

FASD AND ACCESS TO JUSTICE IN THE YUKON

Submitted to:

Yukon Department of Justice

Submitted by:

Canadian Research Institute for Law and the Family

Prepared by:

Joseph P. Hornick, Ph.D.,
Joanne J. Paetsch, B.A.,
Lorne D. Bertrand, Ph.D., and
Lisa Jacobs, M.S.W.

March 2008

The views expressed in this report are those of the authors
and do not necessarily represent the views of the
Canadian Research Institute for Law and the Family
or the Yukon Department of Justice

TABLE OF CONTENTS

	Page
Executive Summary	vii
Acknowledgements	xi
1.0 Introduction.....	1
1.1 Background.....	1
1.2 Yukon Services for Persons with FASD.....	3
1.2.1 Government Services.....	3
1.2.2 Community-based Services	5
1.3 Purpose of the Project	7
1.3.1 Research Questions.....	7
1.4 Methodology	7
1.4.1 Literature Review	8
1.4.2 Focus Groups and Interviews.....	8
1.5 Limitations.....	10
1.6 Organization of the Report.....	11
2.0 Literature Review.....	13
2.1 Access to Justice in Canada.....	13
2.2 Fetal Alcohol Spectrum Disorder	16
2.2.1 Definition of FASD.....	16
2.2.2 Prevalence of FASD.....	17
2.2.3 Disabilities Associated with Fetal Alcohol Exposure	18
2.3 FASD and the Justice System	20
2.3.1 Introduction	20
2.3.2 FASD and Policing.....	22
2.3.3 FASD and the Court System	24
2.3.4 FASD and the Correctional System	31
2.3.5 The Importance of Support Agencies.....	33

	Page
2.4	Conclusions 37
3.0	Focus Groups and Interviews 39
3.1	Clients with FASD 39
3.1.1	Background 39
3.1.2	Experience with the Justice System 40
3.1.3	Support 41
3.2	Stakeholder and Service Provider Focus Groups 42
3.2.1	Experience and Knowledge 42
3.2.2	Barriers to Access to Justice 43
3.2.3	Current Resources in the Yukon 45
3.2.4	Services Needed in the Yukon 47
3.3	Key Informant Interviews 48
3.3.1	Experience and Knowledge 48
3.3.2	Barriers to Access to Justice 49
3.3.3	Current Resources in the Yukon 50
3.3.4	Services Needed in the Yukon 51
3.4	FASD Experts 52
3.4.1	Experience and Knowledge 52
3.4.2	Barriers to Access to Justice 53
3.4.3	Current Best Practices Relevant to the Yukon 54
4.0	Summary, Discussion and Recommendations 57
4.1	Purpose of the Project 57
4.1.1	Research Questions 57
4.2	Summary and Discussion 58
4.2.1	What is the Current State of Canadian Literature on Access to Justice? 58
4.2.2	What National and International Literature is Available on Access to Justice in the Context of FASD and other Relevant Conditions of Limited Cognitive Capacity? 59

	Page
4.2.3 What is the Level of Knowledge of FASD Among Service Providers and Relevant Professionals in the Yukon, Including Justice System Personnel, Social Service Workers, Health Care Workers, and Community Agents?	60
4.2.4 What Barriers to Access to Justice Have Been Identified by Professionals Working in the Area, Individuals with FASD and Their Families?	60
4.2.5 What Strategies and Programs Have Been Developed in the Yukon to Deal with Access to Justice Issues Among the FASD Population?	62
4.3 Conclusions and Recommendations	64
4.3.1 Justice System Recommendations and Areas for Further Investigation	64
4.3.2 General Recommendations	65
4.3.3 First Nations Communities	65
4.3.4 Rural Communities.....	65
4.3.5 Recommendations for Research.....	66
References.....	67
Appendix A: Interview Schedule for Persons with FASD and Support Persons	
Appendix B: Key Informants/Focus Group Protocol	
Appendix C: Experts Interview Protocol	
Appendix D: List of Participants	
Appendix E: Supporting Tables: Focus Groups	
Appendix F: Supporting Tables: Key Informants	
Appendix G: Supporting Tables: Experts	

EXECUTIVE SUMMARY

Background

Fetal Alcohol Spectrum Disorder (FASD) is an umbrella term that refers to a range of life-long physical, neuropsychological, cognitive, and behavioural impairments that result from prenatal exposure to alcohol. In recent years there has been growing recognition that individuals with FASD experience difficulties functioning in their communities, and more specifically, within the justice system. Few studies, however, have focused on issues related to access to justice, and whether the justice system is adequately meeting the needs of individuals with FASD.

Purpose of the Project

The purpose of this project was to examine access to justice issues as they relate to FASD, with particular emphasis on these issues in Yukon communities. The overall goal of this project was “to document the types of barriers that confront these individuals and to make recommendations for how to address them.” The project addressed the following research questions:

- (1) What is the current state of Canadian literature on access to justice?
- (2) What national and international literature is available on access to justice in the context of FASD and other relevant conditions of limited cognitive capacity?
- (3) What is the level of knowledge of FASD among service providers and relevant professionals in the Yukon, including justice system personnel, social service workers, health care workers, and community agents?
- (4) What barriers to access to justice have been identified by professionals working in the area, by individuals with FASD and their families?
- (5) What strategies and programs have been developed in the Yukon to deal with access to justice issues among the FASD population?
- (6) What additional resources are required to address the problem?

Methodology

The project involved a number of research components as indicated below.

Literature Review

The first component of the project involved a review of the access to justice literature in Canada. Further, the national and international literature on FASD and other relevant issues related to limited cognitive capacity and access to justice were

reviewed. The review included academic publications, government reports and documents available on the Internet.

Clients with FASD Interviews

Interviews were conducted with eight persons formally assessed with some level of FASD. All but one of these respondents were referred to us by the Fetal Alcohol Syndrome Society Yukon (FASSY) and were receiving some level of support from FASSY at the time of the interview. Interviews with these individuals were arranged through FASSY and a support worker was present during the interview. All respondents were paid \$20 for the time that it took to complete the interview. Information was collected concerning their background, their experiences with the law, and their supports.

Focus Groups

Eighteen focus groups were conducted with stakeholders, service providers and adoptive parents from the Yukon. The total number of participants for all the focus groups was 94. Background information, as well as experience and knowledge of FASD, was also collected for the majority of participants (n=82). In addition, information was collected (using the focus group as the unit of analysis) regarding perceived barriers to access to justice for persons with FASD, current resources available in the Yukon to help persons with FASD access justice, and suggestions for services needed to help persons with FASD access justice in the Yukon.

Key Informant Interviews

Key informant interviews were conducted with 21 respondents. These persons were either individually involved with persons with FASD, managers of agencies/programs that provided services, or individuals who were not available for the focus groups and thus needed to be interviewed individually. The information collected during the key informant interviews included: background information, as well as experience and knowledge of FASD; information regarding perceived barriers to access to justice for persons with FASD; current resources available in the Yukon to help persons with FASD in accessing justice; and suggestions for services needed to help persons with FASD access justice in the Yukon.

Interviews with FASD Experts

Interviews were conducted with nine professionals identified as experts in the area of FASD, particularly related to legal issues. These experts were identified through a variety of mechanisms including the review of the literature, case law and through referral by other professionals. Interviews were conducted by telephone using the Experts Interview Protocol. The information collected during the experts interviews included: background information, as well as experience and knowledge of FASD; information regarding perceived barriers to access to justice for persons with FASD; and suggestions about current best practices in providing access to justice for persons with FASD.

Conclusions and Recommendations

Overall the findings of the report are very consistent for all data sources. The literature review provided a good basis for the findings and recommendations which was very consistent with the findings and recommendations from the focus groups, key informants and experts. The specific recommendations are listed below.

Justice System Recommendations and Areas for Further Investigation

Recommended resources and services identified as specific to the justice system are as follows:

- Provide special training regarding FASD for front-line staff and other points of client contact with justice professionals.
- Explore the possibility of introducing justice-specific advocates for clients with FASD.
- Consider the creation of a public legal education strategy that facilitates enhanced access to justice for individuals with FASD.
- Encourage key decision-makers to seek out an FASD diagnosis in the early stages of the justice process if FASD is suspected.
- Develop diversion programs to divert less serious cases involving persons with FASD from the justice system.
- Create specialized courts such as the Yukon Community Wellness Court.
- Use circle sentencing to engage the family and the community in the healing process.
- Develop special programs for offenders with FASD who have been incarcerated.

General Recommendations

Recommended resources and services identified under the general approach were as follows:

- Establish programs which provide general support workers for persons with FASD.
- Create housing (short and long-term, and safe houses) and residential support services for persons with FASD and other disabilities.
- Further investigate the development of a territorial-wide FASD strategy and coordination of services for persons with FASD.

First Nations Communities

Implementation of any of the recommendations above will require special consideration for First Nations communities. We would recommend the following:

- Engage and support First Nations families and community resources in dealing with issues related to persons with FASD.
- Utilize traditional First Nations justice and treatment models.

Rural Communities

Implementation of any of the recommendations above will require special consideration for rural communities. We would recommend the following:

- Engage families and a broad range of community services in rural communities to develop a coordinated response to issues related to persons with FASD.
- Support the development of local solutions to problems and issues related to persons with FASD.

Recommendations for Research

Research should be conducted in the following areas:

- Conduct research on the issues and problems related to persons with FASD who have to deal with family and other civil law issues.
- Conduct research and evaluate the use and effectiveness of alternatives to the traditional justice system for persons with FASD.
- Conduct research on issues related to the involvement of victims/witnesses with FASD.
- Conduct a case-law review on issues related to individuals with FASD, including being found “not criminally responsible” and “unfit to stand trial”.

ACKNOWLEDGEMENTS

This project could not have been conducted without the assistance and support of many individuals and organizations. First we would like to acknowledge the financial support of the Yukon Department of Justice and the guidance provided to us by the members of the steering committee, particularly Natasha Phillips and Dennis Cooley. We appreciate their support of this project and value the time, feedback, and suggestions they provided throughout the research process.

Thank you to all the individuals who participated in the focus groups and interviews. Your willingness to share your experience, knowledge, and feelings is much appreciated.

We would also like to thank a number of individuals who assisted us in conducting the focus groups. They include Jeanie Dendys, Martina Sidney, Wenda Bradley, Lesley Carberry, Judy Pakozdy, Lori Duncan, and Mary Amerongen. Thank you also to Ray Marnoch for his contributions to the literature review.

Lastly, we thank Ms Linda Haggett of CRILF for her assistance with typing the text and producing the tables for the report. The Canadian Research Institute for Law and the Family is supported by a grant from The Alberta Law Foundation.

1.0 INTRODUCTION

1.1 Background

In recent years there has been growing recognition that individuals with Fetal Alcohol Spectrum Disorder (FASD) experience difficulties functioning in their communities, and more specifically, within the justice system. Few studies, however, have focused on issues related to access to justice, and whether the justice system is adequately meeting the needs of individuals with FASD. This project examined access to justice issues as they relate to FASD, with particular emphasis on these issues in Yukon communities.

Fetal Alcohol Spectrum Disorder is an umbrella term that refers to a range of life-long physical, neuropsychological, cognitive, and behavioural impairments that result from prenatal exposure to alcohol. FASD is not a clinical or diagnostic term, but rather includes four specific diagnoses: Fetal Alcohol Syndrome (FAS); partial Fetal Alcohol Syndrome (pFAS); Alcohol-Related Neurodevelopmental Disorder (ARND); and Alcohol-Related Birth Defects (ARBD). These diagnoses differ in the extent and type of impairments exhibited by an individual prenatally exposed to alcohol and may include cognitive and behavioural deficits, which fall into five general areas: adaptive behaviour; language; attention; reasoning; and memory (Conry & Fast, 2000).

Individuals with FASD may display three identifying traits: growth retardation, cranio-facial anomalies (which tend to diminish with age), and damage to the central nervous system. The latter can result in delayed development and behavioural and learning dysfunctions and it presents the greatest challenge to successful community living (Boland, Burrill, Duwyn & Karp, 1998; Chartrand & Forbes-Chilibeck, 2003). Neurological damage often results in a number of cognitive deficits (Kerns, Don, Mateer & Streissguth, 1997), which can then lead to criminogenic behaviours (Chartrand & Forbes-Chilibeck, 2003). These behaviours include poor judgement and impulse control, attention deficits, and difficulties retaining information and perceiving social cues (Kerns et al., 1997; Chartrand & Forbes-Chilibeck, 2003; Boland et al., 1998).

Chartrand and Forbes-Chilibeck (2003) note that FASD is often the result of a combination of medical, socioeconomic and environmental factors, all of which must be considered when individuals with FASD come into contact with the law. Many believe that the current justice system in Canada is not equipped to manage these cases, with courts often not placing enough importance on the issues surrounding FASD. This is mainly due to a lack of understanding and knowledge about the disorder (Conry & Fast, 2000; Chartrand & Forbes-Chilibeck, 2003; Moore & Green, 2004).

Individuals with FASD may become involved with the justice system in a variety of ways: (1) as victims/witnesses in the criminal justice system; (2) as offenders in the criminal justice system; and (3) as parties in civil actions including family law cases. The implications of FASD for the justice system are especially relevant for offenders in the criminal justice system. Fast, Conry and Looch (1999) note that the criminal justice system is designed on the premise that persons have the capacity to comprehend the

consequences of their actions. Persons with FASD often do not possess this capacity. With an increasing number of youth and adults with FASD coming into contact with the justice system, addressing the challenges presented by this unique range of deficits is of greater importance (Conry & Fast, 2000).

Moore and Green (2004) note that due to the cognitive shortcomings associated with FASD, ensuring that these individuals are held responsible for their actions presents many concerns. Persons with FASD face unique challenges at all levels of the traditional criminal justice system. Given their inability to connect behaviour to consequence, the entire process creates confusion and stress, affecting their ability to accurately recount events and ultimately compromising the legitimacy of criminal justice proceedings (Conry & Fast, 2000). Further, incarceration presents its own challenges to individuals with FASD, who struggle with the aggressive and uncertain environment of prisons (Boland, Chudley, & Grant, 2002). They often misunderstand institutional regulations, struggle with prison programs and are more likely to be victimized by other inmates (Moore & Green, 2004; Conry & Fast, 2000). Probation orders are also challenging for persons with FASD, who often breach the conditions due to their tendency for impulsive behaviour (Conry & Fast, 2000). These issues raise questions about how effective law enforcement and the criminal justice system are in terms of dealing with individuals with FASD. Conry and Fast (2000) stress the importance of family involvement in this process as they often have the greatest understanding of their loved one's limitations, and can provide the support and guidance that is vital to criminal justice proceedings.

Issues surrounding individuals with FASD and the justice system are further complicated by the fact that diagnosis is often difficult, especially by individuals who are not trained or familiar with the disorder. Boland et al. (1998) note that while physical features may be used to identify an individual with FASD in childhood, it is more difficult in adulthood as the physical features of FASD become less distinctive. In addition, FASD is often accompanied by other disorders, for example substance abuse, which may influence justice workers' interactions with these individuals. As a result of the various challenges and difficulties posed by persons with FASD to the justice system, there is a need for greater knowledge, understanding and awareness at all levels (e.g., police, lawyers, judges, probation and correctional officers, etc.).

While access to justice is a fundamental principle in Canada, research has not examined the extent to which access to justice is an issue for individuals with FASD. Access to justice in this report includes the following four components:

- (1) The ability to attain legal assistance (including information, basic legal advice, initial legal assistance and legal representation);
- (2) The ability to participate effectively and fairly in the legal system (including access to courts, tribunals, and formal alternative dispute resolution mechanisms);

- (3) The ability to obtain assistance from non-legal advocacy and support (including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community-based justice); and
- (4) The ability to participate effectively in law reform processes.

In addition to focusing on the legal system, there is growing recognition that access to justice also requires a multi-disciplinary approach that includes child welfare, social services and health care. Further, developing partnerships between the justice system and relevant community groups is an important component for facilitating access to justice, particularly among disadvantaged groups.

1.2 Yukon Services for Persons with FASD

While there are services in the Yukon for persons with FASD, it is generally believed among community service providers that there are not enough services to meet the high demand, and that the services need to be offered in a coordinated manner. Barriers to access to justice that were examined in this project included factors such as FASD assessments, family dysfunction and addictions, difficulties accessing services due to remote locations, and lack of services for incarcerated individuals. A summary of current services is presented below.

1.2.1 Government Services

Health Canada

The Northern Region's Yukon Office administers two streams of community-based (contribution agreement) program funding targeted at FASD: one for First Nations and Inuit; and the other for the general population. First Nations programs are provided through the First Nations and Inuit Health Branch funding (FNIHB). There are 14 First Nations in the Yukon. As of February 2008, eight receive the current FNIHB funding as part of their self-government program transfers. These First Nations will have the responsibility and authority to deliver FASD programming to their members from a block fund. These First Nations no longer report to Health Canada with respect to these funds and can choose to alter, expand or discontinue any transferred program in order to address community priorities. This agreement is via a Programs and Services Transfer Agreement managed by Indian and Northern Affairs Canada. The remaining six First Nations will continue to receive FASD funding through FNIHB to manage and run the program at the community level. This is done by way of contribution agreements with Health Canada.

There is also public health money for FASD coming into the territory via Public Health Agency of Canada funding. In 2007/2008, the FASD program for the general population provided funding to the Child Development Centre in Whitehorse so it could: hold a one day workshop with a nationally recognized FASD expert for Yukon Canadian Pre-Natal Nutrition Program and Canadian Action Program for Children project coordinators; provide professional development opportunities for the Yukon Diagnostic Team; and set up of a "sensory room" for children with FASD.

Yukon Department of Justice

The Yukon Department of Justice opened a Yukon Community Wellness Court in April 2007. One of the three target client groups for this therapeutic court is persons with FASD. Individuals who are charged and plead guilty may opt to participate in the court, which offers support services. The Department of Justice also provides counselling services to adults with FASD through the Family Violence Prevention Unit. These include one-on-one and group counselling in the spousal abuse program and in the sex offender program.

Yukon Department of Health and Social Services (HSS)

The Yukon Department of Health and Social Services provides a variety of services to children, youth and adults with disabilities. Individuals diagnosed with or suspected of having FASD can access these programs. Adults with FASD in the justice system may or may not have access to some of these programs. Some HSS programs will not accept corrections clients.

In addition to these services, the department also provides targeted initiatives and services aimed at preventing FASD and optimizing the well-being and safety of people with FASD.

- FASD community-based prevention planning model.
 - Ongoing public awareness campaigns and initiatives. This includes public service ads and FASD prevention literature;
 - FASD prevention education kit for grades 7-12 with a prevention consultant available for related workshops;
 - FASD prevention prenatal education kit available at Community and First Nation Health Centres; and
 - Targeted training to allied professionals who work with substance abusing women.
- Funding to Fetal Alcohol Syndrome Society of Yukon (FASSY) for a prevention worker.
- Member of the Canadian Northwest FASD Partnership.
- Priority access to Detox, outpatient and inpatient drug treatment, for at-risk and pregnant women.
- Screening for all children with disabilities with appropriate referrals to Healthy Families and the Child Development Centre.
- FASD diagnosis (funding) to the Child Development Centre for children 18 months to 6 years.

- Funding to FASSY to coordinate adult FASD diagnosis.
- Funding to FASSY for client support programs.
- Family and Children's Services funds a summer day camp for children with FASD and other disabilities.

Department of Education

The Special Programs unit of the Department of Education released the manual "Making a Difference: Working with Students who have Fetal Alcohol Spectrum Disorders" to help school-based staff and others understand the challenges facing students with FASD. Other current initiatives that are specifically directed at students with FASD include:

- developing and delivering a teacher training model to introduce and support the manual;
- enhancing mentors and training school-based support persons;
- developing a culturally relevant grade 1-12 curriculum on FASD for Yukon students; and
- establishing a FASD diagnostic/support team (with HSS) for school-aged children.

1.2.2 Community-based Services

FASSY (Fetal Alcohol Syndrome Society of Yukon)

FASSY is a non-profit society (est. 1996) that provides programs to persons with FASD. They are the only program in the Yukon singularly dedicated to this population. They appear to be unique in Canada for the wide range of supports they provide to individuals with FASD and their families. Clients in the corrections system with FASD are able to access FASSY programs. FASSY has no core funding so all of their activities are either project-specific or volunteer funded and operated. FASSY currently provides the following programs:

- **Adult Diagnostics:** A team of experts from Calgary (including a physician/geneticist, paediatrician, educational psychologist, and a team coordinator) conduct two assessment visits per client, the latter is designed to develop a support system for the persons with FASD. HSS funding is provided until March 2009.
- "With a Little Help From My Friends": program focused on helping women living with FASD heal from abuse and to learn to make healthy lifestyle choices. HSS funding is provided until March 2009.

- “Trying Differently: Enabling Youth and Adults with FASD to Live Successfully in their Community”: outreach workers provide one-on-one housing-related supports and work with clients’ families. National Homelessness Strategy funding is provided until March 2009.
- “Prevention of FASD and of secondary disabilities for affected individuals”: FASSY staff conduct workshops, training, and develop literature to interested individuals and organizations in the Yukon. HSS funding is provided until March 2009.
- “Craft and recreation program”: Yukon Department of Justice funding is provided until June 2008.
- Yukon Community Wellness Court: FASSY is under contract with the Department of Justice to provide some supports to clients with FASD who are in the specialized therapeutic court.
- “Trying Differently: A Guide for Daily Living and Working with FAS and Other Brain Differences”. This booklet of “strategies that work” is distributed across Canada and is self-funded.
- Discretionary/Crisis Fund: private donations that pay for personal items for FASSY clients.

First Nations

The Council of Yukon First Nations (CYFN) reports that some First Nations governments provide funding for housing and one-on-one supports for persons with FASD in their communities. Overall, there are very few formal services in Yukon First Nations communities for persons with FASD.

Selkirk First Nations in Pelly Crossing is showing leadership in addressing the issue of FASD. Over the past two years they have brought FASD specialists from Washington and Oregon to their community. The consultants are providing information and hands-on training about preventing FASD. They are also working directly with individuals with FASD and their families, service providers, and members of the community.

Supportive Housing

There are a number of residential group homes for adults with developmental delays and for youth with behavioural challenges. While they do not provide services specifically to persons with FASD, they have clients with FASD, and some residences attempt to provide services accordingly. Mountain Ridge (youth) and Balsam Residence (adult men) are two homes, with four beds each, that stand out in this regard.

The Options for Independence Society provides housing for individuals with FASD and the residents are referred from FASSY. The building has six apartments and support staff are available 15 hours each day.

The Yukon Adult Resource Centre is a half-way house for male corrections clients. They accept individuals with FASD, although they do not provide specialized services for individuals with FASD.

1.3 Purpose of the Project

The purpose of this project was to examine FASD as an access to justice issue. It explored the various ways in which individuals with FASD might come into contact with the justice system, e.g., as victims or offenders in the criminal justice system, or as parties in civil or family matters. The overall goal of this project was “to document the types of barriers that confront these individuals and to make recommendations for how to address them.”

1.3.1 Research Questions

The following research questions were addressed in this project:

- (1) What is the current state of Canadian literature on access to justice?
- (2) What national and international literature is available on access to justice in the context of FASD and other relevant conditions of limited cognitive capacity?
- (3) What is the level of knowledge of FASD among service providers and relevant professionals in the Yukon, including justice system personnel, social service workers, health care workers, and community agents?
- (4) What barriers to access to justice have been identified by professionals working in the area, by individuals with FASD and their families?
- (5) What strategies and programs have been developed in the Yukon to deal with access to justice issues among the FASD population?
- (6) What additional resources are required to address the problem?

1.4 Methodology

The project involves two major research components: (1) a literature review; and (2) qualitative focus groups and interviews. These components are discussed in more detail below.

Given that this project has been conducted in the Yukon, which has a large First Nations population, all research has been conducted in accordance with the Ownership, Control, Access, and Possession (OCAP) principles.

1.4.1 Literature Review

The first component of the project involved a review of the access to justice literature in Canada. Further, the national and international literature on FASD and other relevant issues related to limited cognitive capacity and access to justice were reviewed. The review included academic publications, government reports and documents available on the Internet.

1.4.2 Focus Groups and Interviews

Clients with FASD Interviews

Interviews were conducted with eight persons formally assessed with some level of FASD. All but one of these respondents were referred to us by FASSY and were receiving some level of support from FASSY at the time of the interview. Interviews with these individuals were arranged through FASSY and a support worker was present during the interview. All respondents were paid \$20 for the time that it took to complete the interview. Information was collected concerning their background, their experiences with the law, and their supports. The interview schedule was developed in consultation with the project Steering Committee (see Appendix A).

Focus Groups

Eighteen focus groups were conducted with stakeholders, service providers and adoptive parents from the Yukon. The total number of participants for all the focus groups was 94. Background information, as well as experience and knowledge of FASD, was also collected for the majority of participants (n=82). In addition, information was collected (using the focus group as the unit of analysis) regarding perceived barriers to access to justice for persons with FASD, current resources available in the Yukon to help persons with FASD access justice, and suggestions for services needed to help persons with FASD access justice in the Yukon. The focus group protocol was developed in consultation with the Steering Committee (see Appendix B). Focus groups were conducted with representatives from the following groups:

- Public Prosecution Service of Canada;
- Yukon Department of Justice, Victim Services/Family Violence Prevention Unit;
- Yukon Department of Justice, Adult Probation;
- Whitehorse Correctional Centre, Case Managers;
- Yukon Department of Health and Social Services;
- Yukon Legal Services Society;
- Yukon Territorial Court Judges;

- Whitehorse residences for youth and adults with FASD;
- Fetal Alcohol Syndrome Society of the Yukon (FASSY);
- Council of Yukon First Nations, Health and Social, including Health and Social Directors and/or staff from various Yukon First Nations;
- Parents of individuals with FASD;
- Watson Lake service providers, including members of Liard First Nation;
- Teslin service providers, including members of Teslin Tlingit Council; and
- Pelly Crossing service providers, including members of Selkirk First Nation.

Key Informant Interviews

Key informant interviews were conducted with 21 respondents. These persons were either individually involved with persons with FASD, managers of agencies/programs that provided services, or individuals who were not available for the focus groups and thus needed to be interviewed individually. The information collected during the key informant interviews included: background information, as well as experience and knowledge of FASD; information regarding perceived barriers to access to justice for persons with FASD; current resources available in the Yukon to help persons with FASD in accessing justice; and suggestions for services needed to help persons with FASD access justice in the Yukon (see Appendix B). Key informants from the following groups were interviewed:

- Individuals with FASD (with support persons);
- RCMP;
- Committee on Abuse in Residential Schools Society (CAIRS);
- Yukon Legal Services Society;
- Yukon Public Legal Education Association;
- Yukon Review Board;
- Psychologist;
- Fetal Alcohol Syndrome Society of the Yukon (FASSY);
- Salvation Army;
- Juneau, Alaska, FASD Diagnostic Clinic;
- Teegatha'oh Zheh;
- Council of Yukon First Nations, Aboriginal Criminal Court Worker; and
- Yukon Health and Social Services.

FASD Experts

Interviews were conducted with nine professionals identified as experts in the area of FASD, particularly related to legal issues. These experts were identified through a variety of mechanisms including the review of the literature, case law and through referral by other professionals. Interviews were conducted by telephone using the

Experts Interview Protocol (see Appendix C). The information collected during the experts interviews included: background information, as well as experience and knowledge of FASD; information regarding perceived barriers to access to justice for persons with FASD; and suggestions about current best practices in providing access to justice for persons with FASD. Appendix D contains a list of these experts, as well as focus group participants and key informant respondents who agreed to be identified.

1.5 Limitations

There are a number of limitations to this research of which the reader should be aware. These limitations are listed below:

- This report focuses on access to justice for adults with FASD (18 years and older). Research focusing on children under 18 with FASD, and on primary prevention, is not included.
- There is a dearth of research information regarding the involvement of persons with FASD in child protection, Family Court and/or civil matters.
- The majority of research to date focusing on persons with FASD and justice has focused on offenders and there is very little research regarding victims or witnesses with FASD.
- This report does not contain a review of case law regarding persons with FASD in the justice system¹. Topics such as “unfit to stand trial” and “found not criminally responsible,” while briefly mentioned in this report, are not thoroughly discussed.
- A sample of clients with FASD interviewed for this research was a convenience sample and should not be considered representative of adults with FASD in the Yukon.
- While we were able to conduct a focus group with parents who had raised children with FASD to adulthood, it should be noted that these were all adoptive parents. We were not able to identify a sample of biological parents.
- While the study attempts to be relevant to the Yukon Territory in general, it should be noted that the majority of research activities took place in Whitehorse due to expediency and timelines. Yukon rural communities and First Nations communities may be underrepresented.

¹ A review of relevant case law is published by the FASD Ontario Justice Committee, which is available on-line at <http://fasdjustice.on.ca/>),

1.6 Organization of the Report

Chapter 2.0 of this report contains a literature review and is relevant to the first two research questions listed above in Section 1.3.1. Chapter 3.0 of the report contains the data analysis and findings from the focus groups and interviews. The information contained in this chapter is relevant to the research questions (3) through (5). Chapter 4.0 contains a summary and discussion of all of the findings of the report and makes recommendations and is thus relevant to the last research question (6).

2.0 LITERATURE REVIEW

As outlined in Section 1.3.1, the first two research questions for this project are:

- (1) What is the current state of Canadian literature on access to justice?
- (2) What national and international literature is available on access to justice in the context of FASD and other relevant conditions of limited cognitive capacity?

In order to answer these questions, a review of the current literature was conducted, including searches of academic publications, government reports and documents available on the Internet. While an attempt was made to locate international literature on access to justice in the context of FASD, it was clear that Canada is a leader in this field. Outside of the United States, no articles were found from other countries. Indeed, Australia only identified FASD as an issue of concern for the Ministerial Council on Drug Strategy in 2004 (Australian Government, 2006), and a newsletter from New Zealand with an article called “Foetal Alcohol Syndrome and Youth Justice” cited Canadian and American sources (New Zealand Court in the Act, 2006).

The research literature also focussed almost exclusively on the criminal context of access to justice for individuals with FASD, even though individuals with fetal alcohol-related disabilities may encounter the courts in the context of child protection, civil and family disputes. The reason for this focus may be due to the fact that in Canada criminal justice is unified under federal jurisdiction, while child protection, civil and family matters are under specific provincial/territorial jurisdictions. However, many of the issues identified for individuals with FASD involved in the criminal justice system will also apply to those involved in civil justice matters.

2.1 Access to Justice in Canada

In the past 25 years, there has been growing recognition that members of diversity groups deserve protection from discrimination by the justice system (Etherington, 2000). Canadians have a constitutional right to legal equality and access to the justice system. According to section 15 of the *Canadian Charter of Rights and Freedoms*,² each person is equal under the law and is entitled to be treated without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. Access to justice includes the following four components:

- (1) The ability to attain legal assistance (including information, basic legal advice, initial legal assistance and legal representation);
- (2) The ability to participate effectively and fairly in the legal system (including access to courts, tribunals, and formal alternative dispute resolution mechanisms);

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

- (3) The ability to obtain assistance from non-legal advocacy and support (including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community-based justice); and
- (4) The ability to participate effectively in law reform processes.

In Canada, the main features of access to justice include: legal aid; public legal education and information; court workers; court reform; alternative dispute resolution; public interest advocacy; and pro bono services (Currie, 2000b). These mechanisms for achieving access to justice are a reflection of the traditional justice system.

In addition to the legislative recognition of legal equality, it was also recognized in the mid-1980s that access to justice in the form of equal treatment would often require “accommodation of differences to enable full participation free of unnecessary barriers” (Etherington, 2000, p. 48). According to Currie (2000a, p. 1), the problem statement of access to justice can be stated as follows:

[G]uarantees of rights, benefits, and entitlements and of protections under the law are meaningless if mechanisms are not in place to assure access to the means of assuring those rights and protections. Access to justice and fair treatment under the law must be equally available to everyone in society.

Despite this recognition, however, Canada continues to struggle with reconstructing a more effective justice system (Currie, 2000a). While the adversarial approach of the traditional justice system remains an important feature of Canada’s justice system, it is slowly being combined with more “holistic” approaches in both criminal and civil justice. Multidisciplinary approaches, in which the justice system partners with service providers from health care and social services, are necessary to develop more effective solutions to justice problems. As Currie (2000a, p. 2) states, “there is a powerful case to be made for partnerships between communities, interest groups, health care, educational and social services, and elements of the mainstream justice system in developing approaches to solving justice problems.”

This shift to multi-disciplinary approaches broadens the concept of access to justice from enforcement of legal rights and protections to a resolution of problems using legal and non-legal solutions. Access to justice then becomes “an important part of the shift toward a more citizen-centred and community-focussed justice system” (Currie, 2000a, p. 3).

Currie (2000a) cautions, however, that a community-based approach to access to justice is not without its problems. The system of access to justice may be fragmented, and users may not know where to go to get help. The services that an individual might need may not be integrated, accessible, or indeed available. Community-based services are under considerable financial constraints, and Canadian society is becoming increasingly complex and socially diverse.

In 2000, Justice Canada held a one-day symposium on access to justice. The goal of the symposium was to explore the concept of access to justice beyond its conventional boundaries. Participants included judges, lawyers, policy specialists, government officials, academics, community representatives, and Aboriginal, visible minority and persons with disabilities spokespersons. Participants were asked to “rethink traditional views and explore the future challenges of assuring access to justice for Canadians in an increasingly complex and demanding environment” (Department of Justice Canada, 2000).

The symposium resulted in a set of themes that could act as guideposts toward a better and more accessible justice system. These themes are:

- Restorative justice was described as an attempt to restore the relational dimensions of the justice process by recognizing the role of the community and the importance of human interaction. Rather than simple diversion, restorative justice is a process of healing and spirituality.
- Access to the justice system is not necessarily access to justice.
- Justice is achieved when a solution satisfies all parties involved in the dispute. Justice is broader than narrowly defined legal regulations; it is an inherently social and solution-oriented endeavour.
- In order to provide access to justice, it is necessary to recognize the diverse needs of Canadians, and the challenge is to assure access to justice for diverse, marginalized, and disadvantaged groups.
- Participants emphasized the importance of meeting the needs of individuals attempting to access justice, in addition to protecting rights.
- Participants also emphasized the need to share power and resources to achieve access to justice. Members of disadvantaged groups must be given a meaningful role in designing justice system change, which requires that existing resources be shared to discover new ways of providing access to justice.

Symposium participants discussed the role of the community, and debated to what extent government should be involved in community-based justice initiatives. A concern was raised as to whether community-based justice was just a euphemism for government downloading of services and responsibilities.

In another context, Kim Pate, Executive Director of the Canadian Association of Elizabeth Fry Societies, argued that the escalating numbers of women and young people, especially those who are poor or disabled, in prison is linked to the evisceration of health, education and social services (Pate, 2003). She states:

Mental health and youth workers in particular have lamented the reality that the evisceration of their resources, combined with the advent of zero tolerance to violence policies have resulted in policy directives that instruct

them to call the police and urge the pursuit of criminal prosecution in cases where those with mental and/or cognitive disabilities are assaultive or abusive. Although the behaviour might previously (and still be) have been considered to be symptomatic of the psychiatric label, reduced resources and priorities mean that they are usually without the requisite supports to handle the most challenging folk. There is a long line-up of others in the community who are not criminalized awaiting treatment options, so they are seen as legally and ethically justified in making such decisions. (Pate, 2003, p. 4.)

She also argues that the reflex of corrections to develop mental health services in prisons only exacerbates the criminalization of women with mental and cognitive disabilities. When community resources are non-existent, women may receive federal sentences because there is an assumption they can access services in prison that are not available in the community. Further, Pate (2003) states that these women (and men) may end up serving longer sentences as a result of their behaviour and additional charges arising in prison.

Similar issues were raised by the Honourable Judge Mary Ellen Turpel-Lafond at Justice Canada's symposium on access to justice (Department of Justice Canada, 2000). She questioned whether we have created a "prison industry" or an economy of control within the justice system. In Saskatchewan, she said that a male Aboriginal youth has a greater chance of going to jail than completing high school. The formal justice system is failing to address the overarching needs of Aboriginal youth who experience conflict with the law. There is a need to get at the roots of the problem if there is to be any true resolution.

2.2 Fetal Alcohol Spectrum Disorder

2.2.1 Definition of FASD

Fetal Alcohol Spectrum Disorder (FASD) is an umbrella term that refers to a range of life-long physical, neuropsychological, cognitive, and behavioural impairments that result from prenatal exposure to alcohol. FASD is not a clinical or diagnostic term, but rather includes four specific diagnoses: Fetal Alcohol Syndrome (FAS); partial Fetal Alcohol Syndrome (pFAS); Alcohol-Related Neurodevelopmental Disorder (ARND); and Alcohol-Related Birth Defects (ARBD). These diagnoses differ in the extent and type of impairments exhibited by an individual prenatally exposed to alcohol (Conry & Fast, 2000).

According to Canada's National Advisory Committee on Fetal Alcohol Spectrum Disorder (Chudley et al., 2005), in order for an individual to be diagnosed with FAS, four diagnostic criteria are required: (1) growth impairment; (2) evidence of a distinctive pattern of facial anomalies; (3) impairment in at least three of the following central nervous system domains: hard and soft neurologic signs; brain structure; cognition; communication; academic achievement; memory; executive functioning and abstract reasoning; attention deficit/hyperactivity; adaptive behaviour; social skills; and social communication; and (4) confirmed (or unconfirmed) maternal alcohol consumption

during pregnancy. The facial anomalies and growth impairment are most apparent during childhood, and may become indistinguishable during adolescence and adulthood.

A diagnosis of partial Fetal Alcohol Syndrome (pFAS) is possible in cases where maternal alcohol consumption during pregnancy is confirmed and there is evidence of at least two of the characteristic facial anomalies, and impairments in at least three central nervous system domains.

Alcohol-Related Neurodevelopmental Disorder (ARND) refers to cases in which maternal alcohol use during pregnancy is confirmed and there is impairment in at least three of the central nervous system domains discussed above. In cases of ARND, the physical characteristics of growth retardation and facial anomalies are not apparent, although the head may be smaller than normal.

Alcohol-Related Birth Defects (ARBD) refer to cases in which maternal alcohol exposure during pregnancy is confirmed and there is congenital damage to one or more organs, most commonly the heart and/or kidneys, or sensory systems, such as vision or hearing. The distinctive physical and neurological characteristics associated with FAS are not present in cases of ARBD.

Diagnosing any of the specific disabilities that fall under the umbrella of FASD is complex, and most experts acknowledge that a multidisciplinary approach is required (Chudley et al., 2005). A diagnosis requires a comprehensive history, as well as extensive physical and neurobehavioural assessments. According to Chudley et al. (2005), a multidisciplinary team tasked with diagnosing fetal alcohol-related disabilities should include individuals from the following professions: medicine, psychology, occupational therapy, speech-language pathology, as well as an individual to serve as a coordinator for case management such as a nurse or social worker.

2.2.2 Prevalence of FASD

Determining the prevalence of FASD and its associated disabilities is difficult, and any estimates are probably low since the complexity of diagnosing likely leads to many cases being misdiagnosed or missed completely. Nevertheless, estimates of the prevalence of FAS in the United States has been reported as between 1-3 per 1000 live births; the estimated prevalence of FASD is 9.1 per 1000 live births (Chudley et al., 2005; Sampson et al., 1997).

No national estimates of the prevalence of FASD disabilities are available for Canada; however, several studies have examined the prevalence within small populations and found that these estimates vary widely. For example, these estimates have ranged from a low of 0.589 per 1000 live births for FAS in a sample of referrals to a diagnostic clinic in Saskatchewan in 1988-1992 to a high of 190 per 1000 live births for FASD in an isolated Aboriginal community in British Columbia (Chudley et al., 2005).

2.2.3 Disabilities Associated with Fetal Alcohol Exposure

The cognitive and behavioural impairments that may be exhibited by individuals prenatally exposed to alcohol are quite broad, are often apparent before a child reaches school age, and may result in limitations in the ability to learn basic academic skills such as mathematics and reading (Conry & Fast, 2000). It is important to note that all of the potential impairments are not observed in all individuals prenatally exposed to alcohol, and that these impairments may be observed in individuals with other disorders, but who were not prenatally exposed to alcohol. Also, a person with a diagnosis of FASD is not necessarily mentally handicapped. In fact, intellect has been found to vary from mentally handicapped to superior IQ in these individuals (Streissguth, Barr, Kogan, & Bookstein, 1996).

According to Conry and Fast (2000), the specific cognitive and behavioural deficits that may be experienced by individuals with FASD can fall into five general areas that can be organized using the mnemonic ALARM: adaptive behaviour; language; attention; reasoning; and memory. Each of these areas is briefly discussed below.

Adaptive Behaviour

Adaptive behaviour refers to the ability to modify one's future behaviour according to the consequences of their past actions. It also includes the extent to which individuals are able to meet the expectations of personal independence and social responsibility appropriate for their age and cultural group. Individuals with impaired adaptive behaviour may have difficulties meeting their most basic self-care needs, forming long-term friendships and social relationships, learning appropriate communication skills, and exercising appropriate judgement in various settings such as school and work environments. Conry and Fast (2000) suggest that impairments in adaptive behaviour may be the most severely handicapping of the range of FASD disabilities, and that these impairments are equally likely to be present in individuals with pFAS and ARND as in those with a diagnosis of FAS.

In practical terms, individuals with impairments in adaptive behaviour may have difficulty in managing their finances, finding and maintaining employment, and engaging in healthy leisure time activities. Further, their interactions with others may be inappropriate and, although they want to create and maintain friendships, they are frequently rejected because of their immature and awkward interpersonal style. Because they have limited ability to learn from their past interactions with others, they may be prone to manipulation and abuse from others. Further, they are at higher risk of alcohol and drug abuse than individuals who do not exhibit impairments in this area.

Language

Individuals prenatally exposed to alcohol frequently have impairments in language acquisition and have difficulty in acquiring reading, writing, and speaking skills. However, they may be quite verbal in an attempt to mask their basic language deficiencies. Because of this they may appear to possess good verbal skills when, in

fact, their comprehension levels are quite low. They may be unable to understand the subtle nuances of language and may respond differently depending upon how a question is asked. This may lead to the conclusion that they are lying when, in fact, they are simply responding quite literally to what they are asked. For example, an individual with FASD may deny going to a “house” because they had gone to an “apartment.”

Attention

It has been estimated that 60% of individuals with FASD have some level of attention deficit/hyperactivity disorder (ADHD) (Streissguth et al., 1996). This translates into a pattern marked by distractibility, inability to remain focused on tasks, and restlessness. These characteristics frequently lead them to be disruptive in school and during other structured activities and further impede their academic performance. They are also characterized by impulsive behaviour and may rush into actions without appreciating the consequences; thus, they may unwittingly place themselves into dangerous situations. For example, individuals with FASD may be easily influenced by antisocial peers, which could lead to impulsive delinquency, such as shoplifting and breaking and entering.

Reasoning

Individuals with FASD typically have difficulty linking their behaviour with consequences, and thus have an impaired ability to learn from experience. This is especially a problem when the consequences of a particular behaviour are separated by a lengthy time period from the behaviour itself, as is often the case in legal proceedings. Individuals with FASD may not remember why they are in court, or may not be able to connect the sentence with the offence. These individuals also have difficulty in understanding the effects that their actions have on others, and moving beyond their own immediate needs or perspective is problematic. For example, an individual with FASD may think it is okay to rob someone with a weapon because they don't intend to use it, not understanding the trauma they cause the victim.

Memory

Fetal alcohol exposure can affect memory functioning in a variety of ways. The most problematic memory deficit is related to short-term recall, where an individual may not remember information or events that they were recently exposed to. However, long-term memory may also be affected, meaning that their memory for events occurring further in the past is impaired or distorted. Due to the gaps in memory that these individuals may experience, they are prone to confabulation in which they may fill in missing memories with inaccurate details (Conry & Fast, 2000). Because they believe that these confabulated memories are accurate, they are not lying. Similarly, these individuals are vulnerable to suggestions of what might have happened in a particular situation for which their own memory is impaired, and may incorporate these suggestions into their memory as fact. This can be a particular problem in cases where an individual is questioned repeatedly about an event, as often occurs in the legal process.

2.3 FASD and the Justice System

As noted earlier, research on access to justice focuses almost exclusively on the criminal justice system. While we suspect that individuals with FASD may also experience difficulties with the courts regarding other matters, such as child protection, civil and family matters, we have no research data on the extent of the problem.

2.3.1 Introduction

It is well documented in the literature that FASD presents challenges in the criminal justice system (Williams, 2006; Fast & Conry, 2004; Mitten, 2004; Moore & Green, 2004; Verbrugge, 2003; Byrne, 2002). Streissguth et al. (1996) estimate that approximately 60% of individuals with FASD have come into conflict with the law, while Stadel et al. (2004) estimate that up to 70% of individuals with FASD will become involved with the criminal justice system. The number of individuals with FASD in the justice system is thought to be over-represented, although exact figures are unknown (Fast & Conry, 2004). Fast, Conry and Look (1999) found that youth with FASD are disproportionately represented in the juvenile justice system; over 23% of youth remanded for psychiatric inpatient assessment in British Columbia had FASD. The risk of conflict with the law is even greater in adulthood, when the supervision provided by parents and schools no longer exists (Moore & Green, 2004). MacPherson and Chudley (2007) estimated that the incidence of FASD in an incarcerated adult male population in Winnipeg was 10%.

Issues and concerns regarding individuals with FASD and the justice system include: assessment/diagnosis; witness advocacy; fitness to stand trial; diminished responsibility; investigative procedures including questioning techniques; testimonial capacity and reliability; false confessions; pre-trial diversion; effective representation; sentencing; and special supervision needs during probation and parole (Moore & Green, 2004). At the more fundamental level, however, Moore & Green (2004, pp. 3-4) state:

This constellation of deficits poses significant obstacles to the fair treatment of FASD persons in the criminal justice system. Persons with FASD, as a group, challenge the underlying premise that defendants understand the relationship between actions, outcomes, intentions, and punishment. The treatment of FASD defendants raises fundamental questions about how we assess individual responsibility, both at the guilt-determining and sentencing stages of the adjudicative process. It raises questions, as well, about the appropriateness of law enforcement and, more generally, the criminal law, as social control models for the management of FASD-related deviance.

There is a contention that individuals with FASD have “decreased or fully lack autonomy, rationality, responsibility, voluntariness and culpability” and there is a concern about exposure to penal consequences for these people. Two of the possible legal arguments that can be made at the beginning of the legal process are that one can

be delegated unfit to stand trial, or that one can be found not criminally responsible for his or her illegal actions (FASD Ontario Justice Committee, 2007). While a legal analysis is beyond the scope of this project, these two legal arguments are discussed briefly below.

Unfit to Stand Trial³

Section 7 of the *Charter* states: Everyone has a right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Criminal sanctions can only be imposed upon an accused if they have received a fair trial and have been found guilty. If an accused is unable to meaningfully participate in his or her own defence due to mental disorder, the trial is not fair, and the accused is held unfit to stand trial (Verbrugge, 2003). For persons with FASD, this assumes that a diagnosis has been made.

A finding of unfit to stand trial due to mental disorder raises other issues, however. People who are unfit to stand trial may be treated more harshly than other offenders and may have to remain in the criminal justice or mental health systems for an indeterminate period of time, which may be a violation of their *Charter* rights (FASD Ontario Justice Committee, 2007). An accused with FASD will never regain fitness and be able to stand trial – the brain damage is permanent. Mitten (2004) argues that if offenders are not considered a significant threat to public safety, they should be subject to absolute discharge, although this option is not permitted in the *Criminal Code* for those unfit to stand trial. It has been suggested that if offenders with mental disorders are considered a threat to public safety, then the disposition should consider the need to protect the public, the mental condition of the accused, and the reintegration of the accused into society (Mitten, 2004). However, in the absence of therapeutic facilities in the community:

...offenders have languished in administrative segregation in correctional facilities. It was never an intention of the legislation to see such mentally disordered individuals warehoused in penal institutions for extended periods of time. Yet such individuals are at risk of being forgotten, lost indefinitely, and left virtually untreated, in the great maw of the justice system's penal apparatus. (Mitten, 2004, p. 9-28.)

Not Criminally Responsible³

An offender who pleads guilty may be found not criminally responsible for his or her illegal actions. Legal counsel has the burden of proving that the offender did not know his/her actions were wrong, and that the offender has a mental disorder according to s. 16(1) of the *Criminal Code*. FASD is a mental disorder according to the *Criminal Code*, and being found not criminally responsible is a question of law rather than a medical determination (FASD Ontario Justice Committee, 2007).

³ While these topics are mentioned in this report, a thorough analysis of their relevance to persons with FASD will require a case law review.

If an offender is found to be not criminally responsible, then the least onerous or restrictive disposition is to be recommended (Mitten, 2003). This includes absolute or conditional discharges for offenders not considered a risk to public safety. If offenders are considered to be a risk to public safety, then they are to be detained in custody in a hospital, subject to regular reviews by a Review Board. This indeterminate detention often deters defence counsel from recommending the not criminally responsible defence to their clients.

Victims/Witnesses with FASD

Most of the research literature on individuals with FASD who come into contact with the criminal justice system pertains to their involvement as offenders. But individuals with FASD are also particularly vulnerable as victims, and deserve protection. According to Kelly (2003) at the University of Washington, it is highly unlikely that the criminal justice system will react to protect and serve the victim with FASD like they would a victim with a visible disability. Because the disabilities caused by FASD are usually not visible, particular attention is warranted when the victim of a crime has FASD.

The mental and behavioural disabilities caused by FASD make these individuals easy prey for criminals (Kelly, 2003). They are likely to accept criminal abuse and not report it to the authorities because they either do not understand the inappropriateness of the behaviour, or they do not want to displease the offender. According to Kelly (2003), almost three-quarters of adolescents and adults with FASD have been physically or sexually abused, and she reports that “sexual abuse of children with FASD by adults in their own home is a particularly serious problem” (p. 30). Adults with FASD, without community support, often end up living on the streets where they are particularly vulnerable to crime.

Criminal cases involving victims and witnesses with FASD require special care and handling. While the testimony of the victim with FASD is important, questioning these victims/witnesses presents challenges, and their testimony can compromise a case because “they are both credulous and very eager to please” (Kelly, 2003, p. 29). A victim or witness with FASD may believe that the correct answer to a question is what the questioner appears to want. Police and prosecutors need to carefully question these victims and witnesses, and let them tell their own story rather than leading them in particular directions. (More information regarding questioning individuals with FASD is presented in Section 2.3.2, FASD and Policing, and Section 2.3.3, FASD and the Court System.)

2.3.2 FASD and Policing

The police play a very important role with individuals who may have FASD. As front-line service providers, they are often the gatekeepers to the justice system. According to Stadel, Clark & D’Agostino (2004), there are five reasons why police need to be sensitized and educated in FASD:

- (1) to better serve communities;
- (2) to ensure the integrity of investigations, to be forthright within the judicial process and to protect the rights of the people being served;
- (3) to have a beneficial impact on the legal system;
- (4) to help with prevention efforts to reduce the incidence of FASD in Canada; and
- (5) to mobilize supports to individuals with FASD from the many services and agencies available in areas such as medical, social, educational, cultural, community, employment, housing and justice.

In 2002, the RCMP published a guidebook for police officers on FASD. The guidebook presents information on FASD, how to recognize the impacts of the condition, how police should approach investigations involving individuals with FASD, and where they can turn to for help in conducting their investigations (Royal Canadian Mounted Police, 2002). The guidebook emphasizes that it is not the police officer's role to diagnose FASD, but rather to recognize that an individual may be affected.

Victims, witnesses and accused individuals with FASD may not understand the arrest and court process. Further, individuals with FASD may not understand the nature and scope of their rights under the *Charter of Rights and Freedoms*, such as their right to counsel and their right to remain silent. To ensure that individuals' rights are protected, it is important for police officers to consider the special needs of individuals with FASD throughout their investigations (FASD Ontario Justice Committee, 2007).

According to the FASD Ontario Justice Committee (2007), the more information there is about an individual with FASD, the more effective his or her court experience will be. It is important for the police to gather as much medical, social, family, educational, psychiatric, and judicial information as possible, as early in the process as possible.

The RCMP guidebook indicates that, with consideration for the circumstances of the offence, needs of the parties involved, and considerations for public safety, diversion is always important to consider in cases involving individuals with FASD. Some of the reasons given to consider diversion include (Royal Canadian Mounted Police, 2002, p. 25):

- assists the victim in gaining an understanding of the event, and an understanding of the offender's behaviour;
- gives the victims' and the offenders' support people a chance to gain empathy through perspective sharing;
- allows consequences to be imposed quickly, adding a logic for the FASD offender;

2.3.3 FASD and the Court System

The quality of testimony given by persons with FASD may be affected by memory difficulties, trouble understanding the concept of time, language deficits, and information processing disorders. In terms of memory difficulties, individuals with FASD may experience intermittent and short-term memory problems, as well as gaps in long-term memory. They may not remember what was said 10 seconds ago, or they may forget something today, but remember it tomorrow. They may have a poor recall of events, present events in the wrong order, or confabulate to compensate for an impaired memory recollection in order to please the court.

In terms of trouble with time, individuals with FASD may have difficulty describing past events, keeping appointments, or planning effectively for the future. They may not understand consequences that are invoked several months after a criminal behaviour, reducing the effect of sanctions. Crimes are seldom planned – rather, they are often crimes that are associated with impulsive behaviour and attention problems such as theft, break-and-enter, and reactive aggression.

In terms of language deficits, individuals with FASD may have problems with incoming information, processing the information, and responding to it appropriately. They may only hear every third or fourth word. While they may be able to read court documents, they may not comprehend what they have read. Their good verbal skills may mask their poor comprehension of the situation. They may not correctly interpret visual information, and they may misinterpret lawyers' and judges' non-verbal gestures. They may be easily led and manipulated during questioning.

Other problems that individuals with FASD may have in the courtroom are problems with transitions, and inappropriate courtroom behaviour. An individual with FASD may show agitated behaviour moving from one situation to another. They may not be able to follow the proceedings, and may become frustrated. They may not understand the severity of their situation, and may appear to have no remorse for their victims. Their impulsivity and disinhibition may lead to inappropriate noises and behaviours, and they may not be able to respect the solemnity of the courtroom.

The FASD Ontario Justice Committee (2007) offers the following suggestions for dealing with individuals with FASD in the courtroom:

- all statements and questions should be short and to the point;
- chunk information into small pieces (for what you are presenting to the individual, and in what you expect to receive back);
- ask a question in several different ways;
- all communication must be as concrete as possible;
- read all materials out loud to those who need it;

- speak slowly;
- use the person's name frequently, especially prior to asking a question;
- avoid pronouns – use the names of people to whom you are referring;
- use “visuals” as much as possible (simple diagrams, charts, point form, pictures);
- use large chart paper, “white boards”;
- be proximal, but not too close to the person;
- try having the individual with FASD role play what happened;
- avoid inferences;
- avoid asking multi-step questions;
- avoid questions containing complex wording;
- always confirm that what they heard is what you said;
- always check for comprehension (not simply by asking if they understand – ask questions about the content);
- provide the individual with verbal cues when activities are about to change (5 minute to 3 minute warnings, give “heads up” that something different is about to happen in the Court...);
- some people need scribes for the written information – someone to write information down for them (i.e., forms, statement, etc.);
- utilize technologies (electronic presentation/retrieval of information: video, audio);
- in some cases, use audio or video conferencing with person with FASD in a separate, quiet room;
- schedule more time for a trial involving a person with FASD;
- allow the person with FASD more time to respond to questions and tasks;

- consider cultural differences in behaviour (i.e., in some aboriginal communities, it is considered rude to look at someone directly in the eye); and
- exercise patience – their communication and processing deficits are not their fault.

Legal professionals should be made aware that there is a high risk of false confessions with people who are cognitively disabled, including individuals with FASD (FASD Ontario Justice Committee, 2007). Fast and Conry (2004) cited two studies that looked at the issue of false confessions by people with mental handicaps. In the first study, Clare and Gudjonsson (1993) found that people with mild learning disabilities or mild mental handicap were more suggestible than people without learning disabilities. They agreed with leading questions, changed their answers in response to negative feedback, and were more vulnerable to making false confessions. In the second study, Perske (1994) explored why individuals with mental disabilities might confess to a crime they did not commit. He found that individuals with mental disabilities (including individuals with FASD) have a desire to please people in authority, an inability to understand abstract concepts, may confabulate, and may take the blame quickly to be able to go home.

In a conference presentation to Crown counsels, Boulding (2005, p. 2), a Canadian defence lawyer, encouraged Crown attorneys to ask defence counsel, “Have you considered fetal alcohol issues?” This question could lead to discussing an assessment for the client, which then gives appropriate structure to any response by the criminal legal system to an individual with FASD. According to Boulding (2005), he is not suggesting Crown counsel do defence counsel’s job. Rather, he is suggesting that Crown counsel can begin a conversation that may spark defence counsel to “do the right thing for the brain damaged client as opposed to being solely concerned with securing an acquittal” (p. 4).

Boulding (2005) recommends that Crown counsel frame their submissions for probation orders differently for individuals with FASD. He stresses the importance of involving the family/caregivers, who can know about the probation, counselling, or other appointments, and can help with attendance. The family can also be told who the “problem contacts” are, and seek their input. To be effective for individuals with FASD, probation orders require a multi-sector approach, involving family, social services, employers, police, probation officers, schools, and defence counsel.

Boulding (2001) also wrote an interesting paper outlining 30 mistakes he has made with FAS clients. He believes that the Canadian legal system has failed FAS clients, but thinks there is hope for changing how lawyers, clients, police, judges, probation officers, prison guards and family members work with FAS clients. The majority of his “mistakes” were not recognizing the deficits that an individual with FASD may have, such as memory problems, time problems, language and learning problems, impulsive behaviour, and not seeking professional help. He regretted not exploring the family history or seeking social services or medical records. Boulding also lamented not considering other legal alternatives. For example, he states (p. 3):

I failed to consider that there were some offences, in some situations, where I should have considered a Not Criminally Responsible By Reason of a Mental Disease (NCRMD) application. At least I might have begun to gather some neuro-psychological data years ago.

I failed to consider breaches of the Canadian Charter of Rights and Freedoms, although I found that most Crown Prosecutors were helpful in reducing the number of the charges. Often there were 13 or 14 separate counts. I never noticed that my clients had long Criminal Records and almost always pleaded guilty. I did not realize that there was a behavior problem at the brain level. I failed to look past the standard phrase “anti-social disorder.” I failed to see that my clients were not learning by experience and that a Charter breach from Section 15 Equality Before the Law was something I should have considered. These clients were not being treated equally and the system had failed to accommodate their special needs. A brain injury by definition makes you a “special needs” person....

I assumed that both my young offender FAS clients and my adult FAS clients could be helped by using standard terms of Probation Orders in the Provincial Court.

Boulding (2001) states that the biggest mistake he has made as a lawyer dealing with clients with FAS is his lack of political awareness. He argues for systemic change, and says the first step in preparing for court is securing an assessment for FAS by trained doctors.

Dagher-Margosian, an American defence attorney, has written articles on representing FAS and other cognitively disabled clients in criminal cases (1997; 2005). She states that attorneys should always look for the physical, intellectual and behavioural characteristics of FASD. In addition, they should investigate the client's family history for maternal alcohol abuse during pregnancy, a poor school history, placement in special education, and the inability to complete tasks. Clients who are suspected of having FASD should then be referred to a specially trained physician for a FAS diagnosis (Dagher-Margosian, 1997).

The question of a client's mental functioning is important at all major phases of a trial: investigation, pre-trial, actual trial (or pleas), and sentencing. Dagher-Margosian (1997) states that the defence of clients with FASD might be benefited by expert testimony on FAS in the following areas: confessions; right to remain silent and right to counsel; methods of questioning; advice of rights; legal responsibility and competency; and sentencing.

In a more recent article, Dagher-Margosian (2005, p. 10) stresses the importance of an assessment by a mental health professional qualified in diagnosis of developmental disability because of a perception by lawyers (and the public) that “intellectually disabled citizens are defined by a total incapacity to care for themselves

or carry on any regular daily activities (have a job, shop for groceries, etc.).” It is important for the court to know that intellectually disabled people are capable of such activities, but their mental processes are different. Concepts (such as the advice of rights) must be explained in graphic, concrete terms. If a client’s understanding of his or her rights cannot be achieved, or the client cannot make the connection between their behaviour and the consequences, then justice requires an alternative result (Dagher-Margosian, 2005).

While individuals with fetal alcohol-related disabilities may encounter the courts in the context of child protection, civil and family disputes, the majority of available literature focuses on the criminal justice system. It is widely recognized that individuals with FASD are over-represented in the criminal justice system. For example, as mentioned earlier, it has been estimated that 60% of individuals with FAS and ARND over the age of 12 had been either charged with a crime or convicted of an offence (Streissguth et al., 1996). Further, Conry and Fast (2000) found that in one juvenile detention facility, the presence of youth with FASD was 40 times the expected frequency.

Despite the suspected over-representation of individuals with FASD in the criminal justice system, Chartrand and Forbes-Chilibeck (2003) note that, in many jurisdictions, the presence of FASD may be largely unrecognized by the courts. In courts where FASD is recognized, there is a great deal of variation regarding how judges think it should impact legal proceedings. Some courts, while acknowledging the presence of FASD, do not treat it as requiring any special consideration, while others view it as simply one of many mitigating or aggravating factors to be considered. At the opposite end of the spectrum, some courts now acknowledge that an accused with FASD should not be treated the same as individuals without FASD, and that their disability requires that special attention needs to be paid to the disorder, and that sentencing needs to take into account rehabilitation and treatment, rather than focusing solely on punishment and deterrence (Chartrand & Forbes-Chillibeck, 2003).

Judge Melvyn Green (2006) notes that our justice system “is founded on the premise that defendants understand the relationship between actions and outcomes, between intentions and consequences, that people who make choices are responsible for the fallout. The cognitive impairments of persons with FASD call these fundamental premises into question” (p. 4). It is important that people who interact with the justice system are able to understand and appreciate the proceedings; however, a significant proportion of people with FASD are not capable of that appreciation. In such a situation where one of the basic premises of our legal system does not apply, it is imperative for judges to devise alternative methods for dealing with individuals with FASD.

One complicating factor, however, is the fact that identifying individuals with fetal alcohol-related impairments is very difficult. As noted in Section 2.2 above, many individuals with FASD do not have any outwardly distinguishing characteristics and, in the absence of confirmation of maternal alcohol use during pregnancy, their impairments may go unrecognized. As noted by Green (2006), the cognitive disabilities characteristic of fetal alcohol-affected individuals may be invisible to naïve observers, a group which often includes the police, lawyers, and judges. With notable exceptions

found in some courts in British Columbia, Saskatchewan, and the Yukon, most legally trained professionals do not have the expertise necessary to recognize the manifestations of FASD among individuals they encounter in their practices or court rooms (Chartrand & Forbes-Chilibeck, 2003). Green (2006) emphasizes the importance of judicial education on FASD and its cognitive, affective, and behavioural implications.

Judge Michael Jeffery (n.d.) offers several suggestions for judges who may be dealing with individuals with cultural differences, language barriers, or suffering from diminished cognitive capacity including FASD. These suggestions include:

- Recognize that a person who appears to understand everything, and who may even say they understand, may actually not. There may be language problems and cultural misunderstandings about the justice system. There may be mental conditions like Fetal Alcohol Spectrum Disorder in which (for example) a young adult in his or her 20s actually has an ability to understand that is equivalent to that of an elementary school student.
- Slow down and check in with a person during an explanation of rights or similar hearing to make sure that the person knows what is going on. Pauses are probably necessary between different major points just to make sure the concepts sink in. When questions are being asked, pauses may be necessary for the person to respond in a manner that is comfortable and that will allow sharing of information that the person wants to say.
- Consider using visual aids, such as writing on large sheets of paper or on a write on/wipe off board.... I notice that the person involved in the hearing seems to focus really well on what's going on....
- Be sensitive to your own cultural biases. Someone may not look at you directly. It may be the person is ignoring you. But, in that person's culture, it may be a sign of respect. Some shy persons dealing with justice system personnel in this part of Alaska may raise their eyebrows to indicate "yes." Though not saying anything, they are responding to the question. Saying "he let me do something" might mean the other person allowed it to happen or it might mean that the other person forced it to happen.
- Do not assume that the attorneys involved have had the time to explain what is needed to their clients in a way that the client can understand. There may have been a lack of time or lack of understanding of a client's mental conditions (such as FASD). I believe that it is the judge's responsibility to make sure that the persons involved in the hearing understand what happened.

- Where possible, use plain English in what is said and what is written. Written forms should have places for a defendant or juvenile to initial so that the person focuses on each portion of the form. Concrete language is best. Having “white space” and easy to read type is helpful, even if it uses more paper! We need to avoid having the whole experience being a “blur” of words.

Writing in the context of family court cases, Malbin (2004) states that FASD is under-recognized by family court judges. Further, she notes that individuals with FASD are often misdiagnosed, which frequently leads to family justice intervention strategies that do not work. She emphasizes that family court judges need to ask lawyers and other professionals involved in a case where the judge suspects cognitive impairment whether they have considered the possibility of FASD. In addition, the judge can ask a series of questions to assist him or her in making a determination of the importance of considering the possibility of FASD in a particular case:

1. Is there a history of alcohol or substance abuse in the family? If yes, the advocates or professionals should be specifically looking at:
 - a. *School History* – Learning disabilities, special education, and school failure or drop out.
 - b. *Mental Health* – Multiple diagnoses, history of failed interventions (including medications and treatment)... The greater the number of diagnoses, the greater the likelihood there is underlying brain damage that has not been diagnosed.
 - c. *Social Profile* – Foster care, multiple placements.
 - d. *Legal Profile* – Frequent contact with the legal system.
2. Has the individual been tested for brain damage, i.e., neurocognitive abnormalities? If not, ask whether it should be considered. Suggest a neurocognitive pre-screening tool. (pp. 61-62).

Traditionally, sentencing principles have emphasized the concepts of punishment and deterrence based upon the assumption that by punishing individuals who come in conflict with the law, they will learn that the behaviour being punished is wrong. Consequently, the likelihood of repeating the behaviour will be diminished. Of course, this reasoning is only valid for individuals who are capable of making the causal link between their behaviour and its consequences, a capability that many individuals with FASD do not possess. “Recognizing the impeded abilities of an individual with FAS/ARND to understand cause and effect [suggests that] the more sophisticated concepts of deterrence and punishment are, for the most part, lost to them” (Chartrand & Forbes-Chilibek, 2003, p. 47).

In recent years, there has been an increased acknowledgement within the courts that traditional sentencing principles do not decrease the likelihood of reoffending among certain individuals, particularly in cases of drug abuse, family violence, child abuse and neglect, and cognitive impairment (Chartrand & Forbes-Chilibeck, 2003). In the case of many individuals with FASD, the organic nature of their disability renders them unable to modify their behaviour based on consequences imposed for their past actions, and thus sentences that emphasize rehabilitation over punishment and deterrence may be more effective.

It has been argued that incarceration is an inappropriate sentence for persons with FASD. Dagher-Margosian (1997) notes that, in many prisons, the only type of treatment available for violent and sex offenders is group therapy, and that “this type of ‘talk’ therapy is not useful to clients affected by FAS. Due to the memory and learning problems of clients affected by FAS, little or no benefit can result from this approach” (p. 131). Further, it is probable that individuals with FASD will learn additional deviant behaviours while in prison and then repeat these behaviours upon their release. There is also a high probability that these individuals will be victimized in a prison setting (Dagher-Margosian, 1997).

As noted by Chartrand and Forbes-Chilibeck (2003), while there has been a growing recognition of the high involvement of individuals affected by FASD in the justice system, the extent to which this is taken into account as a factor to be considered in sentencing varies widely. Some courts do not consider FASD as a factor pertinent to sentencing decisions. Other courts have acknowledged the impact of FASD when making sentencing decisions, and “some judges have gone to great lengths to understand the impact of FAS/ARND and to sentence such offenders in a way that is just and meaningful to the offender and society” (Chartrand & Forbes-Chilibeck, 2003, p. 44). However, the relative lack of appropriate services and programs within the provincial and federal corrections systems for dealing with individuals with FASD have limited the extent to which judges can impose appropriate sentences. While judges may acknowledge that incarceration is not an appropriate sentence for individuals with FASD, the reality is that most communities do not have specific FASD treatment programs. Thus, judges are often forced to rely on standard probation procedures and existing programs which are often inadequate for dealing with these individuals (Chartrand & Forbes-Chilibeck, 2003).

2.3.4 FASD and the Correctional System

As noted above, fetal alcohol affected individuals are disproportionately likely to become involved with the criminal justice system, and these involvements frequently result in incarceration. In fact, research by Dr. Ann Streissguth of the University of Washington (cited in Connor, 2004) found that 35% of individuals with FASD over the age of 12 had been incarcerated at some point in their lives. While no national studies of the prevalence of FASD in the prison population are available, one study that examined a population of incarcerated young offenders in British Columbia reported that 23% were affected by prenatal alcohol exposure (Fast, Conry, & Loock, 1999). However, it is likely that this estimate is high since it only included youth who were admitted to the psychiatric assessment unit, rather than the prison as a whole (Boland,

Chudley, & Grant, 2002). One major reason for the absence of reliable national data on the prevalence of FASD in the corrections system is the difficulty with diagnosing the specific disabilities associated with fetal alcohol exposure discussed in Section 2.2.

Nevertheless, as noted by Boland et al. (2002), even if a conservative estimate that 5% of all incarcerated individuals have some disability related to prenatal alcohol exposure is adopted, the implications for the correctional system are substantial, particularly in terms of the activities and programs available in the prison system. "Given what we do know about the cognitive, emotional and behavioural deficits observed in individuals with FASD, we can speculate that they are likely to have difficulty with programs that have a cognitive emphasis, low built in redundancy (i.e., little repetition), low structure, and little emphasis on active long term maintenance" (Boland et al., 2002, p. 2). These considerations suggest that individuals with FASD likely have needs that differ substantially from the general inmate population, and identifying these individuals within the correctional system should be a priority so that these unique needs can be addressed.

A Canadian study by Burd, Selfridge, Klug, and Juelson (2003) examined a wide range of issues related to identifying fetal alcohol affected individuals and the extent of staff awareness of FASD within the correctional systems of all provinces and territories except Alberta and British Columbia. Of the 148,979 incarcerated offenders reported by the 11 responding jurisdictions, only 13 identified cases of FAS were reported resulting in a prevalence rate of 0.087 per 1000. In a comparable study conducted in the United States, of 3.08 million incarcerated individuals, only one inmate was reported to have a diagnosis of FAS (Burd, Selfridge, Klug, & Bakko, 2004). These figures are substantially lower than the prevalence estimates in the general population discussed in Section 2.2.2, suggesting that there are many undiagnosed individuals in Canadian and American prisons who have been affected by prenatal alcohol exposure.

Burd et al. (2003) also reported on the extent to which programs were available within the Canadian corrections system for dealing with substance abuse problems among pregnant women. Only two of the eleven jurisdictions reported having specialized substance abuse programs for pregnant women in their corrections systems, and three reported having such programs in their community corrections systems. Specialized programs for individuals with mental retardation were only available in the corrections system of one jurisdiction; five jurisdictions had such a program in their community corrections system. Only three jurisdictions reported that they have access to FAS diagnostic services within their community corrections systems. Only one jurisdiction stated that the extent of training on FAS among their staff was adequate; however, ten jurisdictions reported that they would be willing to have staff training in this area. Burd et al. (2003) concluded that "the infrastructure capacity, staff awareness, access to screening, and diagnostic services" (p. 6) related to alcohol-affected individuals within the Canadian corrections system are very low. Despite the difficulties with diagnosing fetal alcohol related disabilities, these authors conclude that corrections systems need to devote resources to developing diagnostic and intervention services for this population. Further, it is essential that corrections staff who work directly with offenders receive training on FASD.

Conry and Fast (2000) note that incarceration is likely to be ineffective as a deterrent for fetal alcohol affected individuals and that, in addition, these individuals may be at high risk for victimization if incarcerated. However, they acknowledge that, in some cases, it is necessary to incarcerate individuals with FASD disabilities in the interest of protecting the public. In these instances, Conry and Fast (2000) suggest that individuals with FASD:

may need to be separated and protected from non-handicapped inmates. They require staff who are sensitive to the nature of the disabilities associated with [FASD]. Training programs focusing on life skills with planned transition back into the community should be implemented. These habilitation or rehabilitation programs must also involve the parents or caregivers.... Youth and adults with [FASD] who are not mentally handicapped typically have education achievement levels only to grades five to eight. Vocational programs need to take into consideration the offender's difficulties with reading, math, time and money management, abstract reasoning, and language. Because vocational programs are designed for the general inmate population, they should be modified to accommodate the communication, cognition, and behavioural disabilities of those with [FASD]. This is also true for every other rehabilitative program offered in a jail setting, including sexual offender programs (pp. 74-75).

2.3.5 The Importance of Support Agencies

A detailed review of support agencies that assist individuals with FASD and their families is beyond the scope of this literature review. However, the literature review thus far on access to justice for individuals with FASD clearly emphasizes the importance of support agencies in dealing with individuals with FASD who come into conflict with the law. This section will highlight the types of support agencies that are necessary to ensure access to justice for individuals with FASD, and will identify gaps in service.

There are many services that may assist individuals with FASD, although their availability will vary widely from community to community. The FASD Guidebook for Police Officers (2002, p. 23) recommends that police officers consider the following possible resources:

1. Justice
 - Policing Services
 - Criminal Justice System
 - Correctional System

2. Health
 - Medical Practitioners
 - Health Authorities
 - Mental Health

3. Social Services
 - Children's Special Services
4. Educational Services
 - Local School Divisions
 - Alternative Schools
 - Adult Learning Centres and Secondary Schools
5. Employment and Housing
 - Residential Housing Cooperatives
 - Income Security
 - Provincial Housing Authorities
 - Employment Counselling Services
6. Non-profit Community-based Organizations
 - Family Resource Centres
 - AA [and Similar Organizations]
 - Churches and Religious Organizations
7. Cultural Supports
 - Community Cultural Centres
 - First Nations Services/Organizations
 - Immigrant Support Services

A network of community support is necessary for individuals with FASD to help them navigate societal rules. Individuals with FASD require structure, black and white rules, and consistency (Byrne, 2002). A concept that is commonly used in FASD intervention efforts is that of the "external brain" (FASD Ontario Justice Committee, 2007). Individuals with FASD benefit from having people in their lives with whom they have an interdependent and supportive relationship. "External brains" may be family members, friends, community volunteers or service providers, and they perform a variety of functions. They do some of the thinking that an individual with FASD cannot do, steer them in the right direction, remind them of obligations (such as probation appointments), and manage their money for them.

When individuals with FASD do not have family/caregiver support, community agencies must fulfil the function of the "external brain." While the disorders related to FASD fall under the purview of many groups, no one group is in a position to lead and coordinate service delivery (Verbrugge, 2003). The need for a coordinated response by community, government, business and not-for-profit organizations was addressed at a two-day forum held in British Columbia (Lutke, 2004). Participants consisted of a large, diverse group of birth, foster and adoptive parents of adult children with FASD. They identified what they believed to be the most relevant needs facing adolescents and adults with FASD, and explored ideas around service delivery models that they believed would enhance support for individuals with FASD and their families. The participants came up with six broad recommendations (Lutke, 2004, p. 9):

1. Safe, stable, secure, supported, structured, supervised, subsidized housing (7S model) should be considered the primary key to broad risk management for adults with FASD. The absence of housing is the absence of everything.
2. The deployment of financial resources specifically targeted at FASD service delivery should be undertaken and considered a primary broad risk management tool for working with adolescents and adults with FASD.
3. The development and funding of targeted health care delivery and mental health treatment should be considered as a primary broad risk management tool for working with adolescents and adults with FASD. The provision of funded long-term mental health care to parents and other family members should be available, funded and encouraged as a risk reducing tool in the maintenance of essential supports to individuals with FASD.
4. The development and funding of targeted educational, vocational, employment and other programming that is specific to adolescents and adults with FASD should be considered as a primary broad risk management tool. It should also be considered as a risk reduction tool in its ability to help maintain both residential and family placements and to provide “respite” to parents.
5. Involvement with the legal and addictions systems occurs when other risk reduction strategies have been ineffective for a variety of reasons. However, because it is in the position of having to provide services to individuals with FASD regardless, it could also provide a pivotal intervention point. The development and funding of targeted legal and addiction services that are specific to adolescents and adults with FASD should be considered as a primary risk management tool.
6. The development and funding of consultative processes that have the authority to direct, monitor and evaluate changes specific to the support needs of adolescents and adults with FASD and the particular needs of their families should be considered as a primary risk management tool.

While stability of family placement may mask the extent of problems that children with FASD may have, adulthood presents a crisis point. According to Lutke (2004), individuals with FASD do not conform to current standards for service eligibility because most are not mentally handicapped, some systems insist the adult agree to services (even though they may adaptively be a child), and others have expectations for performance that individuals with FASD cannot meet. Since they may not be eligible for support services, their disability remains hidden when they come into contact with the

legal system. The legal system treats them as entirely competent adults, and they are expected to make decisions that have consequences they do not understand. This point is echoed by Gibson (2003), who states that the gap between chronological age and developmental abilities of a person with FASD needs to be addressed, because service guidelines often eliminate individuals with FASD from receiving the support they need. Gibson (2003) recommends that services move away from IQ testing, and use more intuitive testing by professionals.

Participants at the forum (Lutke, 2004, p. 65) identified a critical need to develop a true system of justice for individuals with FASD, as well as a critical need to develop, fund and implement legal services which would:

- Provide a range of information for people employed with the legal system, not only awareness and education, but also mandatory comprehensive training for those working directly with individuals with FASD on a daily basis.
- Develop and employ stringent selection criteria for the recruitment and deployment of staff, contractors, and others working directly with affected adolescents and adults.
- Develop, fund, and implement a FASD court worker program and provide access to qualified FASD interpreters at all stages of the legal process.
- Develop and implement appropriate FASD protocols for all systems of the legal process that mandate how the individual must be dealt with because of the disability.
- Develop and implement a mechanism that identifies individuals with FASD within the Canadian Police Information Centre (CPIC) in order to affect the appropriate FASD protocols.
- Provide and fund access to diagnosis as required as a *Charter* right at any step of the legal process where suspicion arises.
- Develop and fund alternatives to incarceration for the majority of those with FASD who are not violent offenders. These alternatives must not be dependent on house arrest which uses families as jailers.
- Develop and implement specialized units and programs within institutions for incarcerated individuals with FASD, when other options are not available or have not been effective, which include proper transitioning to community services.
- Develop and implement specialized parole and probation services for released individuals with FASD who return to the community.

2.4 Conclusions

The literature clearly indicates that access to justice is an issue for individuals with FASD. When an individual with FASD comes into contact with the law, whether as a victim, witness or accused, there are implications for all components of the criminal justice system, including police investigation, legal representation and prosecution, adjudication, sentencing, and corrections. The disabilities of an individual with FASD need to be accommodated to ensure access to justice. However, there is a very broad spectrum of disabilities that affect individuals who were prenatally exposed to alcohol, which makes dealing with these cases more complex.

The first step in achieving justice for people with FASD is the recognition of the disorder, and the need for formal assessment and diagnosis. In order for this to happen, professionals in the justice system need to be educated about FASD and the disabilities associated with it. Early recognition of fetal alcohol affects and the development of strategies for dealing with individuals with FASD may reduce the over-representation of this group in the criminal justice system (Fast & Conry, 2004). Police officers, lawyers, judges, and correctional services staff need to receive formal training in this area. As Williams (2006, p. 12) states:

Absent such training, screening, referrals for diagnosis, alternative sentencing, and any other corrective measures are but mere goals, unlikely to produce systemic change because the gatekeepers are still unable to recognize FASD and its effect on the accused.

Recently, an e-learning training seminar for legal professionals was developed in Alberta to address the need for accurate information about FASD (Cook-Stanhope, Clarke, & Goodfellow, 2006). The goal of the seminar was to help legal professionals identify FASD, identify appropriate consequences for offenders, and utilize the most appropriate resources. A multi-disciplinary approach was used in the seminar, including physicians, judges, defence and family lawyers, and Crown counsel, and it promoted the integration of information and services.

There needs to be recognition that the traditional punishment-oriented system may not be the appropriate way to deal with these individuals. Alternative sentencing options need to be explored and developed, and community supports need to be put in place. In cases where public safety is an issue and incarceration is warranted, it is important to recognize that individuals with FASD will return to the community upon their release and will require ongoing supervision and support. To be effective, any programs and supports that are developed need to be guided by a coordinated response by community, government, business and not-for-profit organizations.

Finally, while Canada is clearly a leader in the study of FASD, more research is needed to determine the extent of the problem for both youth and adults. In addition, virtually all of the research that is available deals with FASD in the criminal justice system. More work that examines issues related to problems faced by individuals with FASD in the child protection, family and civil justice system is needed. According to the

literature, the traditional criminal justice system is not an effective way of dealing with individuals with FASD who come into conflict with the law. However, there have been no research studies that have examined alternative means of dealing with these offenders.

3.0 FOCUS GROUPS AND INTERVIEWS

This section of the report presents information relevant to several of the research questions outlined in Section 1.3.1. More specifically, it focuses on the following questions:

- (1) What is the level of knowledge of FASD among service providers and relevant professionals in the Yukon, including justice system personnel, social service workers, health care workers, and community agents?
- (2) What barriers to access to justice have been identified by professionals working in the area, by individuals with FASD and their families?
- (3) What strategies and programs have been developed in the Yukon to deal with access to justice issues among the FASD population? and
- (4) What additional resources are required to address the problem?

The data analyzed and presented below were obtained by conducting a series of focus groups and interviews with a number of clients with FASD, stakeholders and service providers (including adoptive parents), and known experts in FASD as is described in Section 1.4.2 above. The findings generated from each of the data sets are presented below and summarized. The relevance of the findings to the specific research questions listed above is discussed in the final chapter of this report.

3.1 Clients with FASD

Interviews were conducted with eight persons formally assessed with some level of FASD. All but one of these respondents were referred to us by FASSY and were receiving some level of support from FASSY at the time of the interview. Interviews with these individuals were arranged through FASSY and a support worker was present during the interview. All respondents were paid \$20 for the time that it took to complete the interview. Information was collected concerning their background, their experiences with the law, and their supports.

3.1.1 Background

Seven of the respondents were male and one was female. Their average age was approximately 31 years and ranged from a low of 21 to a high of 38 years. Their average level of education was grade 7 and ranged from a low of grade 4 to a high of grade 12 (one completed high school). Five of the respondents were considered to have low literacy and all had been formally diagnosed with FASD; two were diagnosed with FAS, four were diagnosed with partial FAS, and one was diagnosed with ARND. One client was assessed by his physician but not diagnosed. In general, four reported having good health, two reported poor health and two were having health difficulties related to addictions. Overall, half of the clients reported addictions with alcohol and/or drugs. One respondent commented:

I started drinking when I was six. My parents used me as a bartender.

In terms of general functioning, some reported the need for supervision 24/7; others reported emotional problems and family problems. Two of the clients reported living on their own, three reported living with a family member, and one reported living in a supportive living arrangement. Two of the respondents reported working either part-time or full-time. All the respondents reported prior involvement with the criminal justice system and one reported involvement with child protection.

3.1.2 Experience with the Justice System

As indicated above, all of the respondents reported historical or ongoing involvement with the criminal justice system. Among them, they reported three crimes against persons (threats and assaults), six property offences, one breach, and one other offence.

When asked about their experiences with police, responses were quite mixed. Some reported negative experiences such as being threatened, beat up, or tasered. Others reported more positive experiences. Some of the comments from respondents were:

They treated me well – I went quietly.

If I ran, they would rough me up. If I cooperated, they'd be gentle.

In dealing with the police, I found you should treat people the way you want to be treated.

Sometimes when the police see me drinking, they just take me home.

Seven of the respondents reported being in court and three reported being in court a lot. When asked how they felt when they were in court, two indicated that they understood what was happening. However, others indicated that they were scared, ashamed, mad, isolated, nervous, and/or felt caged in. Two respondents reported:

Here I am again. I'm no stranger to court.

I was scared. I didn't want to go back to jail.

When asked if they remembered how the judge was to them, three clients indicated that they thought the judge was fair. Others felt the judge was strict or didn't remember. One respondent commented:

The judge was upset with me because he sees me so often.

Most of the clients indicated that they had a lawyer to help them and two indicated that they had other support persons in court with them. When asked how the court could be better for them, one respondent commented:

They could stop putting dates off.

The respondents were also asked if they'd ever been in a correctional facility; seven of the eight reported having been in a correctional facility and all of them had been in a correctional facility more than once. When asked about how they felt when they were in a correctional facility, most indicated that they were bored. Some of these mentioned that there were no programs for them; they felt caged in, sad and ashamed, and/or were picked on. Some mentioned that the food was plentiful and good. Others indicated that it was okay because all of their friends were there. Some respondents commented as follows:

There's nothing there in jail – nothing there to help. You just age.

All my friends were in there so it's okay.

When asked how the guards were to them, the majority of clients indicated that the guards were good to them. There were no negative comments about the guards. In contrast, almost half of the clients indicated that the other inmates bothered them. One respondent reported:

I often do something to end up in the "hole" (segregation) as the others annoy me or it gets too noisy.

When asked how a correctional facility could be better for them, the majority suggested that there should be more activities, more programs, and more counsellors. It was also suggested that more fresh air and more education would help.

3.1.3 Support

All but one respondent mentioned family members who were currently providing some form of support to them. Family members mentioned ranged from a parent to aunts and siblings with no particular trend. Several agencies were also mentioned as being supports to the respondents. Of course, by definition, FASSY was mentioned by all of the respondents. The Kwanlin Dun public health nurse, the Healthy Families Program, Family and Children Services, Challenge, the Family Violence Program, probation officers, peacemakers, and social workers were also mentioned.

When asked what would help them to deal with the law, more than half mentioned work and more activities in general. Others mentioned the need for a safe place to live and more programs, especially addictions treatment programs. Some respondents commented as follows:

What would help? Keep me working. Keep me busy.

If I had a job that pays enough money, I would stop the crime.

3.2 Stakeholder and Service Provider Focus Groups

As indicated in Section 1.4.2 above, 18 focus groups were conducted with stakeholders, service providers and adoptive parents from the Yukon. The total number of participants for all the focus groups was 94. Background information, as well as experience and knowledge of FASD was also collected for the majority of participants (n=82) and is presented below. In addition, information was collected (using the focus group as the unit of analysis) regarding perceived barriers to access to justice for persons with FASD, current resources available in the Yukon to help persons with FASD access justice, and suggestions for services needed to help persons with FASD access justice in the Yukon.

3.2.1 Experience and Knowledge

The participants of the 18 focus groups represented a variety of government agencies, service providers, and stakeholders. The most common role the participants played relevant to working with individuals with FASD was the administration of justice, which was identified by 43% of the focus group participants. The next most common role was government service providers such as child welfare and education with 38%. Family members/friends in the community was next with 24%, followed by providers of service in the community with 18%, counselling with 13%, corrections/probation with 12%, and advocacy with 10% (see Appendix E, Table E-1).

While only 16% of the participants reported dealing almost exclusively with persons with FASD, over 30% reported dealing mainly with clients who were FASD or suspected FASD, and an additional 15% indicated that approximately half of their clients were affected by FASD. In contrast, just over 29% reported experience with only a few persons with FASD and only one reported no direct experience with FASD. Thus, it would appear that the focus group participants were highly experienced in terms of direct contact with persons with FASD (see Appendix E, Table E-2).

Respondents were asked how they felt about dealing with individuals with FASD. The largest percentage, approximately 38%, reported that they felt positive and good about working with this population and they related this to having enough information/resources. In contrast, 33% indicated they felt frustrated and that there was a lack of progress in dealing with persons with FASD. A further 27% indicated that they didn't feel they had enough information, training or education to deal with clients with FASD. Some respondents (16%) noted that they felt they needed more compassion, assistance, and patience (see Appendix E, Table E-3). Focus group participants commented as follows:

I cringe when an FASD client walks in. I feel like 5 FASD clients are equal to 50 "normal" clients.

You don't understand why they don't understand.

It's very difficult to balance between understanding the special needs of this population verses acting in the best interest of the public protection.

It can be frustrating; some use it (FASD) as an excuse.

I feel privileged dealing with people with FASD. It's like a spiritual mission!

I don't have enough time to provide needed services.

In terms of formal training/workshops, 77% of the focus group participants indicated that they had received training. The majority of those who received training (63%) went to conferences, workshops and presentations. An additional 19% indicated that they had on-the-job training, while 9% indicated they were self-trained. Only 9% indicated they had special courses or training classes (see Appendix E, Table E-4).

When asked whether they felt they had adequate knowledge to work with persons with FASD, the majority (over 53%) indicated that they did not. While others indicated that they thought that they had enough knowledge, more indicated that they needed even more knowledge (see Appendix E, Table E-5). Focus group participants commented as follows:

Increased knowledge leads to increased understanding, resulting in better planning.

I think I have the knowledge I need to work effectively with people with FASD, but I don't know what I don't know.

If they've done something wrong, it doesn't really matter if they have FAS.

3.2.2 Barriers to Access to Justice

Focus group participants were asked to discuss what the major barriers were for persons with FASD in accessing justice. The discussion was organized under three major topics: obtaining legal assistance/information; effective participation in the legal system; and obtaining non-legal assistance.

In terms of barriers to obtaining legal assistance, 61% of the focus groups indicated that the most common issue was that persons with FASD were not capable of understanding enough to attain legal assistance such as legal information, advice, legal counsel, and legal aid. The next most common barrier identified was that persons with FASD were not capable of communicating with lawyers, which was identified by a third of the focus groups. Next, 28% of the focus groups indicated that due to such limitations as poor memory, persons with FASD were not able to successfully complete day-to-day functions and thus, often missed appointments.

They'll tell me they 'saw some guy' but they don't recognize that it was a lawyer they were talking to.

If you ask them: 'Why did you plead guilty?' they often say 'I don't know. My lawyer told me to.' And I think, it's because they don't understand what's being said to them.

Over three-quarters of the focus groups also indicated that lawyers, police and probation officers do not understand enough about persons with FASD and therefore do not commit enough time to deal with them effectively. Another barrier identified by 17% of the focus groups was that legal assistance/information was simply not accessible to persons with FASD.

Other barriers identified included the following: many persons with FASD do not have the facial characteristics, thus, their disability is "masked" (11%); persons with FASD are highly suggestible, they want to please and thus, they can be easily coerced or taken advantage of (11%); and, the process and timing of court is overwhelming for clients with FASD (11%) (See Appendix E, Table E-6). One participant commented:

They're just sitting ducks for everything that comes along.

It's overwhelming for anyone, the legal system. Think of what is must be like for someone with FASD.

Dealing with someone with FAS requires everyone to rethink their role within the justice system.

Barriers to persons with FASD in their ability to participate effectively and fairly in the legal system were also discussed. Again, the most common barrier referred to by the focus groups was that persons with FASD do not easily understand what is going on and they have to rely on others (61%).

Next, a third of the focus groups again identified that persons with FASD have difficulty with day-to-day functions and a consequence of this is that they frequently miss appointments. As well, the same percentage of focus groups (33%) identified that the court process was too long and complex for persons with FASD to effectively participate in.

They forget about an appointment and they may end up with 30 days in jail.

A person with FASD thinks 'A crisis here today, gone tomorrow.' The legal system doesn't work that way.

Lack of resources/money was also identified as a barrier for persons with FASD in 17% of the focus groups. Lack of ability to communicate and instruct counsel, unwillingness to accept their diagnosis, and the court being unaware of the disability were also each identified by 11% of the focus groups as barriers to effective participation in the legal system (see Appendix E, Table E-7).

Barriers to obtaining non-legal assistance by persons with FASD were also discussed in the focus groups. Again, the most common barrier identified for persons with FASD (50% of the focus groups) was that they are not capable of easily understanding. Likewise, respondents (39%) said that persons with FASD are unable to conduct day-to-day functions such as attending appointments.

Difficulty in obtaining support services and the limited availability of these services was also identified in 39% of the focus groups. This challenge is particularly acute in rural communities. Next, denial by persons with FASD that they are affected, denial by communities in general of the extent of the problem, and the shame felt by mothers due to the stigma associated with FASD were each identified as a barrier by 22% of the focus groups. Lack of knowledge about FASD in general was also identified by 17% of the focus groups (see Appendix E, Table E-8). One respondent commented:

Once a person is labelled in the community as FAS, this is very damaging.

Other general barriers were also mentioned. Persons with FASD have multiple problems, including physical and mental health problems and addictions, and often an inability to meet basic needs such as food and shelter (38%). A correctional facility was noted in 25% of the focus groups as an inappropriate place for them. Persons with FASD are easily preyed upon and can sometimes be the easy victims of physical and sexual assaults. Other general barriers include the lack of support workers (25%); and families sometimes are resistant to accept the fact that they have children who may have FASD (19%) (see Appendix E, Table E-9). Several respondent comments are as follows:

They can't lie. They get into trouble with other inmates and they get used.

We're dealing with the most vulnerable people in society. Almost all of them have multiple diagnoses and attachment issues. Most grew up in foster care.

We will carry them for the rest of our lives. They will always be with us. We need to help them.

3.2.3 Current Resources in the Yukon

Focus group participants were asked to identify and discuss resources that were currently available to persons with FASD in the Yukon to address the problems and barriers of access to justice in three major areas: obtaining legal assistance/information; effective participation in the legal system; and obtaining non-legal assistance.

In terms of the availability of resources to address the barriers of obtaining legal assistance/information, it should first be noted that only half of the focus groups (n=9) were able to identify any resources. Three of the nine focus groups identified Yukon Family and Children Services and the Yukon Department of Justice's Spousal Abuse Program (one-on-one counselling) as a resource. Two of the focus groups identified FASSY and some police, lawyers and probation officers who are specially trained in FASD as a resource. Other resources identified were: Yukon Department of Justice victim services workers; Crown witness coordinators; legal aid; and First Nations court workers (see Appendix E, Table E-10).

The absence of resources was particularly noted in rural Yukon communities. In some communities it was noted that in addition to not having any services specific to persons with FASD, there aren't any resident probation officers or social workers.

Only a third of the focus groups were able to identify current resources for addressing barriers to effectively participating in the legal system for persons with FASD. The most common resource mentioned by three of these focus groups was stable support workers. Other resources mentioned include: judges; FASSY and other NGOs; Yukon Adult Resource Centre (YARC)/Salvation Army; and diagnostic assessments (see Appendix E, Table E-11). One participant commented:

There are no services attached to receiving a diagnosis. This is a big problem.

Regarding barriers to obtaining non-legal assistance for persons with FASD, two thirds of the focus groups (n=12) were aware of some resources. The most commonly mentioned resource was FASSY (55%), followed by support workers (36%). The Yukon Association of Common Living (YACL) was mentioned in two of the focus groups. A few other individual resources were also mentioned (see Appendix E, Table E-12). Comments from several participants were as follows:

We don't have the tools to deal with these problems.

We have to work with their ability, not their disability.

Government departments don't work well enough together.

We're trying to fit people within services that actually don't fit their issues.

None of the respondents mentioned the lack of family support as a barrier to obtaining legal or non-legal assistance. In the focus group of parents with adopted children with FASD, however, the provision of strong family support was noted by parents as a key element in helping to keep their child(ren) out of the corrections system. It was not, however, sufficient in and of itself.

Participants in the focus groups were also asked to indicate whether they used any informal measures when working with clients with suspected or diagnosed FASD. Participants in 16 of the focus groups identified specific informal measures. The most commonly identified measures mentioned in half of the focus groups were speaking slowly and clearly and the use of plain language. Next, focus group participants indicated that they often have their clients repeat what has been told to them (25%) to ensure they understand. Other measures identified include the following: making check lists for them; making phone calls for them; providing small rewards; providing a flexible structure for them; and setting goals very low (see Appendix E, Table E-13).

3.2.4 Services Needed in the Yukon

Focus group participants were also asked what resources and services should be made available in the Yukon for assisting persons with FASD to access justice. These discussions in the focus groups provided suggestions for new resources and services for obtaining legal assistance/information and promoting effective participation in the legal system.

Services aimed at preventing FASD in the first place were generally acknowledged as key to addressing the problems associated with serving persons with FASD. However, specific to justice, in terms of new services needed to help persons with FASD obtain legal assistance/information, suggestions were made in almost all of the focus groups (n=17). The most frequently identified service needed was training and education for staff in the justice system who may come into contact with persons with FASD, which was identified in 65% of the focus groups. Next, general support services such as individual support workers, family supports, culturally specific (First Nations) programming such as Elder involvement, and addictions treatment were identified in 59% of the focus groups. Housing – secure, long-term supportive living, and safe houses – was identified in 35% of the focus groups.

Support services specific to justice such as special advocates, court support workers, and after care programs were identified in 24% of the cases, while prevention and diagnosis/screening were mentioned in 18% of the focus groups. The need for alternative justice models such as special court processes, a special FASD unit in the correctional facility and new sentencing structures for persons with FASD, as well as increased funding for FASD related services, were mentioned in two of the focus groups (see Appendix E, Table E-14). Some participants commented as follows:

We all know jail is not best for them, but often there isn't something in the community for them. Until that exists, it's the jail system.

Working in a circle works well because we give them a lot of community support.

This is not just a court/justice issue – this is a community issue.

Regarding new services needed to help persons with FASD to effectively participate in the legal system, 13 of the focus groups identified services. The need for stable secure housing, including safe houses in rural communities and in Whitehorse, was the most common new service identified as being needed by 85% of the focus groups. Next, 46% of the focus groups mentioned the need for diagnosis/screening. This was followed by general support services (39%). Alternative justice models for persons with FASD and justice-specific support services were both mentioned in 15% of the focus groups (see Appendix E, Table E-15).

Shelter is key.

We're astonished by how their brains can work with support.

Most of the services are in Whitehorse. We need a person or service like FASSY in our community.

3.3 Key Informant Interviews

As indicated in Section 1.4.2 above, key informant interviews were conducted with 21 respondents. These persons were individually involved with persons with FASD, managers of agencies/programs that provided services, or they were not available for the focus groups and thus, needed to be interviewed individually. The information collected during the key informant interviews included: background information, as well as experience and knowledge of FASD; information regarding perceived barriers to access to justice for persons with FASD; current resources available in the Yukon to help persons with FASD in accessing justice; and suggestions for services needed to help persons with FASD access justice in the Yukon.

3.3.1 Experience and Knowledge

The key informants represented a variety of service providers and professionals. The vast majority (67%) identified that the role they played relevant to dealing with persons with FASD was in the administration of justice. The next most common role was the provision of direct service in the community (24%). This was followed by the provision of counselling/therapy (19%). Family members/friends in the community and providers of government services both accounted for 14% of the responses (see Appendix F, Table F-1).

In terms of the number of individuals with FASD the key informants dealt with, 14% indicated that most of their clients were persons with FASD. An additional 19% indicated that more than half of their clients were affected by FASD. A significant proportion of this group, 43%, reported dealing with only a few persons with FASD (see Appendix F, Table F-2).

When asked how they felt about dealing with individuals with FASD, the largest percentage, approximately 47%, indicated that they felt frustrated with the lack of ability to make progress with these clients. An additional 29% reported feeling helpless, ineffective and unprepared to deal with these clients, and 24% felt they required more

time to deal with these clients. Another 18% indicated they felt the need for more compassion, patience, assistance, and resources to deal with clients with FASD (see Appendix F, Table F-3). In contrast, over 35% of the respondents indicated that they felt they had enough information/resources and could deal with clients with FASD positively.

In terms of formal training/workshops, 81% of the key informant respondents indicated they had received training, and the majority of those who received training (88%) went to conferences, workshops, and presentations. Only two respondents indicated that they had received a special training course. One respondent indicated they received on-the-job training and another indicated that they were self-taught (see Appendix F, Table F-4).

When asked whether they felt they had adequate knowledge to work with persons with FASD, the majority (60%) indicated that they did. However, most of these (55%) indicated that they needed more information and knowledge. Only 35% indicated that they did not have adequate knowledge to work with persons with FASD (see Appendix F, Table F-5). One of the respondents commented:

Yes, but I don't know what I don't know.

3.3.2 Barriers to Access to Justice

During the interview, key informants were asked to identify what the major barriers were for persons with FASD in accessing justice. The information related to this area was organized under three major topics: obtaining legal assistance/information; effective participation in the legal system; and obtaining non-legal assistance.

In terms of barriers to obtaining legal assistance, 53% of the respondents indicated that persons with FASD were not capable of understanding enough to obtain legal assistance such as legal information, advice, legal counsel, and legal aid. Over one-half of respondents also indicated that lawyers, police, and probation officers don't understand persons with FASD, and they did not commit the time needed to deal with them effectively.

Next, 27% of the respondents identified that persons with FASD have difficulty with day-to-day functions and consequently, they often miss appointments. Another 20% of the respondents indicated that persons with FASD lack the ability to communicate and instruct counsel. Likewise, 20% indicated that they lacked resources/money.

Other barriers identified included: the lack of diagnosis; the justice system is simply not accessible to them; and process and time in court is overwhelming to persons with FASD (see Appendix F, Table F-6). Respondents commented as follows:

Lawyers often want to talk to these guys on their own. I think "good luck"!

Clients will say “I understand,” but most probably don’t.

When the key informants were asked about barriers to persons with FASD in their ability to effectively and fairly participate in the legal system, 14 of them commented. The majority (71%) indicated that persons with FASD do not understand and have to rely on others when trying to participate in the legal system. A number of other barriers were each identified by two of the respondents. These include the following: persons with FASD are not capable of complex communications and are unable to instruct their counsel; they have difficulty with day-to-day functions and consequently, often miss appointments; they have multiple problems/addictions; and lawyers, police, and, probation officers do not understand these individuals and they do not consult with the client’s family (see Appendix F, Table F-7). Some respondents commented as follows:

I’m quite concerned that the person had no idea who I was and had no understanding of what I said.

They don’t understand why they don’t know what they did wrong.

Barriers to obtaining non-legal assistance by persons with FASD were also identified by 12 of the key informants. A third of these respondents indicated, again, that one of the most common barriers for persons with FASD was that they are not capable of understanding. Another common response mentioned by a third of the respondents was that support for persons with FASD is hard to get and services are very limited. Next, staff turnover was identified as an issue by 25% of the respondents, followed by an ability to communicate and difficulty with day-to-day functions, which was referred to by 17% of the respondents. A number of other individual responses were recorded (see Appendix F, Table F-8). One respondent commented:

FASD is the white elephant of the social service system.

Other general barriers were also mentioned such as the lack of support workers; persons with FASD having multiple problems such as addictions and mental health; their inability to understand; and that some of them want to be in a correctional facility (see Appendix F, Table F-9). One respondent commented:

With FASD, treatment has less to do with what is wrong with the brain and more to do with adaptation.

3.3.3 Current Resources in the Yukon

Key informants were next asked to identify resources that were currently available to persons with FASD in the Yukon to help them address problems of barriers of access to justice in three major areas: obtaining legal assistance/information; effective participation in the legal system; and obtaining non-legal assistance.

In terms of availability of resources to address the barriers of obtaining legal assistance/information, two thirds of the key informants provided responses. Half of the

14 respondents identified FASSY as the first resource. Next, 36% identified legal aid followed by Family and Children Services (22%). The next three resources were police, lawyers, and probation officers with training in FASD; Yukon Review Board; and duty counsel were all mentioned by two respondents each. Other individual comments were also made (see Appendix F, Table F-10).

Only eight key informant respondents identified current responses for addressing barriers to persons with FASD to effectively participate in the legal system. Six of these respondents again identified FASSY as well as other NGOs. Half mentioned government services and two mentioned support workers and the Yukon Adult Resource Centre (YARC). Other individual responses included: the Yukon Community Wellness Court; lack of resources; and lack of formal assessments (see Appendix F, Table F-11).

Resources available to obtain non-legal assistance by persons with FASD were also identified by a third (n=7) of the key informants. FASSY was again the most common response, with 43% of key informants identifying it followed by the YARC, formal diagnosis, and the support of family activities (see Appendix F, Table F-12).

Respondents were also asked to indicate whether they use any informal measures in cases of suspected or diagnosed FASD to deal with persons they interact with. Most of the key informants (n=15) identified specific informal measures. The most commonly identified measures mentioned by over half (53%) of those who responded was speaking slowly and clearly. Next, 40% of the respondents indicated the need to use plain language and to communicate in a manner different than you normally would. Some respondents (13%) also mentioned as additional measures the following: getting the person to repeat what has been told to them; setting goals very low for known clients with FASD; recognizing their special needs; and doing pre-tests/intake assessments (see Appendix F, Table F-13).

3.3.4 Services Needed in the Yukon

Key informant respondents were also asked what resources and services should be made available in the Yukon for assisting persons with FASD to access justice. Some of the key informants provided suggestions for new resources and services for obtaining legal assistance/information and promoting effective participation in the legal system.

In terms of new services needed to help persons with FASD obtain legal assistance/information, suggestions were made by 15 of the key informants. The most frequently identified services needed were general support services (73%) which include individual support workers, family supports, culturally specific (First Nations) programming, and addictions treatment. A third of the respondents also identified the need for stable secure housing. Next, special support services for the justice system such as special advocates, court support workers, and after care programs were suggested by 27% of those who responded. Two respondents mentioned special training and education and the need to coordinate services (see Appendix F, Table F-14). One respondent commented:

We're going to have to learn how to use them [persons with FASD] positively in our communities because they have lots of skills.

New services needed to help persons with FASD to effectively participate in the legal system were identified by nine respondents. The need to increase support services in general was mentioned by all respondents. The need for stable secure housing and the need for formal diagnosis/screening were mentioned by two respondents (see Appendix F, Table F-15). One respondent commented:

Don't try the formal system because it just doesn't work.

3.4 FASD Experts

Interviews were conducted with nine professionals identified as experts in the area of FASD, particularly related to legal issues (see list of FASD experts in Appendix D). These experts were identified through a variety of mechanisms including the review of the literature, case law and through referral by other professionals. Interviews were conducted by telephone using the Experts Interview Protocol as described in Section 1.4.2. The information collected during the experts interviews included: background information, as well as experience and knowledge of FASD; information regarding perceived barriers to access to justice for persons with FASD; and suggestions about current best practices in providing access to justice for persons with FASD.

3.4.1 Experience and Knowledge

The FASD experts represented a wide variety of professionals and many had dealt with the issue of FASD through a number of different roles. For example, a third of them indicated they had worked with individuals with FASD through the administration of justice and another third indicated they provided training workshops and education in the area of FASD. Other areas mentioned by two of the experts included: advocacy and policy developments; corrections and policing; research; and genetics. Roles mentioned by just one of the experts included: physician; providing direct service in the community; providing government service; and having family members with FASD (see Appendix G, Table G-1). One respondent commented:

The kids taught me, I didn't teach them (adoptive parent and researcher).

In terms of the number of individuals with FASD dealt with by the experts, two-thirds of them indicated a lot and/or most of their clients were persons with FASD and one-third of them indicated a few of their clients were persons with FASD (see Appendix G, Table G-2).

When asked how they felt about dealing with individuals with FASD, the most common response, mentioned by three of the respondents, was that they felt positive and good about it. Two respondents also indicated they were keen on being involved with persons with FASD. In contrast, feeling frustrated and feeling that they required more time to deal with these persons were each mentioned twice. Feeling helpless and

ineffective, feeling it was difficult to balance specific needs, and the protection of society were each mentioned once. One respondent indicated that they felt persons with FASD should not be dealt with by the criminal justice system (see Appendix G, Table G-3).

In terms of formal training/workshops, four indicated that they have attended conferences, workshops and presentations. Four also indicated that they have conducted training and workshops. Only two indicated that they have had special training courses in FASD and another two indicated that they received most of their training on the job. One reported being self-trained (see Appendix G, Table G-4).

When asked whether they felt they had adequate knowledge to work with persons with FASD, six experts said yes but they needed more knowledge (see Appendix G, Table G-5). One respondent commented:

The more you know the less you know.

3.4.2 Barriers to Access to Justice

During the interview, the experts were asked to identify the major barriers for persons with FASD in accessing justice. Questions concerning this topic were organized under the following three major topics: obtaining legal assistance/information; effective participation in the legal system; and obtaining non-legal assistance.

In terms of barriers to obtaining legal assistance, eight of the nine respondents indicated that they felt persons with FASD were not capable of understanding enough to obtain legal assistance such as legal information, advice, legal counsel, and legal aid. Four of the respondents also indicated that persons with FASD were not able to remember well enough to obtain legal assistance. Three respondents also indicated that they didn't feel lawyers understood the disability. The inability to communicate and the lack of formal diagnoses were also mentioned twice by the experts. The system not being accessible and the fact that the process and time in court is overwhelming to persons with FASD were also mentioned (see Appendix G, Table G-6). One respondent commented:

Some don't function as well as Down Syndrome patients.

When the experts were asked about barriers to persons with FASD in their ability to effectively and fairly participate in the legal system, all of those interviewed indicated that persons with FASD were not capable of understanding enough to participate fairly in the system. Six of the experts also indicated that persons with FASD could not participate fairly without a support person. Two also indicated that ability to participate depends on whether they have a lawyer who understands FASD. The issue of FASD being masked, i.e., no visible characteristics, could also be a problem if the court is unaware of the condition (see Appendix G, Table G-7). One respondent commented:

They often go to jail as much for things they don't do as they go to jail for things they did do.

A number of barriers to obtaining non-legal assistance by persons with FASD were also identified by seven of the experts. The issues raised include the following: they can't communicate; they forget meetings and they're incapable of performing day-to-day tasks; they don't know how to access systems; support persons for them are a limited resource; and they are limited in their ability to plan and organize (see Appendix G, Tables G-8 and G-9). One respondent commented:

Nobody who needs the assistance could possibly apply for it themselves.

The experts were also asked to indicate whether they use any informal measures in cases of suspected or diagnosed FASD to deal with the persons they interact with. A number of informal measures were mentioned including the following: the use of informal screening or checklist tools; adapting your approach to the person's specific needs; talking to family members; and developing a behaviour plan for those who have to deal with the person affected by FASD.

3.4.3 Current Best Practices Relevant to the Yukon

The experts were asked whether they were aware of any best practices in terms of resources and services to assist persons with FASD in obtaining legal assistance/information and promoting effective participation in the legal system and whether these would be relevant to the Yukon. A number of resources and services were identified. These can be broadly categorized as either approaches that would specifically target involvement with the justice system or general approaches.

Justice System

Resources and services identified as specific to the justice system were as follows:

- Special training regarding FASD for police, lawyers, probation officers and judges.
- Justice specific advocates.
- Develop documents and procedures that are FASD-friendly.
- Develop protocols for the screening and diagnosis of alleged offenders and witnesses who may be cognitively impaired by FASD at the initial stages of the justice process.
- Develop diversion programs to divert less serious cases involving persons with FASD from the justice system.

The Community Justice FASD Committee in Lethbridge, Alberta provides a good example of a diversion, case management program. The Community Justice FASD Committee was originally developed as a diversion program for youth with

FASD, but has now expanded to also offer services for adult persons with FASD. The major objectives of this project are as follows: to influence case management for youth affected by FASD; to divert youth affected by FASD from the system when appropriate; to make recommendations to the court; to identify high-risk youth and their families and connect them with appropriate resources; and to provide advocacy for families, schools and community.

- Specialized courts such as the Yukon Community Wellness Court (see page 4)
- Use circle sentencing to engage the family and the community in the healing process.
- Develop special programs for offenders with FASD who have been incarcerated.

While Correctional Services Canada has well recognized the implications of FASD for correctional services (Boland et al., 1998), the experts identified only one halfway house which provides a link from being incarcerated to being introduced back into society for persons with FASD. This program is part of the services offered by the Genesis House Community in Westminster, B.C. This facility provides comprehensive residential services, serves as a program delivery site for Correctional Services of Canada Core Living Skills and Substance Abuse program and offers a specialized training program for individuals impacted with FASD.

General Approaches

Resources and services identified under the general approach were as follows:

- Programs which provide general support workers for persons with FASD.

The example program referred to here was FASSY (Fetal Alcohol Syndrome Society of Yukon). This is a non-profit society established in 1996 that provides programs to persons with FASD. Because of the lack of core funding, all of the activities of this program are either project-specific or volunteer funded and operated. While FASSY is currently involved in offering a number of programs (see Section 1.2.2 above), the two major programs which would be relevant to the responses of the experts here include diagnostic services for adults suspected of having FASD and a program which consists of outreach workers who provide one-on-one supports to assist persons with FASD to find and keep safe housing and to work with an individual's family members.

- Housing and residential support services for persons with FASD and other disabilities.

The example program referred to here was Quest Residential and Support Services Inc. in Lethbridge, Alberta. Quest, established in 1993, currently provides services to approximately 180 individuals in a range of settings including group homes, Community Access (Day program), Supported Homes,

Respite Care and children's services. While they provide services to individuals with a wide range of disabilities, some of the clients are affected by FASD.

Given FASSY's broad mandate and emphasis on providing safe, stable housing, they could also be considered under this category.

- Coordination of services for persons with FASD.

Vancouver and Surrey Collaboration Roundtables began a formative/pilot stage in the fall of 2006 and provide a good example under this heading. This collaboration is an innovative approach to improving coordination of service planning and delivery of highly complex and often fragmented systems. The goal of the collaboration is to involve all the key systems and agencies that deliver services to children and youth with FASD. Currently the project supports implementation of the protocol agreements, the coordination and integration of service delivery, and the alignment, realignment and development of services to better meet the needs of children and youth affected by FASD.

4.0 SUMMARY, DISCUSSION AND RECOMMENDATIONS

This project examined access to justice issues for persons with FASD, with particular emphasis on these issues in the Yukon Territory. Individuals with FASD may become involved with the justice system in a variety of ways: (1) as victims in the criminal justice system; (2) as offenders in the criminal justice system; and (3) as parties in civil actions including family law cases. The implications of FASD for the justice system are especially relevant for offenders in the criminal justice system and, not surprisingly, the majority of research has been conducted in this area. Fast, Conry and Loock (1999) note that the criminal justice system is designed on the premise that persons have the capacity to comprehend the consequences of their actions, an ability that persons with FASD often do not possess. With an increasing number of youth and adults with FASD coming into contact with the justice system, addressing the challenges presented by this unique range of deficits is of greater importance (Conry & Fast, 2000). Thus, involvement of persons with FASD in the criminal justice system is the major focus of this study.

While access to justice is a fundamental principle in Canada, previous research has not examined the extent to which access to justice is an issue for individuals with FASD. This project, initiated and funded by the Yukon Department of Justice, appears to be one of the first attempts in Canada to examine the issues related to FASD and access to justice. According to the Request for Proposals (RFP) for this project, access to justice includes the following four components:

- (1) The ability to attain legal assistance (including information, basic legal advice, initial legal assistance and legal representation);
- (2) The ability to participate effectively and fairly in the legal system (including access to courts, tribunals, and formal alternative dispute resolution mechanisms);
- (3) The ability to obtain assistance from non-legal advocacy and support (including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community based justice); and
- (4) The ability to participate effectively in law reform processes.

4.1 Purpose of the Project

The overall goal of this project was to document the types of barriers that confront individuals with FASD and to make recommendations for how to address them.

4.1.1 Research Questions

The following research questions were developed to provide a framework to accomplish the goal of this project:

- (1) What is the current state of Canadian literature on access to justice?
- (2) What national and international literature is available on access to justice in the context of FASD and other relevant conditions of limited cognitive capacity?
- (3) What is the level of knowledge of FASD among service providers and relevant professionals in the Yukon, including justice system personnel, social service workers, health care workers, and community agents?
- (4) What barriers to access to justice have been identified by professionals working in the area, individuals with FASD and their families?
- (5) What strategies and programs have been developed in the Yukon to deal with access to justice issues among the FASD population?
- (6) What additional resources are required to address the problems?

4.2 Summary and Discussion

The findings of this report are summarized and discussed below within the context of the specific research questions.

4.2.1 What is the Current State of Canadian Literature on Access to Justice?

In order to answer this question, a review of the current literature was conducted, including searches of academic publications, government reports and documents available on the Internet. While an attempt was made to locate international literature on access to justice in the context of FASD, it was clear that Canada is a leader in this field. Outside of the United States, no articles were found from other countries. Indeed, Australia only identified FASD as an issue of concern for the Ministerial Council on Drug Strategy in 2004 (Australian Government, 2006), and a newsletter from New Zealand with an article on “Foetal Alcohol Syndrome and Youth Justice” cited Canadian and American sources (New Zealand Court in the Act, 2006).

The research literature also focussed almost exclusively on the criminal context of access to justice for individuals with FASD (as did the full report), even though individuals with fetal alcohol-related disabilities may encounter the courts in the context of child protection, civil and family disputes. There appears to be an absence of research information regarding the involvement of persons with FASD in child protection, Family Court and/or in civil matters. However, many of the issues identified for individuals with FASD involved in the criminal justice system would also apply to those involved in civil justice matters.

While Canada is clearly a leader in this field, the lack of a comprehensive body of research in this field is a significant problem even in Canada. One of the experts interviewed indicated, “FASD is a problem that continues to be in the closet.” The lack of recognition and awareness of this problem in society in general has delayed the advancement of research and knowledge, as well as programmatic response to the

problem. Thus, even this current literature review is dependent on a limited number of key research publications.

4.2.2 What National and International Literature is Available on Access to Justice in the Context of FASD and other Relevant Conditions of Limited Cognitive Capacity?

The literature clearly indicates that access to justice is an issue for individuals with FASD. When an individual with FASD comes into contact with the law, whether as a victim, witness or accused, there are implications for all components of the criminal justice system, including police investigation, legal representation and prosecution, adjudication, sentencing, and corrections. The disabilities of an individual with FASD need to be accommodated to ensure access to justice. However, there is a very broad spectrum of disabilities that affect individuals who were prenatally exposed to alcohol, which makes dealing with these cases more complex.

Research to date indicates that the first step in achieving justice for people with FASD is the recognition of the disorder, and the need for formal assessment and diagnosis. In order for this to happen, professionals in the justice system need to be educated about FASD and the disabilities associated with it. Early recognition of fetal alcohol affects and the development of strategies for dealing with individuals with FASD may reduce the over-representation of this group in the criminal justice system (Fast & Conry, 2004). Police officers, lawyers, judges, and correctional services staff need to receive formal training in this area. As Williams (2006, p. 12) states:

Absent such training, screening, referrals for diagnosis, alternative sentencing, and any other corrective measures are but mere goals, unlikely to produce systemic change because the gatekeepers are still unable to recognize FASD and its effect on the accused.

Recently, an e-learning training seminar for legal professionals was developed in Alberta to address the need for accurate information about FASD (Cook-Stanhope, Clarke, & Goodfellow, 2006). The goal of the seminar was to help legal professionals identify FASD, identify appropriate consequences for offenders, and utilize the most appropriate resources. A multi-disciplinary approach was used in the seminar, including physicians, judges, defence and family lawyers, and Crown counsel, and it promoted the integration of information and services.

Next, the research literature indicates that there needs to be recognition that the traditional punishment-oriented system may not be the appropriate way to deal with these individuals since they do not understand consequences. Alternative sentencing options need to be explored and developed and community supports need to be put in place. In cases where public safety is an issue and incarceration is warranted, it is important to recognize that individuals with FASD will return to the community upon their release and will require ongoing supervision and support specific to their disability. To be effective, any programs and supports that are developed need to be guided by a coordinated response by community, government, business and not-for-profit organizations.

While Canada is clearly a leader in the study of FASD, more research is needed to determine the extent of the problem for both youth and adults. In addition, virtually all of the research that is available deals with FASD in the criminal justice system. More work that examines issues related to problems faced by individuals with FASD in the civil justice system is needed.

Finally, according to the literature, the traditional criminal justice system is not an effective way of dealing with individuals with FASD who come into conflict with the law. However, there have been no research studies that have examined alternative means of dealing with these offenders.

4.2.3 What is the Level of Knowledge of FASD Among Service Providers and Relevant Professionals in the Yukon, Including Justice System Personnel, Social Service Workers, Health Care Workers, and Community Agents?

Background information regarding experience and knowledge was available for focus group participants, key informants, and experts and is summarized below:

- The majority of respondents from all three groups reported having considerable experience dealing directly with persons with FASD (over half of their clients).
- While the majority of respondents felt that working with individuals with FASD was challenging and difficult, a significant portion of respondents also felt that it was a positive experience.
- The vast majority of all respondents had received some type of formal training/workshops about FASD. Short conferences, workshops and presentations comprised the major type of training. Only a few mentioned having special accredited courses (since very few seem to be available) or learning on the job.
- When asked if they felt they had adequate knowledge to work with persons with FASD, the majority indicated yes, but they needed more.

4.2.4 What Barriers to Access to Justice Have Been Identified by Professionals Working in the Area, Individuals with FASD and Their Families?

Information regarding perceived barriers to access to justice was available for the clients with FASD, focus groups, key informants, and experts and is summarized below.

Clients with FASD Experiences with the Justice System

All of the clients with FASD reported historical or ongoing involvement with the criminal justice system. When asked about their experiences with police, responses were quite mixed. Some reported negative experiences such as being threatened or beat up. Others reported more positive experiences. Most of the respondents reported

being in court and three reported being in court a lot. Only two said they knew what was going on in court, and many said the experience was not positive.

Almost all of the clients had been in a correctional facility more than once. They indicated that the correctional facility was overall not a positive experience for them because of the lack of programming. Positive aspects included the food and being with their friends. There were no negative comments about the guards. Almost half of the clients indicated that the other inmates bothered them, which is consistent with some of the focus groups and key informants who said that persons with FASD were often victimized in a correctional facility.

Barriers to Obtaining Legal Assistance/Information

When asked to identify barriers to obtaining legal assistance/information for persons with FASD, the most frequent responses from all respondents and focus groups pointed to the limitations of persons with FASD to understand, communicate, and remember well enough in order to function on a day-to-day basis. The second most common response referred to the lack of understanding and knowledge about FASD for police, lawyers, and probation officers who work with clients affected by FASD.

Barriers to Participation in the Legal System

When the focus groups, key informants, and experts were asked to identify the barriers to persons with FASD in their ability to effectively and fairly participate in the legal system, the most frequent responses from all respondents and focus groups again pointed to the limitations of the persons with FASD to understand, communicate and instruct counsel, and functionally participate. Additional responses varied somewhat, and included a lack of knowledge on the part of lawyers and judges regarding the disability, as well as a court process that is too long and complex for persons with FASD.

Barriers to Obtaining Non-legal Assistance

When asked to identify barriers to persons with FASD in their ability to obtain non-legal assistance, the most common responses from all respondents and focus groups referred to the lack of ability of persons with FASD to understand, communicate and function on a day-to-day basis. The second most common response referred to the difficulty in identifying and getting support services, in large part due to the lack of resources.

Participation in the Law Reform Process

When asked about the ability of persons with FASD to participate effectively in the law reform process, the focus group participants, key informants, and experts universally indicated that this process is complex and the cognitive limitations of persons with FASD would prohibit any meaningful involvement in law reform. The only

suggestions made by a few respondents were that law reform pertaining to issues related to FASD should be informed by advocates for individuals with FASD.

Other Barriers

When asked to identify other barriers to persons with FASD in their ability to access justice, the responses were somewhat varied. There was common reference to the fact that persons with FASD are complex to help because they often have multiple diagnoses and problems, services and supports are limited, and the judicial system and correctional facility system are not appropriate or useful in dealing with these cases. The resistance of families and communities in general to actively pursue supports in these cases due to concern about the stigma and shame was also mentioned.

Another point that was often made regarding general barriers to access to justice for persons with FASD was the fact that in the Yukon the majority of services, support persons and resources are based in Whitehorse. Thus, persons with FASD in the communities by definition have significantly more difficulty accessing services that would aid them in accessing justice.

4.2.5 What Strategies and Programs Have Been Developed in the Yukon to Deal With Access to Justice Issues Among the FASD Population?

There are number of government and NGO agencies in the Yukon that provide services for persons with FASD. However, many of the services and programs focus on prevention, services for children, or services that are focused more generally on mental health issues and/or disabilities, including FASD. The services that focus on adults with FASD are summarized below. For more detailed information, please see Sections 1.2.1 and 1.2.2 of this report.

Health Canada

The Northern Region's Yukon Office administers the First Nations and Inuit Health Branch (FNIHB) that includes targeted FASD program funding. The majority of Yukon First Nations have elected to receive FNIHB funding as part of their self-government program transfers and subsequently have responsibility and authority to deliver FASD programming to their members. There is also public health money for FASD coming into the territory via Public Health Agency of Canada funding.

Yukon Department of Justice

The Yukon Department of Justice opened a Yukon Community Wellness Court in April 2007. One of the three target client groups for this therapeutic court is persons with FASD. Justice also provides specialized counselling services to adults with FASD.

Yukon Department of Health and Social Services (HSS)

The Yukon Department of Health and Social Services provides a variety of services to children, youth and adults with disabilities that individuals diagnosed with or

suspected of having FASD can access. It has FASD prevention public education campaigns and it funds FASSY to provide some support programs and to coordinate adult FASD diagnosis.

Department of Education

The Department of Education produced a manual, “Making a Difference: Working with Students who have Fetal Alcohol Spectrum Disorders,” to help school-based staff and others understand the challenges facing students with FASD.

FASSY (Fetal Alcohol Syndrome Society of Yukon)

FASSY is a non-profit society dedicated to providing a range of support programs to persons with FASD and their families. FASSY also currently coordinates adult FASD diagnosis by a Calgary team of FASD experts, and it provides education on FASD to professionals and members of the general public.

First Nations

Some First Nations governments provide funding for housing and one-on-one supports for persons with FASD. Overall, there are very few formal services in Yukon First Nations communities for persons with FASD. Selkirk First Nation in Pelly Crossing is showing leadership in addressing the issue of FASD.

Supportive Housing

Options for Independence is a supportive housing complex for adults with FASD. There are also several residential group homes for adults and youth that have clients with FASD. The Yukon Adult Resource Centre is a corrections half-way house that accepts individuals with FASD, although they do not provide specialized FASD supports.

Focus Groups and Key Informant Responses

Both the focus groups and key informants were asked if they were aware of any resources that are currently available in the Yukon to address the problems or barriers to access to justice for persons with FASD. The summary findings are as follows:

- Only half of the focus groups and two thirds of the key informants were able to identify any resources currently available in the Yukon for persons with FASD to address the barriers to access to justice.
- For those who did respond, the most common responses were FASSY and stable support workers. The next most common responses focused on government services such as Family and Children Services, Yukon Review Board, the Yukon Department of Justice Spousal Abuse Program and the fact that some police, lawyers, and probation officers are particularly knowledgeable about FASD. Almost all of the available resources are only available to persons

with FASD living in Whitehorse. The communities are significantly lacking in resources, both general and justice specific, for persons with FASD.

- Respondents were also asked if they used any informal measures in dealing with people who were diagnosed or may be diagnosed with FASD. The most common responses were to speak slowly and clearly and to use plain language with the understanding that one needs to communicate differently.

In the process of conducting focus groups and key informant interviews, we became aware that it is generally believed among community service providers that there are not enough services to meet the needs of persons, particularly adults, with FASD. Another point that was often made was that the programs and initiatives are not particularly well coordinated. We would concur with this conclusion and suggest that they are also not particularly well-known, which in itself can be a barrier to access to these programs by persons with FASD.

4.3 Conclusions and Recommendations

Overall the findings of the report are very consistent for all data sources. The literature review provided a good basis for the findings and recommendations which was very consistent with the findings and recommendations from the focus groups, key informants and experts. Thus, we used the comments in Chapter 3.0 as a framework for the development of specific recommendations below in response to the final research question which is as follows:

What additional resources are required to address the problems?

The focus groups, key informants and experts were also asked what new resources and services or current best practices should be considered for the Yukon in terms of increasing access to justice for persons with FASD. The themes and responses for all three groups were very consistent. The resources and services identified as being appropriate for the Yukon, as well as recommendations for research, are listed below.

4.3.1 Justice System Recommendations and Areas for Further Investigation

Recommended resources and services identified as specific to the justice system are as follows:

- Provide special training regarding FASD for front-line staff and other points of client contact with justice professionals.
- Explore the possibility of introducing justice-specific advocates for clients with FASD.
- Consider the creation of a public legal education strategy that facilitates enhanced access to justice for individuals with FASD.

- Encourage key decision-makers to seek out a FASD diagnosis in the early stages of the justice process if FASD is suspected.
- Develop diversion programs to divert less serious cases involving persons with FASD from the justice system.
- Create specialized courts such as the Yukon Community Wellness Court.
- Use circle sentencing to engage the family and the community in the healing process.
- Develop special programs for offenders with FASD who have been incarcerated.

4.3.2 General Recommendations

Recommended resources and services identified under the general approach were as follows:

- Establish programs which provide general support workers for persons with FASD.
- Create housing (short and long-term, and safe houses) and residential support services for persons with FASD and other disabilities.
- Further investigate the development of a territorial-wide FASD strategy and coordination of services for persons with FASD.

4.3.3 First Nations Communities

Implementation of any of the recommendations above will require special consideration for First Nations communities. We would recommend the following:

- Engage and support First Nations families and community resources in dealing with issues related to persons with FASD.
- Utilize traditional First Nations justice and treatment models.

4.3.4 Rural Communities

Implementation of any of the recommendations above will require special consideration for rural communities. We would recommend the following:

- Engage families and a broad range of community services in rural communities to develop a coordinated response to issues related to persons with FASD.
- Support the development of local solutions to problems and issues related to persons with FASD.

4.3.5 Recommendations for Research

Research should be conducted in the following areas:

- Conduct research on the issues and problems related to persons with FASD who have to deal with family and other civil law issues.
- Conduct research and evaluate the use and effectiveness of alternatives to the traditional justice system for persons with FASD.
- Conduct research on issues related to the involvement of victims/witnesses with FASD.
- Conduct a case-law review on issues related to individuals with FASD, including being found “not criminally responsible” and “unfit to stand trial.”

REFERENCES

- Australian Government. (2006). *Ministerial Council on Drug Strategy Joint Communique*, December 15.
- Boland, F.J., Burrill, R., Duwyn, M. & Karp, J. (1998). Fetal alcohol syndrome: Implications for correctional service. *Correction Service of Canada*, online. (Accessed June 11, 2007: http://www.csc-scc.gc.ca/text/rsrch/reports/r71/r71e_e.shtml)
- Boland, F., Chudley, A., & Grant, B. (2002). The challenge of fetal alcohol syndrome in adult offender populations. *Forum on Correctional Research*, 14. Available at www.csc-scc.gc.ca/text/pblct/forum/e143/e143s_e.shtml. Accessed November 13, 2007.
- Boulding, D. (2001). *Mistakes I have made with FAS clients: Fetal Alcohol Syndrome and Fetal Alcohol Effects in the Criminal Justice System*. Personal paper by author.
- Boulding, D. (2005). *Fetal alcohol: The role of crown counsel*. Presented at the Annual Conference of Crown Counsels, Whistler, BC, March.
- Burd, L., Selfridge, R.H., Klug, M.G., & Bakko, S.A. (2004). Fetal alcohol syndrome in the United States corrections system. *Addiction Biology*, 9, 169-176.
- Burd, L., Selfridge, R.H., Klug, M.G., & Juelson, T. (2003). Fetal alcohol syndrome in the Canadian corrections system. *Journal of FAS International*, e14, 1-7.
- Byrne, C. (2002). *The criminalization of fetal alcohol syndrome (FAS)*. Unpublished paper by author.
- Chartrand, L.N., & Forbes-Chilibeck, E.M. (2003). The sentencing of offenders with fetal alcohol syndrome. *Health Law Journal*, 11, 35-57.
- Chudley, A.E., Conry, J., Cook, J.L., Loock, C., Rosales, T., & LeBlanc, N. (2005). Fetal alcohol spectrum disorder: Canadian guidelines for diagnosis. *Canadian Medical Association Journal*, 172, S1-S15.
- Clare, I.C.H., & Gudjonsson, G.H. (1993). Interrogative suggestibility, confabulation, and acquiescence in people with mild learning disabilities (mental handicap): Implications for reliability during police interrogations. *British Journal of Clinical Psychology*, 32, 295-301.
- Connor, P. (2004). *Prison: A warehouse for individuals with FASD*. Available at: http://www.fasiceberg.org/newsletters/Vol14Num2_Apr2004.htm#warehouse. Accessed November 9, 2007.

- Conry, J., & Fast, D.K. (2000). *Fetal alcohol syndrome and the criminal justice system*. Vancouver, BC: British Columbia Fetal Alcohol Syndrome Resource Society.
- Cook-Stanhope, L.T.L., Clarke, M., & Goodfellow, C.L. (2006). *FASD Training for Legal Professionals*. Calgary, Alberta.
- Currie, A. (2000a). *Riding the third wave – Notes on the future of access to justice*. Ottawa: Department of Justice Canada.
- Currie, A. (2000b). *Some aspects of access to justice in Canada*. Ottawa: Department of Justice Canada.
- Dagher-Margosian, J. (2005). *Representing the cognitively disabled client in a criminal case*. Presented at the State Bar of Michigan Annual Meeting, September.
- Dagher-Margosian, J. (1997). Representing the FAS client in a criminal case. In Streissguth, A.P. & Kanter, J. (Eds.), *The challenge of fetal alcohol syndrome: Overcoming secondary disabilities* (pp. 125-133). Seattle: University of Washington Press.
- Department of Justice Canada (2000). *Expanding horizons: Rethinking access to justice in Canada*. Ottawa: Department of Justice Canada.
- Etherington, B. (2000). Promises, promises: Notes on diversity and access to justice. *Queen's Law Journal*, 26, 43-65.
- FASD Ontario Justice Committee. (2007). Website designed as a resource for justice system professionals. Accessed October 23, 2007: www.fasdjustice.on.ca.
- Fast, D.K., & Conry, J. (2004). The challenge of fetal alcohol syndrome in the criminal legal system. *Addiction Biology*, 9, 161-166.
- Fast, D.K., Conry, J.L. & Loock, J. (1999). Identifying fetal alcohol syndrome among youth in the criminal justice system. *Journal of Developmental and Behavioural Paediatrics* 20 (5), 370-372.
- Gibson, A. (2003). *Best practice ideas across five aspects of transitions among youths with FASD lives*. Paper prepared for the Calgary Fetal Alcohol Network.
- Green, M. (2006). *A judicial perspective*. Paper presented at the Fetal Alcohol Syndrome Disorders Symposium for Justice Professionals, Toronto, ON.
- Jeffery, M.I. (n.d.). *Suggestions for more user-friendly court hearings*. Available at <http://depts.washington.edu/fadu/legalissues/suggestionsforcourthearings.pdf>. Accessed November 7, 2007.
- Kelly, K.A. (2003). The victimization of individuals with fetal alcohol syndrome/fetal alcohol effects. *TASH Connections*, August/September, 29-30.

- Kerns, K.A., Don, A., Mateer, C. A. & Streissguth, A. P. (1997). Cognitive deficits in nonretarded adults with fetal alcohol syndrome. *Journal of Learning Disabilities* 30(6), 685-693.
- Lutke, J. (2004). *Fighting for a future. FASD and "the system": Adolescents, adults and their families and the state of affairs*. Proceedings from a two-day forum in Surrey, BC, June 19-20.
- MacPherson, P., & Chudley, A.E. (2007). *Fetal alcohol spectrum disorder (FASD): Screening and estimating incidence in an adult correctional population*. Presented at the 2nd International Conference on Fetal Alcohol Spectrum Disorder: Research, Policy, and Practice Around the World, Victoria, B.C.
- Malbin, D.V. (2004). Fetal alcohol spectrum disorder (FASD) and the role of family court judges in improving outcomes for children and families. *Juvenile and Family Court Journal*, Spring 2004, 53-63.
- Mitten, H.R. (2003). *Barriers to implementing holistic, community-based treatment for offenders with fetal alcohol conditions*. Master of Laws Thesis, University of Saskatchewan.
- Mitten, H.R. (2004). *Section 9: Fetal alcohol spectrum disorders and the justice system*. From the First Nations and Metis Justice Reform Commission Final Report, Volume II.
Available online: <http://www.justicereformcomm.sk.ca/volume2/12section9.pdf>.
- Moore, T. E. & Green, M. (2004). Fetal alcohol spectrum disorder (FASD): A need for closer examination by the criminal justice system. *Criminal Reports* 19(1), 99-108.
- New Zealand Court in the Act. (2006). *Court in the act*, Issue 24, October. A newsletter co-ordinated by the Principal Youth Court Judge for the Youth Justice Community.
- Pate, K. (2003). *Access to justice plenary*. Given at the Ontario Conference of Judges, May 21, 2003.
- Perske, R. (1994). Thoughts on the police interrogation of individuals with mental retardation. *Mental Retardation*, 32, 377-380.
- Royal Canadian Mounted Police. (2002). *Fetal alcohol spectrum disorder: FASD guidebook for police officers*. Ottawa: Minister of Public Works and Government Services Canada.
- Sampson, P.D., Streissguth, A.P., Bookstein, F.L., Little, R.E., Clarren, S.K., Dehaene, P. (1997). Incidence of fetal alcohol syndrome and prevalence of alcohol-related neurodevelopmental disorder. *Teratology*, 56, 317-326.

Stade, B., Clark, K., & D'Agostino, D. (2004). Chapter 6: Considerations for law enforcement workers, in the Fetal alcohol spectrum disorder and homelessness training manual. *Journal of FAS International*, 2, 56-59.

Streissguth, A.P., Barr, H.M., Kogan, J., & Bookstein, F.L. (1996). *Final report to the CDC on understanding the occurrence of secondary disabilities in fetal alcohol syndrome and fetal alcohol effects*. Seattle: University of Washington.

Verbrugge, P. (2003). *Fetal alcohol spectrum disorder and the youth criminal justice system: A discussion paper*. Ottawa, ON: Department of Justice Canada.

Williams, S.J. (2006). Is there justice in the juvenile justice system: Examining the role of fetal alcohol spectrum disorders. *Justice Policy Journal*, 3(1), 1-15.

APPENDIX A

INTERVIEW SCHEDULE FOR PERSONS WITH FASD AND SUPPORT PERSONS

ACCESS TO JUSTICE FOR INDIVIDUALS WITH FETAL ALCOHOL SPECTRUM DISORDER (FASD): INTERVIEW SCHEDULE FOR PERSONS WITH FASD AND SUPPORT PERSONS

1.0 Introduction

Interviews with persons with FASD will be conducted in the presence of a support person, guardian/caretaker and/or family member. A support person would be expected to help the FASD respondent answer questions and probe for information. As well, we would ask the support person to witness the signed consent form.

1.1 Introduce Yourself/Ourselves

1.2 Project Overview: Support Persons and Key Informants

The Canadian Research Institute for Law and the Family (CRILF) has been contracted by the Yukon Department of Justice to conduct a research project on Access to Justice for Individuals with Fetal Alcohol Spectrum Disorder (FASD). The overall goal of this project is to determine the types of barriers that confront individuals with FASD and to make recommendations how to address them. We will be conducting a number of interviews and focus groups with professionals to collect information that will be relevant to this project.

1.3 Project Overview: Individuals with FASD

The Yukon government has hired us to find out if you and other people have problems with the laws or the people who work with the laws in the Yukon such as the police, lawyers and judges. We are going to ask a number of people questions about their experiences. Then we will write a report for the government about ways to make it easier for people to deal with the laws in the Yukon.

1.4 Consent

We think you might have some important information for us to tell government. If you talk to us, we will use what you tell us but we will not tell anybody who you are. What you have to say is important and we will pay you \$20 for talking to us. You don't have to talk to us if you don't want to and you may stop talking to us at any time if you're not comfortable. (Have them sign a consent form.)

2.0 Background Information

(Obtain from the support person prior to the interview if possible.)

2.1 List the Following Information:

- gender;
- age;
- education;
- literacy;
- community of origin;
- formal assessment;
- health in general;
- level of functioning;
- additional complications;
- their living situation;

- employment/source of income;
- prior involvement with criminal law (police, court, corrections, jail);
- prior involvement with civil/family law (e.g., child protection, divorce).

3.0 Experience with the Law

(These questions should be asked directly to the person with FASD and may require that the support person help to answer the questions.)

3.1 Have you ever been in trouble with the police?

- if yes, can you tell me about it?
- were you arrested?
- did this happen more than once (most recent time, worst and best time)?
- how did the police treat you?
- what could the police do better?

3.2 Have you ever been in court?

- if yes can you tell me about it?

- do you know why you were there (e.g., witness or victim)?
- were you in court more than once (most recent time, worst and best time)?
- do you remember how you felt?
- do you remember how the judge was to you?
- did you have a lawyer to help you?
- did someone else help you?
- how could the court be better for you?
- did you understand what was going on?

3.3 Have you ever been in jail?

- if yes can you tell me about it (including where you were)?
- do you know why you were there?
- were you in jail more than once (most recent time, worst and best time)?

- do you remember how you felt?
- do you remember how the guards at the jail were to you?
- did you have anybody to help you?
- did the other inmates bother you?
- how could the jail be better for you?

3.4 Have you had other problems that involved the law?

- such as a divorce?
- child protection?
- housing problem?
- problems with money?

4.0 Supports/Services

4.1 What help do you have?

- family members?
- medical?
- support agencies?
- care providers (such as social workers, mental health workers)?
- other justice services (ARC, victim services, family violence)?

4.2 What would help you deal with the law?

APPENDIX B

KEY INFORMANTS/FOCUS GROUP PROTOCOL

ACCESS TO JUSTICE FOR INDIVIDUALS WITH FETAL ALCOHOL SPECTRUM DISORDER (FASD): KEY INFORMANTS/FOCUS GROUP PROTOCOL

1.0 Introduction

1.1 Introduce Yourself/Ourselves

1.2 Project Overview

The Canadian Research Institute for Law and the Family (CRILF) has been contracted by the Yukon Department of Justice to conduct a research project on Access to Justice for Individuals with Fetal Alcohol Spectrum Disorder (FASD). The overall goal of this project is to determine the types of barriers that confront individuals with FASD and to make recommendations how to address them. We will be conducting a number of interviews and focus groups with professionals to collect information that will be relevant to this project.

1.3 Consent

Your participation in this interview/focus group is totally voluntary. You may refuse to respond to any of our questions and of course may withdraw from the interview/focus group at any point in time. All of the information will be collected and dealt with in accordance with the Yukon Access to Information and Protection of Privacy Act (ATIPP). While all information will remain anonymous, we do request that you consent to the possible use of direct quotes without attributing them to specific individuals. Finally, would you agree to being named in a list of persons who were interviewed for this project?

1.4 Introduction of Attendees (for Focus Groups) or the Individuals for Interviews

- who they are;
- what organizations they work for.

2.0 Experience and Knowledge

(Note that this information should be collected for all individuals being interviewed or involved in a focus group. We will inform them prior to the interview or focus group that we will be asking for this information or possibly give them a brief survey to fill out prior to the interview/focus group.)

2.1 Experience

- what is your direct experience with FASD?
- what has your role been?
- how many individuals with FASD have you dealt with?
- how do you feel about dealing with individuals with FASD?

2.2 Training and Workshops

- have you had any formal training or workshops on the topic of FASD?
- how long did the training or workshops last?
- was there any formal recognition or certification?
- was the training or workshops useful and why?
- do you feel that you have the knowledge you need to work effectively with people with FASD?

3.0 Problems/Barriers

3.1 Are you aware of any problems or barriers to persons with FASD in the following areas:

- in their ability to attain legal assistance such as legal information, advice, legal counsel and legal aid?
- in their ability to participate effectively and fairly in the legal system (criminal and civil such as child protection, family law, etc.)?
- in their ability to obtain assistance such as non-legal advocacy and support (such as FASSY) including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community-based justice (such as diversion programs)?
- in their ability to participate effectively in the law reform process?

3.2 Are there any other barriers for persons with FASD and accessing justice in the broadest sense?

4.0 Current Resources Available

4.1 Are you aware of any resources that are currently available to address the problems or barriers in the following areas:

- in their ability to attain legal assistance such as legal information, advice, legal counsel and legal aid?
- in their ability to participate effectively and fairly in the legal system (criminal and civil such as child protection, family law, etc.)?

- in their ability to obtain assistance such as non-legal advocacy and support (such as FASSY) including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community-based justice (such as diversion programs)?
- in their ability to participate effectively in the law reform process?

4.2 Do you use any informal measures in cases of suspected or diagnosed FASD (e.g., person is not diagnosed as FASD but is highly suspected thus, treat differently)?

5.0 New Resources and Services

5.1 What should be made available in terms of resources and services in the following areas:

- in their ability to attain legal assistance such as legal information, advice, legal counsel and legal aid?
- in their ability to participate effectively and fairly in the legal system (criminal and civil such as child protection, family law, etc.)?
- in their ability to obtain assistance such as non-legal advocacy and support (such as FASSY) including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community-based justice (such as diversion programs)?
- in their ability to participate effectively in the law reform process?

6.0 Additional Information

- 6.1 Is there anything else that we should be made aware of that would be relevant to the study?

- 6.2 Do you have any other comments you would like to make?

APPENDIX C

EXPERTS INTERVIEW PROTOCOL

ACCESS TO JUSTICE FOR INDIVIDUALS WITH FETAL ALCOHOL SPECTRUM DISORDER (FASD): EXPERTS INTERVIEW PROTOCOL

1.0 Introduction

1.1 Introduce Yourself/Ourselves

1.2 Project Overview

The Canadian Research Institute for Law and the Family (CRILF) has been contracted by the Yukon Department of Justice to conduct a research project on Access to Justice for Individuals with Fetal Alcohol Spectrum Disorder (FASD). The overall goal of this project is to determine the types of barriers that confront individuals with FASD and to make recommendations how to address them. We will be conducting a number of interviews and focus groups with professionals to collect information that will be relevant to this project.

1.3 Consent

Your participation in this interview/focus group is totally voluntary. You may refuse to respond to any of our questions and of course may withdraw from the interview/focus group at any point in time. All of the information will be collected and dealt with in accordance with the Yukon Access to Information and Protection of Privacy Act (ATIPP). While all information will remain anonymous, we do request that you consent to the possible use of direct quotes without attributing them to specific individuals. Finally, would you agree to being named in a list of persons who were interviewed for this project?

1.4 Introduction of Attendees (for Focus Groups) or the Individuals for Interviews

- who they are;
- what organizations they work for.

2.0 Experience and Knowledge

(Note that this information should be collected for all individuals being interviewed or involved in a focus group. We will inform them prior to the interview or focus group that we will be asking for this information or possibly give them a brief survey to fill out prior to the interview/focus group.)

2.1 Experience

- what is your direct experience with FASD?
- what has your role been?
- how many individuals with FASD have you dealt with?
- how do you feel about dealing with individuals with FASD?

2.2 Formal Education/Training and Workshops

- have you had any formal training or workshops on the topic of FASD?
- how long did the training or workshops last?
- was there any formal recognition or certification?
- was the training or workshops useful and why?
- do you feel that you have the knowledge you need to work effectively with people with FASD?

3.0 Problems/Barriers

3.1 Are you aware of any problems or barriers to persons with FASD in the following areas:

- in their ability to attain legal assistance such as legal information, advice, legal counsel and legal aid?
- in their ability to participate effectively and fairly in the legal system (criminal and civil such as child protection, family law, use of NCR's etc.)?
- in their ability to obtain assistance such as non-legal advocacy and support including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community-based justice (such as diversion programs)?
- in their ability to participate effectively in the law reform process?

3.2 Are there any other key issues that have not been mentioned?

3.3 Do you use any informal measures in cases of suspected or diagnosed FASD (e.g., person is not diagnosed as FASD but is highly suspected thus, treat differently)?

4.0 Current Best Practices

4.1 Are you aware of any best practices in terms of resources and services in the following areas:

- in their ability to attain legal assistance such as legal information, advice, legal counsel and legal aid?

- in their ability to participate effectively and fairly in the legal system (criminal and civil such as child protection, family law, use of NCR etc.)?
- in their ability to obtain assistance such as non-legal advocacy and support including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community-based justice (such as diversion programs)?
- in their ability to participate effectively in the law reform process?

4.2 What should be made available in the Yukon in terms of resources and services in the following areas:

- in their ability to attain legal assistance such as legal information, advice, legal counsel and legal aid?
- in their ability to participate effectively and fairly in the legal system (criminal and civil such as child protection, family law, use of NCR etc.)?
- in their ability to obtain assistance such as non-legal advocacy and support including non-legal early intervention and preventative mechanisms, non-legal forms of redress and community-based justice (such as diversion programs)?
- in their ability to participate effectively in the law reform process?

5.0 Additional Information

- 5.1 Is there anything else that we should be made aware of that would be relevant to the study?

- 5.2 Do you have any other comments you would like to make?

APPENDIX D

LIST OF PARTICIPANTS

LIST OF PARTICIPANTS

Focus Groups and Key Informants

Mary Amerongen	Options for Independence Society (OFI)
Melissa Atkinson	Crown Prosecutor
Kevin Barr	Committee on Abuse in Residential Schools Society (CAIRS)
Jeremy Baumbach	Clinical Psychologist, Whitehorse
Kim Blake	HCC/Office Administration, Vuntut Gwitchin First Nation,
Nina Bolten	Counsellor, Northern Tutchone Council
Wenda Bradley	Family Support Worker, Selkirk First Nation
Greg Bryce	Parent
Sandra Bryce	Manager, FVPU, Department of Justice, and Parent
Rick Buchan	Yukon Review Board
Don Bulford	RCMP
Lonny Burgfjord	Supervisor, Residential Youth Treatment Services, Department of Health and Social Services (HSS)
Rachel Byers	Health & Social Director, Little Salmon/ Carmacks First Nation
Senior J.P. Dean Cameron	Yukon Territorial Court
Lesley Carberry	Parent
Sue Carr	Lawyer, Legal Services Society
Janet Carstable	A/Manager, Adult Probations, Department of Justice
Anne Chapman	Case Manager, Services to Persons with Disabilities and Adult Service's Finance, HSS
Dale Cheeseman	Supervisor, Youth Achievement Centre, HSS
David Christie	Lawyer, Yukon Legal Services Society
Nils Clark	Executive Director, Yukon Legal Services Society
Nicole Comin	Probation Officer, Department of Justice
Dennis Connelly	RCMP
Mike Cozens	Crown Prosecutor
Craig Dempsey	Program Supervisor, FVPU, Department of Justice
Jeanie Dendys	Director of Justice, Liard First Nation
Lori Duncan	Director, Health and Social, Council of Yukon First Nations
Tiffany Duncan	Executive Director, Teegatha'oh Zheh
Amil Dupuis-Rossi	BSW Practicum Student, Support Worker, HSS
Lillian Sequeira Duran	FASD Diagnostic Team Coordinator, FASSY
Natalie Edelson	Counsellor, FVPU, Department of Justice
Debbie Elliot	Social Worker, Family & Children Services, HSS
Spencer Elofson	Case Manager, HSS
Duane Esler	Probation Officer, Department of Justice
Judge J. Faulkner	Yukon Territorial Court
Tom Gibbs	Mountain Ridge
Michael Gormley	Social Worker, HSS
Jennifer Grandy	Crown Prosecutor

Shelley Halverson	Kluane First Nation
Carolyn Hartness	FASD Educator/Consultant
Emily Hill	Lawyer, Yukon Legal Services Society
Andrew Hyde	Probation Officer, Department of Justice
Ric Iannolino	Juneau FASD Diagnostic Clinic Coordinator
Elisabeth Janus	Probation Officer, Department of Justice
Ruby Johnny	Justice Worker, Liard First Nation
Milly E. Johnson	Health and Social Director, Selkirk First Nation –
Darcy Kasper	Counsellor, FVPU, Department of Justice
Kyle Keenan	Case Manager, Whitehorse Correctional Centre
K.G. Komosky	Crown Prosecutor
Suzie Kuerschner	Ed. Consultant/Child Dev. Specialist/FASD Specialist
Evann LaCoste	Counsellor, FVPU, Department of Justice
Matt Leggett	RCMP
Laurie Lesage	Victim Services, Department of Justice
Judge Heino Lilles	Yukon Territorial Court
Laverne MacKenzie	Regional Services, HSS
Marge MacLeod	FASSY Support Worker
Eric Marcoux	Crown Prosecutor
Ray Marnoch	Instructor, Community Support Worker Program, Yukon College, and Parent
K.R. Martin	Kluane First Nation
Pat Martin	Health Director, Ta'an Kwach'an Council
Beryl Mason	Supervisor, Regional Services, HSS
Carol McBride	Probation Officer, Department of Justice
Shannon McCulloch	Social Service Worker/Youth Worker, HSS
Jade McGinty	Health & Community Care Coordinator, Teslin Tlingit Council,
Lucy McGinty	A/Director, Health & Social Programs, Selkirk First Nation,
Richard Meredith	Regional Director, Public Prosecution Service of Canada
Terry Molnar	Probation Officer, Department of Justice
Moe Mooney	Senior Supported Independent Living Worker, HSS
Lynn Moylan-White	Addiction Counsellor, Adult Probation
Debbie Nagano	Social Director, Tr'ondek Hwech'in First Nation
Margaret O'Brien	Aboriginal Criminal Court Worker, Council of Yukon First Nations
Sam Orustei	Crown Prosecutor
April Oxford	RCMP
Judy Pakozdy	Executive Director, FASSY, and Parent
Nancy Paldy	BSW Practicum Student, Residential Youth Worker, HSS
John Phelps	Deputy Regional Director, Public Prosecution Service of Canada
Cpl. Todd Preston	RCMP
Phyllis Prichard	Intake Coordinator, Yukon Legal Services Society
Robert Pritchard	Yukon Public Legal Education Association (YPLEA)
David Ravensdale	Director of Wellness, Carcross Tagish First Nation
Lynn Rear	Health Director, Tr'ondek Hwech'in First Nation

Marg Render	Coordinator Adult Residential Services, HSS
Harvey Reti	Parent
Mabel Reti	Parent
Gary Rosnak	Supervisor, Youth Probation, HSS
Judge K. Ruddy	Yukon Territorial Court
Captain Robert Sessford	Salvation Army
Marjorie Shaw	FASSY Support Worker
Wendy Springford	Disabilities Case Manager, HSS
Glenn Stephen	Health Director, White River First Nation
Marie Sterriah	Health & Social Advisor, Kaska Tribal Council,
Reanna Sutton	FASSY Support Worker
Michael Szakszon	Integrated Offender Management Supervisor, Whitehorse Correctional Centre
Shirley Telep	RCMP
Phil Treusch	A/Case Manager, Whitehorse Correctional Centre
Robin Treusch	Probation Officer, Department of Justice
Liz Walker	Health Partnerships, Council of Yukon First Nations,
Tim Walton	RCMP
Karen Wenckebach	Lawyer, Yukon Legal Services Society
Leah White	Counsellor, FVPU, Department of Justice
Martha White	Addiction Counsellor, Adult Probation
Ruth Wilkinson	Justice of Peace, Watson Lake
Frances Woolsey	Elder, Ta'an Kwach'an Council
Valerie Young	Case Manager, Services to Persons with Disabilities, HSS

Experts

Brad Bell	Manager, Special Projects, Early Childhood, Health & Social Services
Julie Conry	Researcher, Asante Centre
Kathryn Kelly	Director, FASD Legal Issues Resource Centre, University of Washington, FAD Unit, Psychiatry
Carey Johnson	Diagnostic Clinician, MediGene Services Inc.
Jan Lutke	Director, FACES
Doreen Reid	FASD Project Coord., DOJ, NWT Government
Barry Stewart	Consultant/Territorial Court Judge (Ret.)
Mary Ellen Turpel-Lafond	Representative for Children & Youth, BC
Const. Mark Waage	Lethbridge Regional Police Service

APPENDIX E

SUPPORTING TABLES: FOCUS GROUPS

Table E-1
Focus Group Participants Roles When Dealing with Individuals with FASD

Roles*	n	%
Administration of justice	35	42.7
Provide services through government (e.g., child welfare, schools, etc.)	31	37.8
Family members/friends in the community	20	24.4
Provide direct services in the community	15	18.3
Counseling/therapy	11	13.4
Corrections/probation	10	12.2
Advocacy/policy/development	8	9.8
Not much/no experience	4	4.9
Workshops, education	2	2.4

* Multiple response items.

N=82 Focus Group Participants.

Source of data: Key Informant/Focus Group Protocol.

Table E-2
Number of Individuals with FASD Dealt with by Focus Group Participants

Number	n	%
A lot/most	11	16.2
More than half/several/large percentage	21	30.9
Half	10	14.7
A few	20	29.4
Can't say	5	7.4
None	1	1.5

N=68 Focus Group Participants; missing cases=14.

Source of data: Key Informant/Focus Group Protocol.

Table E-3
How Focus Group Participants Felt About Dealing with Individuals with FASD

How Focus Group Participants Felt*	n	%
Felt they have enough information/resources/can deal with FASD, can learn, positive/good	28	38.4
Felt helpless, ineffective, unprepared, no hope, sad	24	32.9
Felt frustrated, lack of progress	22	30.1
Felt they don't have enough information or training/uncertain, more education needed	20	27.4
Felt the need for more compassion, assistance, patience, resources	12	16.4
Felt they require more time to deal with/explain/listen	3	4.1
Felt the justice system inadequate	3	4.1
Concerned about their capacity, support	3	4.1
Felt it difficult to balance specific needs vs. protection of society	1	1.4

* Multiple response items.

N=73 Focus Group Participants; missing cases=9.

Source of data: Key Informant/Focus Group Protocol.

Table E-4
Formal Training/Workshops Attended by Focus Group Participants

Attended/Did Not Attend	n	%
Yes	58	77.3
No	17	22.6
Type of Training/Workshop Attended*		
Conferences, workshops, presentations	27	62.8
On the job training	8	18.6
Courses, special training classes	4	9.3
Self trained, reading, on-line information	4	9.3

* Multiple response items.

N=58 Focus Group Participants.

Source of data: Key Informant/Focus Group Protocol.

Table E-5
Focus Group Participants Reports of Adequate Knowledge to Work With Persons with FASD

Knowledge/No Knowledge*	n	%
Yes	38	46.9
Yes, but need more	40	49.4
No	43	53.1

* Multiple response items.

N=81 Focus Group Participants; missing cases = 1.

Source of data: Key Informant/Focus Group Protocol.

Table E-6
Barriers to Obtaining Legal Assistance Identified by Focus Groups

Barriers*	n	%
They don't understand	19	100.0
They can't communicate	6	33.3
They can't do day-to-day functions/miss appointments	5	27.8
Lawyer's, police, P.O.'s don't understand and don't commit time	5	27.8
Not accessible	3	16.7
Many do not have facial characteristics/others expect more/masked	2	11.1
They can be easily coerced/taken advantage of	2	11.1
Process and time in court is overwhelming	2	11.1
Not diagnosed	1	5.6
Transportation	1	5.6

* Multiple response items.

N=18 Focus Groups.

Source of data: Key Informant/Focus Group Protocol.

Table E-7
Barriers to Effective Participation in the
Legal System (Courts) Identified by Focus Groups

Barriers*	n	%
They don't understand/have to rely on others	11	61.1
They miss appointments/can't do day-to-day functions	6	33.3
Court process too long and complex	6	33.3
Lack of resources/money	3	16.7
They can't communicate/unable to instruct counsel	2	11.1
They are unwilling to accept diagnosis/labels	2	11.1
Court unaware of disability	2	11.1
Mistrust	1	5.6
They have multiple problems/addictions	1	5.6
They have breaches because orders are complex and they don't understand	1	5.6
Lawyers, police, P.O.'s don't understand and don't consult families	1	5.6

* Multiple response items.

N=18 Focus Groups.

Source of data: Key Informant/Focus Group Protocol.

Table E-8
Barriers to Obtaining Non-legal Assistance Identified by Focus Groups

Barriers*	n	%
They don't understand	9	50.0
They can't do day-to-day functions/miss appointments/forget	7	38.9
Support is hard to get/services limited	7	38.9
Deny that they are FASD	4	22.2
A lot of shame for mothers	4	22.2
They can't communicate	3	16.7
Lack of knowledge (e.g., FASD)	3	16.7
FASD is an intergenerational problem	1	5.6
Many do not have facial characteristics/masked	1	5.6
No diagnosis	1	5.6
Staff turnover - do not know history of clients	1	5.6
Staff too busy	1	5.6
They become criminalized in order to get services	1	5.6
Housing problems	1	5.6

* Multiple response items.

N=18 Focus Groups.

Source of data: Key Informant/Focus Group Protocol.

Table E-9
Other Barriers to Accessing Justice Identified by Focus Groups

Barriers*	n	%
They have multiple problems (e.g., addictions, education, mental health)	6	37.5
Correctional facility is not appropriate	4	25.0
They do not have support (workers)	4	25.0
Resistance of families/stigma	3	18.8
The system is overwhelming	2	12.5
They want to be in correctional facility	2	12.5
People don't understand them	2	12.5
They don't understand (consequences)	1	6.3
It is a multi-generational issue	1	6.3
Conditions of release/probation difficult	1	6.3
Police are not educated	1	6.3
Assessments are difficult to get	1	6.3
Safety issues	1	6.3

* Multiple response items.

N=16 Focus Groups; missing cases=2.

Source of data: Key Informant/Focus Group Protocol.

Table E-10
**Current Resources for Addressing Barriers to Obtaining
 Legal Assistance Identified by Focus Groups**

Current Resources*	n	%
Family and Children Services	3	33.3
SAP (the can receive one-one counselling)	3	33.3
FASSY	2	22.2
Some police, lawyers and P.O.'s training in FASD	2	22.2
Victim services	1	11.1
Crown Witness Coordinators	1	11.1
Legal Aid	1	11.1
First Nations court workers	1	11.1

* Multiple response items.

N=9 Focus Groups; missing cases=9.

Source of data: Key Informant/Focus Group Protocol.

Table E-11
**Current Resources for Addressing Barriers to Effectively Participate
 in the Legal System Identified by Focus Groups**

Current Resources*	n	%
Stable support workers	3	50.0
Community Wellness Court	1	16.7
Sometimes judges are good; sometimes they are not	1	16.7
FASSY and other NGO	1	16.7
ARC/Salvation Army	1	16.7
Diagnosis/assessments	1	16.7

* Multiple response items.

N=6 Focus Groups; missing cases=12.

Source of data: Key Informant/Focus Group Protocol.

Table E-12
Current Resources for Addressing Barriers to Obtaining
Non-legal Assistance Identified by Focus Groups

Current Resources*	n	%
FASSY	6	54.5
Support workers	4	36.4
Yukon Association of Community Living (YAACL)	2	18.2
ARC/Salvation Army	1	9.1
Some have informal networking	1	9.1
Psychologist, psychiatrists, etc.	1	9.1
Kaushee's Place	1	9.1
First Nations health unit with hospital	1	9.1
Learning Disabilities Association of Yukon (LDAY)	1	9.1
Yukon Council on Disabilities (YCOD)	1	9.1
Options for Independence (OFI)	1	9.1
Committee on Abuse in Residential Schools Society (CAIRS)	1	9.1
John Breen - Disabilities Employment Coordinator	1	9.1

* Multiple response items.

N=12 Focus Groups; missing cases=6.

Source of data: Key Informant/Focus Group Protocol.

Table E-13
Use of Informal Measures Identified by Focus Groups

Informal Measures*	n	%
Speak slowly and clearly/have patience	8	50.0
Use plain language/communicate differently	8	50.0
Get them to repeat what has been told to them/communication	4	25.0
Put things in writing/make check lists	3	18.8
Make phone calls for people	2	12.5
Community support	2	12.5
Small rewards - very important	2	12.5
Have more contact with Crown Witness Coordinator than in other cases	1	6.3
Direct them to a lawyer	1	6.3
Work with the P.O.'s	1	6.3
Work in circles	1	6.3
Set goals very low if known FASD	1	6.3
Have more flexibility (e.g., appointments)	1	6.3
Provide structure for them	1	6.3
Help them with reading/understanding	1	6.3
Continue to see clients outside of program	1	6.3
The strategies that are helpful for people with FASD are also good for those who may not have FASD	1	6.3
Need women to support pregnant women not to drink	1	6.3
Workshops	1	6.3

* Multiple response items.

N=16 Focus Groups; missing cases=2.

Source of data: Key Informant/Focus Group Protocol.

Table E-14
New Services Needed to Obtain Legal Assistance Identified by Focus Groups

New Services Needed*	n	%
Training/education	11	64.7
Support services (general)	10	58.8
Housing	6	35.3
Support services (justice specific)	4	23.5
Prevention	3	17.6
Diagnosis/screening	3	17.6
Alternative justice models	2	11.8
Increased funding	2	11.8

* Multiple response items.

N=17 Focus Groups; missing cases=1.

Source of data: Key Informant/Focus Group Protocol.

Table E-15
New Services Needed to Effectively Participate in the
Legal System (Courts) Identified by Focus Groups

New Services Needed*	n	%
Housing	11	84.6
Diagnosis/screening	6	46.2
Support services (general)	5	38.5
Training/education	3	23.1
Support services (justice specific)	2	15.4
Alternative justice models	2	15.4

* Multiple response items.

N=13 Focus Groups; missing cases=5.

Source of data: Key Informant/Focus Group Protocol.

APPENDIX F

SUPPORTING TABLES: KEY INFORMANTS

Table F-1
Key Informants' Roles When Dealing with Individuals with FASD

Roles*	n	%
Administration of justice	14	66.7
Provide direct services in the community	5	23.8
Provide counselling/therapy	4	19.0
Family members/friends in the community	3	14.3
Provide services through government (e.g., child welfare, schools, etc.)	3	14.3
Corrections/probation	2	9.5
Not much/no experience	1	4.8

* Multiple response items.

N=21 Key Informants.

Source of data: Key Informant/Focus Group Protocol.

Table F-2
Number of Individuals with FASD Dealt with by Key Informants

Number	n	%
A lot/most	3	14.3
More than half/several/large percentage	4	19.0
Half	5	23.8
A few	9	42.9

N=21 Key Informants.

Source of data: Key Informant/Focus Group Protocol.

Table F-3
How Key Informants Felt About Dealing with Individuals with FASD

How Key Informants Felt*	n	%
Felt frustrated, lack of progress	8	47.1
Felt they have enough information/resources/can deal with FASD, can learn, positive/good	6	35.2
Felt helpless, ineffective, unprepared, no hope, sad	5	29.4
Felt they require more time to deal with/explain/listen	4	23.5
Felt the need for more compassion, assistance, patience, resources	3	17.6
Felt they don't have enough information or training/uncertain, more education needed	1	5.9

* Multiple response items.

N=17 Key Informants; missing cases = 4.

Source of data: Key Informant/Focus Group Protocol.

**Table F-4
Formal Training/Workshops Attended by Key Informants**

Attended/Did Not Attend	n	%
Yes	17	81.0
No	4	19.0
Type of Training/Workshop Attended*		
Conferences, workshops, presentations	15	88.2
Courses, special training classes	2	9.5
On the job training	1	4.7
Self trained, reading, on-line information	1	4.7

* Multiple response items.

N=17 Key Informants.

Source of data: Key Informant/Focus Group Protocol.

**Table F-5
Key Informants' Reports of Adequate Knowledge
to Work With Persons with FASD**

Knowledge/No Knowledge*	n	%
Yes	12	60.0
Yes, but need more	11	55.0
No	7	35.0

* Multiple response items.

N=20 Key Informants; missing cases = 1.

Source of data: Key Informant/Focus Group Protocol.

**Table F-6
Barriers to Obtaining Legal Assistance Identified by Key Informants**

Barriers*	n	%
They don't understand	8	53.3
Lawyer's, police, P.O.'s don't understand and don't commit time	8	53.3
They can't do day-to-day functions/miss appointments	4	26.7
They can't communicate	3	20.0
They lack resources/money	3	20.0
They are not diagnosed	2	13.3
Not accessible	2	13.3
Process and time in court is overwhelming	2	13.3
They can be easily coerced/taken advantage of	1	6.7

* Multiple response items.

N=17 Key Informants; missing cases=4.

Source of data: Key Informant/Focus Group Protocol.

Table F-7
Barriers to Effective Participation in the
Legal System (Courts) Identified by Key Informants

Barriers*	n	%
They don't understand	10	71.4
They can't communicate/unable to instruct counsel	2	14.3
They miss appointments/can't do day-to-day functions	2	14.3
They have multiple problems/addictions	2	14.3
Lawyers, police, P.O.'s don't understand and don't consult families	2	14.3
Judge/court unaware of disability	1	7.1
Court process too long and complex	1	7.1
Remand/correctional facility is traumatizing	1	7.1
Lack of supports in the system	1	7.1
Landlords take advantage	1	7.1

* Multiple response items.

N=14 Key Informants; missing cases=7.

Source of data: Key Informant/Focus Group Protocol.

Table F-8
Barriers to Obtaining Non-legal Assistance Identified by Key Informants

Barriers*	n	%
They don't understand	4	33.3
Support is hard to get/services limited	4	33.3
Staff turnover - do not know history of clients	3	25.0
They can't communicate	2	16.7
They can't do day-to-day functions/miss appointments/forget	2	16.7
Mistrust/lying	1	8.3
Deficiencies are wide-ranging	1	8.3
Staff too busy	1	8.3
No adequate correctional facilities	1	8.3
A lot of shame for mothers	1	8.3
Racial labeling (e.g., Caucasian: ADHD, if First Nation: FASD)	1	8.3

* Multiple response items.

N=12 Key Informants; missing cases=9.

Source of data: Key Informant/Focus Group Protocol.

Table F-9
Other Barriers to Accessing Justice Identified by Key Informants

Barriers*	n	%
They do not have support (workers)	4	44.4
They have multiple problems (e.g., addictions, education, mental health)	3	33.3
They don't understand (consequences)	2	22.2
They want to be in correctional facility	2	22.2
They miss appointments	1	11.1
Legal process is costly	1	11.1

* Multiple response items.

N=9 Key Informants; missing cases=12.

Source of data: Key Informant/Focus Group Protocol.

Table F-10
**Current Resources for Addressing Barriers to Obtaining
 Legal Assistance Identified by Key Informants**

Current Resources*	n	%
FASSY	7	50.0
Legal Aid	5	35.7
Family and Children Services	3	21.4
Some police, lawyers and P.O.'s training in FASD	2	14.3
Yukon Review Board	2	14.3
Duty counsel	2	14.3
Victim services	1	7.1
Crown Witness Coordinators	1	7.1
First Nations court workers	1	7.1
Diagnosis/assessments	1	7.1
Some government programs for pregnant mothers	1	7.1

* Multiple response items.

N=14 Key Informants; missing cases=7.

Source of data: Key Informant/Focus Group Protocol.

Table F-11
**Current Resources for Addressing Barriers to Effectively Participate
 in the Legal System Identified by Key Informants**

Current Resources*	n	%
FASSY and other NGO	6	75.0
Government services	4	50.0
Stable support workers	2	25.0
ARC/Salvation Army	2	25.0
Yukon Community Wellness Court	1	12.5
Not enough resources to help them connect family to supports	1	12.5
Diagnosis/assessments	1	12.5

* Multiple response items.

N=8 Key Informants; missing cases=13.

Source of data: Key Informant/Focus Group Protocol.

Table F-12
Current Resources for Addressing Barriers to Obtaining
Non-legal Assistance Identified by Key Informants

Current Resources*	n	%
FASSY	3	42.9
ARC/Salvation Army	2	28.6
Diagnosis	2	28.6
Family support activities	2	28.6
Options for Independence (OFI)	1	14.3
Group homes	1	14.3
Family and Children Services	1	14.3
Justice related meetings/appointments	1	14.3
Challenge	1	14.3

* Multiple response items.

N=7 Key Informants; missing cases=14.

Source of data: Key Informant/Focus Group Protocol.

Table F-13
Use of Informal Measures Identified by Key Informants

Informal Measures*	n	%
Speak slowly and clearly/have patience	8	53.3
Use plain language/communicate differently	6	40.0
Get them to repeat what has been told to them/communication	2	13.3
Set goals very low if known FASD	2	13.3
Don't treat them as if they have a disability, but recognize they need supports	2	13.3
Do pre-test/intake assessments	2	13.3
Have more contact with Crown Witness Coordinator than in other cases	1	6.7
Make phone calls for people	1	6.7
Put things in writing/make check lists	1	6.7
Direct them to a lawyer	1	6.7
Give information to support workers	1	6.7
Other	4	26.6

* Multiple response items.

N=15 Key Informants; missing cases=6.

Source of data: Key Informant/Focus Group Protocol.

Table F-14
New Services Needed to Obtain Legal Assistance Identified by Key Informants

New Services Needed*	n	%
Support services (general)	11	73.3
Housing	5	33.3
Support services (justice specific)	4	26.7
Training/education	2	13.3
Coordination of services	2	13.3
Diagnosis/screening	1	6.7

* Multiple response items.

N=15 Key Informants; missing cases=6.

Source of data: Key Informant/Focus Group Protocol.

Table F-15
**New Services Needed to Effectively Participate in the
 Legal System (Courts) Identified by Key Informants**

New Services Needed*	n	%
Support services (general)	14	100.0
Housing	2	22.2
Diagnosis/screening	2	22.2
Training/education	1	11.1
Support services (justice specific)	1	11.1

* Multiple response items.

N=9 Key Informants; missing cases=12.

Source of data: Key Informant/Focus Group Protocol.

APPENDIX G

SUPPORTING TABLES:
EXPERTS

Table G-1
Experts Roles When Dealing with Individuals with FASD

Roles*	n	%
Administration of justice	3	33.3
Provided training/workshops	3	33.3
Advocacy/policy/development	2	22.2
Corrections/probation/police	2	22.2
Researcher	2	22.2
Geneticist	2	22.2
Physician	1	11.1
Provide direct services in the community	1	11.1
Provide services through government (e.g., child welfare, schools, etc.)	1	11.1
Family members/friends in the community	1	11.1

* Multiple response items.

N=9 Experts.

Source of data: Experts Protocol.

Table G-2
Number of Individuals with FASD Dealt with by Experts

Number	n	%
A lot/most	6	66.7
A few	3	33.3

N=9 Experts.

Source of data: Experts Protocol.

Table G-3
How Experts Felt About Dealing with Individuals with FASD

How Experts Felt*	n	%
Felt they were positive/good	3	37.5
Felt frustrated, lack of progress	2	25.0
Felt they require more time to deal with/explain/listen	2	25.0
Felt they were keen on being involved	2	25.0
Felt helpless, ineffective, unprepared, no hope, sad	1	12.5
Felt it was difficult to balance specific needs vs. protection of society	1	12.5
Felt that people with FASD should not be involved with justice system	1	12.5

* Multiple response items.

N=8 Experts; missing cases = 1.

Source of data: Experts Protocol.

**Table G-4
Formal Training/Workshops Attended by Experts**

Type of Training/Workshop Attended*	n	%
Conferences, workshops, presentations	4	30.7
Conducts training and workshops	4	30.7
Courses, special training classes	2	15.3
On the job training	2	15.3
Self trained, reading, on-line information	1	7.7

* Multiple response items.

N=9 Experts.

Source of data: Experts Protocol.

**Table G-5
Experts' Reports of Adequate Knowledge
to Work With Persons with FASD**

Knowledge/No Knowledge*	n	%
Yes	1	11.1
Yes, but need more	6	66.7
No	2	22.2

* Multiple response items.

N=9 Experts.

Source of data: Experts Protocol.

**Table G-6
Barriers to Obtaining Legal Assistance Identified by Experts**

Barriers*	n	%
They don't understand	8	88.9
They don't/can't remember	4	44.4
Lawyers do not understand the disability/client	3	33.3
They can't communicate	2	22.2
They are not diagnosed	2	22.2
They have problems with judgment	1	11.1
Not accessible	1	11.1
Process and time in court is overwhelming	1	11.1

* Multiple response items.

N=9 Experts.

Source of data: Experts Protocol.

Table G-7
Barriers to Effective Participation in the
Legal System (Courts) Identified by Experts

Barriers*	n	%
They don't understand	9	100.0
They can't do it without a support person	6	75.0
Masked disorder	2	25.0
Depends on whether they have a lawyer who understands FASD	2	25.0

* Multiple response items.

N=8 Experts; missing cases=1.

Source of data: Experts Protocol.

Table G-8
Barriers to Obtaining Non-legal Assistance Identified by Experts

Barriers*	n	%
They can't communicate	2	28.6
Forget meetings	2	28.6
They don't know how to go about getting assistance	2	28.6
Limited resources - workers, support persons	2	28.6
Unable to plan/organize future activities/events	1	14.3

* Multiple response items.

N=7 Experts; missing cases=2.

Source of data: Experts Protocol.

Table G-9
Other Barriers to Accessing Justice Identified by Experts

Barriers*	n	%
There are gaps in services for assessments and diagnosis	3	37.5
Need specific legislation for FASD	2	25.0
Judicial system is to "punish" and "reform"; not best for FASD - they do not understand cause and effect	2	25.0
Social assistance system and/or justice system has become net for FASD	1	12.5
They commit crimes to get into correctional facility (e.g., for basics of life: clothing, food, etc.)	1	12.5
There are only part-time workers; full-time workers get burned out in days	1	12.5
There are financial issues; they can't afford assistance	1	12.5
Lawyers need proper training to deal with clients with FASD	1	12.5
Their behaviour is misunderstood and misinterpreted	1	12.5
They will confess to things they have not done/they will confess easily	1	12.5

* Multiple response items.

N=8 Experts; missing cases=1.

Source of data: Experts Protocol.