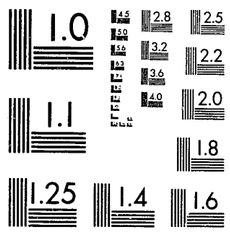

Department of Justice Canada
Ministère de la Justice Canada

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

REPORT VI : RELATIONSHIPS ANALYSIS

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Canada

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RELATIONSHIPS ANALYSIS

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DECEMBER 1981

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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 officean evaluation was designed. The office was run under an on-going evaluation strategy. 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 and judicare modes 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 on the private bar of the introduction of a broader network of criminal

defence offices.

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 are given at the beginning of this report.

This report examines the relationship which developed between the public defenders and the other members of the Burnaby Court. A brief summary of the actual evaluation experiment and the results of the other major segments will be presented before the public defender 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 $25 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 urban centres if the public defence mode of delivering legal aid were expanded. Because it was a small office, average case costs 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 co-accused conflicts occurred or when another lawyer was already acting for an accepted applicant. Caseloads could be increased or decreased. For a public defence office in most British Columbia municipalities 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 defence 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 justice 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; and

- Under the fee for service tariff in operation at the end of the experimental period judicare lawyers received an effective rate of $34 per hour. The tariff was increased after the experimental project ended.

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.

RELATIONSHIP ANALYSIS

1. Public Defence/Court Relationship Analysis

An integral part of the evaluation of the public defence mode of delivering legal aid was an in-depth analysis of how public defenders related to judges and Crown counsel. The evaluation tried to determine what relationships developed and how these effected client outcomes.

2. Introduction

Members of the Burnaby Court, Crown counsel, judges, R.C.M.P. officers, and judicare lawyers were interviewed about their views of public defenders in general, and of the Public Defence Office which operated in Burnaby. Members of the court, Crown counsel, judges, and members of the police force were interviewed twice during the evaluation. The people who were interviewed were asked general questions about the role of judges, Crown, and defence counsel. They were asked to describe their perceptions of how the Burnaby Court functioned with public defence counsel. The interview information from each participant was cross compared to develop a picture of the range of attitudes towards public defence counsel and perceptions of how public defence counsel relate to court personnel.

3. Analysis of Interviews

Three Burnaby Provincial Court judges and one Vancouver judge were interviewed. Two Burnaby judges declined to be interviewed. Eight lawyers from the office of the Crown counsel were interviewed. One Crown counsel was interviewed twice. The experience of Crown counsel interviewed ranged from effectively no previous experience in criminal prosecutions to 6 years of prosecution experience, and from 0 to 26 years of experience in criminal law (defence and prosecution work combined). One Crown, had two years previous experience working as a Legal Service Society staff lawyer in a small community in the interior of British Columbia.

Four members of the private bar who regularly accepted criminal legal aid cases were interviewed. These lawyers were chosen on the basis of their relatively high criminal caseloads in the Burnaby Court. The public defenders were interviewed twice, first at the halfway point of the project and again at the end of the project.

A number of RCMP officers in the Burnaby Detachment were interviewed. The sampled group included four constables, one corporal and two sergeants. The officers ranged in experience from 3 to 24 years with the force. Between them they had served in the areas of general duty, fraud investigation, crime prevention, community relations, court liason, zone supervision, road supervision and support.

4. Perceptions of the Court System in General

Information about perceptions of the court system in general were obtained by asking questions about the ideal roles and skills of prosecutors, judges, defence lawyers and ad hoc prosecutors. The questions asked about roles were general questions attempting to isolate idealized views, not actual descriptions of members of the court.

4.1 Judge Perceptions of the Court System in General.

Judges interviewed identified the "proper administration of justice and the proper administration of law" as the most important goals of the court system.

All judges agreed that the role of the judge was the fair evaluation of cases based on the evidence presented in court. The skills identified as being necessary for an "ideal" judge included patience, wisdom and a thorough knowledge of, and interest in, the law. One judge felt that the ability to "properly examine witnesses so that the testimony is clear" was of special importance. It was also felt that background in both prosecution and defence work were of great importance when selecting individuals as candidates for the bench. The judges generally agreed that "justice must not only be done, it must be seen to be done". One task of a judge identified by those interviewed, was "convincing the people before him that he was doing a proper job." To this end, it was generally agreed that a judge cannot merely listen to proceedings, he must appear to listen to them, must exhibit some evidence of understanding the situation, and ought to explain the reasons for the outcome of the case.

The role of the prosecutor, identified by the judges, was the proper presentation of evidence before the court. One judge noted that Crown counsel should not be concerned with convictions, but should be interested only in the proper presentation of evidence. The skills identified as necessary for the ideal Crown counsel included: an understanding of the law; ability to speak in court; a desire to see justice done; and the ability to use proper discretion in charging. Several judges felt that Crown counsel were occasionally too concerned with "winning" or "losing" criminal court cases. One judge noted in particular that the only circumstance in which the Crown could be considered to have "lost" a case was "if the case should not be there in the first place". He further noted that the Crown should never champion causes.

Judges saw the role of public defence counsel and judicare counsel as identical. Defence counsel's role was identified as the protection of the interests of the accused. The skills thought to be necessary included: the ability to properly examine witnesses; an interest in the job; knowledge of the law; the ability to express one's self; and an understanding and compassion for those he defends. It was noted that since defence counsel did not initiate the court proceedings, counsel should be concerned with providing the "best" possible outcome.

The role of the ad hoc prosecutor was thought to be no different than that of a full-time Crown when undertaking a prosecution, and no different than that of a full-time defence counsel when undertaking a defence. Skills

necessary for an ideal ad hoc prosecutor were identified as no different than those necessary for Crown or defence. Performing ad hoc prosecution was felt to be one of the best possible experiences for a defence lawyer. It facilitated the development of lawyer skills, maintenance of "proper" perspective, and allowed the establishment of confidence and better communications between members of the court system.

4.2 Crown Counsel Perceptions of the Court System in General.

Crown generally agreed that the most important goal of the court system was to ensure that justice was done in each case. Secondary goals included seeing that the public was well served, protecting the rules of society and deterring future anti-social behavior. Some Crown felt that rehabilitation should be a priority, while others believed that the court's responsibility stopped short of rehabilitation.

Crown counsel generally agreed that the role of the judge was to determine guilt or innocence based on the facts of the case, using legal rules of procedure and evidence. There was some feeling among the Crown in Burnaby that, at the provincial court level, cases were cut and dry, that most accused were clearly guilty (or innocent) and that determining guilt was not really a job judges had to do. The only decision-making involved determining sentence. One Crown observed that sentencing in Burnaby was adequate, another felt the penalties should, on the whole, be increased.

Skills and qualities identified as useful for an ideal judge included: dignity and honour in dealing with people brought before him/her; the ability to handle power; an excellent knowledge of the law and legal principles; previous criminal court experience (barrister); patience; a good memory; and the ability to be consistent.

Most Burnaby Crown noted that the Crown should not be exclusively interested in obtaining convictions. It was generally agreed that the prosecutor's role in the realization of court system goals was to present all evidence and facts to the judge, regardless of how they might affect Crown's case. A secondary role was identified as being society's representative in the court process. Most Crown acknowledged a duty not to prosecute the innocent, and a duty to bring the guilty to justice.

Skills and qualities perceived as helpful to Crown in performing his/her duties included: being intelligent and "streetwise"; being able to think on one's feet; having a fair sense of public service; being able to deal with a large volume of cases; being well informed of the law; and being able to keep personal feelings out of one's work.

All the responding Crown agreed that the role of the defence lawyer was the same, regardless whether the defence lawyer was a privately retained lawyer, a judicare lawyer or a public defender. Defence's role was identified as primarily acting as legal advocate for the client, representing his rights and best interests before the court. There was not complete agreement on what the best interests of the client actually might be. Some Crown lawyers felt that using technical grounds to secure an acquittal is not the best way to represent the client's interests, especially when the client is young and impressionable. Two Crown counsel interviewed thought defence counsel had a higher duty to the court and society's interests than to the client's immediate interests, that defence had a duty not to take advantage of the Crown and other court officers. One Crown counsel expressed the belief that defence were often "taken in" by their clients. He noted that "...their clients lie to them. Defence have to be prepared to talk back to clients and not let the clients B.S. them."

Skills and qualities identified as necessary for an ideal defence counsel included: intelligence; speaking ability; knowledge of the law; professional impartiality; and the ability to think on one's feet.

Half the Crown interviewed felt there were no differences between public defenders and judicare lawyers in practice. Among those respondents who observed a difference, it was noted that the "fee for service" method of providing legal aid could provide the incentive for a lawyer to minimize work and maximize profits, an incentive not present for a salaried lawyer.

It was observed that increased contact between Crown cousel and public defenders had increased the professional integrity of the lawyers involved. This observation was a response to the alleged "cozy relationships" which are said to develop between prosecution and public defenders. One Crown counsel felt that judicare counsel were able to remain more independent than public defenders because judicare counsel could choose clients, while public defenders had no option in chosing clients.

When asked whether the differences had any effect on court functioning it was observed that the fee for service tariff was too low and that, as long as it stayed at the current levels, billings would be submitted for representation that did not occur, and the judicare lawyer's first concern would not be the client's best interests, but the economics of a case. Several judicare counsel believed that incorrect bills were submitted for legal aid work; bills which inflated services actually delivered.

Respondents were in 100% agreement that an ad hoc prosecutor's role does not differ from that of a full-time Crown. Further, when a lawyer who served as an ad hoc prosecutor served as defence counsel, it was felt his or her role did not vary from that of any defence counsel.

Skills necessary for an ideal prosecutor were considered appropriate for an ad hoc prosecutor, as were skills and qualities for an ideal defence lawyer.

The responding Crown noted that the role of an ad hoc prosecutor, as a prosecutor, did not differ at all from the role of a full-time Crown lawyer. It was observed, however, that some lawyers who did ad hoc work were less efficient because they were less familiar with police and other members of the court staff. As defence counsel, no differences were observed except that there seemed to be more trust between Crown and defence who did ad hoc work. This relationship was described as similar to that which existed between the Crown and the public defenders. Advantages of being an ad hoc included the experience of learning more about how Crown thinks, thus gaining perspective, and the opportunity to improve one's defence skills by learning what the prosecution acutally does. The responding Crown generally agreed that the best defence lawyers engaged in occassional prosecuting.

4.3 Public Defender Perceptions of the Court System in General.

There was virtually total agreement between the public defenders' responses to questions concerning roles, skills, qualities and characteristics necessary for an ideal judge, an ideal prosecutor, an ideal defence lawyer, and the overall goals of the court system.

The overall goals of the court system cited were control of society, prevention of retribution at the hands of private citizens and the fair and impartial treatment of the accused. One lawyer noted that one often mentioned goal

of the criminal court process was to provide justice, but expressed doubts about the meaningfullness of the notion.

According to the public defenders, the role of the judge was to establish the facts of a case through the use of rules of evidence at trial, and provide just outcomes at sentencing. An ideal judge should be compassionate and exhibit respect for defendent and defence counsel. Further, he/she should be intelligent and have a thorough understanding of the law.

One lawyer suggested that judges should "learn to keep their egos out of court", should not "read too much into personal comments" and to avoid displays of temper, which "imply a loss of control". Another public defender suggested that judges be "dignified and able to relate", and should exhibit "something of a common touch".

Crown's role was defined as presenting the facts of the case to the court. Necessary prosecutor skills and desirable qualities were identified as compassion and understanding for those brought before the court, intelligence, a thorough knowledge of the law and its application, and the ability to "think quickly, on one's feet if necessary". Two public defenders noted that Crown should "be less aggressive" and have "less desire to win the case than defence counsel". One public defender lawyer felt that the Crown should not be afraid to use discretion and should "not let the police push them around so much". It was also suggested that the prosecutor should be most committed to seeing that the outcome of the legal process was just.

All public defence counsel agreed that the role of the defence, whether public defender, judicare or privately retained, was to keep the client out of prison, or to provide the very "best" possible outcome for him. The required skills and desirable characteristics of the ideal defence counsel were identical to those identified for Crown with one exception. Aggressiveness and the desire to win were considered to be very important characteristics of the ideal defence lawyer. One public defender identified "willingness to associate with the criminal element" as being helpful, while another observed that "good criminal defence lawyers must know how people think, their weaknesses and soft spots and must be able to spot deception and dishonesty". One public defender felt that some cynicism about the criminal justice system was a good quality for a defence counsel to possess, and further suggested that he/she should be part actor-entertainer. All public

defenders agreed that, while not absolutely necessary, preparedness and the ability to organize things efficiently were traits which made the defence lawyer's job easier.

The position of the ad hoc prosecutor was identified (by the three public defenders) as being no different from a full-time prosecutor when prosecuting, and no different from a full-time defence lawyer when acting as defence counsel. No special skills or characteristics were identified as necessary for an ad hoc Crown. One public defender noted that ad hoc Crown were superior to full-time Crown because of their experience as defence lawyers. He also observed that ad hoc prosecutors displayed more "healthy cynicism" than full-time Crown. Another lawyer believed that, because of their prosecuting experience, ad hoc prosecutors were "cozier with the Crown" than regular full-time defence counsel.

4.4 Judicare Lawyer Perceptions of the Court System in General.

Members of the private bar who were interviewed did not respond significanlty differently from public defenders when identifying overall goals of the court system, or the roles and necessary skills of various actors within it.

The general goal of the criminal court system, as viewed by the judicare lawyers, was the provision of a just decision based on the facts of the case and the law.

The judge was generally viewed as arbiter, with his/her real role being the use of his/her legal knowledge to interpret the law according to the facts presented. One lawyer suggested that judges were always the subjects of manipulation by the defence and Crown. Skills, qualities and special characteristics identified as being necessary in an ideal judge included compassion, understanding for the people who come before them, thorough knowledge of the law and it's application and "native intelligence".

The interviewed judicare lawyers perceived Crown's almost exactly as public defenders did. The lawyers who maintained private practices emphasized the importance of Crown counsel's role in merely presenting the facts to the court, and de-emphasized Crown's role in "directing the outcome by aggressive prosections." Useful skills for prosecutors were identified as similar to those for any lawyer; specifically, thorough knowledge of the law and the ability to think quickly under stress.

The role of defence counsel was identified as "getting the client off" or failing that, of getting the "least" possible penalty. Necessary skills included the ability to think on one's feet, good judgment, and the ability to understand how Crown and judges think. One judicare lawyer stressed his previous experience as a parole officer and previous experience as a prison guard. He maintained that this experience helped him "learn to cut corners in the court system" and helped him to "see what is important."

No differences were observed by judicare lawyers interviewed between the role of public defenders in the Burnaby court and the role of judicare lawyers. One lawyer observed that both types of lawyers had to "bulk cases through" and had to work very hard to maintain a feeling of delivering a service. It was further observed that neither type of lawyer could afford to take an easy route out of the court, there must be "...a constant balance with one's own interests and the client's best interests."

Perceptions of private lawyers, who did occasional prosecution work, tend to be largely ambivalent. Skills, qualities and characteristics identified as necessary for good ad hoc Crown counsel did not differ from those identified for Crown and defence lawyers, although the judicare lawyers interviewed agreed that all Crown counsel should not be as aggressive in trying to win the case as the defence.

4.5 Summary.

When judges, Crown, public defender and Crown counsel were asked to identify ideal judges, Crown or defence counsel, they tended to respond in similar ways. Judges should be impartial, patient and just. Crown should be concerned with justice; not winning. Defence should be the aggressive advocates for clients. The ideal judge, Crown counsel or defence counsel might never match an actual judge, Crown or defender, but the vision of what one should be was fairly uniform. The major actors in the courtroom have similar ideal expectations.

5. Perceptions of the Relationships Between Members of the Burnaby Court

The people interviewed were also asked to comment on actual relationships in the court. All persons interviewed were asked to comment on the nature of the relationships which existed between themselves and other members of Burnaby Court and how these relationships affected job performance.

5.1 Judge Perceptions.

The judges were in agreement that the nature of the relationships which exist between judges and public defenders, judicare lawyers, privately retained defence counsel and those who did ad hoc prosecution in Burnaby were professional relationships between officers of the court. The relationships were reported to affect the judges' own work only in that both judges and defence had functions to perform which depended in part on each other.

The relationships between judges and Crown counsel in Burnaby were perceived as not substantially different from those which existed between judges and defence counsel. The judges agreed that the relationships they had with Crown counsel were professional and work-related. The relationships between judges and Crown were perceived as affecting the discharge of their duties only because the functions of each were inter-dependent. The judges further reported that they did not usually see Crown counsel outside the courtroom.

5.2 Crown Perceptions.

Crown counsel were in complete agreement about the nature of Crown-judge relationships. Crown counsel characterized the Crown-judge relationship as a professsional, working relationship that was pleasant and amicable. Younger Crown noted that the judges seemed more aloof with them than with older Crown. One younger lawyer speculated that the aloofness might be a result of an age/experience disparity, while two Crown noted that contact with judges outside the courtroom was based largely on age and law school experience. One younger Crown described the judges as "stand-offish", while another characterized them as "frank", and added that he felt no qualms "about appealing if I feel the decision is wrong in law."

Lawyers from the office of the Crown counsel noted that the relationship between Crown and judges affected their work largely because they were aware of each judge's personality and behavior, and tended to act and react to judges with some background knowledge of how they thought.

It was observed that the absence of a good relationship with judges generaly leads to personal frustrations, but that Burnaby judges "play the game" and Crown's work in Burnaby can be completed without alienation, mistrust, bad appearances of justice and broken promises to the accused. Several Crown noted that their relationships with the judges made their jobs more pleasant. One lawyer noted that sometimes his work was easier if he knew whether the judge was "Crown-oriented" or "defence-oriented".

In comparing the relationships which existed between themselves and the judges, with those they perceived between the judge and other members of the Burnaby court, Crown generally agreed that judges related best to Crown counsel, having easier access to them and greater trust. Interviewed Crown generally thought that the relationships judges had with various members of the court were based largely on reputations of trustworthiness.

Several Crown counsel who were interviewed gave some indication that they believed judges sometimes abused the Crown-judge relationship, by asking them to "perform duties no defence lawyer would do". Several members of the Crown counsel office observed that Burnaby judges sometimes abused the judge-public defender relationship by pressuring public defenders to perform tasks at the convenience of the court, especially when setting dates for appearances, hearings and trials. Crown counsel thought this happened because of the judges' familiarity with public defenders, public defenders' frequent presence in the courthouse, and the judges' perceptions of public defenders as auxiliary court officers, much like the Crown. Empirically, however, there were no differences in the length of time from first appearance to disposition for judicare cases and public defence cases even though Crown counsel perceived a shorter time for public defender cases.

In contradiction to other statements, all Crown interviewed agreed that their relationships with judges and judges' relationships with judicare lawyers and those who did occasional prosecution did not differ substantially from judge-public defender relationships. The most important factors in determining relationships between judges and non-public defender defence counsel were perceived to be

frequency of appearance in the Burnaby Court, and the personalities of the people involved. Several Crown believed that the heightened presence of public defenders in Burnaby gave them a chance of forming a better relationship with the judges than judicare and ad hoc Crown, but that members of the private bar appearing in Burnaby were not automatically precluded from having better or worse relationships with the judge than public defenders.

All Crown identified their relationships with public defenders as "working relationships". No Crown felt that the relationship could be described as "cozy". Two noted that they had no difficulty taking opposing sides of an issue, and suggested that some subtle antagonisms had developed as several Crown counsel and public defenders got to know each other. Most Crown interviewed noted that they dealt with defence counsel as individuals and not as "public defenders" or "judicare lawyers". Most Crown interviewed felt that the basis of the relationship between any individual Crown counsel and any public defender depended more on the personalitities of the individuals involved, establishing trust and confidence in each other, and less on the fact that a particular lawyer was or was not a public defender. One Crown counsel suggested that any lawyers who spend as much time in the Burnaby court as the public defenders had the same relationship with Crown counsel as the public defenders.

All Crown interviewed agreed that the relationship between public defenders and Crown made their jobs easier and more pleasant since known individuals are easier to deal with than unknown individuals. Some Crown felt that public defenders were more accessible; some felt that they tended to prepare a case better and thus made Crown's work more difficult. One lawyer suggested that public defenders received more cooperation from Crown than the average defence lawyer. One Crown counsel suggested that because of the frank, casual relationship he had with the public defenders, combined with their knowledge of his and the judges' reputations, the public defenders probably had slightly higher numbers of guilty pleas than defence counsel who worked in other courts or who travelled between courts.

All Crown interviewed stated that the relationships between themselves and judicare counsel were not substantially different than the relationships between themselves and the public defenders. Most Crown observed that relationships were based primarily on personalities and trust, and not on type of defence counsel. It was further observed that there was no real difference in how these

relationships affected Crowns' work. One Crown felt that none of the public defenders and some of the members of the private bar were "jerks", and that if an individual double-crossed Crown, it tended to increase Crown's determination to do a good job, sometimes at the expense of the accused. Several Crown, while noting generally good relationships with public defence counsel, expressed varying personal views of individual public defence counsel. Several Crown counsel stated they had poorer personal relationships with one public defenders. These Crown felt that this particular defence counsel might have faired worse in court because of his relationship with other members of the court. The public defenders pointed out that, from their perspective, problems with Crown centred around isolated case related arguments and that there were generally no poor interpersonal relationships. Close contacts between prosecutor and defence were perceived by some Crown to produce negative well as positive consequences.

The interviewed Crown stated that relationships between themselves and lawyers who engaged in ad hoc prosecution were identical to relationships between themselves, judicare lawyers and public defenders, because the relationships were based on personality factors and trust. According to the Crown counsel, relationships between Crown and ad hoc Crown were dependent on personality factors, frequency of contact, trust, and confidence in each other.

When asked to compare the relationships between Crown and public defenders with Crown-judicare and Crown-ad hoc prosecutor relationships, all Crown agreed that there were no major differences, but some differences could exist in specific cases, depending on how well Crown counsel knew the lawyer involved. One Crown counsel observed that he was more inclined to be cooperative with judicare lawyers and defence who had done ad hoc prosecutions. Another Crown noted that who the lawyer was, or the type of lawyer he/she was did not affect the jobs he/she did, it merely made doing the job more or less pleasant. It was further observed that ad hoc prosecutors "adhere strictly to appropriate forms of behavior" and "go out of their way to delineate the two roles." One responding Crown noted, since "ad hoc prosecutors are chosen by the Crown, (they are) usually people whose abilities are respected regardless of the side of the case...we un-choose them if they don't measure up."

Responses by Crown Counsel to questions about relationships with defence fell into two broad categories. Most Crown asserted, as with idealized roles, that they

treated judicare and public defence counsel identically. At the same time all Crown indicated that frequency of contact made it possible to build up trust relationships and that these trust relationships made their job easier. These two categories of responses are somewhat mutually exclusive, since public defenders were in court much more frequently than any judicare lawyers, trust relationships could develop.

5.3 Public Defender Perceptions.

Each public defender was interviewed twice during the project to detect changes in perceived relationships.

Perceptions of relationships between judges and public defenders from the first series of interviews indicated that public defenders generally felt they enjoyed "good" relationships with the judges. Public defence counsel perceived that relationships were founded primarily on mutual respect and frequency of contact, combined with courtroom experience and coffeeroom talk. All public defenders agreed that their relationship with the judges were similar to Crown's and dissimilar to judicare lawyers and those defence lawyers who performed occasional prosecutions. The chief difference between public defence/judge, and other defence/judge relationships was thought to be selective pressuring by judges. The public defenders thought that judges perceived them as members of the court system who "should be contributing to system function, not doing the 'bad' things that private defence counsel do" It was felt that judges perceived public defenders as present chiefly for the convenience of the court. Some judges were reported to act as if the public defenders were inter-changeable, expecting one to act in the place of another, if the lawyer to whom the case had been assigned was unavailable on a day which the judge selected for a court appearance. The public defenders indicated that such concessions to the court were never expected from members of the private bar.

In the second series of interviews, most views of judges/public defenders relationships remained unchanged. One public defender felt it was not good for public defenders to appear before the same judges all the time, since judges ceased to treat them as independent lawyers and began treating them as a group. He observed that "even judicare lawyers are not treated quite the same." While knowing judges better was perceived as an advantage in helping to determine how to plead, the belief that judges viewed public defenders "as a means of making the system

work more smoothly" was felt to be a distinct disadvantage. In comparing the public defender/judge relationship with the Crown/judge and the judicare/judge relationships, public defence counsel generally agreed that their relationship to judges was similar to the relationship between judges and Crown, chiefly because of judges' perception of the role of the public defender in the administration of the Burnaby Provincial Court.

While judges asserted in interviews that they considered public defence counsel to be identical to judicare or private counsel, public defenders were convinced that judges really considered them "part of the court" and responsible staff, not independent counsel.

In the first series of interviews, all public defence counsel noted that members of the Crown counsel office in Burnaby had been warned to remain aloof from the public defenders. Each public defender stated that there were no sound ties or friendships between themselves and members of Crown counsel's office. They observed that their working relationships with Crown were characterized by trust which largely grew out of professional contacts and courtroom experience, not simply friendship.

Public defenders felt the relationship between themselves and Crown differed from judicare relationships only because they were more familiar with the idiosyncracies of individual Crown and were given the opportunity to form more trusting relationships. Trust was perceived as an advantage for defence. One lawyer noted, however, that the information regarding the personalities and idiosyncrasies of individual Crown was often shared with private and judicare defence counsel during the course of waiting for proceedings to begin.

In the second series of interviews, relationships between public defenders and Crown counsel were still characterized as good by all public defenders. One lawyer observed that Crown/public defender "coziness" never developed, and that Crown never pressured public defence counsel to act in any particular way. It was observed that relationships with particular Crown had changed, opening up, so that there was more communication. Public defence counsel felt this worked to their advantage, since they had the opportunity to communicate more information to Crown about a client's situation and to better negotiate an agreeable disposition.

In general, the public defenders did not perceive their relationships with the Crown as structurally different from those of any other defence counsel who handled as many cases in Burnaby. The public defender/Crown relationship was felt to be superior to any which could develop with infrequent contacts.

5.4 Judicare Perceptions.

Judicare counsel characterized their relationships with the judges in the Burnaby Court as "good". The judges were characterized as intelligent, lenient and better than the majority of judges in Vancouver Provinical Court. They agreed the performance expectations of the judges were generally more defined in Burnaby. The lawyers agreed that the judges were "friendly and prepared for halfway talks", but were generally "aloof" and did not encourage "coffee-klatsching".

Two judicare lawyers reported that their relationships with judges did not effect their work. One noted that Burnaby judges did not encourage "points-making" and "preferred to have the lawyer stand up to them". Two lawyers interviewed indicated that the high quality of judges in Burnaby led them to elect out of Burnaby less often, and to take trials there more often. The analysis of cases handled by judicare and public defence counsel showed that judicare counsel elected out of Burnaby more frequently than public defence counsel and that public defender client's received fewer jail sentences than judicare clients. (see Effectiveness Analysis, Report II for a full description of actual case outcome patterns).

The relationships between Burnaby judges and judicare counsel who were interviewed were not perceived as notably different from the relationships which existed between public defenders and judges in Burnaby. One lawyer did mention that a judge could readily identify the accused in a public defender-represented case as a legal aid client, whereas this was not always possible when a legal aid client was represented by a judicare lawyer. It is interesting to note that only one lawyer in all the interviews made a comment about the automatic identification of legal aid clients through the use of public defence counsel.

The relationship between Burnaby Crown counsel and judicare counsel was characterized as a good working relationship. Three lawyers volunteered the observation that Burnaby Crown counsel were "better" than Crown in Vancouver Provincial Court. The size of the Burnaby court

was one reason offered for the superiority of Burnaby Crown: the court was smaller, the Crown counsel's office was proportionately smaller and it was easier to "get to know" prosecutors in a small court. It was thought that Crown in Burnaby tended to be older and more experienced than those in Vancouver, and their tenures in Burnaby were viewed as longer than those in Vancouver. The physical layout of the office of Crown counsel in the Vancouver Provincial courthouse was perceived as a barrier to the development of close relationships with Crown, since defence counsel were not given free access to Crown offices. In contrast, Burnaby defence counsel were allowed "walk-in" access to Crown counsel offices.

Two interviewed judicare lawyers perceived definite effects of their relationships with Crown on their work. Specific information was easily discussed with Burnaby Crown in informal situations such as over coffee, or in the hallways of the courthouse. In Vancouver, discussions were more formal and restricted in terms of where they occurred. It was considered easier to "work things out" and "easier to deal" with Burnaby Crown counsel, because they were considered more approachable.

All judicare lawyers interviewed believed they had the same relationship with Crown as public defenders. No differences were perceived. The lawyers who were interviewed were high volume Burnaby legal aid lawyers. One lawyer did suggest that judicare lawyers who only occasionally handled cases in Burnaby might not have the opportunity to develop a close relationship with the Crown counsel there.

Judicare counsel comment centred on points similar to those noted by Crown and public defenders. Access to Crown and friendly relationships were considered important. Frequency of contact was thought to be a major factor influencing relationships which developed.

5.5 Perceptions of Burnaby R.C.M.P..

Members of the R.C.M.P. who were interviewed, answered questions about the relationships which existed between themselves and judges. They felt judges were separated from police, and maintained a certain distance from other members of the Burnaby Court. R.C.M.P. members observed that the distance they perceived between themselves and judges contributed to the judges' seeming inability to fully comprehend the nature of police work.

R.C.M.P. members felt that the relationships between members of the R.C.M.P. and lawyers in the Crown counsel office were more relaxed than their relationships with the judges. The relationships between the R.C.M.P. and Crown counsel were thought to be cooperative with Crown counsel acting as counsellors/advisors about court procedures, particularly admission of evidence. Some officers noted the advisor/advisee aspect of their relationships gave them no input into decisions about laying of charges.

The relationships between the Burnaby R.C.M.P. and defence counsel from the Burnaby Legal Aid Office were described as professional, no different from their relationships with any other defence counsel (judicare or private), with one exception. The members interviewed noted that, because public defence counsel were in court more often, the frequency of courtroom contact was greater than with most judicare and private defence lawyers, and the public defenders seemed "more approachable".

Members of the R.C.M.P., as the other major actors in the Burnaby court described "relationship" in terms of closeness. They were closest to Crown counsel, having most contacts with Crown. They found public defenders "more approachable". Familiarity seemed to lead to perceived approachability.

6. Perceptions Regarding the Nature of the Contact between Different Members of the Burnaby Court

All persons interviewed were asked to provide details about the nature and frequency of extra-courtroom contacts with others involved in the Burnaby Provincial Court. They were asked to describe how contact began, developed, and where contact usually took place.

6.1 Judge Perceptions of Extra-courtroom Contacts.

The responding judges noted that contact with Crown was generally limited to contact in the courtroom itself, although occasional contact did occur outside the courtroom. Contact outside the courtroom was limited to exchanging "pleasantries" in the courthouse hallways and lunchroom, and occasional discussions of legal, non-case specific issues. The judges noted that their physical location in Burnaby courthouse was isolatated and discouraged contact.

Contact, as reported by the judges, between judges and defence lawyers, including public defenders, judicare, privately retained lawyers, and those who did ad hoc prosecution work was almost completely limited to contact in the courtroom itself. Contact outside the courtroom was limited to exchanging greetings in the hallways and lunch room.

6.2 Crown Counsel Perceptions of Extra-Courtroom Contacts.

All but three Burnaby Crown counsel reported contacts with the judges outside the courtroom itself. Most contacts were described as "exchanging pleasantries" and short conversations on non-case specific legal issues. These observations coincided with judges' observations, as noted in Section 6.1. Other contacts between judges and Crown included court specific social occasions such as Christmas parties, weddings, and Law Society functions. With one exception, no other social contact occurred between judges and Crown counsel. One Crown counsel reported social contacts with a Burnaby Provincial Court judge, once to twice a month.

Older Crown seemed to have higher frequency of contact with the judges; younger Crown had fewest contacts. The "newest" Crown counsel reported no contact with judges outside the courtroom itself. As would be expected Crown counsel who served as administrator had more contacts with the judges than any other Crown; the contacts primarily involved procedural and organizational matters, and were not case specific. One younger Crown counsel observed that, where social contacts between judges and lawyers in the Crown counsel office occurred, they usually developed from mutual law school experience.

Contact usually took place in the courthouse hallways, coffee shop and lunch-room, with the exception of Law Society functions. Administrative contacts with judges took place in judges' chambers. Responding Crown generally agreed that contacts had developed from courtroom and courthouse interactions and similarities in age and experience.

One Crown counsel noted that the physical organization of the Provincial Court in Burnaby did not encourage casual extra courtroom contact with the judges. The Burnaby judges also made this observation. As noted, the physical organization of the court in Burnaby did appear to affect contacts which occurred between judges and other members of

the Court.

The judges' chambers were physically separated from offices occupied by Crown counsel and from the area where lawyers and clients waited for proceedings to begin. Judges also had access to the courtrooms themselves from their chambers. The location of judges' chambers in Burnaby reduced the frequency of judges entering other parts of the court building.

The physical isolation of the judges' chambers prohibited other members of the court from casually interacting with the judges. One Crown counsel observed that the isolation of the judges' chambers heightened the separation of the judges and encouraged them to socialize among themselves and not with Crown. The presence of the judges' secretaries at the entrance of the passage to chambers further served as a means of screening individuals and discouraging casual passage through the area.

The implication of the observations of this Crown counsel were interesting. He said they had few contacts with judges but believed they would have more if the physical layout of the court was different. Most comments made by Crown counsel assumed that more social, non-professional contacts were the norm and that the physical structure of the court kept them from the frequency of contacts experienced in other courts. It was not assumed by Crown that judges and Crown should remain separate and not have social contacts.

Two of the six Crown counsel interviewed said they had no contact with public defence counsel outside the courtroom itself, excluding Law Society activities, seminars and case discussions. The other Crown noted that their contacts with the public defenders outside the courtroom proper included Law Society functions, occasional meetings between the two offices, occasional lunches, and having coffee together.

One Crown counsel interviewed noted that he had played racketball roughly a couple times with one public defenders in 1980. He further noted that they had dinner together on one occasion and road to work together several times. He indicated that his position as Crown counsel had not been compromised by social contacts. He further pointed out that despite occasional lunches and racketball games, he had never been to the homes of any public defenders, or visa versa. For this Crown counsel visiting someones home was the act which indicated that a friendly relationship had developed.

During the course of the evaluation study members of the Burnaby Crown counsel office and public defence counsel were occasionally observed having lunch together. These occasions were infrequent and appeared to occur spontaneously (being at the lunchroom at the same time). No case specific discussions appeared to take place on the occasions when prosecutors and public defenders were observed together at lunch. Crown counsel were never observed in the Burnaby public defender office itself.

With few exceptions contacts developed out of courtroom/case related interactions. The exceptions included instances where the lawyers were acquainted before the Burnaby Criminal Defence Office was established. In most instances contact was recent, starting when the experimental office was opened.

Half the Crown counsel interviewed said they had contacts outside the courtroom with judicare lawyers. The nature of the contact was described as social, arising from the work situation, Law Society functions, and contact arising from law school experience. Contact usually occured outside the courthouse, after work hours. Crown counsel who reported having the most extra-courtroom contact with a public defender lawyer described his contact with judicare lawyers as "minimal" and said that the contact was "no more or no less than that which he had with public defenders".

6.3 Public Defender Perceptions of Extra-Courtroom Contacts.

Public defence counsel reported minimal extra-courtroom contact with Burnaby Provincial Court judges. Virtually all contacts took place within the courthouse, with the exception of Bar functions. Contacts were generally described as cordial, and were characterized as "exchanges of pleasantries in hallways, or while waiting for court". One public defender noted that "in Burnaby, the judges don't mingle". This observation coincided with Crown counsel's characterization of the judges as being "aloof".

Public defender assessments of the nature and frequency of extra-courtroom contacts with lawyers from the Crown counsel office did not differ substantially from those provided by the interviewed Crown. The public defenders noted that Crown had received instructions to remain aloof from public defence counsel at the outset of the Burnaby Criminal Defence Project. Extra-courtroom contacts with Crown were reported to occur in the courthouse waiting for court to commence, over lunch, at coffee, or at meetings

held between the two offices. One public defence lawyer observed that he had played racketball twice with one Crown counsel.

A comparison of responses about frequency and nature of public defender/Crown contacts obtained in the first interview did not differ materially from responses to the same questions obtained in the second interview. Extra-courtroom contacts between public defence lawyers and the Crown counsel did not appear to increase during the course of the evaluation.

As noted in Section 5.3, public defence counsel were occasionally observed having lunch with lawyers from the Crown counsel office. In those instances, no case-related discussions were observed to take place. Crown counsel lawyers were never seen in the Burnaby legal aid office, nor were the public defenders ever perceived by Crown as overly friendly. The separation between defence and prosecution was not lost by the public defenders. Winning an important case was often a cause for celebration and congratulations in the Public Defender Office. Public defence counsel did not seem to lose sight of their roles as advocate, or lose their desire to win their cases.

Crown, judges and public defence counsel did however, engage in some formal socializing which showed their perceived job-related dependence. While no one mentioned it in interviews, public defenders did attend some Burnaby Court social activities, parties and picnics. One defence counsel, after he asserted that he had no social contact with Crown or judges mentioned playing softball with the judges and Crown at a picnic. In some formal-social ways, public defence counsel were considered part of Burnaby Provincial Court.

6.4 Judicare Counsel Perceptions of Extra-courtroom Contacts.

Three judicare lawyers interviewed indicated they had no contact with judges in Burnaby Provincial Court outside the courtroom itself. The lawyer who reported having extra-courtroom contacts described them as "hallway small talk" and indicated that contact took place only in the courthouse.

Three lawyers interviewed reported they had no extra-courtroom, non-case specific contact with any Burnaby Crown counsel. A fourth judicare lawyer reported he occasionally had coffee with some Crown, and that contact

developed out of interaction in court. No judicare lawyers reported "after hours" contact with Burnaby Crown counsel.

The judicare lawyers interviewed were high volume legal aid lawyers. Their lack of contact with Crown or judges reinforced the perception that, while public defence counsel and Crown made efforts to stay professionally apart, the frequency of contact and opportunities to engage in small social interactions did produce a relationship between Crown and public defenders which was qualitatively different from the relationship between Crown and judicare counsel.

6.5 R.C.M.P. Perceptions of Extra Courtroom Contact.

Contacts between R.C.M.P. members and Burnaby judges were limited to courtroom contact. No social contact took place between judges and police. R.C.M.P. offices were located on a lower level of the Burnaby justice buildings than the courtrooms and courthouse offices. Members of the force and judges rarely, if ever, had casual contact in the courthouse.

Contacts outside the courtroom proper between Crown and Burnaby R.C.M.P. officers seemed to be limited to contacts in the office of the Crown. The nature of contacts was reported to be strictly work-related, limited to seeking advice from the Crown about particular cases. One constable noted there were some limited formal social contacts between R.C.M.P. and members of Crown staff. Social contacts included the Policeman's Ball.

R.C.M.P. members who were interviewed agreed that contact between themselves and public defence counsel was limited to courtroom contact. Contact with judicare counsel was also limited to the courtroom.

7. Perceived Advantages and Disadvantages of Public Defender and Judicare

Judges, Crown counsel, public defenders, judicare lawyers and selected members of the R.M.C.P. in Burnaby were asked to identify advantages and disadvantages of having the public defence counsel and judicare counsel in Burnaby. People were also asked questions about conflict between members of the Provincial Court, nature and sources of the conflict, the extent to which the conflict affected court functioning, and the seriousness of the conflict.

7.1 Judge Perceptions of Advantages and Disadvantages.

Two judges in Burnaby believed the public defenders had several advantages. Advantages included: sharing library facilities with other lawyers; having other lawyers close at hand for consultation; being physically close to the Burnaby Court, saving travel time and money; having a specialized criminal office; and having the opportunity to spend more time in the Burnaby Court, thus facilitiating learning about specific Crown and judges.

Two Burnaby judges believed there were no disadvantages to the public defender's position in the Burnaby Court. One Burnaby and one Vancouver judge believed there were some disadvantages. One disadvantage given was becoming too well-known to judges and Crown. Defence counsels' idiosyncrasies were learned by judge and Crown. The Vancouver judge also thought that not having the opportunity to act as *ad hoc* Crown counsel was a problem. Public defenders missed a "patent learning experience".

No judges interviewed observed either advantages or disadvantages for judicare and privately retained defence lawyers in the Burnaby Court. No judges interviewed observed any conflicts between Crown, defence counsel, or judges in the Burnaby Court. One judge noted that "everyone is happy here; everyone gets along".

7.2 Crown Perceptions of Advantages and Disadvantages.

All Crown counsel in Burnaby felt that public defence counsel had distinct advantages in the Burnaby Court. The major advantages were physical proximity, which allowed public defenders easier access to people who need to be seen (for discussion of cases, etc.) and allowed public defenders to become more familiar with other officers of the court. Crown thought that familiarity with prosecutors' and judges' personal likes and dislikes gave public defenders the advantage of being able to avoid contact with those persons who were personally incompatible, or adjusting their behavior to suit Crown or judges. One Crown counsel noted that defence counsel must "act in a certain way if they are going to perform to the best advantage of the client." Another Crown counsel noted that increased access and presence in the Burnaby Court "especially in the hallways and coffee room...allows public defenders to pick up more information, to increase encounters with the police so that they can discuss many cases at once".

Being part of a specialized three man office gave public defence counsel the advantage of being able to keep a close account of relevant case law, as several Crown counsel noted, as well as being able to pool resources and consult freely with other like-specialized lawyers. Two Crown noted that the big advantage for the public defenders was the "group-like nature of their practice". One Crown counsel noted that judicare counsel "can't have someone cover for them in court, if they get tied up", largely because they cannot afford to employ extra staff members such as paralegals. Another Crown counsel observed that "the group-like approach to defence work (allows the lawyers) to shift files among them...they can have one cover for another". Crown counsel clearly saw the three public defence counsel as somewhat interchangeable or practicing in a joint fashion. They did not view the public defenders as independent counsel with non-interchangeable cases.

Other advantages reported by Crown counsel included freedom from monetary constraints since public defender lawyers did not have to worry about overhead associated with private law offices, and freedom from client opinion. Two of the Crown interviewed noted that legal aid clients tended to "be more leery of the private bar than public defenders since public defenders are interested in keeping the client out of jail and not in doing $180 worth of defence work". This perception did not match perceptions of clients. Clients were equally well pleased with judicare and public defence counsel. It was further believed that public defence counsel clients had different expectations of their lawyers than juidcare and private clients had of theirs, and that public defence counsel clients put less pressure on their lawyers to act in particular ways or obtain particular outcomes. The perception that public defence counsel was immune to client criticism was not held by any of the public defenders.

From an organizational perspective, one Crown counsel noted that public defenders were "more reliable than the private bar" in keeping obligations. Overall, Crown counsel praised the public defender lawyers for their individual excellence, abilities and talent as defence counsel.

Even with these broad statements of approval, several Crown counsel remarked about personal conflicts. Individual Crown counsel seemed to distinguish between "public defence counsel" as a type of defence counsel and individual public defenders.

One Crown counsel interviewed noted that from his perspective the only advantage of public defenders over judicare lawyers was that the public defenders provided a continuity of duty counsel "superior to that provided by a judicare lawyer who had been referred to the duty counsel activities for one month".

Crown counsel identified two major disadvantages of the public defender's in Burnaby. Public defence counsel were present so frequently in Burnaby that personality differences became more obvious leading to personality clashes. Several Crown counsel suggested that personality conflicts existed between some Burnaby judges and some public defenders, and that there was a greater "likelihood of retribution by court members if the disliked defenders acted out of line".

The second major disadvantage perceived by Crown involved pressures placed on public defenders by officers of the Burnaby Court. Several Crown counsel felt that some judges expected more of Burnaby public defenders than they did of other defence counsel largely because of the increased physical presence of public defence counsel in court. It was felt that the Court took advantage of the public defender's position by overbooking and overworking the them, with the possible result of a decline in the quality of the defence services provided.

Crown counsel observed that judges had the "expectation that puble defenders are constant, continuous duty counsel", that public defenders "lose individual status in the same way as Crown", and "that the court treats them as interchangeable elements of a group".

The advantages of public defenders over judicare lawyers as cited by Crown counsel, and noted above, when accepted in light of these perceived disadvantages suggest that judges were not the only members of the Burnaby court who expected continuous duty counsel and "lawyer inter-changability" from public defender lawyers. Some Crown perceived public defenders as a group, and expected them to contribute to the smooth functioning of the court by having other public defence counsel step in for them or by shifting files amongst themselves to satisfy court obligations. It is important to note that at no time did any Crown counsel suggest that members of private firms should shift files (cases) amongst themselves, nor did they ever observe judges pressuring private members of the bar to do so. It is especially interesting to consider that the same Crown counsel who noted the disadvatage of public

defenders losing individual status and being treated as interchangable elements, felt that advantages of a public defence office included the group-like nature of the practices, the interchangability of lawyers and the facility of shifting files from one lawyer to the other within the office. Another interesting point is that no judge interviewed reported that they treated the public defender lawyers differently or had different expectations of them than of private members of the bar.

Overall, while Crown perceived that judges pressured public defenders to contribute to the stable functioning of the court, there seemed to be an underlying attitude among Crown counsel that if they must make sacrifices to overall court interests, public defenders ought to as well. Crown identified with the way they perceived judges treating public defenders, and with the group-like aspects of public defence practice. Despite claims to the contrary, some Crown appeared to perceive public defenders as having a special duty to the court organization, a duty not expected of private members of the bar.

Additional disadvantages to public defence lawyers in Burnaby observed by Crown included: large caseloads; a lack of "expensive clients"; the "fishbowl" aspect of the project; together with a tendency towards cynicism and the "personality changing aspects of full-time criminal law". One Crown counsel, who had previous experience as a staff lawyer for the Legal Services Society, noted that "public defenders have a tendency to burn out" and that "this was true of Legal Aid staff lawyers as well". One Crown counsel, suggested that clients who can pay (not Legal Aid clients) may get better defence from the private bar.

Two members of the Office of the Crown counsel felt there were no advantages associated with judicare counsel in the Burnaby Court. Other Crown interviewed felt that judicare lawyers had the advantage of being relatively free from pressure that might be put on them by judges and Crown, and that judges did not have the same expectation of judicare lawyers as public defenders. It was felt that judicare lawyers could remain remote and avoid personality conflicts between themselves and other members of the court.

One Crown counsel suggested that if public defenders "weren't liked, or were creating havoc in the court, judicare lawyers would probably be welcomed". It was further noted, however, that this was not the case in Burnaby. One Crown counsel suggested that "if a client is wealthy, he can spend lots of money on a case" and that this

would be a great advantage to a private lawyer. He further suggested that "more senior members of the private bar get more respect from judges and Crown counsel than do public defender", and that senior members who had good reputations were more believable than Crown or public defenders. However, other Crown noted that seniority and a good reputation did not give members of the private bar court system advantages or advantages over the court staff. Analysis of the outcomes of cases handled by judicare and public defence counsel found that public defence counsel clients generally received fewer jail sentences (See Report II, Effectiveness Analysis) than judicare clients.

Disadvantages of judicare counsel in Burnaby were identified by Crown as primarily opposite to the advantages of the public defenders. Not knowing the idiosyncrasies of judges and Crown was seen as a disadvantage. Behaviour could not be adjusted. Not having a close working relationship with Crown was also observed to be a disadvantage. Not being physically near the Burnaby Court or having a working knowledge of the physical layout of the courthouse were also thought to be disadvantages. One Crown saw general problems with judicare in British Columbia. He thought that "a person in private practice can't afford to do criminal defence work for what legal aid pays". Crown also saw private counsel as disruptors of smooth court functioning "asking for adjournments just for the sake of adjourning". In actuality, the adjournment patterns for judicare and public defence counsel were similar. The perception was that they were different.

Questions about the nature and effects of conflict between members of the Burnaby Court drew varied responses from Crown counsel. Two Crown stated no conflict had existed. Two perceived conflicts and saw the source of these conflicts in judges expectations and perceptions of the public defenders' roles. They thought judges pressured the public defenders to organize themselves and their cases at the convenience of the court. One Crown who did not observe differential treatment on the part of judges, noted that the judges "have more respect for them (public defenders) and the P.D's are allowed to joke just because they know the judges better".

Two Crown counsel felt that R.C.M.P. constables and the jailors (sheriffs) in some instances, may have slowed the public defenders' efforts to get people in custody to court quickly by refusing to comply with requests of the lawyers. Finally, one Crown felt the major source of conflict in the Burnaby Court was the public defenders themselves. This

Crown counsel thought that public defenders should be more readily available for trial, since they specialize in criminal work. It was felt that public defenders play too many "time games" with the Crown and judges.

The perceptions of conflicts ranged widely. Some Crown thought the judges pressured public defenders, while others thought public defenders were uncooperative because they knew the "system" and the players. One Crown counsel perceived no conflicts. When conflicts were perceived they were seen as having no serious effect on the functioning of the court and no serious effect on case outcome.

7.3 Public Defender Perceptions of Advantages and Disadvantages.

The public defenders were in general agreement about the advantages of their position over judicare lawyers. Public defenders were interviewed twice. Similar advantages were identified in both interviews. Public defence counsel saw increased contact with other members of the Burnaby Provincial court (Crown, judges) as advantageous. Contacts enabled the public defenders to learn which behaviors were acceptable by which judges and to negotiate better outcomes for their clients with Crown counsel.

Most advantages perceived by public defence counsel centred around favourable opportunities for contacts with members of the court, opportunities which came from their frequent presence in the Burnaby court. Public defence counsel had the opportunity to learn the idiosyncrasies of various judges in Burnaby and so "avoid making arguments which would be considered spurious in front of them".

Familiarity with Crown counsel and Crown tactics was thought to be a great advantage. As one public defender noted, "private counsel don't know enough to go to the prosecutor for talks about specific cases -- they don't know who to go to". He further noted that "public defence counsel have more face to face communications with Crown about clients than judicare lawyers" and that public defence counsel can spend more time "harassing the Crown, nagging and nagging to have charges dropped, etc." Another public defender noted that public defenders had a "greater opportunity to negotiate an agreeable dispostion "with Crown than judicare counsel, but acknowledged that "this may be idiosyncratic since many private counsel are able to get the same thing for clients through last minute negotiations of dispositions".

The "last minute" disposition negotiation occured when a disposition was negotiated immediately before trial - usually in the hallway in the courthouse. Very often, Crown counsel negotiated more readily when witnesses did not show up for the trial - a situation which many defence Counsel anticipated when setting a trial date. If all Crown witnesses appeared, and Crown's case seemed secure, both judicare and private counsel indicated that the defence tactic was to plead guilty. If witnesses did not show up, both judicare and public defence counsel indicated that Crown most frequently stayed charges.

Report II, Effectiveness Analysis, described the empirical relationship between discussions with Crown and case outcomes. Based on case reports public defence counsel entered into discussions with Crown more frequently than judicare counsel. The discussions more frequently ended with an agreement, and more frequently resulted in non-incarceration sentences. One public defender noted that public defenders had, on the whole, greater access to Crown, but qualified this with the observation that this access was "not greater than that of any legal aid staff counsel".

Increased contact with members of the Burnaby Court was viewed as beneficial as long as each party remained trustworthy. One public defender observed that if trust between public defenders and Crown or judges was upheld, counsel was invested with greater credibility. He further noted that trust could only develop if personalities were compatible and if frequent professional contacts occurred.

Other advantages cited by public defenders included factors specific to the organization of the Burnaby Legal Aid Office and factors which focused on increased contact between public defenders, judges and Crown in Burnaby Provincial Court. One lawyer felt the opportunity to refer cases to the private bar when caseloads were perceived as too high, provided a "safety valve which saved public defence counsel in Burnaby from selling out - there was no need to compromise clients because of time constraints". Another lawyer noted the pressure of practising criminal law was reduced because there were neither administration nor office management worries within the Legal Aid Office. One lawyer observed that one advantage of the Burnaby Public Defence Office was the quality of the defence work provided. He further added that "the public defender system is only as good as the people hired" and observed that the biggest drawback to the public defender mode of delivering legal aid was that one "can't trust government to consistently hire competent counsel".

Public defence counsel perceived they had increased contact with the R.C.M.P. and this contact allowed increased opportunity for "talking about the case with the R.C.M.P". R.C.M.P. members, however, did not perceive any increased contact.

Spending more time in court was also thought to provide a better knowledge of court schedules, which could be used tactically to delay cases.

Public defenders were all concerned with "burn-out", with the clients, and with the frequency of contact with judges and Crown. Confirming Crown counsel's perceptions about excessive pressure put on the public defenders to satisfy court system needs, the public defenders were unanimous in identifying judicial pressure as a disadvantage to their position in the Burnaby court. One public defender felt it was not good to be before the same judges continuously, especially when fixing dates for court appearances. He observed that "judges don't treat public defenders as independent lawyers - - even judicare lawyers are not treated quite the same". Another public defender observed that "judges see public defenders as the means to make the system work more smoothly" - - a perception which was similar to that held by Crown. The third public defender was more specific. He observed that public defenders were subject to greater demands on their availability, and their time in general. Public defenders were "encouraged to pursue matters in which the court is interested". He further observed that judges recognized demands on the private bar, and so were more likely to accommodate the private bar.

Increased frequency of contact with Crown counsel and judges was also perceived as disadvantageous. According to one public defender; "public defenders have to be more careful not to do things to irritate Crown." Private counsel must also not irritate Crown, but the results are not as severe (if he does irritate the Crown) because the number of Crown counsel and the number of contacts between Crown and private lawyer limit what Crown can do in return. It was further felt that public defenders suffered a decided loss in bargaining power through familiarity with the other actors in the trial process, especially in opportunities for bluffing. One lawyer noted that the public defender's position, as perceived the Crown and judges, may be detrimental to the client, and that "because of previous spurious arguments, the public defenders may lose believability for the next client". The actual pattern of discussions with Crown and client outcomes did not support

the fears of public defence counsel. They bargained more frequently and with better results than judicare counsel.

All three lawyers agreed that by the time the project ended they were "burned out". One lawyer identified the cause of his "burn out" as the constant volume of work with no let up, combined with few elections out of the Burnaby Court. He noted the boredom of a situation, where the routine never changed, always appearing before the same judges opposing the same Crown counsel. Another defender observed that burn out was accelerated by "the assembly-line nature of public defence practice, by cases that were too short" in duration and by the heavy workload created by having to do duty counsel plus casework. The third lawyer noted that burn out occurred in other types of legal aid staff positions. He considered that "the lack of paying clients to balance perspective and supply appreciation" contributed to burn out.

Public defence lawyers observed several dangers of a public defender system. One public defender thought that the public defender mode of delivering legal aid can only be "as good as the lawyers who are hired". He observed that, because of the volume of cases handled, an incompetent public defender would do more damage than the same lawyer in the private sector. Another public defender thought that individuals hired for the Burnaby public defender project did not have trouble "standing up to Crown", but that if "civil-servant types" were hired as public defenders, they might be "more inclined to do Crown's bidding".

The major advantages and disadvantages of the judicare lawyers' position in the Burnaby court, identified by the Burnaby public defender lawyers, were generally the opposites of the advantages and disadvantages observed for public defenders. The public defenders identified independence, being able to control case flow, being free from pressure from the judges to act particular ways, being able to accept paying clients, being able to "get out of the Burnaby Court occasionally", and having idiosycrasies less well known by Crown and judges as major advantages of judicare lawyers. One lawyer felt that these advantages outweighed the advantages of the public defender mode of delivering legal aid.

Public defence counsel saw disadvantages in judicare lawyers' positions. They perceived difficulties maintaining an office, doing office management and administrative tasks. They also thought judicare counsel's lack of familiarity with the judges and their sentencing practices, as well as

general lack of familiarity with Crown, sheriffs and other staff in the Burnaby Provincial Court lead to problems.

The only conflicts reported by public defenders involved themselves and judges, and very occasionally, Crown counsel lawyers. The chief conflict centred around the pressure put on the public defenders by judges to perform services for the benefit of the court. The public defenders indicated that pressure to be "full-time" continuous duty counsel came from all sectors of the Burnaby court. Crown counsel, sheriffs and court clerks did not hesitate to bring people in need of assistance -- many of them not qualified for legal services -- to any of the public defenders who happened to be in the courthouse. "Resident duty counsel" was the term used by the public defenders to describe their view of the perception most court staff seemed to have. One defender pointed out that the work involved in giving "on the spot legal service" often took more time to complete than their own business at court. All lawyers agreed that it seriously increased what was considered to be an already heavy workload.

Public defence counsel reported minor conflicts with individual Crown counsel. Conflicts were generally caused by misunderstandings on either or both sides about some bargaining or negotiation process, or by personality clashes. No conflicts reported here were considered serious enough to disrupt court functioning.

7.4 Judicare Perceptions of Advantages and Disadvantages.

Most judicare counsel interviewed were in agreement about advantages and disadvantages of the public defenders in Burnaby Provincial Court. There were some variations in perceived minor advantages and disadvantages of the position of the public defenders in Burnaby.

The major advantage seen by judicare counsel of public defenders over other defence counsel in Burnaby was freedom from bureaucratic, administrative and financial constraints. One lawyer felt that public defenders were generally exempt from office administrative and office management duties, giving them more opportunity to organize time spent on casework. One lawyer observed that public defenders were free from financial constraints, in that they did not have to support an office themselves. Another lawyer observed that public defenders did not have many "bureaucratic hassles", since they had relatively cosy access to court members and information about cases. Still another observed

that time travelling to court was much easier for the public defenders. One lawyer felt that time spent working as a public defender was a good way to organize a future practice, because of contacts formed with prospective clients and with members of the court.

Two lawyers interviewed noted that the presence of public defenders in Burnaby provided reliable duty counsel regularly in court. The "duty counsel" observation confirmed how judges and Crown appeared to perceive the role and duties of public defence counsel. One lawyer reported that he observed no difference in the quality of criminal legal services provided by the two modes of defence counsel.

According to judicare counsel the major disadvantages of the public defenders' position were pressures placed on public defenders by other members of the court, and lack of distance between public defenders and the court system. Three lawyers interviewed felt that high visibility of the public defenders in a court such as Burnaby left them open to pressures from other members of the court. One lawyer observed that "the court shoves everything to the public defenders", and suggested that they were perceived as "resident duty counsel on call (who) have to come over to court to handle stuff". Another lawyer expressed the feeling that the a job of a public defender made it "too easy for a person to become part of the system". He further noted that this did not appear to be a problem in Burnaby, but he felt that if the public defender office had been in operation in Vancouver, the "volume of cases would make the public defenders cynical and pressured". A third lawyer suggested that continually appearing before the same judge and against the same Crown counsel "might produce patterns of behavior because the judge, defence and Crown know each other so well". He further noted that public defenders might have to role play, and that it might be too easy to perform the same play, when the cast is the same".

Minor disadvantages of public defender's position in Burnaby reported by the judicare lawyers included: lower motivation on the part of the lawyers because of lack of financial incentives; less individuality of clients and cases high case volumes. One lawyer observed that the pay given public defenders was "not very good for the work expected". He further speculated that a cost analysis might reveal that the public defender mode of delivering criminal legal services was more expensive than the judicare tariff system.

The major advantages of the judicare mode of delivering criminal legal services over the public defender method, as perceived by the judicare lawyers interviewed, centred around the independence of judicare lawyers and their "distance" from the court. One lawyer felt that "on a day to day basis, the integrity and morality (of a private lawyer) can not be questioned". He further indicated that his position in the court freed him from pressuring by Crown and judges which might unconsciously cause him to compromise the interests of his client. One lawyer who was interviewed commented that private lawyers were freer to book trials, while another felt that because individual private counsel appear before judges in Burnaby less often than public defenders, they were less apt to be pressured to be more efficient in scheduling cases and handling appearances. He, additionally, observed that he would "personally feel funny setting cases for trial with no defence, on the chance that the Crown would be unable to produce evidence or witnesses if I were a public defender and had to see the same Crown and judges over and over". He felt, however, this was a reasonable tactic for private counsel. It should be noted that the practice of setting cases for trial on the hope that the Crown's case falls through seems to be a fairly common tactic among privately retained, judicare, and public defence counsel. In Burnaby most cases were disposed of on the day set for trial whether the disposition was a guilty plea, stay, or an actual trial.

Client preference and superior treatment of clients by private lawyers were perceived as minor advantages of the judicare mode of delivering legal aid. One lawyer thought that a client would prefer to deal with a private counsel than with a public defender, and felt that private counsel were more likely to treat "clients as clients and not like items on an assembly line". The "assembly-line" treatment of clients by public defenders was thought to be a likely result of higher caseload in public defender practices. He further noted that the lower caseload of judicare counsel gave them an advantage in their work generally, and at trials especially, since they usually had more time to spend on case preparation than public defence counsel. Analysis of time logs filled out by judicare and public defence counsel did not show greater case preparation time on the part of judicare counsel (see Report VI, Tariff Analysis).

Lastly, one lawyer felt that private practice allowed more personal freedom than practicing criminal law in a public defender office. He noted he could stop taking cases and "take time off whenever I feel like it" as he could "make as much money as I want by increasing the number of

clients I accept".

Two judicare lawyers interviewed felt there were disadvantages to their positions in Burnaby Provincial Court. One disadvantage was not having the opportunity to get to know judges sentencing tendencies as well as public defence counsel. The other disadvantage concerned the quality of service provided at the first appearance level. One lawyer felt that the "service may not be as good at first appearance, as that provided by public defenders." Analysis of cases handled by the two lawyer groups showed earlier client contact for public defence counsel particularly at show cause hearings. Tied with this, more public defence counsel clients were released after the show cause hearing than judicare counsel clients.

Overall, judicare counsel agreed that disadvantages associated with the judicare mode of delivering criminal legal services did not outweigh advantages. None of the lawyers felt that the disadvantages of the public defender method of delivering legal services outweighed the advantages. Each lawyer expressed a slight preference for the judicare method, but none were strongly opposed to a public defender mode of delivering legal aid. Only one lawyer indicated that he had lost work because of the public defender office. One lawyer reported that his caseload had actually increased since the Burnaby Public Defender office opened.

No judicare lawyers interviewed reported observing conflict between members of the Burnaby court. Two lawyers volunteered that Burnaby Provincial Court was the best court in the Vancouver area in which to work.

8. Analyses and Conclusions: The Public Defender in Court

The perceptions of judges, Crown counsel, public defenders, judicare counsel, and members of the R.C.M.P. in Burnaby about the functioning of Burnaby Provincial Court have been presented in the previous sections. No one set of perceptions can be used alone to provide a comprehensive picture of public defenders in the Burnaby Court. For this reason different actors or members of the court were interviewed. A picture of public defender in Burnaby can only be obtained by weighing the perceptions of different members of the court.

The opinions and perceptions of the judges and Crown counsel are important in determining the position of the public defenders in the Burnaby Court. Crown counsel and judges are permanent members of the court organization, and it is within this organization that the defence lawyer must discharge his/her duties. Permanent members of the Court also have the best opportunity and the greatest interest in influencing others to behave in particualar ways and to improve the efficiency of court functioning.

When asked to define the role of the public defence counsel, the judges agreed that the role was largely to protect the interests of the accused. They further observed that the roles of the public defence counsel, judicare counsel and privately retained defence counsel did not differ. Crown counsel were also in agreement about the role of public defenders as legal advocate and representative of the accused's rights and interests before the court. Crown counsel further agreed that the role of public defenders was not different from that of any other defence lawyer.

Interviews with both Crown and public defenders revealed that, despite the fact that judges and Crown perceived the roles of all criminal defence lawyers as similar, the roles, in fact, differed. Crown counsel, public defenders and judicare counsel observed that judges possibly treated public defenders differently than they treated members of the private bar. Public defenders were thought to be pressured into performing tasks at the convenience of the court; and were expected to contribute to its steady functioning. One judicare lawyer noted that "the judges see public defence counsel as the means to make the system work more smoothly", a perception which was similar to that held of the Crown. Crown counsel also observed that the relationship between judges and the public defenders was

more like Crown's relationship with judges, and less like the relationship with defence counsel.

Overall, the judges seemed to perceive public defenders in part as interchangeable elements of a group, whose duty it was to provide criminal legal counseling whenever the need arose. Judges were reported to have expressed the expectation that, if one public defender was unavailable for a court appearance at a particular time, any other member of the public defence office should be available to step in for him. Reportedly, judges also had similar expectation of Crown. Private criminal lawyers who acted in the Burnaby Court frequently were members of law firms, or were from multi-lawyer law offices. Crown and public defence counsel did not think Judges expected members of the private bar to shift cases among themselves or to stand-in for each other when one was unavaiable.

Expectations of the judges about duties of public defenders, as described by Crown, judicare counsel and defence lawyers, did not match the judges' perceptions of the idealized role of the public defence counsel. Neither did their expectations match their perceptions of the nature of the relationship between themselves and the public defenders and how this relationship compared with their relationship with the Crown counsel. Either the judges did not realize that they are treating the public defenders differently than private defence counsel, or they chose not to discuss the differential treatment or Crown, judicare, and public defence counsel perceptions were inaccurate.

At the time of the first series of interviews with Crown counsel, Crown reported that the relationship between themselves and the public defenders did not differ from their relationship with other defence lawyers. Several Crown counsel observed the treatement of the public defenders by the judges and compared it to their own, but there were no indications that Crown felt the public defenders ought to act differently than any other defence lawyer. In the second series of interviews, however, especially when asked to identify the advantages and disadvantages of public defenders in the Burnaby court, some changes in Crown perceptions were apparent.

The advantages of the public defenders over their judicare counterparts stated during the first series of interviews were largely centred around defenders knowing the idiosyncrasies, likes, dislikes and behavior patterns of other members of the court. In the second series of interviews, the stated advantages centred around

characteristics of the public defenders' practice which contributed positively to the functioning of Burnaby Provincial Court. Crown perceived the Public Defence Office as a group-shared practice. Public defenders were thought to be able to cover for each other and handle each others cases. The potential of shifting files among themselves and covering for one another in court did not seem to be of any particular advantage in speeding the actual processing of cases. Judicare cases and public defence cases took about the same length of time from first appearance to disposition (See Report II, Effectiveness Analysis).

The observations of Crown counsel about advantages of the public defender style of criminal practice were oriented towards court objectives. Likewise, the expectations of judges about how public defenders ought to proceed were also court-oriented. Both the judges and the Crown counsel appeared to perceive public defenders in Burnaby as permanent members of the court with certain court system duties.

There are several possible explanations for how judge and Crown perceptions were formed. One explanation for Crown counsel and judge perceptions of "permanent member" status of public defenders involved the frequency with which public defenders were in court. For the life of the project the three public defenders alone provided most duty counsel services for Burnaby Provincial Court. Under other circumstances, duty counsel duties would have been referred to members of the private bar. The number of practicing lawyers who accept duty counsel referrals in Burnaby made it unlikely that any single private lawyer would create the sense of "constant, continuous duty counsel" that public defenders established. Being identified as duty counsel for the Court and establishing a sense of duty counsel constancy were the first steps leading to the lawyers actually being perceived as the resident duty counsel. When the first series of interviews were conducted, the public defenders complained about other members of the court expecting any public defenders to provide duty counsel at any time of day, regardless of other business the lawyer might have. The burden of "extra" duty counsel service was felt to contribute to the "burn out" syndrome which affected the public defender lawyers as the project came to a close.

Another factor influencing the identification might be the mode of payment of public defenders. They were staff lawyers paid salaries just as Crown and judges are paid salaries and not for cases handled. Public defenders were paid for all their time, not just case related time or not

just for specific services. It might be easy for judges and Crown to consider slack time for public defenders as time which can be drawn upon by the court, since the public defenders were already being paid.

The third factor which may provide an explanation for judge and Crown counsel perceptions of public defenders might be the limited number of courts in which the public defenders appeared. Most lawyers acting for criminal legal aid clients in Burnaby were actually lawyers from Vancouver. Judges and Crown might agree that it was unreasonable to expect defence counsel who practice in several courts too be available to or arrange his/her schedule at the convenience of particular court. The public defenders were known to be almost exclusively in Burnaby. Knowledge of this fact may have led the judges to be slightly short sighted in their demands that the public defenders act in accordance with the court's wishes, especially in scheduling appearances. For example, in the instance that a judicare lawyer indicates that he/she is unavailable for an appearance on a particular day, commitments in another court provide an acceptable reason for the delay. In instances when a public defender indicated that he/she could not be available at a particular time, the judges' nature of the response was sometimes reported as "why can't you be here, you don't have case in any other courts" or even "can't you send over one of the other fellows in your office - you are all Burnaby public defenders".

These three factors, the frequent presence of public defenders in the Burnaby court; the identification of Burnaby Legal Aid lawyers as "public defenders" and staff counsel, and the exclusivity of public defender practice in Burnaby Provincial Court are not independent of each other. The pressures on the public Defenders were heightened by the limitation of their practice to the Burnaby Court. The limited practice enhanced their image as a public defender/public servant available at all times. The presence and interaction of these three elements may have affected the perceptions of Crown counsel and judges, facilitating the view that public defenders were permanent, members of the court. The perceived permanent status of the public defenders in Burnaby further contributed to judge and Crown expectations that public defenders ought to contribute to the smooth functioning of the Burnaby Provincial Court.

8.1 Relationships Between Public Defence and Crown Counsel.

One frequently voiced criticisms of the public defender mode of delivering criminal defence is that public defence counsel sacrifice the interests of their clients in the interests of serving the court. Public defence counsel, who must work daily with other members of the court, such as Crown counsel, might establish relationships with court members which supercede the lawyer's loyalty and duty to the client. The opportunity for extra-courtroom contacts between public defence counsel and Crown counsel is thought to influence the nature of the relationships which develop and courtroom behavior. The end result is that the client is "sold down the river" in order that the Crown and public defender can reach an agreement which preserves or strengthens their on-going relation.

There were two categories of defence/Crown counsel contacts identified in this study. Contacts between defence and prosecution can be characterized as professional or social. Professsional contacts are those which, by their nature, are case related. Contacts between defence counsel and Crown counsel, which occur in the office of the Crown or in the courtroom, can generally be assumed to be professional. Social contacts are non-case related, and generally take place outside the courtroom or Crown's offices.

All public defenders reported contacts outside the courtroom with various Crown counsel. Contacts occurred in the courthouse hallways, at coffee, at meetings held between the two offices, and occasionally at lunch. One public defender noted that he and one Crown played racketball a few times. These observations coincide with those made by interviewed Crown.

Three judicare lawyers interviewed stated they had no contact outside the courtroom with the Crown counsel except for contacts which occurred in the Crown offices about specific cases. A fourth judicare counsel stated that he occasionally had coffee with some Crown counsel, whom he had come to know through interaction in the courtroom. Generally, on-going relationships did develop between Crown and public defenders. Informal social contacts occured. Crown and public defenders gained mutual knowledge. Crown considered their relationships mostly "good" and "trusting". Informal social relations did not develop between Crown counsel and the high volume legal aid lawyers interviewed, thought informed social relationships may have existed with some judicare counsel not interviewed.

Burnaby public defenders and judicare lawyers interviewed were asked to describe the bargaining procedures they used with Burnaby Crown. Burnaby Crown were asked questions about the bargaining process they used with the two groups of defence lawyers.

Each public defenders outlined the same basic method of proceeding on a case. The procedure outlined by public defenders differed in only one respect from the procedure outlined by judicare lawyers. Judicare counsel and public defenders stated they generally did not take any action in a case until they had obtained the particulars of the case from Crown counsel. This prevented them from revealing any damaging information. If no discussion of the circumstances of the case occurred prior to obtaining the particulars, they could not disclose anything which might be used against the client.

After the particulars of the case were received, public defence and judicare counsel generally had their first meeting with the client. In Burnaby, since public defenders were also duty counsel, public defenders met some of their clients in their role as duty counsel. At that time, the client was informed of the law pertaining to his/her offence(s) and was informed what defences were available. The client was allowed to express any possible preferences he/she might have about how to proceed. Several lawyers interviewed - one public defender and three judicare lawyers - specifically indicated that, within the bounds of ethics, they always tried to do what the client wanted.

The information obtained from judicare and public defence counsel revealed some differences in the bargaining process. Judicare counsel were more likely to set a trial date after the first appearance on the chance that Crown would be unable to obtain required evidence or witnesses would not appear at the trial. This stated pattern of proceedings conflicted with the perceptions of some Crown and public defence counsel that public defence counsel were pressured into setting dates quickly, but judicare counsel easily put off trial. Most negotiations with Crown counsel were reported to take place "at the last minute", while waiting for court to begin. Public defenders, on the other hand, appeared more likely to negotiate with Crown if they perceived that the Crown had a very strong case, as long as the client did not object. If the Crown's case was perceived as weak, there was no indication that the public defenders had any more pre-trial discussion with the Crown counsel, than judicare counsel in a similar situation.

Public defence counsel did engage in discussions more frequently than judicare counsel and discussions more frequently ended in agreement. Report II, Effectiveness Analysis, details discussion patterns which actually occurred.

Crown counsel were asked to identify the most important factors affecting the nature of the bargaining process. Of those Crown who responded to this question, all indicated that the relationship between Crown and defence counsel was the most important factor in bargaining. The relationship between defence and Crown counsel was reported to be dependent on personality factors and trust. In turn, it was felt that trust could only be established between the Crown and defence counsel through repeated dealings and contacts with each other.

In the first series of interviews, interviewed Crown indicated that the relationship which they had with the public defenders did not differ in any way from the relationships which they had with members of the private bar who were in the Burnaby court as often as the public defenders. Several members of the private bar were then mentioned by name, some of whom were subsequently interviewed. In the second series of interviews, interviewed Crown generally agreed that the frequency of the defence lawyer's presence in court was still the most significant determinant of the relationship between Crown and defence. However, they also generally agreed that there were no members of the private bar who were in court as often as the public defenders, and none with whom Crown had a better working relationship. One Crown indicated that, if the relationships between Crown and defence were rated on a scale, the relationships with public defenders would rate the maximum score. The relationships between the Crown counsel and the public defenders differed from those which Crown had with private defence lawyers.

According to several Crown counsel, because their relationships with public defenders were "good and trusting", their work was more pleasant. Additionally, when relationships existed which were characterized as good, less discussion was needed to reach an agreement. One Crown counsel noted that since the public defenders knew Crown and judges better than private lawyers, they were more likely to accept an offered deal. This perception matched the pattern found in the analyzing case records (Effectiveness Analysis, Report II). Public Defence counsel reached more agreements with Crown than judicare lawyers.

One public defender stated that the high frequency of contact with Crown and ongoing relationship with Crown meant that the public defenders "had to be more careful not to do things to irritate the Crown." He further indicated that private lawyers had the same obligation, but that if they did do something to annoy the prosecutors, "the results are not so severe, because of the number of Crown Counsel and the fewer numbers of contacts between Crown counsel and private lawyers." He further thought that the relationship between Crown counsel and public defenders generally resulted in a loss of bargaining power, since there was seldom any chance to bluff. One public defender noted that he spent time "harassing" the Crown--"nagging" to have charges dropped and telling him about the client's personal problems. The opportunity to harass is clearly related to frequency of contact. This lawyer felt that he was able to influence the sentence recommendations in this way, because Crown counsel would be more likely to have a positive attitude toward the client. The public defender further indicated that this tactic generally resulted in obtaining lesser penalties for his clients. The public defenders thought that their relationship with the Crown did not differ from that which the Crown had with any other lawyers who handled as many cases in Burnaby as the public defenders. However, no defence counsel existed who handled as many cases.

Judicare counsel characterized their relationships with Crown counsel as generally "good working relationships". Judicare counsel defined their relationships within professional or work-related terms. Public defenders talked about general relationships which included social and professional dimensions. Judicare counsel felt that the informality and accessibility of the Crown counsel in Burnaby made it "easier to deal and work things out" than in Vancouver Provincial Court. Overall, the judicare lawyers did not feel that their relationship with the Crown counsel differed appreciably from that which existed between public defenders and the Crown counsel. They did not, however, have any knowledge of the relationship between Crown and public denfenders.

The perceptions of both judicare counsel and public defence counsel had some similarities. Both lawyer groups recognized an accessibility and informality about the Burnaby Crown. Prosecutors, public defenders and private lawyers acknowledged that good relationships between Crown counsel and defence lawyers made dealing and bargaining tasks easier. The major differences perceived between the two lawyer groups were differences of intensity as opposed

to differences in the nature of the relationships between defence and Crown and a perception (by public defence counsel) of an ongoing professional and social dimension to Crown relationships.

Both Crown and public defenders made a point to distinguish between private defence lawyers who were infrequently in the Burnaby court and those who handled as many cases in Burnaby as the public defenders (though non-existent). Private lawyers who were in Burnaby as frequently as the public defenders were perceived to develop relationships of high intensity. Frequency of contact was the dominant perceptual factor. All lawyers interviewed, both Crown, judicare, and public defence, believed defence counsel who were frequently in Burnaby had the potential to develop relationships with Crown counsel which were similar to those developed by public defence counsel. However, of the private defence counsel who do criminal defence work in Burnaby none handled as many criminal legal aid cases as the Public defender lawyers. It is not known how many non-legal aid cases the interviewed judicare lawyers handled in Burnaby. However, those picked to be interviewed were a sample of the highest volume legal aid lawyers and presumably had high volume criminal law practices.

As noted in Section 5, observations of public defenders in the day-to-day discharge of their duties did not show public defence making any effort to perform favors for the Crown, or to "lean over backwards" for them. On several separate occasions, a public defender detailed strategies he intended to use in court with Crown counsel, and expressed some pleasure in using what he felt were particularly obscure, or technical tactics. When one of the public defenders won an important case, it was not unusual for the other legal aid staff to take him out to lunch, in celebration. This behavior did not suggest that the public defenders were particularly committed to satisfying Crown interests.

8.2 Quality of Defence and Lawyer "Burn out".

Two problems associated with the public defender method of delivering legal services were related to the perceived heavy workload of the public defender. Part of this perception may have come from the way Crown and judges used them to "fire fight" in court, to provide quick on-the-spot representation. The pressure of being on call contributed to perceived "burn out". The monotony of the work may also have lead public defender lawyers to "burn out". Public defence counsel estimated roughly 1-1/2 to 2 years of public

defence work before "burn out". In fact, all public defenders felt the need for a change at the end of the project.

The public defenders were defining a new role within the Burnaby Court. They were setting limits and creating expectations. The fact that there was no public defender way behaving at the beginning of the project may have led to the perception of external pressure from Crown and judges and have contributed to a feeling of "burn out".

Public defenders generally felt that legal service agencies either could not or would not pay public defenders salaries which would compensate for the workload associated with public defence work. For this reason, it was believed over the long run that only a very inexperienced and/or incompetent lawyers would remain public defenders. Lawyers with a range of skills might be initially hired, but it was thought that a disproportionate number of incompetent lawyers would stay on as staff counsel, rather than leave and go into private practice. One public defender interviewed expressed his fears about the public defender mode as a means of delivering criminal legal aid. "The public defender system has certain great advantages, but none of the advantages are as great as the disadvantages, because the public defender system is only as good as the people hired. One can't trust the government to consistently hire competent counsel, either on a long-term basis or on a large scale." One Crown counsel noted that the public defender system in Burnaby might not have worked out so well if any of the public defender lawyers "were not liked or were creating havoc."

The judges and Crown counsel interviewed in the Burnaby court volunteered that the three public defenders were excellent criminal lawyers. One judge indicated that the quality of criminal defence had improved with the establishment of the Burnaby Legal Aid Office. Crown counsel indicated that they spent more time and effort preparing cases when the defence counsel was a public defender. The public defence counsel felt that much of the success of the public defender office in Burnaby was due to their competence as lawyers, and expressed concern that future public defender offices might be doomed to failure if staffed by incompetent or mediocre lawyers.

If the Burnaby Public Defence office had been staffed with anomalous defence lawyers then the results of the study could be suspect. Findings which indicated some measure of superiority of public defender mode over the judicare mode

of defence might be questionable on the ground that the findings reflected only the qualities of the individual lawyers and not the qualities of the public defender system. In anticipation of this potential bias in running the experimental office, the Legal Services Society deliberately hired public defenders who were representative of lawyers who would be expected to apply for and be hired in public defender posts.

The Legal Services Society and the Department of Justice, which provided funds and contracted for the evalaution, were conscious of the potential bias and made strong efforts to avoid problems. For example, one public defender had limited court experience when he was hired. He had shown exceptional administrative skill, but could not be considered an exceptional criminal trial lawyer. Another public defender lawyer had been a legal aid staff lawyer for a short time in rural British Columbia. While he was staff counsel he handled some criminal legal work. His outcome record as staff was similar to the average outcome pattern for judicare counsel in Burnaby. The third public defender lawyer had wider ranging criminal court experience. The outcome patterns for the public defence counsel are described in detail in Report I, Effectiveness Analysis . Briefly, there were differences in how cases were handled by staff and non-staff counsel, but the overall guilty/non-guilty patterns were similar. There was some individual variability in how the public defenders handled cases, but based on outcomes, there was no indication that the three public defenders were exceptional criminal lawyers whose talent would bias the analysis.

There was an obvious discrepancy in the perceptions of some Burnaby court members and the Legal Services Society about the representativeness of the lawyers who were employed in the Burnaby office. Some members of the Burnaby court were convinced that the three public defenders were exceptional lawyers, while the Legal Services Society hired them in a conscious effort to employ lawyers representative of a potential pool of public defenders. The Legal Services Society hired individuals with a range of criminal law/courtroom experience.

There are three possible explanations for this disparity in perception. The first reason centres around possible misperceptions of what constitutes lawyer ability. The qualities which designated excellence to the hiring committee of the Legal Services Society may not have been the same qualities which indicated excellence to a judge, prosecutor or defence lawyer in a criminal court. The Legal

Services Society used criteria of experience, past legal aid performance and reputation. Judges and Crown may use standards which relate to courtroom behavior.

The second reason for the discrepancy, might involve the affect of expectation on perception. The public defenders, Crown counsel and judges in Burnaby were not informed of the criteria used in hiring the public defenders. Individuals with no background in evaluation research would not be able to anticipate criticisms of the design of a particular evaluation project. Lawyers or judges might expect that a legal services organization would hire only the best practicing trial lawyers for a pilot project of some importance. It seems possible then, that the judges, and Crown counsel lawyers perceived excellence in the public defender lawyers simply because they expected it to be there.

The third reason for the difference in perceptions between members of the Burnaby court and the Legal Services Society was suggested by one of the Burnaby prosecutors who noted that the public defender lawyers provided "expert criminal counsel" but suggested that "even stupid people doing this much criminal defence work would do a good job". The observation was not meant to imply that any of the public defenders were not considered intelligent. No Crown counsel indicated anything except the belief that the public defenders were intelligent and competent. The observation implied that the volume of criminal defence work which public defenders encounter increased their competence and sharpened their skills as defence counsel, that even counsel who were initially less skilled would develop good skills in a public defence operation. If this observation is accurate, it could mean that in the time which elapsed between the hiring of the public defence lawyers and the interviews with the different members of the Burnaby court, the public defenders developed skills perceived by other members of the court as excellent defence skill. Another possibility is that knowledge of the system and its major actors improved performance without changing skills. Public defence counsel developed personal knowledge of judges and Crown, as they stated, may have learned to avoid problems, thereby increasing perceived skills by judges and Crown.

If the improvement performance of skill phenomenon occurred, the public defender mode may be a mechanism for improving the quality of legal representation. In fact, the fear that high quality criminal defence is unobtainable from a public defender office may be unfounded. In Burnaby perceived high quality was a major characteristic of public

defender representation.

The second major problem often associated with the public defender mode of delivering legal services was the high rate of turnover of public defence counsel--public defenders "burn out". Routine and perceived heavy workload associated with public defender practices may produce mental exhaustion and boredom after a period of time. All three Burnaby public defenders reported being "burned out" at the end of the experimental project. The reasons they cited for the "burn out", as noted earlier, included the monotony of appearing before the same judges and Crown counsel, the routine nature of cases, and excessive workloads. Burn out did occur and may be a characteristic of public defence practice. The perceived "burn out" may also have been the result of having to define a new role, to set limits of action, to determine what exactly a public defender is. Role defining jobs are often associated with perceived high levels of stress. A lawyer stepping into an existing public defender job might not experience the same stresses.

Having to appear before the same judges on a regular basis was viewed as a disadvantage because the judge tended to cease treating public defenders as independent defence counsel, and treated them more as interchangeable units in one group. Appearing before Burnaby judges and against Crown counsel regularly was perceived to have a stifling effect on creativity in arguing their cases. Objectively it appeared to have a beneficial effect on jail sentencing.

Being in the same court on a regular basis had other negative effects on the lawyers' job satisfaction. The variability of charges brought against individuals in Burnaby was small - mostly property offences. Arguing similar defences for similar types of cases over and over may have led to boredom and disinterest.

One possible solution to these two problems would be to establish small offices which could serve more than one court. This is a solution possible in the greater Vancouver area, not in the rest of British Columbia. Dividing time and energy between two courts ought to alleviate some of the boredom and monotony of being continuously in one court. It may also help lawyers retain a sense of independence. Since they would have recognized obligations in more than one court organization, serving two courts could help to relieve or alleviate the pressure from judges to always be at the disposal of one court. Splitting time between courts has some disadvantages. Public defender familiarity with individual judges and Crown was a distinct advantage. If

lawyer's reduced their time in any one court too much, the benefits of a public defender system might be eliminated.

Public defence counsel indicated that continuously working with similar clients became a strain towards the end of the experimental period. One lawyer felt that taking only legal aid clients resulted in a loss of perspective. There is no solution to client "monotony" within a staff legal aid structure. Any solutions to perceived "monotony" would have to come from programs to change public defender attitudes.

The heavy workload was perceived by the public defenders as the single greatest contributions to "burn out". Two public defenders concurred that the heavy caseload they were required to carry, combined with duty counsel duties, created an excessive workload.

The belief that duty counsel duties were excessive presents some problems for analysis. Public defenders reported that, whenever they were in the courthouse, they were viewed by Crown and judges as "on duty" for any problems which arose. They were asked to look after persons who appeared in the courthouse without lawyers or to give legal advice and even to act for private counsel's clients. Under normal circumstances, official duty counsel functions required the lawyer acting as duty counsel to appear in the morning at court and confer with any person who may be in custody or in need of legal assistance. Duty counsel was assigned to each lawyer on a rotating basis so each public defender was usually responsible for one day's duty counsel every third day. On occasion, the duty counsel duties were referred to private counsel. Officially assigned duty counsel time was accounted for on daily duty counsel time logs, which summarized the activities performed, time spent and the number of clients served.

The regular presence of the public defence counsel as official duty counsel to the Burnaby Court resulted in their being viewed by members of the court as "resident duty counsel", available to attend to court matters at any time, even when they were in court on different matters. Informal duty counsel activities were extra work, additional services which contributed to the lawyers' workload. The public defenders particularly found the "resident duty counsel" status difficult when it interrupted them before a trial. The increased accessibility was seen by Crown, judges, and even defence counsel as a major benefit of the public defender system, but did produce job strain.

9. Conclusion

Public defence counsel were in a conflicting position in court. Their continuous, frequent presence in the same court, dealing with the same judges and Crown, produced a continuity of legal aid services which improved perceptions of the quality of criminal defence. Continuous on-going relationships also seemed to facilitate discussions with Crown and produce lighter sentences for those convicted. Public defence counsel, however, felt pressures from the judges and Crowns to ease the operation of the system and provide instant representational services.

The position of public defender is difficult. Unless additional steps are taken, public defenders will most likely become dissatisfied with what is perceived as a high pressure job and "burn out". The legal Services Soceity can accept a high staff turnover or attempt to improve job satisfaction. Problems with job satisfaction came primarily from monotony and "permanent duty counsel status." Monotony might be reduced by allowing some representation in a number of courts. Constant duty counsel status might be eliminated if formal duty counsel were available during the whole court day. Individuals with problems could then be directed away from public defenders in court for an appearance.

Perceived problems of constant duty counsel status might also be reduced by working with defence counsel to accept the difference between staff and fee-for-service positions. In a staff position slack time is not unpaid time, but time which can be put to alternative uses. Giving advice in the courthouse while waiting for an appearance is not necessarily a misuse of time, it can be an alterantive use during an otherwise unused time period.

The public defence mode of delivering legal aid in Burnaby had strong positive effects. Public defender, Crown and judge relationships were generally positive. The perceived quality of defence improved. A working relationship developed which seemed to help clients and a continuity of service developed.

The strength of the public defence mode of delivering legal aid, and the increased perceived and actual performance were tied to knowledge of a specific court and how it operated. Problems of "burn out" were real and should be dealt within any continuous public defender operation, but, in order to maintain the benefit of a public defence counsel system, solutions would have to be worked

out which do not compromise availability and accessibility of services.

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