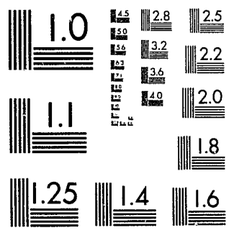

Department of Justice Canada
Ministère de la Justice Canada

THE BURNABY, BRITISH COLUMBIA EXPERIMENTAL PUBLIC DEFENDER PROJECT: AN EVALUATION REPORT

REPORT II: EFFECTIVENESS ANALYSIS

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Canada

REPORT II

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EFFECTIVENESS ANALYSIS

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DECEMBER 1981

The work reported upon in this volume was undertaken under contract for the DEPARTMENT OF JUSTICE, CANADA with the assistance of the BRITISH COLUMBIA LEGAL SERVICES SOCIETY. The views expressed in this volume are not necessarily shared by the Department or the Society.

NOTE

THE BURNABY, BRITISH COLUMBIA EXPERIMENTAL PUBLIC DEFENDER PROJECT: AN EVALUATION

IS REPORTED IN SEVEN DIFFERENT VOLUMES:

I	PROJECT SUMMARY
II	EFFECTIVENESS ANALYSIS
III	COST ANALYSIS
IV	CLIENT SATISFACTION ANALYSIS
V	TARIFF ANALYSIS
VI	PUBLIC DEFENCE/COURT RELATIONSHIP ANALYSIS
VII	DISTRIBUTIONAL IMPACT ANALYSIS

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PREFACE

So many people were involved in providing information and assistance during this project that it is impossible to mention all of them by name. Special mention must be given to members of project staff who spent many long hours. Mention should also be made of the cooperation received from staff of the Legal Services Society of British Columbia. Final thanks must be given to the members of the Private Bar in British Columbia who, through interviews and written comments, provided information necessary for the design and execution of this evaluation.

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Project Summary

Description of the Evaluation

During 1979 and 1980 an experimental public defence office was established in Burnaby, British Columbia. The office was run by the Legal Services Society of British Columbia, an independent society with the mandate to deliver legal aid in British Columbia. The office was set up to determine the feasibility of introducing staff criminal defence offices within the Province. Currently most criminal legal aid in British Columbia is delivered by private lawyers paid under a fee for service tariff. Payment for legal aid under a fee for service tariff is generally called a judicare mode of delivering legal aid.

The experimental public defence office was structured within an evaluation framework. The project was evaluated during the two year experimental operation. Prior to the opening of the office an evaluation was designed. The office was run under an on-going evaluation strategy. Information was collected during the two years of experimental operation. This report presents some of the results of that evaluation.

There were six major goals in the evaluation:

- Analysis of the relative effectiveness of a public defence mode and a judicare mode of delivering criminal legal aid;

- Analysis of the relative costs of delivering legal aid under the two modes;

- Determination of client satisfaction with public defence counsel and judicare counsel representation;

- Analysis of the time spent by lawyers providing criminal legal aid and an analysis of the existing possible alternative tariff structures;

- Determination of the relationships which develop between criminal staff counsel, Crown counsel and judges.

- Projection of the impact of introduction of a

broader network of criminal defence officeson the private bar.

The results relating to each of the major goals in the evaluation analyses, and an overall summary, are presented in separate reports and are available upon request. A list of the titles of the reports can be found at the beginning of the report.

This report examines the relative effectiveness of criminal legal aid representation by public defence and judicare counsel in terms of the legal outcomes obtained for clients and the methods used to achieve those outcomes. A brief summary of the actual evaluation experiment and the results of the other major segments will be presented before the effectiveness analysis is reported.

The Public Defence Office was a small criminal legal aid office set up near the provincial court in Burnaby. The office staff included three full-time staff lawyers, a paralegal and a secretary. The office functioned as a general, non-specialized, criminal defence office. All lawyers handled all types of criminal cases. All lawyers handled all appearances, from first appearance through to disposition. All lawyers provided duty counsel services. The paralegal supplemented the lawyers' duties by interviewing clients, assisting lawyers, and providing entry point social services for clients by making referrals to social agencies.

The office structure was representative of the structures which most likely could be set up in other cities in the Province if the public defence mode of delivering legal aid were more widely adopted. Most cities in British Columbia could only support small offices such as the office in Burnaby.

The evaluation of the public defence operation involved a comparison of public defence counsel cases with cases handled by judicare counsel in the Burnaby, New Westminster, and Vancouver Courts. The public defence counsel primarily represented clients in Burnaby Provincial Court. To a lesser extent, they acted for clients in the County and Supreme Court in New Westminster. For comparison purposes, two groups of judicare cases were used. The Public Defence Office in Burnaby did not handle all criminal legal aid clients in Burnaby. Some clients were referred to private counsel. The cases referred to private counsel were used in the evaluation. These cases were heard in the same courts,

Burnaby Provincial Court and New Westminster County Court, as the cases handled by public defence counsel. Cases handled by judicare counsel in Vancouver Provincial, County and Supreme courts were also used for comparison purposes.

Summary of Effectiveness Analysis

Clients of public defence counsel and judicare counsel received guilty outcomes at about the same rate, but there were differences in the procedures which were used to reach a determination of guilt. Public defence counsel pleaded their clients guilty more frequently than judicare counsel. Judicare counsel went to trial more often. However, when guilty pleas and determinations of guilt were combined, there was little difference in the overall rate of guilty outcomes for the two modes of delivering legal aid.

There were differences in the patterns of sentences received by public defence and judicare counsel clients. Public defence counsel clients received fewer jail sentences than clients of judicare counsel. As something of a balance, judicare clients received more stays of proceedings or withdrawals of charges.

Public defence counsel engaged in more discussions with Crown. The discussions resulted in more guilty pleas and Crown recommendations for sentences. The overall pattern of justice under the public defence mode was one of more negotiations, more guilty pleas, but fewer incarceration sentences than under the judicare mode. Differences in pleas, negotiations and sentences occurred within generally similar total patterns of guilty and non-guilty outcomes.

Summary of Relative Costs

Under the experimental structure in Burnaby, the average costs per case for public defender cases was $9 more than for judicare cases in Burnaby, but $29 less than judicare cases in Vancouver. The average cost for judicare cases in Burnaby was $225. In Vancouver the average was $264 per case. The average cost for public defender cases was $235.

The Burnaby Office was a three lawyer office, a size similar to what could be set up in other British Columbia cities if the public defence mode of delivering legal aid

were expanded. Because it was a small office, average costs in it were susceptible to fairly large variation with small changes in caseloads. If Burnaby public defender case flow figures were increased one case a month there would be no appreciable difference in average costs per case for the two modes of delivering legal aid. In fact, the public defence mode would be marginally less expensive. It should be noted that, if caseloads fell much below the level the office experienced during the experimental operation, the operation would become cost inefficient. Caseloads fluctuated some month to month. The fluctuation in caseload in the Criminal Defence Office in Burnaby was the result of internal management decisions and some variability in application rates. The Public Defence Office did not handle all criminal cases in Burnaby, some were referred to private counsel. The decision to refer was made when the director of the office believed the staff lawyers were fully booked or when conflicts occurred or when another lawyer was already acting for an accepted applicant. Caseloads could be increased or decreased. For a small public defence office to remain cost efficient, at a local level of analysis, caseloads would have to be maintained.

Analysis was also performed to project costs under increased tariffs and under projected staff salary increases. Generally the staff model of delivering legal aid was found to be cost competitive with the judicare mode under expected tariff increases.

A small public defence operation appears to produce similar case costs to judicare delivery of legal aid. A staff operation permits monitoring and predictions of cost. If caseloads are maintained there is no apparent cost reason for the Legal Services Society to choose one mode of delivery over the other. As noted in the effectiveness summary, there were differences in how cases were handled by the judicare and public defence counsel. Public defence counsel clients were given terms of imprisonment less frequently than judicare clients. If correctional costs are considered, the public defence counsel mode is much less expensive. For every 1000 legal aid cases, the correctional saving produced by reduced incarceration costs could be over $200,000.

Summary of Client Satisfaction

Clients of public defenders and judicare lawyers were both reasonably well satisfied with the performance of their lawyers. Neither mode of delivering legal aid presented major problems in client satisfaction. If anything, clients of public defence lawyers were marginally more satisfied with the services they received.

Summary of Time/Tariff Analysis

The average time spent on a case by a public defender was 5 hours and 40 minutes. The average time spent by judicare counsel was around 7 hours. The major component of time spent was time travelling to, waiting at, and appearing in court. About 4 hours were spent in court-related activities by judicare counsel per case. About 1 hour was spent with clients; little time was spent in preparation or doing research.

The equivalent hourly rate (tariff payment/time spent) received by judicare counsel was $34 per hour under the 1980 tariff. Lawyers received approximately the same equivalent hourly rate for major tariff services. Cases which ended by clients' "failure to appear", guilty pleas, stays and by trials were paid at the same equivalent hourly rate.

Summary of Public Defence/Court Relationships

It was generally felt by judges and Crown counsel in Burnaby that the presence of public defence counsel in the court improved the quality of justice for legal aid clients. Crown, in particular, felt that the presence of public defence counsel made their job easier. Both Crown counsel and the judges felt free to call upon public defence counsel to perform "on the spot" legal services for individuals. They saw them as part of the court system and their general availability as a major strength of a public defence office.

Public defence counsel felt that Crown was willing to give them good "deals" for their clients, better than the "deals" given for clients of judicare counsel. Crown, defence and judges all believed that this improved ability to communicate and obtain good sentences was the result of

defence counsel being present in the court regularly, not the fact that the public defenders were staff counsel. However, during the course of the experimental operation of the office, Crown became aware of the fact that private counsel were not present in court as frequently as public defence counsel, so that a close working relationship could not develop with private counsel.

The public defence counsel, while acknowledging that Crown made them offers which were very good for their clients, gave the impression that they did not like the feeling that Crown or judges would call upon them for special services such as stand-in representation in court or impromptu discussions with accused persons. The pattern of open accessibility of the public defenders whenever in court which Crown and the judges liked was not uniformly liked by the public defenders.

Public defence counsel, if they are to remain independent, must have their independence continually reinforced by the Legal Services Society and must learn ways to limit their accessibility for general, non-duty counsel, court representation services. Under the current arrangements, it was generally agreed that the quality of defence had greatly improved, but that public defence counsel are likely to burn out rapidly.

Summary of Distributional Impact Analysis

It would be possible to set up several small public defence offices in the Province without having a major impact on the private criminal bar. There are about 1,000 lawyers in British Columbia who accept criminal legal aid cases. Most of these, however, handle only a few cases at a time. Only six lawyers in the whole province average as many criminal legal aid cases as staff counsel did in Burnaby. Only 1.4% handle more than 12 cases per month, and only 21% handled more than 1 case per month.

Small criminal legal aid offices could be set up in 10 communities in British Columbia without any substantial economic impact on the practices of most lawyers. A ten lawyer office could be set up in Vancouver without much impact on the criminal bar.

Overall Summary

The evaluation study found that:

- Public defence offices can be introduced in the Province in a limited way without disrupting the practice of most lawyers;

- Clients were generally well pleased with both public defence representation and judicare representation;

- Court personnel in Burnaby were well pleased with what was viewed as an improvement in the quality of defence representation in the court after the introduction of public defence counsel;

- The type of representation provided by public defence counsel differed from the type provided by judicare counsel;

- Under a public defence mode there were more guilty pleas and fewer trials. The overall guilty rates, (found guilty plus plead guilty) however, were similar, but clients of public defence counsel received fewer jail terms than judicare clients; and

- The current tariff in British Columbia, a fee for service tariff, pays judicare lawyers at an effective rate of $34 per hour.

A public defence mode for delivering legal aid within the Province could be introduced in a limited way. It would likely improve both judges' and Crown counsels' perception of the quality of defence representation in court. Based on the experience in Burnaby, clients would not be dissatisfied.

The introduction of a public defence mode of criminal legal services, however, would produce more negotiated justice and fewer trials. It would also most likely produce fewer jail sentences for those convicted.

Maintaining the cost-effectiveness of offices would require monitoring of caseloads and maintenance of minimum workloads. Small offices would rapidly become cost inefficient if workloads were not maintained. With a public defence system, the performance of staff counsel would also have to be monitored. With a more limited number of lawyers providing criminal legal aid, the presence of a staff lawyer who received worse outcomes for his clients than other staff would have a more profound impact on criminal representation.

The introduction of a public defence office in Burnaby was seen as an improvement in justice by court personnel, including Crown counsel and judges. The introduction of criminal legal aid offices in other parts of the Province, if done within a more general judicare system and operated with the necessary monitoring, should improve the quality of legal aid representation generally.

EFFECTIVENESS ANALYSIS

1. Introduction to the Analysis

A primary goal of the public defender evaluation was to compare the effectiveness of criminal legal aid representation by public defence counsel and judicare counsel in terms of the legal outcomes obtained for clients and the methods used to achieve those outcomes. The effectiveness analysis includes six major parts:

- a description of public defence and judicare counsel,
- a description of legal aid clients and cases,
- an analysis of the procedural pathways followed by judicare and public defence counsel,
- an analysis of the legal outcomes of cases handled by judicare and public defence counsel,
- an analysis of sentences imposed on clients of judicare and public defence counsel,
- an analysis of judicare and public defence case discussion patterns with Crown counsel.

The defence counsel, client and case descriptions provide the empirical background necessary to understanding of differences in effectiveness between the two modes of legal aid delivery. Case data for the public defender office, for Burnaby judicare and for Vancouver judicare were used to triangulate on procedural, outcome, sentence, and case discussion patterns. Basically judicare and public defence counsel case outcomes in Burnaby were compared. Judicare case outcomes in Vancouver were analyzed and compared to the outcomes in Burnaby for both public defence counsel cases and judicare cases. The analysis sections explore differences between the two modes of criminal legal aid delivery and assess structural and organizational reasons for the differences.

Throughout the evaluation judicare and public defender case outcomes were compared statistically as samples of outcomes and procedures which might have occurred over a

longer period of time. Throughout the report the results are reported as percentages of cases with selected characteristics. Using base underlying numbers, differences were analysed to determine whether they could have occurred by chance,that is to determine if the differences were likely to reappear for different groups of similar cases. No court patterns are perfectly stable. With similar cases a defence counsel might obtain acquitals for his clients 18% of the time one year and 15% of the time the next year. Nothing major about the aggregate characteristics of the cases or the lawyers' skills may have changed. The acquital rate may have varied for many reasons or just in some minor random fashion.

There is inherent variability in any human decision process. Statistical analyses were done to determine whether differences in outcomes were more likely to be normal, inherent variability or structural differences between the two modes of delivering legal aid. The statistical tests are reported in the technical appendix. To improve readability the main report contains no results of statistical tests. However, the descriptions in the main report follow a strict rule: If differences were statistically significant, that is the differences were not likely to be because of chance, they are reported as real differences. If numeric differences most likely were the result of inherent variability, they are reported as not being substantial or structural differences. Within the report, some percentage differences and underlying caseflow differences are significant, others are not. The text of the report makes clear whether differences should be considered important or not.

2. Public Defence Counsel Characteristics

During the evaluation period the legal staff of the public defence office in Burnaby consisted of three lawyers, one of whom acted as office director, and a paralegal staff member. The three lawyers hired as public defence staff counsel represented a cross section of professional and criminal legal aid experience. Two of the lawyers graduated from U.B.C., the third lawyer graduated from the University of Windsor.

The staff counsels' professional experience differed after their admission to the bar. One of the counsel worked in administration and research for Legal Services. This lawyer had little experience in criminal defence

representation before joining the public defence office.

One public defence counsel had practiced criminal law as a partner in a firm. Before joining the staff of the public defence office, this lawyer had handled legal aid cases, and he was experienced in criminal law.

The third public defence lawyer had practiced criminal law as a professional member of the Legal Services staff. This lawyer had handled criminal legal aid cases prior to joining the public defence office staff. His criminal practice prior to the public defence practice was analysed. As a Legal Services staff counsel during 1978, this lawyer handled 62 criminal legal aid cases. Of these 62 cases, 30% went to trial. Of those cases that went to trial, 63% resulted in not guilty findings and 36% in findings of guilty. Of the 62 cases, 19% resulted in stays, 25% in guilty pleas, and 11% resulted in combinations of stays and guilty pleas.

The Legal Services Society established the Public Defence Office in Burnaby within an evaluation framework. In order to discover the strengths and weaknesses of the public defence mode of delivering legal aid, they hired staff counsel they thought would be representative of the bar as whole, representative of lawyers who might be available for staff criminal legal aid work. One lawyer was respected for his administrative skills, but there were no expectations about his ability in court. The other two lawyers were selected because it was thought they were representative of individuals who might be hired in an non-experimental public defence office. The Legal Services Society made a concious effort to pick staff with varying backgrounds. The legal defence skills of the public defenders were not so high as to make it unlikely that lawyers with similar skill levels could be easily found in the bar as a whole. Checks were made throughout the analysis to determine whether differences between the performance of the public defenders and judicare lawyers could be attributed to the performance of individual public defenders or whether differences were general office effects.

The paralegal staff member was responsible for legal aid eligibility interviews. She assisted staff counsel by performing administrative case work, interviewing witnesses and clients, gathering evidence, preparing and filing court documents, liaising with social welfare agencies and members of the court organization, preparing defence presentence reports, and making some court appearances. The paralegal

staff responsibilities are described in detail in Report III, Cost Analysis.

The staff counsel acted as duty counsel in the Burnaby Provincial Court, and frequently met legal aid clients first in this context. The staff counsel were responsible for all aspects of a client's legal defence, from the beginning of a case to its conclusion. The three staff counsel each completed an averaged 180 criminal cases each during 1979 and 1980, as well as a limited number of appeals. They had slightly higher caseloads during 1979. Individual caseloads were unconstrained. When staff counsel perceived that they were too busy to accept any new cases, the Burnaby office referred clients to members of the private bar. Clients were also referred out of the office if their interests conflicted with co-accused clients defended by staff counsel or if there was a lawyer already acting for the accepted applicant on another charge. Volume referrals were made in blocks during periods when staff counsel were considered fully booked.

3. Characteristics of Burnaby and Vancouver Judicare Counsel

A sample of judicare lawyers who handled criminal legal aid cases in Vancouver and Burnaby were asked to complete a questionnaire describing their professional experience and their practices. Most lawyers in the sample handled cases in both courts. The pattern of appearing in both courts held for most lawyers who act for clients in Burnaby. Many Burnaby judicare lawyers in fact are primarily located in Vancouver. From this survey, the characteristics of the judicare legal practice were estimated (see Report VII, Distributional Impact). Some of the surveyed judicare counsel represented a large number of criminal legal aid clients, other judicare counsel handled very few, so it was possible to describe a range of judicare practices.

Seventy percent of the surveyed judicare counsel graduated from the University of British Columbia, 30% from a wide variety of other universities. The sampled judicare lawyers had been practicing criminal law for an average of 7.1 years. They had been practicing civil law for an average of 4.9 years, and performing solicitor's work for an average of 3.6 years. The sampled judicare lawyers had been handling criminal legal aid cases for an average of 5.1 years.

Several characteristics of the judicare practices varied with criminal legal aid caseloads. If a judicare lawyer handled one criminal legal aid case in an average month, his criminal legal aid practice was defined as a small practice. If a judicare lawyer handled five or more criminal legal aid cases in an average month, his criminal legal aid practice was defined as a large practice. Two to four cases were considered a moderate criminal legal aid practice. As compared to judicare lawyers with small criminal legal aid practices, judicare lawyers who handled large criminal legal aid case loads tended to work more hours per week, worked in smaller firms or independently, employed a larger number of support staff (though not all necessarily full time), and required less time for consulting. The sampled judicare lawyers who worked within a law firm rather than independently averaged 4.8 years with that firm. The average number of partners was 2.9, the average number of lawyers per firm was 4.5.

Public defence counsel and judicare counsel differed in how they were paid. Public defence counsel were paid a salary. Judicare counsel were paid on a fee for service basis according to an established tariff. The British Columbia tariff is a block tariff. The tariff categories which are used to set judicare fees are defined according to blocks of services such as representing a client who failed to appear, or who pleaded guilty, or who went to trial, or against whom charges were stayed. Many individual activities such as meetings with clients or court appearances may be paid for as part of a single block service fee, while some activities, such as days in trial court, are paid for individually. In Vancouver, criminal legal aid lawyers are working for approximately $34 per hour.

Judicare counsel spent very different amounts of time on cases in different tariff categories. Public defence counsel did not vary total case times with different types of cases as widely as the judicare counsel. Public defence counsel reported much lower total case times for most types of cases than judicare counsel. Report V, Tariff Analysis, contains detailed analysis of how much time was spent on different types of cases. Burnaby judicare counsel generally spent longer on a given case than Vancouver judicare counsel. Burnaby public defence counsel averaged 5 hours and 40 minutes on a case, Vancouver judicare counsel averaged 7 hours on a case, and Burnaby judicare counsel averaged around 7 hours and 45 minutes on a case.

Judicare counsel spent a much higher proportion of total case time on court related activities than did public defence counsel. Public defence counsel spent a larger portion of total case time on preparation of submissions and examination of witnesses and a much smaller proportion of total case time on court activities than judicare counsel.

4. Case Comparison Groups

The effectiveness analysis needed some means for measuring differences in case processing and outcome between public defence and judicare legal aid modes. Judicare cases from both jurisdictions were used as comparative controls.

Cases referred out of the public defence office itself formed one comparison sample. As described in Section 2, these referrals were made mostly in blocks. For example, when staff counsel in the Burnaby office were fully booked, cases would be referred out for several weeks. The referral process was administratively blind. In caseload referrals, individual cases were not inspected prior to referral. In co-accused referrals, cases were referred out randomly. The referral process was not totally random, only co-accused referrals were random, but had no administrative biases. The cases referred to Burnaby judicare counsel were initiated by the same police force and were heard in the same court as public defence cases. Differences between public defence cases and those control cases may, more confidently, be attributed to defence type than could differences between public defence cases and judicare cases in general. Cases were also referred to specific counsel if the counsel was acting for the client on another charge. These cases were potentially non-comparable to cases handled by the public defenders.

A second comparison group consisted of a sample of cases drawn from the Vancouver Legal Services office. This comparison sample permitted a further test of the strength of defence type differences in case processing and outcome: strong differences attributable to the legal aid delivery mode would produce similar patterns in Burnaby and Vancouver judicare case samples, which would be similarly different from public defence patterns.

For every case included in the evaluation, staff counsel and judicare lawyers completed a detailed case description questionnaire, a copy of which is included in the Technical Appendix, and a time/activity log, also included in the technical appendix.

Vancouver judicare cases and the Burnaby judicare cases were compared with cases handled by the public defence counsel. To ensure that the cases handled by the two defence types were comparable, case analyses were run both before the evaluation began and during the evaluation. Before the evaluation began the Legal Services cases in the Burnaby and Vancouver Provincial Courts were compared in terms of client characteristics, types of offences, and structures of cases (measured by the type and number of charges and informations laid against the clients). During the evaluation checks were made to determine whether cases handled by judicare and public defence counsel were similar.

5. Description of Legal Aid Cases

In order to have a perspective on the differences in procedures followed by judicare and public defence counsel, and in the verdicts and sentences that their clients received, it was necessary to know something about the characteristics of the cases handled. This part of the report contains five sections. The first section presents the definition of a legal aid case which was used in the evaluation. The sections following describe the types of crimes handled by legal aid.

5.1 Definition of a Case.

The definition of a case in court-related studies is problematic. For the purposes of this evaluation a case has been defined to be consistent with what criminal defence counsel generally call a file. A case consisted of material relating to charges in all informations or indictments brought forward as one unit against a single client. Within a case there may be one or more charges and one or more informations or indictments. The various charges may end up being processed separately, but they are initiated in an associated or linked fashion. All charges and informations within a case, by this definition, have a single common first appearance date. This definition of case is consistent with the record keeping practices of the Legal Services Society where information is recorded by client application. All charges and informations covered under one

application for criminal legal aid are treated as a unit.

Cases vary by administrative complexity. Cases with one charge are relatively simple administratively, both for defence counsel and for the court. There is only one set of facts; only one charge to be heard in court. Multiple charges and multiple informations present many levels of administrative complexity. Multiple charges may require multiple groups of witnesses, multiple submissions of evidence, and result in divergent outcomes. Multiple information cases present all the potential administrative and logistic problems of multiple charges in addition to which the informations may end up being handled in totally different court proceedings. The number of potential outcomes and potential court proceedings increases as the number of charges and informations increase.

Administrative complexity should not be confused with legal complexity. A case may be legally complex if there are issues of law, procedure or evidence which are problematic. A case may be administratively simple, say one charge, but legally complex. It may involve only one set of facts, but bringing these facts into court may present problems under the rules of evidence. Conversely, a case may be administratively complex, with many informations and many witnesses, but legally straightforward. Cases may also be concurrently administratively and legally complex.

In criminal legal aid work, which involves cases primarily heard in provincial courts, the degree of legal complexity is slight. Administrative complexity does, however, vary and is potentially related to verdicts and sentences.

To include administrative complexity in the evaluation, cases were divided into three categories:

- Single charges in single informations or indictments;
- Multiple charges in one information or indictment; and
- Multiple informations or indictments with one or more charges or two or more informations or indictments.

The differences and similarities between judicare and public defence counsel were analysed for all three categories of administrative complexity. The verdicts and sentences associated with each charge were analysed. A case was defined as an aggregate unit, but analysis was performed on individual charges as well as the aggregate.

5.2 Types of Cases.

In Burnaby about 50% of all cases handled by either judicare or public defence counsel were administratively simple, that is the cases included only one charge. The two types of counsel, however, had a different mix of administratively complex cases in Burnaby. In about 43% of staff counsels' cases were multiple charges; in about 8% there were multiple informations. For judicare counsel, only about 33% of their Burnaby cases were multiple charge cases but 16% were multiple information cases. For both groups the total proportion of cases which were administratively complex, either multiple charges or multiple information, was similar; the mix was different (see Table 5.2.1).

The mix of cases in Vancouver varied from the mix in Burnaby. Cases handled by judicare counsel included multiple informations almost 23% of the time. There were multiple charges 20% of the time. Fifty-seven percent of the cases were single charge cases. Vancouver had more multiple information cases, but fewer total administratively complex cases when multiple charge and multiple information cases were considered as a group.

TABLE 5.2.1

Administrative Complexity of Cases

Proportional Cases with:

	One charge/ One information	Multiple Charges on One information	Multiple Informations
Vancouver Judicare	57	20	23
Burnaby Judicare	51	33	16
Burnaby Public Defence	49	43	8

It is possible that multiple information cases, with charges on one or more informations, represent a different class of cases than multiple charge cases on only one information. In order to adjust for the different proportions of multiple charge cases on one information and multiple charge cases on two or more informations, two sub-analyses were run during the evaluation. In all analyses performance for the evaluation outcomes and procedures were analysed for single information and and multiple informations separately. Combined analyses were were run after reapportioning the cases handled by public defence counsel and judicare counsel to produce equivalent distribution of multiple charge and multiple information cases. The higher proportion of multiple information judicare cases might be traced to the referral of cases to judicare counsel if that counsel were already acting for the client on another charge. In as much as multiple information cases are often more serious cases, accepted applicants with multiple information cases may have disproportionally been in the class of individuals who were currently being represented by other counsel. Multiple charge, multiple information cases were re-apportioned before analyses were run.

5.3 Custody Status.

In administratively simple cases, about 17% of judicare and public defence counsel clients were in custody at time of disposition. In administratively complex cases, public defence counsel clients were not kept in custody at the same rate as judicare clients (see Table 5.3.1). About 30% of judicare clients who had administratively complex cases were in custody at time of disposition. Only 9.1% of public defence clients in similar situations were in custody at time of disposition. In part, this difference can be explained by differential arrest rates. Judicare clients had been arrested 40% of the time. Public defence clients had been arrested 27% of the time. Fifty percent of judicare clients who were charged with multiple offences or with multiple informations and were initially arrested were released before disposition date. Sixty-six percent of arrested public defence clients with administratively complex cases were released before disposition date.

While the method of referring clients out of the Burnaby office was administratively even-handed, that is no one within the office made case to case decisions about which cases to keep in house and which to refer out, the

process did produce a disproportinate number of clients in administratively complex cases in custody for judicare counsel. The process of referring cases to judicare counsel if the accepted applicant were already being acted for by a judicare counsel probably produced the higher proportion of in-custody clients for judicare counsel. Custody status at disposition date has been linked to sentencing outcome. Formally, judges keep the accused in custody if they feel the accused might not appear in court unless forced to, or if they believe the accused might cause public harm if released. Empirically, custody status has been linked with case outcome. Those persons kept in custody and found guilty are more likely to be sentenced to jail than those persons found guilty but not kept in custody awaiting disposition. In order to make it possible to compare administratively complex cases handled by judicare and public defence counsel, the relative proportions if in-custody and out-of-custody cases were adjusted, or weighted, so that the distribution of in-custody and out-of-custody clients were similar for the two defence categories. Analysis of administratively complex cases described in this report was based on a reapportionment of custody and noncustody cases. There was no effective difference in initial or dispositional custody status in administratively simple cases.

Table 5.3.1

Custody Status at Time of Disposition

	Administratively Simple Cases	Administratively Complex Cases
Judicare-Vancouver	15.4%	29.8%
Judicare-Burnaby	17.5%	27.0%
Public Defence-Burnaby	17.6%	9.1%

5.4 Types of Crimes.

Counsel in Burnaby and Vancouver both handled a wide variety of offences. The legal aid cases handled by public defence counsel and judicare counsel acting for clients in Burnaby were similar. For administratively simple cases handled by both staff and private counsel, the most common

offences were breaking and entry, theft over and theft under $200, and drug offences. However, the number of cases of any one detailed type crime was not sufficient to allow much analysis.

Offence types were collapsed into 7 categories to permit analysis. The categories and the general types of offences included in the categories are listed in Table 5.4.1. A detailed breakdown of the criminal code offences included in each category can be found in the Technical Appendix.

Table 5.4.1

Crime Categories

Violent Offences -	Homicide, sexual offences, assaults, robberies
Property offences -	Breaking and entering, theft possession of stolen property
Drugs and Vice -	Gaming, drugs possession, drugs sale
Escape -	Unlawfully at large, failure to appear
Alcohol -	Drinking and driving
Others -	Weapons, other property, other criminal code offences.

In Burnaby the distribution of administratively simple cases across the crime categories was similar for public defence counsel and judicare counsel. Table 5.4.2 contains the distributional figures for administratively simple cases. Both private and public defence counsel most frequently represented clients for crimes which were classified as property crimes. Over 40% of all cases involved property offences. Drugs and vice offences were the next most frequent groups of criminal legal aid cases, followed by escape, violent and drinking offences.

The crime distribution in Vancouver was slightly different. About 40% of legal aid cases were property offences, as in Burnaby, but a higher proportion were violent offences and a lower proportion escapes.

The relatively high ratio of escape offences in Burnaby resulted from the location of a regional correctional facility in the city. Many escaped prisoners are initially placed in this facility after recapture and handled through the Burnaby office.

Administratively complex cases had a different crime distribution. Cases involving multiple charges included alcohol related charges in 39% of the criminal legal aid cases in Burnaby and 30% of the cases in Vancouver. The high proportion of alcohol related multiple charge offences was the result of a pattern which produces two charges in an impaired driving case. The person accused of impaired driving is also charged with having a blood alcohol level above .08 milligrams per milliletre, or failure to provide a breath sample. If the impaired driving charge results in a guilty determination, then the second charge, above .08 or failure to provide a breath sample, is stayed. Because of this pattern of automatic staying of charges, 39% of multiple charge, single information cases are similar to single charge cases.

There is one other charging pattern which influences the distribution of offences. When a person is charged with theft over or under $200, he or she is often also charged with possession of stolen property. The inclusion of a second charge, possession of stolen property, is not as automatic as the inclusion of a charge of over .08 in drinking offences. The inclusion of a possession of stolen property charge appears to be related to local court Crown charging practices. In Vancouver 60% of theft cases are charged singly. Forty percent of theft over $200 cases include a possession of stolen property charge. Seventeen percent of cases with a theft under $200 also have a possession of stolen property charge. This latter category primarily contains shoplifting charges. If the accused is found guilty or pleads guilty to the theft charge then the possession of stolen property charge is usually stayed. If, however, the accused is not found guilty of the theft charge he or she might be found guilty of the possession of stolen property charge.

TABLE 5.4.2

Distribution of Crimes

(Proportion of Cases with Specific Offences)

	Violent	Property	Vice/ Drugs	Escape	Drinking	Other
Vancouver Judicare	16.2	40.9	15.1	2.9	5.0	19.9
Burnaby Judicare	13.3	41.9	21.3	9.8	4.1	10.4
Burnaby Public Defence	8.5	39.2	17.0	15.9	6.0	13.4

In Burnaby only 26% of theft over $200 cases are charged alone (versus 60% in Vancouver). Seventy-one percent of theft under $200 charges appear singly in one information. In Burnaby, unlike Vancouver, theft under $200 is rarely linked with a possession charge. In Burnaby, as in Vancouver, 38% of theft over charges are linked to an additional charge of possession of stolen property. Burnaby and Vancouver follow different charging patterns with theft offences. The dominant offences, however, are property related.

5.5 Summary of Case Types.

Private judicare counsel who were representing legal aid clients in Burnaby handled the same mix of offences as staff counsel. This similarity in charges is important to note. Cases handled by private counsel in Burnaby were referred to private counsel from the Burnaby office. Referrals were made primarily in temporal blocks. All cases were referred out of the office for a period of time, one, two or three weeks, when staff counsel were considered fully booked. The charged offences for cases which were referred out were similar to the cases which were handled by staff. Overall analysis and comparison of cases handled by judicare and public defence counsel in Burnaby involved analysis of cases with similar crimes. Differences between the outcomes of the two defence types were not the result of the two types of counsel handling different types of cases.

Comparisons between public defence cases in Burnaby and judicare cases in Vancouver must be made, however, while considering the slightly higher rate of violent offences, lower rate of escape offences, and a different charging pattern for theft charges in Vancouver.

6. Characteristics of Clients

The characteristics of clients whose cases were included in the evaluation were compared. Vancouver judicare clients, Burnaby judicare clients, and Burnaby public defence clients were very similar with respect to age, sex, marital status, education and employment. The average client age ranged between 25 years and 28 years; between 82% and 86% of the clients included in the study were male; between 60% and 63% of the clients were single; approximately 49% of the clients had less than grade 10

education; approximately 34% had grade 11 or grade 12 education or more; 22% of judicare clients were employed and 26% of public defence clients were employed. The comparison of clients both before and during the evaluation found no fundamental differences between the experimental and control clients that would interfere with comparison of their cases.

6.1 Summary of Case Comparisons.

An evaluation of modes of delivering legal aid is an evaluation of aggreagte processes. In any system there are case by case or individual differences. Variability is inherent in any real situation. The basic questions addressed in the evaluation relate to differences between categories or groups of cases, not individual cases. For example, do public defence and judicare counsel function differently and obtain different outcomes for their clients? Clients of any individual counsel, either staff or private, obtain a variety of sentences. The question is whether across many cases there is any pattern of behavior by defence counsel or outcomes for clients. If public defence counsel represent clients with similar backgrounds, who are accused of similar crimes, differences in outcomes can not be the result of handling clients with different backgrounds or who are accussed of different crimes. Differences may, however, be the result of how public and private defence counsel handled legal aid cases.

When working with aggregate patterns, individual variability, when small, does not greatly effect the overall pattern. Small case by case differences do not fundamentally alter results. When case by case variability becomes large, it is difficult to even discern overall patterns. In the evaluation analysis individual, case by case variability within categories of cases was examined. When it was small, aggregate patterns were analysed and reported.

7. Comparison of Court Procedures

An individual may be processed through the system in a variety of ways. After a suspect is located he may be arrested or given a "notice to appear" in court on a specified day. In either case the accused will subsequently have a first appearance in court where he is formally charged and has the opportunity to plead. Crown counsel may stay or withdraw proceedings at this time. At the first appearance the accused may be continued in custody or

released. If the accused is continued in custody there may be a subsequent bail review.

For those cases not disposed at the first appearance, a second appearance occurs. Once again Crown counsel may stay or withdraw. If Crown counsel does neither, the defendant enters a plea to the charges and a trial date is set for those who plead not guilty. The court decides whether to continue the accused in custody or to release the client pending trial. For those continued in custody a subsequent bail review may occur.

After the second appearance, the processing of summary and indictable offences diverge. Decisions are made about electable offences and whether the trial will be by judge and jury or judge alone. Crown counsel may also file a notice to seek a higher penalty.

The next major step in the process is the trial. Before the trial the defendant may make a late plea of guilty or Crown counsel may stay or withdraw charges. A preliminary hearing may be held. At trial there are three primary outcomes: acquittal; dismissal; guilty.

Next, the accused who are found guilty (and those who pleaded guilty) are sentenced. The usual penalties are fines, incarceration, absolute or conditional discharge, probation, restitution, or some combination of these. In most cases the process ends after the imposition of sentence. In some cases, there is an additional appeal stage.

Diverse procedural patterns can be followed in disposing criminal cases. The pathways followed depend on the facts of the case and specific facts about the client. The evaluation of the public defence mode included an analysis of a broad range of procedural steps and paths which might be followed by a lawyer representing a client. The primary procedural steps are, of course, appearances in court to fix dates for future apprearances, trial, and stay or withdrawal of charges, and entering of guilty plea. These major procedural events will be described in the next section.

Less frequently used court procedures are:

- quashing and reswearing of informations;
- severance procedures;
- bail hearings;

- bail review;
- competency hearings;
- preliminary hearings;and
- perogative writs.

An analysis of these procedural steps will be presented in this section.

While these less frequent procedures are generally used in the context of pleadings, stays or trials, it is important to determine whether there was any difference in the frequency of the use of these procedures by public defence counsel or judicare counsel or any difference in the use of these procedures by the court when addressing judicare and public defence cases. Judicare and public defence lawyers may handle the majority of cases similarly but perform differently in more unusual situations. While differences in performance in relatively infrequent court proceedings will have no major effect on the handling of most cases, major differences in less common procedures could become important from a policy view point. If public defence counsel and judicare counsel functioned similarly, or in ways accepted as equivalent, for most cases processed, but differently in less common procedures the differences for a few cases become important.

7.1 Infrequent Procedures.

The evaluation study found that some procedures were so rarely used that differences in how public defence counsel and judicare cases were handled could not reasonably be determined. The use of perogative writs, charge severance or severance of co-accused, and the holding of competancy hearings rarely occur in criminal legal aid cases. During the course of the evaluation there were no cases which involved perogative writs. Less than 0.5% of the cases involved charge or co-accused severances. Less than 0.3% included a competency hearing. It is not known how frequently these procedures occur in general criminal practice, but in criminal legal aid practice they are quite rare. There were no differences between what judicare and public defence counsel did because neither type of counsel employed these procedures.

7.2 Bail Hearings and Bail Review.

Bail hearings occurred much more frequently than writ and severance applications or competency hearings. Bail hearings occur when a client is kept in custody prior to

trial. The number of hearings therefore relates to the custody status of clients. Differences between public defence counsel and judicare counsel were found in two major aspects of bail hearings. First, public defence counsel in Burnaby more frequently acted for their client in a bail hearing than judicare counsel. In 52% of all bail hearings for public defence counsel clients, the counsel of record represented the client at the hearing. Only 15% of judicare clients who had a bail hearing were represented by the lawyer who ultimately handled their case. Public defence counsel made contact with clients earlier than judicare counsel and represented their clients at proceedings earlier in the case.

Besides not being represented by the same lawyer at disposition and during a bail hearing, judicare counsel clients in Burnaby were more frequently detained after the bail hearing than public defence counsel clients. Thirty-two percent of judicare clients who had a bail hearing were detained; sixteen percent of public defence counsel clients were kept in custody.

The pattern in Vancouver was closer to the Burnaby public defence pattern. In 39% of the cases the same counsel acted in both the bail hearing and represented the client at final disposition. In addition, only 20% of judicare clients were kept in custody after the bail hearing. These percentages conform more closely to the public defence pattern in Burnaby.

Bail review was an infrequent event in either judicare cases or public defence cases. Less than 5% of judicare cases or public defender cases involved a bail review. There was no difference in what happened in these few cases.

7.3 Preliminary Hearings.

Preliminary hearings were relatively more frequent than preogative writs or competency hearings. There was a preliminary hearing in 4.9% of judicare cases. In 2.6% of public defence cases there was a preliminary hearing. The outcomes of preliminary hearings were similar: about 62% of the clients were committed to stand trial.

7.4 Court of Appearance.

Legal Aid cases are primarily heard in Provincial Court. About 97% of all the criminal legal aid cases handled through the Burnaby office, both referrals and staff cases, were heard in the Burnaby Provincial Court. In

Vancouver 93% of cases were heard in Provincial Court. Vancouver has a legal aid case flow of about 6000 cases per year. Legal Services Society could expect about 400 of these cases to be heard in County or Supreme Court. In Burnaby, with a case flow of around 800 cases per year, approximately 25 cases would probably be heard in County Court.

While the dominant pattern in Vancouver and Burnaby is practice in lower courts, there was one difference between judicare and public defence representation. Judicare counsel, both in Vancouver and Burnaby, elected to go to higher courts more often than public defence counsel. Judicare counsel elected trial by judge and jury or judge alone 6.6% of the time in Burnaby and 6.4% of the time in Vancouver. Public defence counsel elected higher courts only 1.9% of the time.

Interviews with public defence counsel, reported in depth in Report VI, Public Defence/Crown Relationship Analysis, tied this election pattern to their negotiation experience with the Crown in Burnaby. All of the public defenders remarked that Crown counsel in the Provincial Court offered them superior deals for their clients, making election to County Court risky. Section 11 of this report analyses discussion patterns. Generally, public defence counsel had more discussions with Crown, more agreements, and fewer jail sentences for clients than judicare counsel.

8. Comparison of Public Defence and Judicare Case Outcomes

There are a wide variety of potential outcomes for cases heard in criminal courts. For cases with multiple charges and multiple informations each charge may have a different verdict. A guilty plea may be entered. A stay or withdrawal may be obtained. A client may be diverted or fail to appear or be acquitted. A case may end with a determination of guilt after a trial.

If a client either pleads or is found guilty, there are a wide variety of sentencing options. A person may be sentenced to jail, fined or both, the sentence may be probation, community work, restitution or some combination of these. The client may receive a conditional discharge or an absolute discharge.

Table 8.1

Outcomes Analysed in Evaluation

Type of Outcome	Point Where Outcome Occurred
Stay/withdrawal of charages	- Before first appearance - First appearance - Second appearance - Before trial - Preliminary hearing - Trial date - During trial
Guilty Plea	- First appearance - Second appearance - Before trial - Preliminary hearing - Trial date - During trial
Charges Reduced	- Before first appearance - First appearance - Second appearance - Before trial - Preliminary hearing - Trial date - During trial
Charges Dismissed	- Preliminary hearing - After trial
Found Guilty/Not Guilty	- After trial
Found Guilty of Lesser Included Offence	- After trial
Found Incompetent to Stand Trial	- Competency Hearing
Result of Preliminary Hearing	- Preliminary Hearing
Result of Bail Hearing/ Bail Review	- Bail Hearing - 30 or 90 Day Review
Failure ot Appear	- Any point in Proceedings

Outcomes, that is, verdicts or sentences, may occur at any point in the court process. An outcome may occur before first appearance, at first appearance, at the second appearance, during a preliminary hearing if one is held, at trial date or between the initial appearances and trial date, and during and after the trial.

There are multiple outcomes which can occur at multiple points in criminal proceedings. The evaluation compared the outcomes received by judicare and public defence counsel for their clients at the various decision points in the proceedings at which outcome decisions could be made for all charges against a client. Table 8.1 contains a list of all outcomes and decision points considered in the evaluation. The evaluation included analysis of uncommon outcomes such as decisions that the client was incompetent to stand trial as well as common outcomes such as stays of proceedings.

The breadth of sentences analysed in the evaluation are listed in Table 8.2. The different patterns of sentences received by public defence counsel clients and judicare clients were compared.

Table 8.2

Sentences Analysed in Evaluation
of
Public Defence Mode of Delivering Legal Aid

- Absolute Discharge
- Conditional Discharge
- Probation
- Resitution/Compensation
- Jail and Jail Term
- Fine and Fine Amount
- (Diversion)*

*Diversion is not a sentence but is the consequence of formal criminal justice system intervention and was included in the analysis.

8.1 Public Defence and Judicare Decision Points.

The initial part of the outcome analysis explored the temporal pattern of decision making for cases handled by legal aid counsel. The point in proceedings when decision

were made was analysed. The analysis was done on administratively simple cases, with one charge on only one information or indictment. When multiple charges are involved outcomes may occur at different court appearances.

8.1.1 Stays/Withdrawals.

The patterns were similar for public defence counsel and judicare counsel acting for clients in both Vancouver and Burnaby. Stays of proceedings and withdrawals occurred primarily on the date when trials were scheduled. Around 60% of all stays and withdrawals for public defence counsels' cases and judicare counsels' cases occurred at trial date. Few stays occurred at first or second appearances. For public defence counsel in Burnaby and judicare counsel in Vancouver about 25 - 30% of stays occurred after second appearance but before trial. The dominant decision point was, however, the scheduled date for trial.

8.1.2 Guilty Pleas.

Guilty pleas were also entered primarily on the date scheduled for trial. Forty percent of judicare cases in both Burnaby and Vancouver which ended in guilty pleas were resolved on the date trial was scheduled. For public defence counsel 56% of cases which ended in guilty pleas ended on the trial date. Guilty pleas and stays were both entered primarily on trial date.

There was one difference between Burnaby judicare on the one hand, and Vancouver judicare and Burnaby public defence on the other. Judicare counsel acting in the Burnaby court who entered guilty pleas for their clients entered around 25% of them at first appearance. For Burnaby public defence counsel, the proportion of guilty pleas entered at first appearance was only slightly above 5%. Burnaby judicare counsel were terminating cases with guilty pleas earlier than public defence counsel. Vancouver judicare counsel, however, did not enter as many guilty pleas at first appearance as Burnaby Judicare counsel. As noted before, most Burnaby judicare counsel were primarily located in Vancouver and handled cases in Vancouver. Judicare case handling, however, varied between Burnaby and Vancouver.

8.1.3 Charge Reductions.

Charge reductions occurred rarely, in less than 1% of the cases, but when they did occur they followed the pattern of stays and guilty pleas. The most common point at which charge reductions were made was trial date. Reductions were seldom made before trial date.

8.1.4 Summary of Decision Points.

Judicare and public defence counsel had very similar patterns in terms of when outcomes occurred. Both judicare and public defence, in Burnaby and Vancouver, resolved most cases which did not go to trial on the date scheduled for trials. Both types of counsel most frequently waited until trial date to enter a guilty plea. Crown counsel most frequently waited until trial date to enter a stay.

If the criterion of when decisions occur is used, there was no substantial difference between the two modes of delivering legal aid in Burnaby. Public defence counsel neither pleaded their clients guilty nor obtained stays earlier in the proceedings than judicare counsel in Burnaby. However, when both judicare cases and public defence cases in Burnaby were compared to Vancouver judicare cases there was one difference. Burnaby judicare cases which resulted in guilty pleas were ended more frequently at the first appearance than judicare cases in Vancouver or public defence cases in Burnaby.

The major pattern was one of similarity. Whatever differences existed between judicare and public defence counsel, they did not include major differences in timing of dispositions. Public defence counsel were operating similarly to judicare counsel and waiting for the day trial was scheduled to make final decisions about pleas.

8.1.5 Adjournment Patterns.

There were few Crown adjournments in either the Burnaby or Vancouver Provincial Courts. Ninety-one percent of cases in Vancouver had fewer than two Crown adjournments. In Burnaby, approximately 85% of the cases had no adjournments or only one Crown adjournment.

There were fewer defence adjournments than Crown adjournments. Only five percent of criminal legal aid cases in Vancouver had more than one defence adjournment. In Burnaby, only six percent of judicare cases had more than one defence adjournment. Seventy-seven percent of public

defence cases were adjourned only once; twenty-three percent were adjourned more than once. Public defence counsel in Burnaby took more adjournments than private judicare counsel. As described in Report V, Public Defence/Crown Relationship Analysis, the public defenders believed that they were being forced to trial quickly, that judicare counsel were given adjournments whenever they wished. The empirical data, however, did not support this perception.

The adjournment pattern was similar for clients both in and out of custody while awaiting trial. Cases of clients remanded in custody were not adjourned more or less frequently than cases of clients not remanded in custody.

8.2 Overall Outcome Patterns - Administratively Simple Cases.

While public defence and judicare counsel both resolved most of their cases on trial day, there were differences between the two types of legal aid counsel in the resolutions which occurred. They had different proportions of cases which ended in guilty pleas, stays and trials. Patterns of outcomes in administratively simple cases will be presented in this section. Outcome patterns in administratively complex cases will be presented in section 8.3.

8.2.1 Guilty Pleas.

Judicare counsel pleaded their clients guilty less often than did public defence counsel. This was true for judicare counsel acting both in the Vancouver courts and the Burnaby court. For cases which did not end with the client failing to appear, about 37% of all administratively simple cases handled by judicare counsel resulted in a guilty plea (Table 8.2.1.1).

Slightly more than half of all administratively simple cases handled by public defence counsel ended with a guilty plea. This is a difference of about 14% of total cases.

Table 8.2.1.1

Percentage of Total Cases
Ending in a Guilty Plea

Vancouver Judicare	35.9%
Burnaby Judicare	38.8%
Burnaby Public Defence	51.0%

8.2.2 Stays or Withdrawals.

For cases which did not end with the client failing to appear, judicare and public defence counsel obtained stays in about the same proportion of cases. Judicare counsel obtained stays in 25% of their cases in Burnaby and 21% of their cases in Vancouver. Public Defence counsel obtained stays in 20% of their cases.

Table 8.2.2.1

Percentage of Total Cases
Ending with a Stay or
Withdrawal

Vancouver Judicare	21.4%
Burnaby Judicare	24.8%
Burnaby Public Defence	19.9%

8.2.3 Trials.

There were differences between judicare and public defence counsel in the number of cases which went forward to trial. Judicare counsel went to trial more often than public defence counsel. Judicare counsel went to trial in

about 36% of administratively simple cases in Burnaby and 43% of such cases in Vancouver. Public defence lawyers went to trial in just under 30% of the cases.

Table 8.2.3.1

Percentage of Total Cases Going to Trial

Vancouver Judicare	42.7%
Burnaby Judicare	36.4%
Burnaby Public Defence	29.1%

Judicare counsel went to trial more often and entered guilty pleas less often than public defence counsel.

8.2.4 Trial Verdicts.

Overall, for administratively simple cases about 50% of the judicare cases going to trial resulted in a guilty verdict after trial (Table 8.2.4.1). About 46% of the total number of public defence cases result in a guilty verdict.

Table 8.2.4.1

Proportion of Trial Cases With Found Guilty Outcomes

	Found Guilty	Found Not Guilty
Vancouver - Judicare	53.5%	17.2%
Burnaby - Judicare	49.3%	51.7%
Burnaby - Public Defence	46.1%	53.9%

Judicare counsel took more cases to trial. Of the cases which went to trial, judicare counsel and public defence counsel clients were found guilty at about the same rate, 46-49% of the time. The judicare rate was slightly higher; the public defence counsel rate slightly lower. The

differences were marginal.

8.2.5 Failure to Appear.

The percentages given in the previous sections were for cases which did not end with the client failing to appear, but sometimes clients fail to appear (FTA). In Burnaby, clients failed to appear at the same rate for judicare counsel and public defence counsel. In 7.8% of the cases clients failed to appear and no verdict was reached. Some clients failed to appear at one or more proceedings, but eventually did appear. In Vancouver, 15.9% of cases ended with the clients failing to appear. Vancouver had double the FTA rate of Burnaby.

8.2.6 Found Guilty and Plead Guilty.

Although the procedural pathways were substantially different, judicare and public defence clients experienced similar guilty rates: of those cases not ending with a failure to appear about 60% either pleaded guilty or were found guilty after trial. For public defence clients the mix were more guilty pleas, fewer found guilty after trial. For Burnaby judicare clients the mix were fewer guilty pleas and more found guilty after trial. For Vancouver judicare clients, the mix was about equal for guilty plea and found guilty after trial. The proportion of clients held liable for criminal sanction was about the same for the two modes of criminal legal aid, but the procedural pathways followed were quite different (see Table 8.2.6.1). As with outcome at trial, there was a percentage difference between judicare and public defence counsel. The difference, however, was not large enough to be considered other than chance variation. Overall the two modes of delivering legal aid produce guilty outcome at about the same rate.

TABLE 8.2.6.1

Percentage* of Total Cases Where

Future System Action Will be Taken

	Found Guilty and Pleaded Guilty	Stays/Withdrawals and Acquittals/Dismissals	
Vancouver Judicare	60	40	100%
Burnaby Judicare	58	42	100%
Burnaby Public Defence	64	36	100%

*Percentage calculated without FTA's

8.2.7 Outcome Patterns of Public Defence Counsel.

The Public Defence Office in Burnaby had three staff counsel. In comparing public defence counsel with private counsel paid to handle criminal legal aid cases, it is important to determine which outcome patterns are office patterns and what are patterns associated with individual lawyers. The three public defence staff counsel followed similar patterns. For all three staff counsel, the proportion of cases ending with a stay or withdrawal of charges was about 19%. The guilty plea rate was about 40%. There was variability in the guilty plea rate but the similarities were structurally more important than the differences. All public defenders had fewer trials and more guilty pleas than judicare lawyers. There was some variability of outcomes at trials, but the combined guilty plea and found guilty rates were fairly similar for the Burnaby public defence counsel.

The variability in how the public defence counsel performed points out a potential problem in a public defence operation. Within a public defence operation, an individual staff counsel handles many cases. Should an individual staff counsel plead a large proportion of his or her clients guilty or should an individual staff counsel receive a relatively high guilty outcome rate at trial, then the overall combined guilty outcome rate could increase. When many counsel handle criminal legal aid cases then the performance of anyone counsel in the overall pattern is minimized. When a few counsel handle most cases, the impact of one counsel is magnified.

Within the experimental operation, the overall outcome patterns were similar for judicare and public defence counsel clients. There was variability in guilty plea rates and trial outcome rates for the public defence counsel. One counsel entered guilty pleas for 56% of his clients in administratively simple cases guilty. Another counsel received guilty outcomes at trial over 60% of the time (versus 29% for the other two counsel). The varying guilty plea rate and guilty at trial rates somewhat cancelled each other out producing more or less similar overall combined guilty outcome rates for clients and patterns dissimilar to judicare cases.

8.2.8 Summary of Overall Outcome Patterns: Simple Cases.

Public defence counsel and judicare counsel had, overall, patterns of outcomes which were not too dissimilar. About 60% of all cases which did not end with an FTA, ended with a guilty verdict and about 40% ended with not-guilty outcomes.

Public defence counsel pleaded their clients guilty more frequently than judicare counsel. Judicare counsel went to trial more frequently. About 46-49% of trial verdicts were findings of guilt. The overall pattern of guilty and not-guilty outcomes was similar.

While public defence counsel pleaded clients guilty more often than judicare counsel, the higher guilty outcome numbers at trial just about balanced the total guilty outcome rate between the different modes of delivering legal aid.

The similarity between the two modes of delivering legal aid depended on the combination of guilty plea and found guilty rates. The pattern of similarity would not hold if the guilty plea rate for public defence counsel rose much above 50% in administratively simple cases. With no changes in judicare case outcomes, the judicare mode would soon begin to have a lower overall guilty outcome rate. On the other hand, if judicare counsel began entering more guilty pleas for their clients or losing more cases at trial, then the public defence mode would begin to have a lower overall guilty outcome rate.

8.3 Overall Outcomes in Administratively Complex Cases.

Describing the outcomes in cases which involve a single charge in a single information is relatively straightforward. There is one outcome for the case and that is the outcome associated with the single charge. In administratively complex cases, in which there are multiple charges and possibly multiple informations, outcome patterns can be complex. Each charge may be associated with a different outcome. One charge may be stayed, the client may be found guilty on another. If there is a trial, there may be acquittals, or dismissals, on some charges and convictions on others.

To analyze administratively complex cases, outcomes were classified along three dimensions. Table 8.3.1 contains the classifications used.

Stays, guilty pleas, and trial outcomes were each divided into three groups. Group 1 for each type of outcome consisted of outcomes in which there were no stays, no guilty pleas, or no found guilty outcomes. Group 2 included all those situations in which there were stays, guilty pleas, or guilty verdicts on some but not all of the charges. The final group, group 3, included cases in which the outcomes were uniform, either all pleas or all stays or all guilty verdicts after trial.

Analysis of outcomes in administratively complex cases involved several steps. Public defence counsel had a different mix of administratively complex cases from the mix of judicare cases. Judicare counsel had a higher proportion of multiple information cases than the public defenders. Judicare counsel also had more clients in custody at time of disposition than judicare counsel.

Outcomes were analysed for multiple charge, single information cases separately from multiple information cases. Outcomes were also analysed for clients in custody and out of custody at time of disposition. In addition, cases were reapportioned to equalize the numbers of judicare and public defence counsel cases in and out of custody at disposition and the numbers of multiple charge and multiple information cases. Some multiple charge cases were really cases which involved second charges which would be automatically stayed if the accused were found guilty or pleaded guilty to the primary charge. Analyses were performed both excluding and including these cases with potentially automatic stays.

TABLE 8.3.1

Outcomes in Multiple Charge/Multiple Information Cases

Guilty Plea	no charges	some charges	all charges
Stay/withdrawals	no charges	some charges	all charges
Found guilty	no charges	some charges	all charges
Composite - Found and Pleaded guilty	no charges	some charges	all charges
Composite - all outcomes	all non-guilty	mixed guilty/ non-guilty	all guilty

TABLE 8.3.1.1

Proportion of Stays in Administratively Complex Cases

	No Stays	Stays Some Charges	Stays All Charges	
Vancouver Judicare	38.3	60.6	1.1	100%
Burnaby Judicare	40.9	57.6	1.4	100%
Burnaby Public Defence	23.2	76.1	0.7	100%

8.3.1 Stays or Withdrawals.

Considering multiple charge and multiple information cases together public defence counsel had more cases in which some charges were stayed than judicare counsel in either Vancouver or Burnaby. Seventy-six percent of administratively complex cases handled by public defence counsel had stays or withdrawals for some of the charges. Only 58% of administratively complex cases in Burnaby and 61% of administratively complex cases in Vancouver handled by judicare counsel resulted in stays on some charges. Judicare counsel in Burnaby and Vancouver had more cases in which no stays were obtained than public defence counsel. (see Table 8.3.1.1).

8.3.2 Guilty Pleas.

The pattern of more mixed outcomes for public defence counsel was repeated for guilty pleas. Public defence counsel clients pleaded guilty to some of the charges in 70% of the cases. Judicare counsel clients in Burnaby and Vancouver pleaded guilty to some of the charges 49% of the time in administratively complex cases. Public defence clients entered no guilty pleas in 28% of the cases, while judicare clients entered no guilty pleas in 50% of the cases in Burnaby and Vancouver. Public defence counsel obtained more stays for clients, but entered more guilty pleas.

8.3.3 Trials.

As with administratively simple cases, judicare counsel went to trial more often, over 30% of the time in Burnaby and 40% of the time in Vancouver. Public defence counsel went to trial less than 20% of the time in administratively complex cases.

8.3.4 Overall Outcome Patterns.

The overall outcome pattern in administratively complex cases in Burnaby was mixed. For multiple charge cases, there was no difference in the overall outcome patterns for public defence counsel and judicare counsel clients. Clients not in custody in both groups received non-guilty outcomes on all charges about 30% of the time. Clients in custody rarely received non-guilty outcomes on all charges. In multiple information cases, judicare clients received more non-guilty outcomes on all charges in cases where the client was not in custody at time of disposition. For clients in custody there was no difference. Given the relative infrequency of multiple information, non-custody

cases (3.9% of judicare cases and 0.5% public defender cases), small changes in the outcomes of a few cases could have reversed the pattern. In fact public defence counsel appealed several decisions. Judicare counsel did not. Appeals were not included in the evaluation, but the success on these appeals would have reversed some of the difference.

8.3.5 Outcomes excluding Automatic Stay Offences.

The outcomes on administratively complex cases were also examined excluding those offences in which a second charge was included which would be automatically stayed if a guilty determination were made on the first charge. These cases included theft charges linked to possession of stolen property and impaired driving linked to a charge of over .08 blood alcohol level. The exclusion of these charges reduced the number of complex cases but did not alter the pattern of more mixed outcomes for public defence clients.

9. Comparison of Outcomes for Specific Crime Categories

There was no real difference in the type of administratively simple cases handled by judicare lawyers in Burnaby and public defence lawyers. They handled similar charges, the clients were similar, yet there were differences in how they handled cases. Public defence counsel pleaded more clients guilty than judicare counsel. Conversely, judicare counsel went to trial more often. The evaluation study explored whether the difference in guilty plea-trial patterns existed for all crimes or only for some crimes.

As described in Section 4.4, offences were categorized in six groups:

- violent offences
- property offences
- vice/drug offences
- escape offences
- drinking offences
- other criminal code offences

Using this breakdown of offences there were no substantial differences in trial rates or guilty plea rates for violent, property, escape, drinking and for the final category for "other" criminal code offences. There was a difference in guilty plea rates for vice and drug offences. This category of offence primarily contained drugs possession offences. Public defence counsel pleaded clients guilty to vice and drug offences at a rate of 62%. The rate of guilty pleas for judicare counsel was 30%. However, when all administratively simple cases which ended in a guilty finding (guilty pleas plus found guilty verdicts) were analysed, there was no difference between the two modes of delivering legal aid: Both public defence counsel and judicare counsel in Burnaby ended up with guilty determinations for their clients in about 60% of their vice and drug offences.

The relatively high public defence guilty plea rate for vice and drug offences was traced to one lawyer who took almost no vice or drug cases to trial. If this lawyer is excluded from the analysis, the pattern of pleas is similar for the two remaining defence counsel and the Burnaby judicare counsel.

Clients of judicare counsel in Vancouver and judicare counsel in Burnaby received similar verdicts for all categories of crimes except property offences. For property offences, judicare counsel in Burnaby took more cases to trial (about 47%) than judicare counsel in Vancouver (about 35%). Burnaby counsel also obtained acquittals or dismissals in 75% of the property cases they took to trial. Vancouver judicare counsel obtained acquittals in only 42% of the cases they took to trial.

Public defence counsel obtained outcomes similar to Vancouver judicare counsel in all offence categories except violent offences. In this category, Vancouver judicare counsel obtained more stays and more acquittals (23%).

9.1 Summary of Outcomes by Crime.

When all administratively simple cases were considered together, there were differences between judicare and public defence counsel. Public defence counsel pleaded more clients guilty and took fewer cases to trial than judicare counsel. There was no substantial difference between Burnaby judicare counsel and Burnaby Public defence counsel in the proportion of cases which received some guilty determination, either by plea or by verdict of guilt.

The difference in guilty plea rates was the result of one major pattern and a minor pattern. The major pattern was a substantial difference in the rate at which clients who were charged with vice or drug offences pleaded guilty. Public defence clients pleaded guilty 62% of the time. Burnaby judicare clients pleaded guilty only 30% of the time. The high public defence counsel rate was traced back to one lawyer who took almost no drug cases to trial. His clients pleaded guilty or received stays effectively for all cases. This high proportion of guilty pleas in one offence category, a cateogry which made up 17% of all public defence legal aid cases, pushed the total guilty plea rate higher.

The minor pattern influencing the differentially high guilty plea rate for public defence counsel when compared to judicare counsel was a small, marginally higher guilty plea rate in all the other crime categories. In the non-vice/drugs cateogries, the higher public defence counsel guilty plea rate was small compared to the judicare rates. Each small difference appeared minor and non-important. The cumulative effect of the small difference, was an aggregate difference which, coupled with the higher guilty plea rate in drugs and vice offences, was important.

10. Sentencing Patterns for Judicare and Public Defence Counsel

For administratively simple cases, public defence counsel and judicare counsel in Burnaby obtained about the same number of guilty and non-guilty verdicts. Public defence counsel received more guilty verdicts through guilty pleas, than judicare counsel. Judicare counsel went to

trial more often. Different case processing modes were used by the two types of defence counsel.

The evaluation study explored the consequences of guilty verdicts. The probability of being convicted is an important base for comparison between the two modes of delivering legal aid. Differences in sentences imposed following conviction is also an important basis for comparison. The analysis of sentencing included three major parts:

- A comparison of the proportion of public defence counsel and judicare counsel clients receiving various types of sentences including probation, fines, and jail;
- A comparison of the influence of discussions with Crown on the sentences received; and
- A comparison of the frequency of specialized sentencing such as community work and restitution.

10.1 Types of Sentences.

A wide variety of sentences are possible. The criminal code sets maximum penalties, but in most instances maximum sentences are not given. From a legal aid perspective the best sentence for a client is usually one which involves the least intervention into a client's life and the least economic burden. It was this perspective which was used in the analysis.

The possible sentences which could be given were divided into five categories:

- Absolute discharge;
- Suspended sentence or conditional discharge with probation;
- Suspended Sentence or conditional discharge with community work or restitution;
- Fine; and
- Jail.

A jail term was considered the least desired outcome; an absolute discharge the most desired. If a client received sentences in multiple categories, the sentence was classified in ascending order. For example a sentence with a fine and jail was classified as a jail sentence.

When sentences received by judicare and public defence clients in single charge cases were analysed, important differences were found between the two modes of delivering criminal legal aid. Burnaby judicare clients received more sentences to a jail term than public defence counsel clients (Table 10.1.1). About 40% of all convicted judicare clients were sentenced to jail; around 30% of all public defender client's received jail terms. Public defence counsel clients received more sentences to probation, community work and resitution than judicare clients. Public defence counsel clients received these non-incarceration sentences 16% more frequently than Burnaby clients of judicare counsel. Judicare counsel obtained absolute discharges for their clients more frequently.

Judicare counsels' clients most frequently received sentences at the extremes: either jail or absolute discharges. Public defence counsels' clients most frequently received the intermediate sentences of probabtion, community work, resitution and fines. Public defence counsel client received these intermediate sentences 68% of the time, while judicare clients received them 49% of the time.

Legal aid clients sentenced in Vancouver and represented by judicare counsel received sentences somewhat dissimilar to those received by public defence counsel clients and judicare clients in Burnaby. Judicare clients in Vancouver rarely were given absolute discharges or community work or restitution. They most frequently received probation. There appears to be court influences in sentencing practices. They received fines and jail terms in similar proportions to public defence counsel clients.

TABLE 10.1.1

Sentences

	Absolute Discharge %	Probation %	Comm. Work Resti-tution %	Fine %	Jail %	%
Vancouver Judicare	1.0	32.4	5.7	29.5	31.4	100
Burnaby Judicare	10.8	11.8	11.8	25.8	39.8	100
Burnaby Public Defence	2.4	21.9	17.8	28.4	29.6	100

The sentencing comparison in the Burnaby court is the more interesting one. For Burnaby cases handled by judicare and public defence counsel, the mix of crimes was similar, the court hearing the cases was the same and the judges giving the sentences were the same. Differences in sentences were most likely the result of the mode of delivering legal aid.

In Burnaby, with highly comparable cases, public defence counsel obtained a high proportion of non-incarceration sentences. The public defence counsels' perceptions of sentencing patterns were consistent with the actual sentencing pattern. In interviews, the public defence counsel all remarked that they were getting very good "deals" on recommendations for sentences from Crown and that one of the reasons that they took relatively fewer cases to trial was the types of sentences their clients were receiving. The interviews are reported in depth in Report V, Public Defence/Court Relationship Analysis.

There were no differences in the patterns of sentences obtained by the three public defence counsel for their clients. All primarily obtained probation, community work, or restitution of their clients.

10.2 Sentences After Trial.

When sentences received after convictions at trial are compared, the differences between judicare and public defence cases disappear. After trial, clients' of both judicare and public defence counsel received similar sentences.

10.3 Sentences After Guilty Pleas.

Clients of judicare lawyers and public defenders received markedly different sentences after guilty pleas were entered. Judicare clients received more jail sentences than public defence counsel clients. The difference in sentencing patterns for judicare and public defence counsel cases was a pattern which came from differential sentencing after pleas of guilty had been entered, not sentencing after convictions following trials.

10.4 Comparison of Sentences After Guilty Pleas and Found Guilty Verdicts.

Both judicare and public defender clients were sentenced to jail about 25% of the time in cases which went to trial and ended in a determination of guilt. After a guilty plea, however, judicare clients were sentenced to jail 46% of the time. Public defence clients were sentenced to jail 31% of the time. Both public defence clients and judicare clients were sentenced to jail more frequently after pleas of guilt were entered, but judicare clients were sentenced to periods in jail 15% more frequenty than public defence clients.

11. Judicare and Public Defence Discussion Patterns with Crown

Judicare counsel and public defence counsel followed different patterns in discussing cases with Crown counsel. Report V, Public Defence/Court Relationship Analysis, deals in depth with the working relationship which developed between Crown counsel and the public defenders over the course of the experimental period. Generally, Crown felt that a good, trusting working relationship had developed. Public defence counsel believed they could work well with Crown counsel and that Crown counsel offered them extremely good "deals" for their clients.

The more objective, less impressionistic, information collected during the evaluation supported Crown's and public defence counsels' impression that a good working relationship developed. In Burnaby, public defence counsel engaged in discussions with Crown in 47% of the cases. Judicare counsel acting in Burnaby entered into discussions only 25.5% of the time. Judicare counsel acting in Vancouver entered into discussions with Crown in similar proportions to Judicare counsel in Burnaby. They began discussions in 24.3% of their cases.

11.1 Administratively Simple Cases.

The sentences received by judicare clients when discussions occurred were very similar to sentences when no discussions occurred. About 40% of cases which ended in a verdict of guilty ended with sentences to jail (see Table 11.1.1).

TABLE 11.1.1

Sentences when Discussions Occurred

	Discharges, Probation, Comm.Work, Restitution %	Fine %	Jail %	%
Burnaby-Judicare	44.0	16.0	40.0	100*
Burnaby-Public Defence	51.0	30.0	19.0	100*
Sentences when no Discussions Occurred				
Burnaby-Judicare	38.0	24.0	38.0	100*
Burnaby-Public Defence	33.0	28.0	39.0	100*

*of cases with guilty outcome

**includes absolute and conditional discharge

Public defence counsel cases ended in jail sentences 39% of the time when no discussions occurred and 19% of the time when discussions did occur. When discussions with Crown occurred public defence counsel clients received terms of probation, community work or restitution sentences 48% of the time. When discussions did not occur, public defence counsel clients received probation only 29% of the time and jail terms 39% of the time. The sentencing pattern in judicare cases did not vary much with or without discussions. Discussions had no apparent influence on major sentencing outcomes for judicare clients. In public defence counsel cases there was a sharp drop in jail sentences when discussions occurred. When public defence counsel engaged in discussions, the relative proportion of clients sentenced to jail decreased and the proportion receiving probation, restitution or community work increased.

11.2 Administratively Complex Cases.

The pattern of sentencing was similar for administratively complex cases. Judicare cases in Burnaby ended more frequently with jail terms for clients after discussions. Thrity-two percent of judicare clients found guilty were sentenced to jail. Only twenty-six percent of public defence clients were sentenced to jail in complex cases. Twenty-eight percent of these judicare cases ended with probation, community work or restitution sentences, while 45% of public defender cases ended with such outcomes.

The outcome in judicare cases was similar whether discussions occurred or not. When discussions occurred 31% of judicare clients were sentenced to jail. When they did not occur 32% of judicare clients were sentenced to jail. For public defence clients, 33% were sentenced to jail when no discussions occurred and 22% when discussions occurred, a drop of 11%.

11.3 Pattern of Discussions.

When defence counsel engaged in discussions with Crown counsel there were different case outcomes than when judicare counsel engaged in discussions. The actual discussions and agreements reached by defence counsel and Crown counsel varied between the two modes of criminal legal aid delivery.

Public defence counsel reached an agreement with Crown counsel in about 90% of all discussions. Judicare counsel reached agreement only 79% of the time. The substance of the agreements was different. Table 11.3.1 lists the ways

studied in the evaluation in which Crown counsel might make concessions to defence counsel and several concessions defence counsel might make to Crown in exchange. There are a wide variety of topics which can be discussed between Crown and defence leading to many different types of agreements. Crown may decide to withdraw charges, make submissions favourable to defence counsel's client, agree to limit introduction of prior record or even make no submissions at all. Table 11.3.1 lists twenty possible actions Crown may take. Crown did not take these actions with equal frequency. In public defence cases, Crown most frequently stayed charges, or made favourable submissions with respect to type and severity sentence. In judicare cases, Crown also most frquently withdrew or stayed charges, but less frequently made recommendations as to type or severity sentence. Public defence counsel discussions with Crown, frequently centred around type of sentence. The public defence pattern of more probation and fewer jail sentences primarily followed the entry guilty pleas in return for Crown concessions. Public defence counsel agreed after discussions to enter guilty pleas about 70% of the time. Judicare counsel entered guilty pleas 43-47% of the time. The increased guilty plea rate was tied to increased concessions from Crown counsel.

Public defence counsel engaged in more discussions with Crown counsel than judicare counsel and obtained more concessions after discussions. The increased discussion rate and relatively greater frequency of Crown concessions regarding sentences was reflected in the sentencing patterns where fewer public defence counsel clients were sent to jail than judicare clients.

Table 11.3.1

Crown/Defence Discussion - Crown Concessions

- reduce a charge to a lesser or included offence
- withdrawn or stay some or all charges
- agree to use summary rather than indictable procedure
- make favourable submissions regarding the type of sentence
- make favourable submissions regarding the severity of sentence
- limit the number of prior convictions made known to court
- agree not to seek greater punishment where the Code provides for application to be made for same
- agree not to charge others with the same offence or to stay or withdraw proceedings against others
- agree to a more positive recital of information concerning the circumstances of the offence to be placed before the court at sentencing
- agree to make recommendations re place of imprisonment, type of treatment or time of parole
- agree to move the case before or away from a particular judge for the appropriate proceedings
- agree to make no submissions other than to agree with defence
- agree to make no submission
- stay or withdraw in order to divert
- agree to adjourn for substantial length of time for a guilty plea

12. Fines

There was overall similarity in the fines and jail terms received by judicare and public defence clients.

12.1 Fines - Administratively Complex Cases.

The average fines for judicare clients in Burnaby in complex cases was $192. The average for public defence clients was $348. Public defence clients had fines which averaged about $150 more than judicare clients. These numbers must, however, be interpreted in light of the differential rate at which judicare and public defence clients are sent to jail upon conviction or after pleading guilty. Judicare clients in Burnaby who were found or pleaded guilty were sent to jail more frequently. Public defence counsel clients who received guilty outcomes were sent to jail less frequently. Fines were given to a larger proportion of public defence clients than judicare counsel clients. There was also one public defence case which received an extremely large fine, bringing the average up.

12.2 Fines - Administratively Simple Cases.

For administratively simple cases, there was no real difference between the fines received by judicare clients and public defence clients in Burnaby. The average fine was $205.

12.3 Jail Terms - Administratively Complex Cases.

There was also no real difference between the jail terms given to judicare and public defence clients in Burnaby. There was, however, great variability in the term of incarceration. The average was about six months.

12.4 Jail Terms - Administratively Simple Cases.

The jail terms received in administratively simple cases in Burnaby were shorter than jail terms received in administratively complex cases. The overall average term was 3.39 months. The average for judicare clients was 4.30 months and for public defence clients the average was 3 months. This difference was negligible.

12.5 Fine and Jail Terms by Manner of Guilt Determination.

In Burnaby the fines and jail terms given to clients did not vary much by how the client was found guilty. Fines were not higher if a client was found guilty than if he or she pleaded guilty. Similarly jail terms did not vary much by how the determination of guilt was made. The generally accepted view that clients who plead guilty receive shorter jail sentences or lower fines was not supported by the data gathered in Burnaby.

13. Specialty Sentences

The most commonly imposed sentences were to jail or fines. Probation orders, restitution orders and community work orders were also available to judges as sentencing options. Restitution, as would be expected with legal aid clients, was rarely used as a sentencing option for either public defence clients or judicare clients. In Burnaby only 3.6% of sentences for judicare clients involved resitution; 5.4% of public defence counsel clients received restitution orders.

Community work, as a sentencing option, was used by judges more frequently than restitution in Burnaby. Judges ordered community work in 8.2% of the time for judicare clients and 12.4% of the time for public defence counsel.

Specialty sentences such as restitution or community work were rarely imposed on legal aid clients in Vancouver. Restitution was used in less than 1% of the cases; community work was used in around 5% of the cases.

Probation orders, without community work orders or restitution were imposed on Burnaby judicare clients 11.8% of the time. Probation alone was used 21.9% of the time for public defence clients.

Although specialty sentences such as restitution were infrequently used with criminal legal aid clients and community work orders with only moderate frequency, they may be employed more frequently with non-legal aid clients. If the pattern of use with legal aid clients holds true for non-legal aid clients, it would appear that specialty sentences are not particularly common.

Official Crown initiated diversion was an almost non-existent sentencing alternative in these criminal legal aid cases. It was used in less than 0.5% of all the cases. If diversion occurred, it occurred prior to any procedural step at which people received legal aid representation.

14. Conclusion

Public Defence Counsel in Burnaby and judicare counsel conformed to different patterns in defending clients. Public Defence counsel pleaded their clients guilty more often than judicare counsel. Judicare counsel took their clients to trial more often. The defence patterns were different. However, the overall outcomes for clients were similar. In Burnaby there was no real difference between the proportion of judicare and public defence clients who had a guilty outcome.

Public defence counsel and judicare counsel engaged in different patterns of discussions with Crown counsel. Public defence counsel engaged in discussions more frequently, and reached agreements at a higher rate. Public defence clients received fewer incarceration sentences after discussions. Judicare counsel clients received more stays. The pattern of public defence was one of discussion and concession, producing fewer jail terms than judicare counsel obtained for their clients. A similar pattern of discussion and concession was found for each public defender. Their sentencing results were also similar. The negotiation and sentencing pattern was an office pattern, not an independent individual lawyer pattern.

Public defence counsel made contact with clients earlier than judicare counsel. Public defender clients more frequently had the same lawyer acting for them at all proceedings. Particularily at the bail hearing for clients who are arrested, public defence clients more frequently had the lawyer of record acting for them and more frequently were released after the hearing than judicare clients.

The three public defence counsel were different in background and experience. They exhibited some individualized legal defence characteristics, yet when it came to central practice considerations such as discussions with Crown, entering pleas or going to trial, and sentences received, they were very similar.

A public defence mode of delivering legal aid, if set up as a small office following the Burnaby model, most likely will produce similar practice patterns. The public defence mode of delivering legal aid should not result in grossly different overall outcomes for clients, but is likely to be based on more negotiation, fewer trials, and result in fewer sentences of incarceration. The pattern of discussion with the Crown and fewer jail sentences was strong in Burnaby, a pattern which existed for all three public defence counsel. The three public defenders came from diverse backgrounds. They were a cross section of the criminal bar and were picked by Legal Services Society as representative of the types of lawyers who might be staff criminal legal aid counsel. The patterns in the Public Defence Office were so strong it is highly likely that they would reappear in other criminal offices.

There is, however, a danger associated with small public defence offices. Since a more limited number of lawyers would handle legal aid cases, a poorly qualified staff lawyer, or one who under-performed, would have a strong impact on legal aid clients. This deleterious influence would be far wider than the influence the same lawyer would have on legal aid clients under a judicare model. Legal Services Society has a direct responsibility for maintaining the quality of representation. When cases are distributed across a wide range of lawyers, the impact of one lawyer is less than when cases are concentrated. Public defence counsel work directly as staff counsel: It would be possible to monitor their practice patterns. There was enough variability in the individual guilty plea rates and trial outcomes of public defence counsel in Burnaby to demonstrate the importance of monitory staff counsel performance. In a staff model for delivering legal aid, Legal Services Society would have to set minimum standards of acceptable performance for staff and monitor performance.

Given that minimal performance standards are maintained, the public defence mode of delivering criminal legal aid should provide more continuous representation, and fewer jail sentences than the judicare mode. The practice pattern will, most likely, depend on discussion with Crown, and produce fewer trials, but the end result should be less incarceration.

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