Elliot lost his seat to Isaac Shooyook in Nunavut's 2013 territorial election. One comment to a

Peter's story, the harm that he saw in his community and the inadequacies of Bill 64 as he saw them:

I know that the government is well aware that the leading cause of the crimes committed or the court cases that increase the whole cases of the law and order systems are alcohol-related. I was amazed this summer that even a territorial judge indicated that Nunavut is really not geared towards having various programs or whatnot to address social problems that affect people with crimes that cause them to go to the court case and so on.

What we're doing on the last day of the Third Assembly now is trying to increase the amount of supply of alcohol and liberalizing so that there appears to be seen the freedom of choice accorded to individuals, but freedom of choice is allowing them to have more increase in violence, family problems, and law and order infractions related to alcohol is not on that we should be dealing with on the last day of this Assembly."¹⁰⁷

Crafting responsive legislation that captures community values (that are not uniform and sometimes conflicting) is not an easy task. MLA Ningark, who was on the Task Force, highlighted the challenges:

[W]hether Bill 64 is only a band-aid solution, for the time being, we know that the flow of alcohol will never stop flowing. There is no way to flag it. Why? It's all about human nature...we have attended many public meetings and you see the desperate families, children, parents, grandparents, and leaders. They're

Nunatsiak News Online article reporting on the election read: "Ron Elliot may be a good guy and the best thing since sliced bread - but the voters are the boss mang. Before you call us foolish, a unilingual Anglo can only do so much with a predominant Inuktitut-speaking democratic exercising constituency. (David Murphy, "Nunavut recounts produce one winner and one intractable deadlock", Nunatsiak News (November 5 2013) online: <http://www.nunatsiaqonline.ca/stories/article/65674nunavut_election_recounts_end_with_one_winner_and_one_enduring_tie/>).

¹⁰⁷ Hansard, supra note 96 at 72.

looking for ways to curtail the abuse of alcohol...I will support Bill 64. Like I said before, at least that's something that we can do for the time being.¹⁰⁸

That is the current state of the law. In the final chapter I will discuss how the law might look in the future.

¹⁰⁸ Hansard, *supra* note 96 at 51.

Chapter 3: The Future

“When I think about this, I wonder how we can solve the problem. I would like to look at the Inuit maligait that we had in the past and compare them with the laws we have today, so we could develop better laws for the future.” - Elder Aupilaarjuk¹⁰⁹

1. Inuit Qaujimajatuqangit (IQ): An Intelligent Way Forward

The concept of “Inuit law” has been mostly absent from this discussion. While many Nunavummiut made reference to the “Inuit way,” Bill 64 did not seem to reflect this way, Inuit values or traditional conceptions of law. However, understanding traditional Inuit law is essential if we are to arrive at a better understanding of what truly reflective and responsive legislation might look like in the future. While Inuit values, legal norms and beliefs have undoubtedly changed with time and contact with other cultures, traditional beliefs and conceptions of law still inform how people understand the law and what it ought to be. In order to understand traditional Inuit law, it is essential to understand the culture from which it derives.¹¹⁰

Even before Nunavut became a territory in 1999, many Nunavummiut understood that the new territorial government would have to reflect Inuit knowledge and culture. At a March 1998 Nunavut Social Development Council conference, Nunavut’s Interim Commissioner J. Anawak remarked: “Our commitment must be strong to Inuit ways and the traditional values of our society. We must use our own way of thinking when creating new government.”¹¹¹ What emerged from this conference was the concept of Inuit Qaujimajatuqangit (IQ), a term which roughly translates as “the ancient knowledge of the Inuit.” IQ denotes all aspects of

¹⁰⁹ Mariano Aupilaarjuk et al, *Interviewing Inuit Elders: Perspectives on Traditional Law*, 2 (Iqaluit; Nunavut Arctic College Library, 1999) at 13 [Interviewing Elders].

¹¹⁰ Paul Groarke, “Legal Volumes from the Arctic College’s Interviewing Inuit Elders Series”, *Book Review of Perspectives on Traditional Law*, vol. 2, *Interviewing Inuit Elders* by Mariano Aupilaarjuk et al.; *Cosmology and Shamanism*, vol. 4, *Interviewing Inuit Elders* by Mariano Aupilaarjuk et al., (2009) 47:4 Osgoode Hall LJ 787 at 787 [Review].

¹¹¹ George W. Wenzel, “From TEK to IQ: Inuit Qaujimajatuqangit and Inuit Cultural Ecology” (2004) 41:2 *Arctic Anthropology* 238 at 240 [IQ].

traditional Inuit culture including knowledge, language, values, beliefs, social organization, life skills, perceptions and expectations.¹¹² In the Government of Nunavut's 1999 Bathurst Mandate it publicly acknowledged that IQ would "provide the context in which we develop and open, responsive and accountable government."¹¹³ Despite these early affirmations, the incorporation of IQ into Nunavut's governance structures continues to be a "work in progress."¹¹⁴

This final chapter explores the concept of Inuit law and culture (which is an aspect of IQ) as described by Inuit elders in *Interviewing Inuit Elders: Perspective On Traditional Law (IIE)*. In IIE, students from Nunavut's Arctic College interviewed several Inuit elders and transcribed their responses on a variety of topics including traditional Inuit conceptions of law as it existed prior to contact with Western law.¹¹⁵

2. Defining Traditional Inuit Conceptions of Law

There is no direct translation of the Western concept of "law" in traditional Inuit culture. However, the words *maligait*, *piqujait* and *tirigususiit*, which refer to positive and negative obligations in Inuit society, are sometimes understood as corollaries to "law."¹¹⁶ By understanding these words we can begin to understand the ways in which Bill 64 did not fully reflect Inuit perspectives.

Pigujaq has been translated as "Inuit customary law." However, this translation is not sufficient as the concept of "customary law" was alien to Inuit society before contact with the

¹¹² Ibid at 241. Several IQ core principles have been identified. Among these are *Pijitsirniq* (serving others), *Aajiiqatigiingniq* (consensus seeking and respecting differences), and *Piliriqatigiingniq* (cooperation, working together toward a common purpose) (Ibid).

¹¹³ IQ, supra note 111 at 241.

¹¹⁴ Ibid (quoting J. Arnakak in a personal communication).

¹¹⁵ Paul Groarke argues that it is a mistake to assume that no law existed among the Inuit prior to the introduction of southern laws in the territory, the introduction of Western legal and governmental systems. In reality, Inuit law existed in Nunavut well before European contact. In his review of the IIE, Paul Groarke notes how European anthropologists mistakenly believed that as the Inuit had no formal mechanisms of government or legal systems and no positive law. He cites anthropologists such as E. Adamson Hoebel who, in 1954, stated that the Inuit had "rudimentary law in a [p]rimitive [a]narchy." According to Groarke, the problem with the conception of "law" espoused by legal positivists and theorists such as Bentham, Austin and H.L.A. Hart, is that "it leaves us without the conceptual resources to explain the presence of law in traditional Inuit society." (Review, supra note 110 at 790) Later Groarke notes that while the Inuit had few formal legal mechanisms, IIE bears "living testimony to the fact that they had a rich and complex body of laws to meet their social needs." (Ibid at 791).

¹¹⁶ The authors of IIE caution: "The use of these translations tends to obscure the fact that *maligait*, *piqujait* and *tirigususiit* on one hand, and notions such as law on the other, derive from completely different cultural perspectives." (Interviewing Elders, supra note 109 at 1).

Canadian legal system. A back translation sheds more light on the word and its meaning. Piqujaq literally means “which is asked to be done (by somebody),” and its implicit meaning is “which is asked by an authorized person to be done.”¹¹⁷ Michele Therrien posits that piqujaq refers to the general obligation to respect rules made by authorized persons in Inuit society. These rules are not codified but rather transmitted orally. Often these rules were taught by parents and concerned helping the family and elders, and how to respect animals.¹¹⁸ What distinguishes piqujaq “rules” from Western conceptions of laws as general principles is that piqujaq is a relational term: “people will comply with what those they respect ask from them.”¹¹⁹

Maligait, a word that is now translated as “Canadian law,” is another term that emphasizes the relationship between people. Malik means “to follow a person, an animal, an idea, an object. To travel with somebody not being the leader e.g. not owning the sled.”¹²⁰ Maligait implies something “which is followed in an inherent manner.” Therrien distinguishes piqujaq, which focuses on the request (the wish to obey) from maligait, which emphasizes the result (an obligation).¹²¹

Tirigususiit, which is sometimes referred to by anthropologists as superstitions or taboos, was frequently used by elders to refer to the observance of specific rules or rituals regarding game and the land. Essentially, tirigususiit were rituals that dictated how animals and the land were to be respected by members of society. The authors of ILL suggest that no clear distinction between rules and rituals existed in traditional Inuit society. Elders noted that while tirigususiit are mostly no longer observed, people still understand the importance of respecting game and the land. Tirigususiit, therefore, was also a term of relation that emphasized the need to maintain respectful relationships with people, animals and the land.¹²²

¹¹⁷ Interviewing Elders, supra note 109 at 1.

¹¹⁸ Interviewing Elders, supra note 109 at 1.

¹¹⁹ Ibid at 2.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

Maligait, piquait and tirigususiit all emphasize the interconnectedness of people, the natural and spiritual worlds. The sanctions associated with breaking these “laws” also emphasized a person’s connection to society and the natural world. Unlike Western penal sanctions which are imposed by the State, traditional Inuit sanctions often came from the natural and spiritual world. Groarke suggests that the Inuit concept of maligaq is hard to reconcile with Western legal system because sanctions often came from the broader community and spiritual world.¹²³ One elder noted: “In the old days a maligaq was not allowed to be broken. Nobody was arrested, but it was scary. Even though you knew you were not going to be incarcerated, the consequences might be that the camp could be wiped out through starvation.”¹²⁴ Thus, sanctions could fall upon not only the individual but his/her entire community. Furthermore, breaking a rule could have a negative impact on subsequent generations. Elder Aupilaarjuk recounted a story of his great-grandfather who had killed another man. As a result, several of Aupilaarjuk’s children died at a very young age.¹²⁵

Groarke also suggests that Inuit law was internalized rather than something that was imposed from without.¹²⁶ Elder Aupilaarjuk stated it this way: “The maligait of the Inuit are not on paper. They are inside people’s heads and they will not disappear or be torn to pieces. Even if a person dies, the maligait will not disappear. It is part of a person. It is what makes a person strong.”¹²⁷ The law is therefore something that is eternal rather than written down. The consequences of breaching the “law” will have an impact not only on the individual perpetrator, but also his/her community and even subsequent generations.

A focus on obligations to others, rather than individual rights, makes more sense given this emphasis on interconnectivity and the causal relationship between wrongdoing and community harm. Groarke also posits that traditional law was based on obligations

¹²³ Review, *supra* note 110 at 791.

¹²⁴ Interviewing Elders, *supra* note 109 at 180.

¹²⁵ *Ibid* at 27.

¹²⁶ Review, *supra* note 110 at 792.

¹²⁷ Interviewing Elders, *supra* note 109 at 14.

rather than rights.¹²⁸ This emphasis on interconnectivity and obligations is also reflected in the specific ways in which Inuit dealt with wrongdoers. Whereas the Western criminal justice system focuses on deterrence and denunciation, the traditional Inuit approach emphasized re-integration through counseling.¹²⁹ Elder Imaruituuq explains:

If there was any kind of strife in the community, they used to get together and talk to the person or persons causing it. If they listened the first time, then that would be the end of the matter but if they persisted, the second round of counseling would be more severe.”¹³⁰

However, to characterize the Inuit way as one which shuns all forms of punishment and only seeks to re-integrate individuals into the community is overly simplistic. Elder Imaruituuq confirms that individuals who did not listen to counseling after several attempts could face banishment.¹³¹ In a harsh environment like Nunavut, banishment could constitute a death sentence. In addition, if an individual committed a serious crime such as murder, the victim’s family would be justified in avenging the murder.¹³² And while every person was potentially valuable to the community, those who committed serious crimes and were unwilling to accept guidance and counseling could also be killed by other members of their community. Killing dangerous offenders was not meant as punishment, but rather to ensure the community’s survival.¹³³ Placing murder in a contemporary context, Elder Imaruituuq notes that as murder is the most serious crime which threatens the community, “[i]ncarcerating

¹²⁸ Groarke references elder teachings which stress that hunters had certain obligations to give elders meat before anyone else, as well as obligations to give women certain parts of the animal. While these obligations varied, they followed similar social patterns. (Review, supra note 110 at 793).

¹²⁹ Re-integration of wrongdoers would follow an informal procedure. During the first meeting, the person was uqallaujjau (told he/she was cared for and loved by the elders). If a second meeting was needed, the wrong-doer would be iqqaqtuijau (reminded by elders of their wrong-doing in a harsher manner and warned of the potential consequences). (Interviewing Elders, supra note 109 at 31) While resembling the approach taken to first time offenders (of less serious crimes) in the Canadian criminal justice system, the goal was squarely one of integration rather than segregation. Later elder Imaruituuq adds “One thing we know for sure is that there were no jails in the old days. Everything was dealt with through counseling, the offenders were never sent to jail.” (Ibid at 47).

¹³⁰ Interviewing Elders, supra note 109 at 44.

¹³¹ Ibid at 54.

¹³² Ibid at 48.

¹³³ Interviewing Elders, supra note 109 a 7.

these individuals is the best way to deal with them, because it removes the threat from the community.”¹³⁴

What emerges from this discussion is an Inuit conception of law which focuses on obligations rather than rights, on interconnectivity and the overall health of communities. Groarke notes: “There appears to be a remarkable degree of forgiveness in traditional Inuit society, but this would be misplaced. It was the existence and preservation of the community that was uppermost in the legal system.”¹³⁵

Can traditional Inuit law as articulated by elders (or IQ) inform the Canadian legal system in Nunavut today? Elder Aupilaarjuk notes that some parts of qallunaaq (white laws) and Inuit morals and customs don’t mix, and that many families were disrupted when Inuit tried to follow these foreign regulations recently brought to the north.¹³⁶ However, elders repeatedly called for a synthesis of Inuit and Western cultures.¹³⁷

3. A New Liquor Act that Reflects IQ

It seems clear that offenders who pose a threat to the health of the community (such as bootleggers) ought to be dealt with in a harsh manner. This approach accords with what community members called for during the Task Force consultation, as well as the IQ articulated by elders which prioritizes community wellbeing and collective health. While Bill 64 does impose harsher sanctions for bootleggers, a Liquor Act that truly reflects Inuit values might demand more. During the consultation process, most communities called for harsher sanctions as well as increased police powers to inspect and search people and places that are suspected of bootlegging.¹³⁸ However, disregarding individual rights and granting overly

¹³⁴ Ibid at 53.

¹³⁵ Review, *supra* note 110 at 794.

¹³⁶ Interviewing Elders, *supra* note 109 at 26.

¹³⁷ Elder Aupilaarjuk acknowledged: “I think we should be joining together the good parts of qallunaat and Inuit ways.” (Interviewing Elders, *supra* note 109 at 27) Specifically, elders noted the strong impact that Western law has had on Inuit society and the many failures of Western law to address many of the social problems in modern Inuit society. They felt that communities are best suited at addressing their social problems, and they should rely on their own traditional methods and traditions of counseling. The Canadian law should only be invoked to deal with serious offenders when segregation and punishment are necessary.

¹³⁸ What We Heard, *supra* note 18 at 50.

broad police powers might conflict with the Canadian Charter and prove to be impossible in the Canadian context. Though drastic amendments to the Liquor Act might not be possible, an emphasis on collective health rather than individual rights might inform the s. 24(2) Charter analysis in cases involving bootleggers who are in contravention of the Act. An Act that included a preamble that explicitly stated the Act's purpose and the harm it seeks to prevent could provide judges with helpful guidance when weighing collective and individual rights under a s. 24(2) Charter analysis.

While there was no consensus regarding whether prohibition or liquor liberalization is the appropriate way forward, most Nunavummiut agreed that hamlets need to make this decision for themselves. The plebiscite process provides a democratic forum for communities to determine their level of alcohol restriction. However, without adequate resources to enforce local options it seems that bootlegging and harmful drinking will continue. The Liquor Act could earmark funds to enable hamlets to properly enforce restrictions and give local Alcohol Education Committees the resources they need to educate and regulate their communities.

Finally, it seems evident that merely focusing on crime and punishment misses the broader goals of traditional Inuit law: community health and wellness with an emphasis on re-integration. It also misses the ostensible goal of the Liquor Act itself: to reduce alcohol related harm. Harm takes many forms. It is manifested as FASD and other diseases, as increased violence, unacceptable stresses on families and lower productivity in the workforce. For the Liquor Act to truly protect community wellness, a broader approach is needed.¹³⁹ Significant funds would be necessary to support treatment and prevention programs, and an amended Liquor Act could designate sources for this funding.

Funding, or the lack thereof, seems to be the biggest obstacle preventing the expansion of the Liquor Act mandate. The Task Force noted that while specialized treatment for people with alcohol-use disorders was often very effective, "it is a very expensive public

¹³⁹ The Task Force itself noted: "In light of the complex nature of the issues, participants called on the government to broaden the scope of the legislative review and urged the Task Force to consider in their recommendations how legislation could support collaborative efforts, improve treatment options, and increase public awareness about the risks of alcohol." (What We Heard, supra note 18 at 42).

policy option.”¹⁴⁰ GN 2012-2013 Main Estimates indicated that the Nunavut Liquor Commission had a \$1.9M operating surplus.¹⁴¹ Establishing a government monopoly and ceasing the use of import permits would also raise revenue in the territory.¹⁴² Fines for bootleggers, which are now capped at \$100,000, could also be used for harm reduction programs. Despite these potential revenue streams, the Task Force, in consultation with the Department of Finance, the Nunavut Liquor Commission and the Department of Health and Social Services, found that the cost of treatment programs exceeded the profit currently being made through liquor sales. That being said, the Task Force also conceded that considerable money is being spent on policing, incarceration, social and family support programs and health programs that result from alcohol abuse, noting “these costs represent a powerful incentive for effective community-based alcohol treatment programs.”¹⁴³

As noted in Chapter 1, the GN recently approved 15 million dollars for the construction of a temporary prison to alleviate the overcrowding at the Baffin Correctional Centre. If we accept that alcohol is involved in 90-95% of offences in the territory; if we accept that 95.6% of inmates have substance abuse issues; if we consider that the construction of a new prison is one of many alcohol-related expenses incurred by the GN, then the problem appears to be one of legislative priorities and not funding. Money will be spent on alcohol-related harm one way or the other. Funding community programs and treatment centers might be a sound long-term investment. It might also accord with IQ.

A well-funded Liquor Act would not be a panacea,¹⁴⁴ but a more integrated and expansive Liquor Act might begin to reduce harm in Nunavut. Section 59.1 of Bill 64 currently reads: “Sums in the Liquor Revenue Fund may be used for expenses related to education campaigns.” Rather than committing vague promises and allowing some funds to

¹⁴⁰ Final Report, supra note 16 at 94.

¹⁴¹ Ibid at 30.

¹⁴² The Liquor Commission estimated that between 2009-2010, the use of import permits resulted in a net loss of revenue of \$2.3 million/year, profits that were accrued in the provinces where the liquor was sold (Final Report, supra note 16 at 61).

¹⁴³ Final Report, supra note 16 at 141.

¹⁴⁴ During the consultation process frontline workers noted that the Act might help in some situations, it cannot resolve all of broader systemic issues which contribute to alcohol related harm. They pointed to inadequate housing, lack of employment and education opportunities as well as the loss of cultural identity as some of the underlying issues that are present. (What We Heard, supra note 18 at 42).

be used for education, explicit statutory language could earmark all liquor revenue to integrated community and government health and social programs which address all forms of alcohol related harm. A strong argument can also be made that additional funds should be allocated to support these initiatives under an amended Liquor Act.

These recommendations (all of which were made by Nunavummiut) would greatly expand the scope of the Liquor Act beyond regulation and distribution of alcohol to include treatment of alcohol related harm. While the cost of funding such programs would be significant, the human and monetary cost of maintaining the status quo cannot be discounted. The question, as Justice Kilpatrick noted in *R v. Joamie*, is which government agency should pick up the tab? Another related question is which government agency is best suited at addressing alcohol related harm? The Act, as it currently exists, puts a good deal of the expenses resulting from alcohol related harm on the Nunavut Department of Justice. In the final section of this chapter, I revisit Peter and Lucy's stories. I argue that a Liquor Act which integrates and supports other remedial programs would be more effective at dealing with alcohol related harm than the criminal justice system.

4. The Moral of the Story of Peter Joamie: The Problem of Focusing on Crime and Punishment

One problem with the criminal justice system is that it takes time and good deal of resources. This often results in delayed justice. Peter Joamie's story provides a good illustration of delay and the associated financial costs. The assault occurred on January 16th, 2010. Yet a final judgement was pronounced on September 4, 2013, 3 years and 8 months after the incident.¹⁴⁵ In addition to the time and resources needed to arrest Peter, one must also consider the time and resources needed to detain and hold judicial interim release

¹⁴⁵ Justice Kilpatrick noted that there were 18 prior appearances in court over these three years, that that preliminary inquiries had been scheduled and set to proceed on three occasions, and that warrants were issued for Mr. Joamie's arrest as he did not appear on two of these occasions. (Joamie, *supra* note 4 at para 9).

hearings for Peter multiple times.¹⁴⁶ Some community members have also insisted that delayed justice is not in line with a traditional Inuit approach which seeks to deal with problems quickly while satisfying all of the concerned parties.¹⁴⁷

Peter must also not be forgotten in this narrative. He suffered the effects of alcohol related harm, and as Justice Kilpatrick noted at length, not a single institutional resource was in place to diagnose or help Peter with his FASD. The Liquor Act fails to address any of the harms that Peter suffered. It is also questionable whether the criminal justice system will be equipped to re-integrate Peter back into society upon his release in accordance with the Inuit way described by elders.¹⁴⁸ A Liquor Act that assumed a holistic approach to harm could begin to help Peter and his community deal with the collective harm they have suffered outside of a correctional setting. Instead of spending money on trials and jails, the resources might be better spent on community wellness programs and healing.

5. The Moral of the Story of Lucy Akpalialuk: The Problem of Favoring Individual Over Collective Rights

Nunavummiut have also noted the tension between individual rights (to privacy, for example) and a community's right to health and safety. The amended Liquor Act does little to advance collective rights. During the consultation process one community member noted "Inuit will step in and resolve problems, but the white man always has privacy issues

¹⁴⁶ This story also suggests that Mr. Joamie made "bail" on at least two occasions. While his personal liberty and security interests would have been protected (as well as the presumption of innocence enshrined in s 11(d) of the Charter) one cannot forget that for these three years Peter was free to live in the same community as his alleged victim. In addition to the incredible cost associated with this delay in justice, one can imagine that there would be significant emotional cost to the victim as the accused was free on "bail" and left unpunished for three years.

¹⁴⁷ What We Heard, *supra* note 18 at 49.

¹⁴⁸ James Morton, a lawyer who regularly represents clients in serious criminal matters in Nunavut, made the following observations in the Huffington Post:

Dealing with the concept of healing in prison I can state, unequivocally, that the overwhelming majority of crime in Nunavut has a substance abuse component -- usually alcohol. People, usually men, who are decent hard-working individuals drink and become dangerous and violent criminals. I agree they must be separated from society for a time and punishment is required by society -- but absent treatment these same individuals will be released, get drunk and hurt other people. Treatment is an essential element of criminal justice. And healing from childhood abuse (which is astoundingly common), family suicide (again a regular occupancy) and longstanding alcoholism is necessary if substance abuse is to stop. (James Morton, "Nunavut's New Jail is No Club Fed", The Huffington Post Canada (17 January 2013), online: http://www.huffingtonpost.ca/james-morton/new-jail-nunavut_b_2467179.html http://www.huffingtonpost.ca/james-morton/new-jail-nunavut_b_2467179.html>).

stopping them from dealing with the problem.”¹⁴⁹ Lucy’s story reflects this tension and the delays that can result when one emphasizes individual rights.

Lucy was arrested on April 20, 2012. Justice Kilpatrick rendered his judgement on July 11, 2013, over a year after the incident. This delay in justice is significant when one considers that Lucy was facing a summary conviction offence, the Crown had physical evidence of the offence and a voluntary confession from the accused. This was a fairly straightforward case that could have proceeded relatively quickly. However, when Charter applications are made and individual rights are asserted (as in Lucy’s case) additional costs and delays are inevitable. These expenses are perhaps necessary to ensure individual rights and adequate checks on police powers.¹⁵⁰ But should individual rights trump collective rights in this particular context?

Justice Kilpatrick’s decision suggested an affirmative.¹⁵¹ Ultimately, Lucy’s individual Charter rights prevailed over the potential harm her actions caused the community. After weighing the seriousness of the Charter breach, the impact of the breach on Lucy’s rights, and the communities’ interest in seeing the matter judged on its merits, Justice Kilpatrick excluded the evidence (Lucy’s confession) obtained through the Charter breaches pursuant to s. 24(2) of the Charter. According to Kilpatrick J, the inclusion of this evidence would bring the administration of justice into disrepute.¹⁵² That being said, Lucy was ultimately convicted based on other direct and circumstantial evidence that was lawfully obtained pursuant to the Act.

Does this decision reflect Inuit values or an Inuit approach? The result (finding Lucy guilty) was in line with what people said in various communities and the IQ that elders articulated, however the method (which placed individual rights before collective health) was not. In Lucy’s case there was sufficient evidence to convict. However, bootleggers could very

¹⁴⁹ What We Heard, supra note 18 at 18.

¹⁵⁰ As a young jurist immersed in the Western legal tradition I was happy to see these safeguards in place.

¹⁵¹ In his judgment Justice Kilpatrick did weigh individual and collective rights. He noted: “All citizens have a profound interest that the legal rights fundamental to a free and democratic society are preserved and protected” (Akpaliuk, supra note 13 at para 79). However, Kilpatrick J. also acknowledged the impact of Lucy’s offence on society, writing: “Substance abuse is tearing Nunavut’s families and communities apart. Much of Nunavut’s violent crime is alcohol related. Much of this crime is driven by bootleg alcohol.” (Ibid at para 75).

¹⁵² Akpaliuk, supra note 13 at para 81.

well escape criminal sanctions in cases where the only available evidence was obtained in violation of the Charter. A revised Act, which makes its purpose and the harms explicit, might assist judges in striking a different balance between individual and group rights under the s. 24(2) Charter analysis in future cases.

Epilogue

In a 2006 Law Commission of Canada discussion paper entitled “Justice Within: Indigenous Legal Traditions,”¹⁵³ the Commission suggests that many Aboriginal legal traditions existed prior to contact. Furthermore, greater acceptance of Aboriginal legal traditions would have a positive impact on the health of Aboriginal communities. Recognizing Aboriginal traditions would require the state to accept alternative approaches to the regulation of social interactions that are not based on the Western liberal culture of Canadian society which is greatly concerned with individual rights, but on collectivity.¹⁵⁴ These sentiments were echoed by Inuit community members in ‘What We Heard,’ and elders interviewed in IIE. Many noted that Nunavut’s Liquor Act does not reflect community values and Inuit ways of approaching problems.¹⁵⁵ It does not reflect the Territory’s IQ. It seems that an Act which seeks to reduce alcohol related harm in Nunavut must reflect these values and perspectives.

The observations in this paper reflect my understanding of what Nunavummiut expressed during the Task Force’s consultation process, as well as my understanding of elder wisdom captured in IIE. Throughout this process, I have been cognizant of the dangers that can arise when one interprets someone else’s legal and cultural traditions. I have been careful to avoid essentializing any community. Nunavummiut, like all Canadians, have diverse beliefs and values that are constantly changing. I have attempted to highlight re-occurring

¹⁵³ Canada, Law Commission of Canada, *Justice Within: Indigenous Legal Traditions* (Ottawa: Law Commission of Canada, 2006). Online: <http://dalspace.library.dal.ca/bitstream/handle/10222/10229/ILT%20Discussion%20Paper%20EN.pdf?sequence=1> > [Justice Within].

¹⁵⁴ The Law Commission of Canada concludes:

Although sharing the concern for individual rights and security that is of central importance in our liberal democracy, Aboriginal communities historically placed great importance on the collectivity and the responsibilities of its members to each other, to the community, to the land and to the Creator. Canadian society and the Canadian state would have to accept that renewed Indigenous legal tradition may reflect this different emphasis.” (Justice Within, supra note 153 at 13).

¹⁵⁵ One community leader stated “The Act reflects western values and approaches to problems we need to change the Act to reflect Inuit ways.” (What We Heard, supra note 18 at 18). Another community member noted the “Inuit way” requires laws which protect the overall wellbeing of the community rather than the rights of individuals (Ibid).

themes and areas of agreement between communities and traditional wisdom while being cognizant that this process could lead to misinterpretation.¹⁵⁶

This paper reflects my attempt at understanding context. This context suggest that Nunavut's Liquor Act needs a greater emphasis on collective health. Alcohol is causing a lot of harm in many communities, and harsher sanctions for bootleggers, more expansive police powers and well funded community health and wellness programs are all needed. The newly amended Liquor Act does not go this far. It liberalizes access to alcohol and increases fines for bootleggers. This emphasis on the individual (right to drink, and responsibility to obey positive laws) overlooks the interconnectedness of people, communities and the natural world. It overlooks the Inuit way. The Act punishes Lucy Akpalialuk, but it fails to protect those who are harmed by alcohol. It does not speak to Peter Joamie, his victim or the underlying issues their story reveals.

The federal prosecutor warned me before my arrival in Nunavut that I needed to understand the "arcane rules here" regarding alcohol. After the passage of Bill 64, these rules seem even more mysterious and obscure to me now. Until legislation truly reflects Inuit values it seems unlikely that harm will be reduced to acceptable levels in the Territory.

¹⁵⁶ The Law Commission of Canada also warns:

Like all legal traditions, Indigenous legal traditions are cultural phenomena that must be interpreted in their proper cultural context. Indeed, no system of law has meaning outside of its cultural context. Since every culture has its own notions of space, time, historical truth and causality, and since a shared understanding of such concepts is taken for granted when drawing inferences or conclusions about a given set of facts, there is much scope for misinterpretation when people unfamiliar with Indigenous cultures interpret Indigenous laws. (Justice Within, *supra* note 153 at 14).

Bibliography

Articles

Darryl S. Wood, "Alcohol controls and violence in Nunavut: a comparison of wet and dry communities" (2011) 70:1 International Journal of Circumpolar Health 19.

Colleen M. Davidson et al, "Community-driven alcohol policy in Canada's northern territories 1970-2008" (2011) 102:1 Health Policy 34.

George W. Wenzel, "From TEK to IQ: Inuit Qaujimajatuqangit and Inuit Cultural Ecology" (2004) 41:2 Arctic Anthropology 238.

Jack Hicks, "The painful transition: Explaining and preventing suicide by Inuit youth," Nunavut Tunngavik Inc., Spring 2012, at 16-23 online:

http://www.tunngavik.com/files/2012/04/9834.20-NTI_Springonline.pdf

J. Rehm et al, "The Cost of Substance Abuse in Canada 2002" (2006) Canadian Centre on Substance Abuse, Ottawa, online: <http://www.ccsa.ca/2006%20CCSA%20Documents/ccsa-011332-2006.pdf>>

Paul Groarke, "Legal Volumes from the Arctic College's Interviewing Inuit Elders Series", Book Review of Perspectives on Traditional Law, vol. 2, Interviewing Inuit Elders by Mariano Aupilaarjuk et al.; Cosmology and Shamanism, vol. 4, Interviewing Inuit Elders by Mariano Aupilaarjuk et al., (2009) 47:4 Osgoode Hall LJ 787.

Books

Mariano Aupilaarjuk et al, *Interviewing Inuit Elders: Perspectives on Traditional Law*, 2 (Iqaluit; Nunavut Arctic College Library, 1999).

Newspaper Articles

"Costs could double for temporary jail in Iqaluit", CBC News North (25 October, 2012) online: CBC News <http://www.cbc.ca/news/canada/north/costs-could-double-for-temporary-jail-in-iqaluit-1.1149379>>

"Iqaluit City Council approves new jail", CBC News North (March 27, 2013) online: <http://www.cbc.ca/news/canada/north/iqaluit-city-council-approves-new-jail-1.1339293>>

Andre Mayer, "Canada's weird liquor laws", CBC News (May 17, 2011) online:
<http://www.cbc.ca/news/canada/canada-s-weird-liquor-laws-1.1004724>

David Murphy, "Nunavut recounts produce one winner and one intractable deadlock", Nunatsiaq News (November 5 2013) online:
<http://www.nunatsiaqonline.ca/stories/article/65674nunavut_election_recounts_end_with_one_winner_and_one_enduring_tie/>

James Morton, "Nunavut's New Jail is No Club Fed", The Huffington Post Canada (17 January 2013), online: http://www.huffingtonpost.ca/james-morton/new-jail-nunavut_b_2467179.html

Reports

Statistics Canada, Police reported crime statistics in Canada, 2012 (Ottawa: StatCan, 25 July, 2013).

Nunavut, Nunavut Liquor Act Review Task Force, A New Approach: Halting the Harm, Final Report and Recommendations (Nunavut: document prepared by North Sky Consulting Group, 2012).

Nunavut, Nunavut Liquor Act Review Task Force, What We Heard: A public consultation report (Nunavut: document prepared by North Sky Consulting Group, 2012).

Canada, Law Commission of Canada, Justice Within: Indigenous Legal Traditions (Ottawa: Law Commission of Canada, 2006). Online:
<http://dalspace.library.dal.ca/bitstream/handle/10222/10229/ILT%20Discussion%20Paper%20EN.pdf?sequence=1>

Cases

R v Akpalialuk, 2013 NUCJ 12 (available on CanLII).

R v Joamie, 2013 NUCJ 19 (Nunavut Court of Justice) (available on CanLII).

Legislation

Liquor Act, R.S.N.W.T. 1988, c. L-9 as duplicated for Nunavut by s.29 of the Nunavut Act, S.C. 1993, c.28

Bill 64, An Act to Amend the Liquor Act, 3rd Sess, 3rd Leg, Nunavut, 2013 (assented to 17 September 2013)

Bill C-311, An Act to amend the Importation of Intoxicating Liquors Act (interprovincial importation of wine for personal use), 1st Sess, 44th Parl, 2012, (assented to 28 June 2012)

Access to Information and Protection of Privacy Act, S.N.W.T. 1994, c.20, as duplicated for Nunavut by s.29 of the Nunavut Act, S.C. 1993, c. 28.

Criminal Code, R.S.C. 1985, c. C-46.

Government Documents

Nunavut, Legislative Assembly of Nunavut, Unedited Transcript (Nunavut Hansard), 17 September 2013).