



Department of Justice Ministère de la Justice

Canada

Canada

**WORKING DOCUMENT**

**LEGAL AID DUTY COUNSEL SYSTEMS  
IN CANADA:**

**SUMMARY REPORT**

**Prairie Research Associates**

**1994**

**WD1994-14e**

**UNEDITED**

**Research and Statistics Directorate /  
Direction générale de la recherche et de la statistique**

**Corporate Management, Policy and Programs Sector/  
Secteur de la gestion, politiques et programmes ministériels**

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Department of Justice Canada. The views expressed  
herein are solely those of the authors and do not  
necessarily represent the views of the Department.*

## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION</b> .....	<b>1</b>
1.1	Background for the Study .....	1
1.2	Scope of the Study .....	1
1.3	Methodology .....	2
1.3.1	Introduction .....	2
1.3.2	Sources of Information for the Study .....	3
<b>2.0</b>	<b>DESCRIPTION OF DUTY COUNSEL IN CANADA</b> .....	<b>7</b>
2.1	Overview .....	7
2.2	Legislative Context .....	8
2.3	Overview of Existing Duty Counsel Services .....	9
2.3.1	Organization of Duty Counsel .....	9
2.3.2	Scope of Duty Counsel .....	9
<b>3.0</b>	<b>IMPLICATIONS AND OBSERVATIONS</b> .....	<b>19</b>
3.1	Introduction .....	19
3.2	Experience and Training .....	19
3.3	Access to, and Awareness of, Services .....	22
3.4	Arrangements for Special Groups .....	25
3.5	Quality and Performance of Counsel .....	26
3.6	Delays in Processing Cases .....	31
3.7	Impact of <i>Brydges</i> and other Court Decisions .....	33
3.8	Client Interviews .....	38
3.9	The Role of Duty Counsel in Legal Aid Costs .....	41
<b>4.0</b>	<b>CONCLUDING OBSERVATIONS</b> .....	<b>45</b>

### LIST OF TABLES

Table 2-1	Type of Duty Counsel Systems .....	10
Table 2-2	What kinds of service have you provided as duty counsel? .....	17
Table 2-3	In what locations have you provided assistance as duty counsel? .....	18
Table 2-4	What reason do people have for not making use of duty counsel? .....	23
Table 2-5	Do you think the courts in your city are adequately staffed with duty counsel? .....	28
Table 2-6	Who of the following, if any, do you think should not perform duty counsel services? (n=701) .....	29
Table 2-7	Summary of <i>Brydges</i> Duty Counsel or On-Call Services .....	35
Table 2-8	Support of <i>Brydges</i> .....	36

## 1.0 INTRODUCTION

### 1.1 Background for the Study

In February, 1992, the Department of Justice engaged Prairie Research Associates Inc. to conduct a study of duty counsel in Canada. The study was "*required to provide a comprehensive description and analysis of duty counsel arrangements in Canada in communities where there are permanent courts.*" Although a variety of previous studies had commented on duty counsel, none had exclusively investigated the different ways in which duty counsel had been organized in the various provinces. Consequently, the Department of Justice initiated this research to expand the "*knowledge of access to justice issues affecting people at a disadvantage in Canadian society.*"

Another important aspect of this study involves the *Brydges*<sup>1</sup> decision of the Supreme Court of Canada on February 1, 1989. This decision resulted from an accused in Manitoba who was arrested, but not given information about the availability of legal aid or duty counsel. The Supreme Court decided that all accused must be informed of the right to counsel immediately upon arrest. Subsequent practice has evolved to mean that all persons detained have the right to immediate legal counsel regardless of financial circumstance. At the same time, there was no increase in the federal-provincial legal aid cost-sharing agreement to compensate for additional expense of 24-hour duty counsel coverage. Hence, each province and territory has responded differently to *Brydges*, essentially reflecting the differences among legal aid plans, budgets, and philosophies.

### 1.2 Scope of the Study

Our work was guided by a research framework that links each question posed in the request for proposal with one or more research tasks. It is important to emphasize that this report cannot provide a quantitative or financial basis for assessing the effectiveness and efficiency of duty counsel in Canada. The study also does not evaluate various approaches to duty counsel. However, we do make a number of observations which bear on how duty counsel is organized in each province.

This is also not a national study as Quebec declined to participate. Further, this report does not examine duty counsel in the context of circuit courts, also known as "fly-in," "remote" or "temporary courts." These courts extend the justice system to remote communities, especially in northern Canada. Judges, Crowns and defense (duty) counsel travel to remote communities and courts are held in schools or community halls. These courts deal predominantly with accused who are aboriginal; since aboriginal justice is under general review in a number of jurisdictions, studying only one aspect, namely duty counsel, would have resulted in an incomplete analysis of what is widely acknowledged to be a general failure of the justice system. Furthermore, the costs would have been very high for an examination of this one aspect of the justice system. Accordingly, our review did not include duty counsel systems in Yukon and Northwest Territories which have very high volumes of cases involving aboriginals in circuit courts.

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<sup>1</sup> *R. v. Brydges*, 53 C.C.C. (3d).

A separate Technical Report provides detailed descriptions of provincial operations, analysis of the four case studies, and the survey of duty counsel. This report summarizes the main findings and observations from the Technical Report.

## 1.3 Methodology

### 1.3.1 Introduction

A number of issues and considerations shaped our approach to this research. At the outset it is important to note that duty counsel systems are the responsibility of provincial justice systems and in particular the legal aid plans which have evolved over the last two decades. This means that the legislative basis for, and organizational practices of, duty counsel, vary, as does the way in which information is maintained. Some jurisdictions have implemented computer based accounting and recording which makes it relatively easy to develop quantitative perspectives on duty counsel activity. Other jurisdictions have only recently begun to keep information in paper files, the primary role of which is to generate payment from the federal government. This is not a criticism -- rather, it demonstrates that a unified perspective of duty counsel is not feasible at this time. Data have been reconciled as much as possible to allow inter-provincial comparisons, but these should be made with some care.

The research has proceeded in two ways:

- First, an extensive and comprehensive review of duty counsel in all jurisdictions was undertaken to allow a degree of comparison among provincial systems.
- Second, intensive information on duty counsel systems in a number of locations was collected. Within provincial jurisdictions, duty counsel perform a variety of services; we reviewed all participating provinces and used case studies in Ontario, British Columbia, Manitoba, and New Brunswick to probe the range of services provided. It is important to stress that there is a continuum between the traditional model of duty counsel as a service to support first appearances in court and "outreach" legal services. A range of services, largely summary legal advice and minor functions (e.g., notarizing) are performed for lower income persons by duty counsel in some jurisdictions. In other provinces, these services are either not offered, or are dealt with on a limited basis by legal aid. Some use the term "duty counsel" to mean solely representation of accused at first appearance court; others use the term in a more general sense for any service involving summary advice. In this report we emphasize the role of duty counsel in criminal and family courts.

### 1.3.2 Sources of Information for the Study

The information sources for this study consisted of the following.

## **Administrative Data**

Administrative data available for this study vary in quantity and quality. Most provinces collect summary information on duty counsel activity. In those areas where the private bar is used, accounting information is completed as a basis for payment by the lawyers providing services. Where staff are used as duty counsel, activity information is retained by the sponsoring organization. Sometimes information is maintained in a computer system; other times only paper-based files are used.

In addition to these activity reports, we consulted annual reports of legal aid plans, occasional papers and evaluations commissioned on these plans, as well as any studies on duty counsel which had been completed in the last decade. Particularly useful were training and policy manuals related to duty counsel.

As mentioned above, there is little comparability in the information retained among the provinces making it difficult to directly compare duty counsel activity among these jurisdictions. Further, the administrative information on duty counsel activity contains many imprecisions. The data provided by individual lawyers to generate payment is accepted by the legal aid plans on more or less an honour system. A few jurisdictions are contemplating increasing the checks on hours recorded by duty counsel.

Therefore, this report cannot be used as the basis for an effectiveness or efficiency analysis. We had neither the authority nor the resources to audit information provided by legal aid plans. Further, given the diversity of duty counsel systems, there would be little point in such an exercise until accounting practices become more uniform.

## **Legal Aid/Law Society Management**

Across Canada, legal aid plans and law societies (under contract to legal aid plans) administer duty counsel systems. In some provinces, such as Saskatchewan, legal aid is provided by a governmental agency specifically charged with administering the plan. In other provinces, such as British Columbia, the Legal Services Society administers the plan for the government, but contracts duty counsel almost exclusively from the private bar. The distinction is important. The former model is one where government hires lawyers as employees to perform services, while the second case involves the private bar supplying legal aid on a fee for service basis.

Management personnel of various legal aid plans includes directors of the plan, area directors (regional management usually associated with permanent courts serving a region) and others involved in specific functions such as *Brydges* duty counsel. These managers were important sources of information for this study. Interviews involved about 40 senior managers, were unstructured and allowed a free exploration of issues defined in the framework as well as matters which were identified by the respondent. In this way, we were able to expand the scope of the study as new issues were identified.

## **Lawyers (Duty Counsel)**

Duty counsel services are primarily performed by members of the bar. Most

criminal lawyers have performed duty counsel at some point in their careers. For some, duty counsel was a function performed as junior members of a law firm. In other cases, senior lawyers continue to offer services. Duty counsel has been extended in the past decade or so to civil cases, especially family law, and practitioners in this area also become involved in duty counsel. Because the study focuses on the present situation, we interviewed (in person or by telephone, or surveyed by mail) only those lawyers who have performed duty counsel services in the last year. In total, approximately 80 lawyers were interviewed in person or by telephone.

A mail questionnaire was developed in consultation with Justice Canada and pre-tested with fifteen lawyers. The sampling frame for the survey was constructed from duty counsel rosters supplied by legal aid directors. We sampled from larger lists (e.g., Ontario, Alberta, and British Columbia), and accepted all names from smaller lists (e.g., Prince Edward Island, Newfoundland) to produce an overall mailing of 1100. Because of the methods used to construct duty counsel rosters, the sample frame is not random and therefore, cannot be used as the basis for statistical inference.

There is considerable diversity in the range of practice offered by duty counsel and local conditions vary. The questionnaire allowed respondents latitude in qualifying responses and we received detailed written comments from many respondents. These were coded by researchers familiar with duty counsel processes. This coding allowed the written comments to support numerical analysis. Finally, all written comments were recorded by question number and province to further extend the research.

### **Crowns, Judiciary, Court Personnel, Police/Sheriffs**

Crown attorneys, judiciary, court personnel (trial administrators, native and other court workers, etc.), and law enforcement officials have useful perspectives on the role of duty counsel. These respondents were interviewed either in person or by telephone. In total, about 190 were interviewed.

Respondents were selected in consultation with legal aid directors, area directors, and others familiar with particular courts. The main criterion was that the individual be in a position to comment on duty counsel. We selected judges whose responsibilities included first appearance court or family court where duty counsel were active, or who had administrative positions which allowed them to observe the effect duty counsel has on the operation of a court. We endeavoured to interview Crown attorneys with current experience who had been active for some time. Native court workers, as well as volunteers from the Elizabeth Fry Society and Salvation Army, provide a variety of services to accused and deal directly with duty counsel.

### **Case Studies**

Case studies were organized in four provinces: Ontario, British Columbia, Manitoba, and New Brunswick. These provinces were chosen because they provide a range between duty counsel systems predominantly served by the private bar (British Columbia and New Brunswick), one which features a mix of staff duty counsel and private bar (Ontario), and a jurisdiction where duty counsel is largely, though not entirely,

provided by legal aid staff counsel (Manitoba).

Information was collected using a variety of interview schedules. Notes were taken throughout the interviews, during court, and after counsel-client interviews. A number of vignettes, which are actual court cases observed, illustrate the nature of duty counsel services.

### **Court Observation**

Direct court observation was carried out in 36 courts during the case studies in the four provinces. This allowed us to observe duty counsel serving clients in a variety of roles.

### **Clients**

Client interactions with duty counsel were observed and, as well, clients were directly interviewed during the case study court visits. Formal methods of interviewing clients, such as securing names and addresses from courts and using a mail or telephone survey were deemed unworkable. Often dockets contain no information as to whether clients are represented by duty counsel. No other record of clients is generally available so sampling frames are impossible to construct.

We interviewed 150 clients in a variety of settings -- Clients who were in custody were interviewed in hallways, lock-ups and holding cells. Interviews with those who were not in custody were conducted in hallways outside the courtroom, staircases, and in a few instances, in consultation rooms. This was also how duty counsel consulted with clients; many courts do not have separate interview rooms.

Clients were told about the nature of the research, that it had no impact on their case, and that they could refuse to participate without prejudice. Very few refused.

The client interviews provide qualitative information and are valuable in providing information about the state of clients appearing before the courts, but these data permit no statistical inference. Sampling was not random, but based on availability of the respondents and requirements of the setting.

In review, the information for this study was derived from legislation, policy manuals, administrative files, interviews, observation, and a mail survey of lawyers providing duty counsel services.



## **2.0 DESCRIPTION OF DUTY COUNSEL IN CANADA**

### **2.1 Overview**

Traditionally, duty counsel is legal assistance rendered without charge to unrepresented individuals who are making an appearance in court. Originating in Scotland in the fifteenth century, duty counsel is provided under a variety of legal aid plans in Canada.

Persons in conflict with the law often have their first appearance in court without legal representation. Some are arrested and held. In minor matters the police may release and provide the accused with a notice to appear in court on a date in the near future. Others may have been initially detained and/or released by a justice of the peace, or on their own recognizance. In all cases, accused are directed to a first appearance soon after being charged with an offence. Other persons, involved in civil matters such as divorce or child custody, may arrive at court without a lawyer to represent them and without having received any form of legal advice.

Duty counsel typically refers to the legal support provided to accused at the first appearance in court. It most often applies to criminal cases, but also may be found in family courts, points of entry into Canada, psychiatric institutions, and other civil venues. Historically in Canada, defence counsel who were in the courtroom representing their own clients often provided *pro bono* services to other accused appearing without representation. This was often a way to build a clientele. Judges also occasionally asked defence counsel in the court to "*act as a friend of the court*" to explain procedures and implications of various outcomes to accused who were unrepresented.

However, until the early 1970s duty counsel coverage by the private bar was unorganized and incomplete. Often within a province, some courts were well served by a *pro bono* system, but in other courts, no such support would exist. This caused concern that the rights of the accused were infringed. As well, there were concerns about the increased costs of dealing with those who were unfamiliar with the court procedures.

In the 1960s and '70s, legal aid plans across the country began to consider how to serve accused who appeared without representation. In the vast majority of cases these persons were low income and qualified for legal assistance. However, it is important to stress that most legal aid plans offered duty counsel without regard to financial status or nature of the offense.

### **2.2 Legislative Context**

The legislative context for duty counsel extends from legal aid legislation of the various provinces. In some provinces the legislation explicitly refers to duty counsel and its availability without restriction. For example, Legal Aid Society of Alberta Annual Report states: "*All persons are entitled to assistance by Duty counsel regardless of their financial circumstances.*" The legislative basis for duty counsel in Saskatchewan is

similar to that of Alberta except that in practice it is a service for those eligible for legal aid.

In British Columbia, there is no explicit mention of duty counsel in legislation. The responsibilities of duty counsel are defined by the Legal Services Society in a series of letters of instructions to lawyers serving in this capacity. Similarly, in Ontario, duty counsel is not mentioned in the legislation except to permit the Legal Aid Plan to render assistance without issuing a certificate, to allow the creation of duty counsel panels, and to set the tariff. The Regulations to the Ontario Legal Aid Act explicitly defines the role of duty counsel. In Manitoba, the Legal Services Society Act provides for the Lieutenant Governor in Council to set regulations with respect to duty counsel.

While it appears that in much of the legislation duty counsel is a discretionary service, it must also be reviewed in light of a number of court decisions. Of particular relevance is the *Brydges* decision which was rendered by the Supreme Court of Canada in 1989. *Brydges*, the result of a case in which an accused was arrested in Manitoba, directed that a "*detainee should be informed of the existence and availability of the applicable systems of duty counsel and legal aid in the jurisdiction, in order to give the detainee a full understanding of the right to retain and instruct counsel.*" This decision has prompted diverse reaction across Canada as various provincial jurisdictions made adjustments to ensure that this directive could be fulfilled. Some provinces added statements to the cautions provided by police to accused persons about their right to instruct and retain counsel and that such service is free. Other jurisdictions have made a number of more complex adjustments to extend duty counsel services in off hours through toll free numbers to ensure that the *Brydges* decision is fully enabled within the court system. Still other provinces have made few changes to accommodate *Brydges*.

Another relevant Supreme Court decision was *Askov*<sup>2</sup> which relates to the time required to bring an accused to trial. Once this decision was rendered, many courts were required to drop charges against a large number of accused who had been waiting for trial. Duty counsel play a key role in the functioning of courts and often serve to arrange remands and set trial dates for accused. The effectiveness of duty counsel in this role can be a determinant in the speed with which accused are brought to trial and the *Askov* ruling is therefore pertinent to the study.

Finally, the 1991 *Stinchcombe*<sup>3</sup> decision on Crown disclosure has had some impact on the relation between the Crown and defence counsel. The Crown must provide full disclosure to defence within a reasonable time. In most cases, prosecutors are willing to provide particulars when requested. However, in a few instances, we discovered that *Stinchcombe* had not yet been embraced by some individual prosecutors and/or certain offices of the Crown, and duty counsel experienced difficulties obtaining particulars from the Crown.

The varying methods of organizing duty counsel as well as the variety of responses to these court decisions have created a diverse system of support for those unrepresented in Canadian courts.

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<sup>2</sup> *R. v. Askov* (1990, 79 C.R. (3d) 273 (S.C.C.).

<sup>3</sup> *R. v. Stinchcombe*, 68 C.C.C. (3d) 1 (S.C.C.).

## 2.3 Overview of Existing Duty Counsel Services

### 2.3.1 Organization of Duty Counsel

As Table 2-1 shows, British Columbia, Alberta, and New Brunswick rely almost exclusively on the private bar using the judicare model. That is, private lawyers are retained to perform the services on an hourly fee basis (tariff). Manitoba, Ontario, and Newfoundland use a combination of staff counsel and private lawyers. While Manitoba and Newfoundland are quite close to the staff counsel model, Ontario has full-time staff duty counsel in Toronto and Oshawa, and private bar outside of these two centres. Saskatchewan, Nova Scotia, and Prince Edward Island do not provide formal duty counsel services unless accused are eligible for legal aid. All three provinces have staff systems for legal aid.

### 2.3.2 Scope of Duty Counsel

Duty counsel operates in three general areas: Criminal First Appearance Courts (Adult and Youth), Family Court, and much less commonly in community clinics which offer assistance in civil or other matters. Although termed "duty counsel" these clinics are actually outreach and subsidized services to specific groups and communities. The term "duty counsel" is universal for the service which ensures that in the immediate circumstance no one is denied justice. In criminal matters this is most apparent in the potential loss of liberty; in Family Court it is conceivable that an individual may have a substantial judgment entered against his/her income, or stand to lose custody of children.

**Table 2-1**     **Type of Duty Counsel Systems**

<b>Province</b>	<b>Type</b>
British Columbia	Private Per Diem (Staff in some small communities)
Alberta	Private Per Diem
Saskatchewan	Staff (Only if eligible for legal aid)
Manitoba	Mixed Staff (Winnipeg, most major and some smaller towns) Private (Rest of province)
Ontario	Mixed Staff (Toronto, Oshawa) Private (Rest of province)
New Brunswick	Private Per Diem
Nova Scotia	Staff (Only if eligible for legal aid)

P.E.I	Staff (Only if eligible for legal aid)
Newfoundland	Mixed

## **Criminal Duty Counsel**

Duty counsel provide core Criminal Court and Youth Court based activities consisting mainly of: providing plea advice to accused, arranging adjournments, speaking to bail, speaking to sentence, and negotiating dispositions with the Crown.

- **Meet With Accused/Advice on Plea**

Duty counsel everywhere meet with accused to review their situation and provide advice. Priority is given to those in custody at most, though not all, sites. In many ways the nature of this initial contact determines the overall effectiveness of the processing of cases.

We observed some duty counsel who quickly placed clients at ease and had a disciplined approach to information gathering. These individuals maximized the use of their time and were well appreciated by judges and Crown counsel. Others were more haphazard, omitting key questions, thus requiring them to re-consult accused in the court to answer questions asked by the judge. At times, the judges had to take responsibility for information gathering from the accused which defeated a major reason for having duty counsel in the first place.

- **Arrange Adjournments**

Probably the most common action of criminal duty counsel is to arrange adjournments. The rationale for this is that accused who wish to plead not guilty have the right to retain a lawyer who has sufficient time to explore the particulars, identify a potential defence, and assemble evidence.

At times duty counsel act for lawyers who wish to have matters rescheduled. This practice was common and accepted by some duty counsel as simply part of the job; others saw it as a way to win favour with senior practitioners; still others believed it was a serious imposition and a poor use of their time.

- **Review Cases With Crown**

Another key role for duty counsel is reviewing cases with the Crown. Often the Crown will negotiate reduced charges if duty counsel reports that the accused will plead guilty. The close collaboration between duty counsel and Crown was observed in a number of courts, and clearly improved the operation of the court. Experienced duty counsel also are able to predict how certain judges will react to specific cases.

- **Speak at Bail Hearings**

Many duty counsel reported that speaking at bail hearings is their most important function. Duty counsel must quickly obtain key information on the accused to demonstrate that he or she is not a threat to society and will not fail to appear. The interview with accused, as well as the corroboration of key facts such as place of employment and residence, usually takes time. Arranging sureties and contacting relatives often requires more time than duty counsel has available. Duty counsel who can assemble evidence about the risk of granting bail clearly serve the interests of the accused and the court.

- **Speak to Sentence**

Where a client wishes to plead guilty at first appearance, some jurisdictions caution duty counsel to seek an adjournment so the client can review the case more fully with counsel. In other jurisdictions, duty counsel are encouraged to continue with the case to expedite court proceedings if they feel it would not compromise the outcome.

We observed a number of duty counsel who could effectively speak to sentence after briefly meeting with the accused and consulting with the Crown. Sometimes speaking to sentence is a joint submission by duty counsel and the Crown, which is almost always accepted by the judge. Most duty counsel agreed with this role in first offence summary matters. In more complex matters, however, duty counsel usually preferred to request a deferral to allow a lawyer to have more time to prepare the case and review evidence. In a few jurisdictions the Crown believed that duty counsel tended to always "play it safe" and request deferrals. In other areas, where the duty counsel (a private lawyer) could assume a client, a few persons we interviewed believed that some duty counsel deferred the case to obtain a client on a legal aid certificate.

- **Legal Aid Applications**

Staff duty counsel were the most active in helping accused to complete applications or in directing accused to legal aid. In some provinces court workers from the Salvation Army or Elizabeth Fry Society dealt with the applications. Courts and legal aid offices are either in close proximity, or legal aid maintains a small office (or desk) within the court specifically to take applications.

In a few provinces such as Ontario and British Columbia, the private bar has organized a referral service which will direct a caller to a lawyer in the area who can assist with a specific problem. Up to one-half hour of free consultation<sup>4</sup> is provided to anyone requesting advice. After the allotted time, the lawyer's normal rates apply.

- **Night Calls**

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<sup>4</sup> In B.C., there is a nominal charge of \$10.00 for the first half hour.

Duty counsel also deal with night calls in many jurisdictions. In some provinces, there is a distinction made between duty counsel service and *Brydges* calls, while in other sites, the responsibilities merge. In some jurisdictions, province-wide toll free lines allow accused to speak to a lawyer after hours; in others, police maintain a list of private lawyers to call.

- **Conduct Trials**

Duty counsel rarely conduct trials at first appearance. Even for the most experienced lawyer, there is usually little time to prepare a defence. In Ontario, the Attorney General has announced a pilot study to expand the role of duty counsel to assist in trials on summary matters.<sup>5</sup>

- **Continuing Representation**

Legal aid staff who serve as duty counsel often "graduate to trials." There is no issue with continuing representation in jurisdictions using the staff model and this is often cited as an advantage of this approach. Of the provinces using private lawyers as duty counsel, only British Columbia accepts continuing representation. It is used as an incentive for the private bar to serve as duty counsel. In other areas, there is a prohibition against continuing representation except in specific circumstances. For example, in rural areas where there are small criminal bars, those serving as duty counsel are often permitted to continue to act for a client. In other circumstances, when special skills are required such as with a psychiatric patient, duty counsel may be permitted (or often asked) to continue with a case. Finally, where there has been a previous client relationship with a lawyer, a continuing relationship is generally permitted.

In conclusion, most experienced criminal lawyers are comfortable with all above duty counsel roles. However, if there is insufficient time to prepare a defence, most will refuse to conduct a trial in their role as duty counsel even if the legislation for that province allows it. Further, in bail hearings counsel may advise an accused to accept a few days in jail in order that a proper show cause representation can be prepared.

## **Family Duty Counsel**

Duty counsel in Family Court is a comparatively recent development. With increasing caseloads, many respondents (often men) appear at a support or custody hearing unaware that they face substantial risk by being unrepresented.

The role of duty counsel in family courts usually involves considerable negotiation and mediation. Often duty counsel work closely with family and social workers to arrange dispositions prior to court. Duty counsel are required to have an intimate knowledge of the social services system and legislation pertaining to family maintenance, custody matters and so on. Sometimes duty counsel merely inform respondents of their rights prior to their court hearings. With respect to the four case studies, family duty counsel are most active in Ontario, followed by New Brunswick,

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<sup>5</sup> A summary offence is one which does not normally run the risk of incarceration such as a first offence shoplifting charge.

British Columbia, and Manitoba.

In some family courts, duty counsel are expected to handle both domestic matters and young offenders, while in other courts these duties are separated. Duty counsel reported that respondents in family courts were more difficult to deal with than criminal accused because of the emotional nature of situations. Family matters take much more time than a typical criminal matter. Duty counsel reported that family courts were often chronically understaffed, leading to inferior service. Many Crowns, duty counsel and judges stated that these family matters require extensive and continuing experience in family law and thorough knowledge of the *Young Offenders Act*.

The use of a family court administrator to preside over interim orders and agreements such as in Toronto Family Court is a sound practice. Duty counsel and family court workers often are able to arrange interim agreements on custody or maintenance, which are then approved by an administrator. In this way the court proceedings are avoided and costs reduced. The participants also develop additional experience in negotiating agreements as opposed to the court imposing a decision. This may reduce the need for the court to determine future agreements. In this particular court the social work component of duty counsel is highlighted. Empathic duty counsel are much better able to arrange for agreements which avoid the court process.

In New Brunswick, we found that duty counsel typically act for respondents, implying that their clients are mainly couples seeking to oppose apprehension of children by the government and men who have been delinquent on maintenance payments. We encountered a number of lawyers and judges who were concerned that the limited availability of legal aid certificates for such matters could prejudice the rights of respondents. Often the respondent appears just before court and will have a brief consultation with duty counsel. Whether it is government social services petitioning for a child apprehension or a spouse seeking payment of maintenance, the petitioner will likely have more legal resources than the respondent. Many key informants saw this as a serious bias in the system.

Family Court in Vancouver has the services of two duty counsel assigned a week at a time to deal with *Young Offenders Act* offenses and family matters including breaches of the *Family Relations Act*. Although the shifts are staggered, and they usually assist each other as the need arises, one duty counsel deals mainly with family matters; the other handles the young offenders. Duty counsel provide advice regarding court procedures, disclosure requirements, assistance with obtaining legal aid applications, court adjournments, applications for restraining orders, child apprehensions, and so on. In cases involving family violence, Criminal Code offenses are also heard at this location and duty counsel assist accused as they do in any criminal court.

In Manitoba, only the Child Welfare Docket (Queen's Bench) is covered by duty counsel. At this court, duty counsel deals mostly with respondents who wish to apply for legal aid and assists them with understanding interim orders, requesting adjournments or pre-trial dates, and speaking to the court on behalf of their regular counsel.

Although Manitoba has little duty counsel coverage in family court, criminal

family matters are dealt with in the Family Violence Court which is a pilot program designed to process domestic abuse cases. Several courtrooms each day hear family violence cases and a "floater" duty counsel is assigned to the first appearance (docket) courtroom. It is the position of judges and Crown attorneys that this is completely inadequate. Many accused appear without representation and the judge frequently must explain the law and procedures to accused. This obviously slows the court. Apparently from the perspective of Legal Aid, the government has moved to a position of "zero tolerance" with respect to wife assault without increasing the resources with which to handle the increased caseload.

### **Other Venues For Duty Counsel**

There are provincial differences in the types of services extended. For example, one would typically not find duty counsel services in psychiatric institutions or prisons in New Brunswick or Prince Edward Island, while in Ontario, Alberta, and Manitoba a range of such services are found. Duties in these settings are often limited to assisting with legal aid applications and in some jurisdictions, duty counsel may represent psychiatric patients at a mental health review panel or inmates at a prison disciplinary panel. Assistance to abused women at shelters is provided in some sites, though often it is not called duty counsel. Ontario provides services to artists and seniors, and there are some clinics that offer anyone, regardless of income, a few minutes of summary advice or assistance.

### **Summary of Services**

Table 2-2 summarizes the services reported as provided by duty counsel on the survey. The most common are the core functions previously identified, namely advising on plea, speaking to sentence, speaking with the Crown, arranging adjournments, and representing accused at bail hearings. The differences among provinces in provision of certain services outside this core can also be seen. A number of respondents performed specialized duty counsel services, especially in Ontario where legal aid services are more extensive.

Table 2-3 shows where duty counsel provides this service. Duty counsel remains largely a service to accused in criminal courts (adult and youth). Again, the more expansive role of duty counsel can be seen in certain provinces, especially Ontario.



**Table 2-2 What kinds of service have you provided as duty counsel?**

Services Reported	Staff Counsel			Mixed						Overall (n=701)
	N.S. (n=25)	PEI (n=4)	Sask. (n=32)	Man. (n=43)	Nfld. (n=35)	Ont. (n=267)	Alta. (n=133)	B.C. (n=116)	N.B. (n=46)	
Advice on Plea	76%	75%	88%	91%	100%	92%	100%	100%	94%	94%
Speak to Sentence	72%	75%	78%	91%	100%	91%	100%	99%	94%	94%
Speak with Crown (Guilty Plea)	76%	75%	78%	91%	97%	91%	99%	99%	94%	93%
Adjournment	72%	50%	78%	91%	100%	95%	99%	94%	78%	93%
Bail Hearing	76%	75%	81%	86%	100%	84%	99%	100%	80%	89%
Assist - Legal Aid Applications	60%	25%	63%	88%	80%	57%	34%	66%	76%	58%
Speak to Interim Orders in Family Court	40%	50%	34%	23%	14%	54%	6%	31%	46%	35%
Negotiate Settlements in Family Court	44%	50%	38%	23%	9%	53%	3%	16%	41%	32%
Act at Trails	68%	75%	59%	21%	46%	20%	11%	30%	41%	26%
Advise Victims	16%	0%	25%	42%	9%	31%	11%	16%	9%	22%
Advise Patients	4%	0%	16%	7%	3%	23%	9%	7%	4%	13%
Speak at Mental Health Review	4%	0%	9%	0%	9%	14%	11%	6%	2%	10%
Other	28%	25%	28%	28%	11%	31%	14%	25%	13%	21%

Note: Columns add to more than 100% due to multiple responses possible for this question.

Note: In the tables in this section, responses for provinces are grouped based on the type of duty counsel provided. Nova Scotia, Prince Edward Island, and Saskatchewan provide staff duty counsel, while Manitoba, Newfoundland and Ontario have a mixed staff-private per diem system. The remaining provinces surveyed offer a per diem system. It is important to note that while Prince Edward Island has a staff system handling about 95% of the duty counsel services, none of the four surveys returned from P.E.I. were from staff counsel. Therefore, the responses are not necessarily representative of Prince Edward Island.

**Table 2-3 In what locations have you provided assistance as duty counsel?**

Services Reported	Staff Counsel			Partial			Per Diem			Overall (n=701)
	N.S. (n=25)	PEI (n=4)	Sask. (n=32)	Man. (n=43)	Nfld. (n=35)	Ont. (n=267)	Alta. (n=133)	B.C. (n=116)	N.B. (n=46)	
Criminal Court	80%	100%	88%	88%	100%	92%	96%	98%	94%	93%
Youth Court	76%	50%	75%	72%	86%	84%	81%	84%	78%	81%
Lock-up	92%	25%	56%	65%	83%	41%	50%	66%	57%	54%
Phone Assistance	68%	25%	69%	65%	60%	39%	36%	38%	72%	45%
Family Court	52%	50%	38%	28%	14%	64%	6%	35%	57%	42%
Duty Counsel Clinics	0%	0%	3%	34%	9%	25%	2%	5%	4%	14%
Psychiatric Hospital	12%	0%	9%	0%	9%	23%	8%	3%	0%	12%
Civil Court	0%	25%	25%	16%	9%	11%	3%	3%	13%	9%
Women's Shelters	4%	0%	16%	7%	6%	4%	0%	3%	7%	4%
Refugee/ Immigration Panel	8%	0%	3%	7%	9%	5%	2%	3%	2%	4%
Family Violence Court	4%	0%	6%	9%	3%	2%	0%	1%	2%	2%
Other	12%	0%	3%	5%	6%	8%	1%	0%	0%	4%

Note: Columns add to more than 100% due to multiple responses possible for this question.

## **3.0 IMPLICATIONS AND OBSERVATIONS**

### **3.1 Introduction**

In all areas, the *pro bono* tradition of the private bar volunteering services to those who could not afford counsel gave way to more formal delivery. The general acceptance in the late sixties and early seventies that legal services be widened reflects the liberalization of services provided to the poor and interest in the rights of accused. Duty counsel programs expanded in step.

In those provinces which rely primarily on the private bar to provide duty counsel (British Columbia, Alberta and New Brunswick), the distinction between duty counsel and legal aid is clear. In provinces with staff duty counsel this distinction is obscure. Where duty counsel is only offered to those who qualify for legal aid (Saskatchewan, Prince Edward Island and Nova Scotia), duty counsel merges into the legal aid system.

### **3.2 Experience and Training**

The qualifications to perform duty counsel vary by province. In most jurisdictions the duty counsel is required to be member of the bar, but in a few, such as Manitoba, articling students and paralegals are also allowed to serve. Some provinces set minimum years of practice; for example, in British Columbia, a lawyer is supposed to have at least two years experience in criminal practice before being placed on a duty counsel roster, although this is not always the case. We heard from key informants that some lawyers who never practice criminal law serve as duty counsel in criminal court, and similarly lawyers who serve in family court may not routinely practice in that area.

In staff models, lawyers often become proficient because they perform duty counsel services intensively. This training by experience may initially be at the expense of clients. Staff duty counsel in Toronto and Oshawa are those recently admitted to the bar who are hired for a maximum of two years. Although they begin with little experience, by the time they leave after two years, they have developed excellent specialized duty counsel skills. There is an assumption that junior lawyers (or articling students) providing duty counsel are being closely supervised. Based on our site visits, this is not always the case.

Law schools cannot be relied upon to provide the type of training needed to be an effective duty counsel. They appear to emphasize conduct in court, but scant attention is paid to training in the skills needed for duty counsel. Therefore, law students may get little or no training in duty counsel skills prior to being called to the bar. These lawyers then must perform under extreme pressure, often in crowded courts. In both cases, systematic training would reduce the learning time needed to develop a pool of efficient duty counsel.

There is no consistency in training duty counsel among, or even within, jurisdictions. Alberta appears to have the most formal requirement; the Alberta Legal

Aid Society, in conjunction with Legal Education Society of Alberta, has a mandatory one-and-a-half day course. We found the following methods of training in the four case study sites:

- The regulations to the Ontario Legal Aid Act empowers the Law Society to develop training for duty counsel. Each area director has considerable discretion in determining the extent of training. At one site we visited, training involves a minimum of five "stints" in court and a set of materials provided for duty counsel to read. In another jurisdiction, training involves providing duty counsel six times before being allowed to invoice for future service. Another site involves two hours of information/education about legal aid and two weeks of watching others provide duty counsel. In Toronto, a comprehensive manual has been developed to instruct new duty counsel, but its use seems limited.

In one of the family courts in Ontario, duty counsel said they were teamed with experienced lawyers, but there was *"no real training."* Duty counsel from another family court said they would like to have more seminars on family law, especially if they are not regularly practising in this area of law. They stressed the need to keep abreast of the changes in that field. Only the duty counsel who were on the psychiatric panel mentioned ongoing training; they are expected to attend seminars two or three times a year or they are removed from the panel.

- In British Columbia training is essentially on-the-job. Occasionally, articling students are assigned duty counsel duties under supervision of a senior lawyer.
- In Manitoba, a brief manual is available to familiarize lawyers with their responsibilities as duty counsel, but much of it is learned "on-the-job."
- In New Brunswick there are no policy manuals to guide duty counsel. Training is accomplished by having junior counsel attend court in the company of experienced duty counsel for a week. It was reported that large firms use duty counsel as a vehicle for training inexperienced lawyers.

Among the respondents to the mail survey of duty counsel, over 40 percent reported that there was no training provided for this role. However, the fact that such a high number report little or no training may also reflect the opinion of older lawyers, who have been performing the service for several years.

The most common method of training identified in the survey was on-the-job training. Some of this training would be in the presence of a senior lawyer, but others reported that the approach is to *"learn as you go."* There seems to be little relationship between the pattern of training and the type of system (staff/per diem) used to provide duty counsel. The perceived need for training was not in law, but in the unique aspects of the role of duty counsel.

Approximately 80 percent of respondents to the survey supported the idea of some form of training for duty counsel.<sup>6</sup> In written comments provided by respondents, two

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<sup>6</sup> This ranged from 85 percent in Alberta to about 50 percent in Newfoundland.

methods of training were most commonly suggested: a training course or seminar for new lawyers; and watching experienced lawyers perform the service. Training was endorsed as important, both for new lawyers and as a refresher for experienced lawyers whose normal practice did not include criminal or family law.

In particular, the training required for duty counsel includes:

- interviewing skills;
- processes used in First Appearance Court for those performing criminal duty counsel; and
- a deeper understanding of the range of social services and interpersonal skills (stress management, negotiating, etc.) for those in Family Court.

Cross cultural training, especially for those serving aboriginal populations and new Canadians, is seen as essential by duty counsel in courts with a high immigrant or aboriginal population, although, in our view, clients are best served by interpreters who speak in their first language.

In summary, there is an urgent need for legal aid plans to provide more formal training programs. As case management practices spread, all court personnel will need training. Manuals such as those available in Ontario provide a good starting point for training. We recommend each jurisdiction administering a duty counsel system would do well to review this material and amend it for local circumstances. Distribution of such a manual to all duty counsel should be standard practice. In addition, it is important that judges and Crowns, as well as other court personnel, be involved in training both as consultants and to share ideas on procedures.

### **3.3 Access to, and Awareness of, Services**

The Canadian Charter of Rights contemplates that special efforts will be made to increase access by accused to duty counsel. However, duty counsel may not be used by an accused for several reasons. Many persons appearing without representation are unfamiliar with the term "duty counsel" and others are simply unaware that such service is available. Illiteracy and language deficits are also major barriers to accessing service. Finally, services are sometimes simply unavailable at particular sites.

Respondents to the mail survey of duty counsel were nearly unanimous in their perception that some accused "*slip through the cracks*;" overall, 84 percent stated that some accused fail to use duty counsel. However, there is substantial variation in this view among the provinces. In Nova Scotia, 64 percent of respondents stated that some accused fail to use duty counsel (and 24% stated they did not know), compared to 90 percent in Alberta. This difference may reflect the fact that a staff counsel system such as used in Nova Scotia only defines those eligible for legal aid as potential duty counsel clients. Further, full-time staff counsel may be more assiduous in ensuring that all eligible clients are seen. In a province where private lawyers are used, it may be that

some accused are missed. Table 2-4 is from the survey of duty counsel and classifies reasons respondents reported that people do not use duty counsel.

**Table 2-4      What reason do people have for not making use of duty counsel?**

<b>Reason for not Using Duty Counsel</b>	<b>Percent Responding Yes</b>
Accused do not understand the system	75%
Accused do not know they are available	54%
Accused do not believe duty counsel are competent	41%
Duty counsel not available at some courts	20%

- **Lack of understanding of the role of duty counsel;**

Many individuals who are unfamiliar with the court process are unaware of what "duty counsel" is; lawyers often fail to explain their role and the term itself is poorly understood.

Illiteracy restricts access and awareness, as does the stress of functioning in a strange and intimidating situation. While many duty counsel take care to speak plainly, others are insensitive to the limited literacy and language skills of many accused. Further, much of the documentation and written communication supplied by the criminal justice system to accused is obscure. Duty counsel we observed varied widely in their interviewing skills and ability to "connect" with the accused.

- **Lack of knowledge that service is available;**

The method used to make clients aware of duty counsel services available in courtrooms varied among locations. Many lawyers we observed made a general announcement in the corridors to inquire whether "*anyone needed to see duty counsel.*" Few offered an explanation that duty counsel was a lawyer, who could assist in court or provide advice and who was available free of charge. In a few locations, an interview room with the sign "duty counsel" was available, but often clients were seen in hallways.

Some of the lawyers fail to announce their presence. In some courts, judges go out of their way to direct unrepresented accused to duty counsel; in only a minority of courts did judges appear content to allow accused to proceed without representation unless the case was remanded.

There was a reported lack of public awareness of the duty counsel system. In courts, many accused were reported to not seek out duty counsel, nor understand they had rights to counsel before appearing before a court. As one respondent stated, "*The main problem is a lack of public awareness as to how the system actually works. Some form of public education is necessary.*"

In some very busy courts there is daily (or twice daily) turnover of duty counsel, and court staff often do not recognize them. This makes it difficult to keep track of when they are there, especially if they do not identify themselves. At one courthouse we visited, duty counsel "check in" at a central desk. If they leave at any time during their shift, they "check out" by informing the commissionaire at the desk. They are also expected to wear name tags. In courts where Elizabeth Fry attended or native court workers were present, accused were usually well advised as to the availability of duty counsel.

- **Duty counsel services are not available.**

There may be significant differences between access to services in large cities compared to small rural locations. There are two reasons for this: first, larger cities usually have well organized duty counsel programs; second, the criminal bar is large enough in urban areas to ensure all courts are staffed. Of course, this does not pertain to differences in commitment and ability of individual lawyers, but in general, the organization of urban legal aid addresses the issue of access in the larger jurisdictions. Alternatively, in some of the smaller jurisdictions, the lack of formal organization results in an informal network among police, criminal bar and judiciary that can be very effective in ensuring that people are well served.

The most common reason for the unavailability of duty counsel was the high demand placed on their time. Clients we interviewed frequently expressed the opinion that they did not have the time to "*tell their side of the story.*"

### 3.4 Arrangements for Special Groups

A number of jurisdictions have developed a comprehensive series of arrangements to increase access for women, aboriginal people, persons with disabilities, and other groups. In the survey of duty counsel, many respondents stated that these groups were generally well served. Aboriginals are effectively served in the context of the current judicial system as long as a native court worker is present. We often observed very good liaison service by these court workers; where they do not exist, native people are at a disadvantage in the courts.

New immigrants have increased the stress on many social services, especially in the large urban areas of Toronto and Vancouver. The courts are no exceptions. A serious problem, not just for duty counsel but for the entire criminal justice system, is in the delivery of services in languages other than English or French. Often translators were unavailable or the court relied upon friends and family whose command over English was

usually only marginally better than the accused. As an example, the concept of pleading "not guilty" may be quite strange for someone who simply wants to say "*I did not take it.*"

In jurisdictions where there is a requirement that accused provide written instruction when they wish to plead guilty at a first appearance, access may also be impaired. In this instance, formal procedures designed to ensure accused do not prejudice their rights can be an impediment to accessibility. This requirement assumes literacy. The forms are designed to ensure that cases do not fail if convictions are appealed on the grounds that duty counsel did not receive written instruction allowing a guilty plea. The reasons for written instructions are legally sound, but probably incomprehensible to many accused. For example the phrase "*lengthy period of incarceration*" used on some forms may not be understood by many accused as opposed to the phrase, "*a long jail term.*"

The survey of duty counsel found that respondents generally believed that linguistic minorities were the least well served of any group. Some of the larger courts are trying to provide services in several languages. For example, in Brampton, where there is a very large immigrant population, there is a full-time coordinator of interpretation services and several translators are available in court at any given time. From what was observed in our case studies and from the responses to the survey, this level of service for a variety of language groups was exceptional.

These appear to be the common factors in non-use of duty counsel and were evident in the case studies, the direct observation in the courtrooms, and responses to the survey.

### **3.5 Quality and Performance of Counsel**

There is anecdotal evidence about the quality of duty counsel. Some of those we interviewed were quite searing in their criticism. However, most Crowns and judges stated that while there were some less effective duty counsel, accused were usually well represented. Court observation confirmed the general variability in duty counsel performance, but this was not a random sample.

The inability to be more definitive about duty counsel quality and performance is also due to the fact that legal aid societies rarely concern themselves about these issues unless there are flagrant abuses. Few area directors were keen to remove duty counsel from panels. Sometimes this was because there were too few lawyers to adequately staff panels, and at other times it was simply a matter of professional reluctance to judge a colleague. The usual mechanism for assessing lawyer competence relies upon a complaint being lodged with the bar. Few accused would make a complaint to the bar regarding the service, partly because they have no basis upon which to compare the adequacy of the service provided. However, duty counsel performance encompasses many aspects other than just how a client perceives the services. Their role in case flow also needs to be assessed. To be sure, a system of monitoring performance would not be trivial, but merely relying on the bar to remove ineffective duty counsel, assumes that a mechanism designed to respond to client complaints can monitor and raise duty counsel



performance.

Some issues surrounding quality of service are beyond the control of individual duty counsel. Four areas in particular were repeatedly cited as hampering duty counsel in doing their job: caseloads and understaffing; quality of facilities; continuity of service; and clerical tasks for other lawyers.

### **Caseload/Understaffing**

It was typical for clients we interviewed to remark that they had little time to explain their case to duty counsel. When questioned whether they believed that duty counsel understood their situation a typical response was "*well, enough in the time we had.*" Hurried consultations, in the hall with cursory notes and little time to exchange information, often resulted in the accused giving a mixed review to the service provided.

In some cases these time constraints were the responsibility of duty counsel themselves, but in most cases they reflect a large number clients served by a small number of duty counsel in a short period of time.

The type and location of court influence case load and understaffing:

- First appearance courts were reported to be characterized by wide daily fluctuations in dockets making it difficult to plan duty counsel service.
- Domestic courts were often cited as being chronically congested, having insufficient staff, and placing extreme emotional burdens on counsel.
- Rural courts were sometimes mentioned as being thinly staffed at all times.

Table 2-5 shows the assessment of duty counsel as to whether staffing was adequate in their courts. Responses varied widely by jurisdiction.

Duty counsel in provinces with staff models were the least likely to believe that the courts in their cities were adequately staffed. This lends some credence to a fairly widespread concern that legal aid may spread the caseload over insufficient personnel. But it could also mean that standards of service vary between staff and private lawyers, or that plans using private counsel are "overstaffed." The concepts of appropriate staffing and standards of performance are poorly developed in the criminal justice system and like the health care system, professional providers define the appropriate level of service. There is a general lack of administrative and financial information to plan resource allocation in Canadian duty counsel systems.

**Table 2-5**     **Do you think the courts in your city are adequately staffed with duty counsel?**

	<b>Percent Yes</b>
Nova Scotia (n = 23)	30%
Prince Edward Island (n = 3)	0%
Saskatchewan (n = 30)	50%
Manitoba (n = 38)	53%
Newfoundland (n = 35)	74%
Ontario (n = 258)	85%
Alberta (n = 129)	74%
British Columbia (n = 112)	80%
New Brunswick (n = 46)	65%
Overall	57%

### **Variable Facilities**

Facilities in all locations are variable. Some provide private rooms where duty counsel and a client can review the case, while in others consultation must be done in the hallway. Consultation was often not private and usually hurried.

### **No Continuity**

There is also a problem of continuity when per diem duty counsel on half-day shifts are scheduled, as there is no transfer of communication from morning to afternoon duty counsel. Therefore, cases that are set down from the morning must be taken through the preliminary steps again in the afternoon as the new duty counsel familiarizes him/herself with the case. Of course, this also occurs if duty counsel serves a whole day - there is still no continuity from one day to the next: *"If someone wants to plead guilty, but it has to be held over, a new duty counsel needs to start again the next day."*

### **Clerical Tasks**

In several locations it was reported that a large amount of duty counsel activity is simply clerical. Some respondents remarked that a *"disproportionate"* amount of time is spent taking and relaying messages from other lawyers before court. Duty counsel were frequently observed in Toronto arranging adjournments and setting dates for private counsel. Some duty counsel resented this role; others saw it as an inevitable part of being a junior lawyer. In New Brunswick duty

counsel were asked to assess the merit of clients for legal aid certificates, but this practice has been met with some opposition.

In addition to systemic problems that affect quality of service, there were some specific areas of criticism by Crowns, judges, and court workers levelled at lawyers who provide duty counsel.

### **Competence - Training and Experience**

A number of respondents expressed concern about an insufficient screening process to ensure that duty counsel are adequately trained and experienced. Most key informants indicated that only lawyers should be providing duty counsel services rather than articling students or paralegals. Table 2-6 shows that duty counsel surveyed strongly endorsed this perspective.

**Table 2-6      Who of the following, if any, do you think should not perform duty counsel services? (n=701)**

	<b>Adult Accused</b>	<b>Young Offenders</b>	<b>Civil (Family/Refuge/Psych)</b>
Paralegals	86%	85%	74%
Law Students	77%	74%	67%
Articling Lawyer	59%	57%	51%
Staff Legal Aid (Full-time duty counsel)	17%	17%	14%
Staff Legal Aid (Part-time duty counsel)	12%	12%	9%
Private Bar	2%	2%	2%

Note: Columns do not add to 100% because multiple entries were permitted.

There is no evidence that there are intrinsic quality differences between staff counsel and the private bar. Certainly, a concern exists among some staff counsel, and the bar in general, that public defender models may be subject to underfunding with resulting "burnout" and loss of quality.

A common statement from all jurisdictions was that there is no monitoring of performance or quality control. Many key informants believed that only criminal bar should provide duty counsel at Criminal Court and only specialists in family law should be handling those cases. The recession was reported to have encouraged lawyers to apply for criminal duty counsel panels without the requisite experience. A few respondents stated that fees for duty counsel service were insufficient to maintain their practice and, therefore, could not offer such service. These tended to be the most experienced lawyers.

There were many observations that duty counsel is used as a training

ground for new lawyers who often could not provide the same service as a more seasoned member of the bar. In serious matters such as bail hearings or speaking to sentence, this inexperience was thought to prejudice the rights of the client or prolong cases as the duty counsel sought remands on routine matters.

### **Arriving Late**

We received many comments from key informants (judges, Crowns and other court personnel that some duty counsel chronically show up too late to be adequately prepared before court begins. This often meant that pleas were delayed and the entire court procedure was stalled. Although many respondents pointed out that most lawyers are very responsible and make sure they arrive early, others were seen as less committed and performing the minimum requirements, or less.

### **Combining Private Practice With Duty Counsel**

In some cases, lawyers act for their own clients while they are serving as duty counsel. Those who reported this behaviour were very critical of it. One respondent stated, "*[duty counsel] shows up with ten files under his arm and deals with his own cases first.*"

In summary, many concerns about the quality and availability of duty counsel were cited. In particular, the congested urban courts were seen as insufficiently staffed. Further, this led to time pressures which reduced the service provided to all accused. There was some sentiment that the quality of service provided did vary with different segments of the population, but it appears that the lack of time accounted for a large part of uneven service, especially among immigrants and psychiatric patients who are typically time intensive clients.

## **3.6 Delays in Processing Cases**

Some of the issues affecting quality of service relate to causes of the many delays in the processing of cases.

### **Congestion in Courts**

When courts become congested, there is often a lack of preparation time which seriously impedes delivery of service. When several accused who are not in custody show up just prior to court time, duty counsel does not have time to conduct a proper interview and obtain all the necessary information before appearing in court.

In criminal dockets, accused often appear just before court. Duty counsel complained that there was little time to consult with accused before court commenced, even on the slower days. Often notices to appear, given to accused by police, have court start times (e.g., 9:30 a.m.) printed on the notice rather than

an earlier time to permit consultation with duty counsel. These notices usually do not contain any notification that free legal assistance (duty counsel) is available for those without a lawyer. In these circumstances, if everyone shows up "on time," duty counsel has perhaps only half an hour to interview all accused before court begins.

At some locations there is poor coordination between police holding accused in custody and the court. Where a lock-up is located in close proximity to the court this is less of a problem, especially if duty counsel can visit clients there. If clients are being transported considerable distances from outlying jails, or if there are perceived to be problems of security in particular lock-ups, duty counsel must wait until police transport accused to court. In a few courts accused were made available to duty counsel only a short time before court started.

Many respondents to the mail survey alleged an increase in the demand for duty counsel since *Brydges*. Most respondents confirmed that since the decision, more accused are aware of their rights. A few speculated that this may have increased the demand on court resources and slowed the proceedings. It was not possible to assemble any independent evidence to evaluate this speculation.

There is also great variability in dockets. On some days duty counsel are too busy -- they run from one courtroom to another, to the lock-up and to consult with the Crown. On other days, duty counsel may have little to do. The busiest courtrooms we witnessed were in Toronto's Old City Hall, where accused were shuffled through the system in a very cursory fashion. The term "five minute duty counsel" and "over the shoulder duty counsel" were phrases used to describe the service provided on busy court days.

### **Crown Disclosure**

Crown disclosure has been a source of irritation in a few courts. Occasionally, duty counsel complained about the lack of cooperation from Crown counsel and the inability to obtain particulars. Lawyers indicated that without full disclosure they could advise their clients and therefore they tended to encourage clients to plead not guilty and move a case to a certificate. The *Stinchcombe* decision was acknowledged as being important in prompting greater Crown disclosure, but a few lawyers reported that the established practices of some courts remained uncooperative. In most other sites, we were told of good cooperation between the Crown and duty counsel.

### **Delay Tactics**

When an accused is detained on the weekend and calls his/her lawyer to be at first appearance court on Monday, often the lawyer agrees to the responsibility and then, reportedly, calls duty counsel on Monday morning and either asks that the matter be postponed until later in the day, or to remand the matter for another day. It was reported that sometimes the lawyer simply does not show up. This practice was said to have been repeated, in some cases for two or three days, until

there were sufficient clients in custody at which point the lawyer can attend court and deal with several bail hearings with little time expenditure.

Counsel on record (defense) have not remained "*free from the influence*" of the *Askov* decision. In *R. v. Glasner*, a Toronto lawyer was recently found guilty for contempt of court for twice failing to appear in court due to double booking. The remarks of Paris J. are telling:

*The practice of double booking is alive and well in Toronto courts because lawyers can, with one telephone call, delay a case in one court while they fulfil their obligations in another court. . . Many hours of court time are now being wasted while we wait for these lawyers. In the post-Askov era this is clearly unacceptable.*<sup>7</sup>

Duty counsel was urged by Judge Paris not to accept messages from lawyers unless there were unforeseen circumstances which caused the delay. When someone is being remanded in custody without a bail hearing or detention order being issued, the "*systemic delay*" can often be attributed to the defense counsel rather than the accused. However, duty counsel acting for other defence counsel to remand is a firmly entrenched activity in Canadian courts.

It can be inferred from the *Askov* trend, that pressure is being placed on duty counsel by the Crown and the judiciary, to act as a facilitator to expedite proceedings. The faster an accused can be put on trial, the less chance there is of the mass dismissals which occurred after this decision was rendered.

### 3.7 Impact of *Brydges* and other Court Decisions

#### *Brydges*

Historically, in many jurisdictions, police stations often retained phone numbers of members of the criminal bar who were prepared to provide summary advice to accused who were detained. During business hours legal aid offices would often provide summary advice without regard to eligibility for service. After hours service was much more variable. In some smaller urban centres with a *pro bono* tradition and with a close knit criminal justice community, these arrangements served the accused. In other areas, and especially in larger cities, accused often appeared in court without any prior legal consultation.

*Brydges* enunciated the requirement under the Charter that accused be informed of the right to counsel immediately upon arrest. Further, subsequent interpretations of the decision required that the criminal justice system make efforts to allow accused to consult with counsel soon after arrest. Accused were similarly required to make an effort to seek such advice.

The response to *Brydges* has varied considerably among the provinces. Table 2-7

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<sup>7</sup> *R. v. Glasner*, O.C.J. (Prov. Div.), Paris J., October 28, 1991.

summarizes the various methods adopted. In general, during the day Legal Aid offices will accept calls from police and accused. Summary advice is provided by staff counsel and thereafter referrals are made to staff or private counsel.

In Saskatchewan a toll free number is maintained by one person under contract to Legal Aid. The accused who uses this number may receive summary advice, but is usually referred to local legal aid staff counsel or to the Yellow Pages if accused do not appear to qualify for legal aid. In many areas of Canada, police are informed of which lawyers provide duty counsel and accused are shown these lists.

Compensation for after hours calls is currently provided only in New Brunswick. Because duty counsel are usually private lawyers in Alberta and British Columbia and are allowed to assume accused as clients after duty counsel consultation, legal aid management believes this should be inducement enough. In Nova Scotia, the use of staff counsel to handle after hours calls has been controversial, with some lawyers refusing to accept any calls in the evening.

In New Brunswick, when lawyers are assigned to duty counsel for a week at a time, they take *Brydges* calls at night. In British Columbia, there are staff lawyers in Vancouver assigned to accept *Brydges* calls on a province-wide toll free line. In Ontario, a province-wide toll free *Brydges* line is answered in Toronto at night and on weekends by staff lawyers. In Manitoba, a combination of staff (usually articling students) and private bar take *Brydges* calls. This service is not referred to as duty counsel, nor is it seen as a function of duty counsel. Legal Aid Manitoba simply refers to the person carrying out this function as the "on-call lawyer."

**Table 2-7 Summary of *Brydges* Duty Counsel or On-Call Services**

Jurisdiction	Compensation for After Hours Calls	Access
Nova Scotia	Staff Counsel	- Legal Aid during day. - After hours police maintain lists of Legal Aid lawyers.
Prince Edward Island	No	- Legal Aid during day. - After hours police <u>may</u> maintain lists.
Saskatchewan	Staff Counsel	- Legal Aid during day. - After hours province-wide toll free number.
Manitoba	No (except in Winnipeg - flat weekly fee paid)	- In Winnipeg a 24 hour on-call service maintained by Legal Aid Manitoba. - In rural areas, RCMP maintain complete lists of Legal Aid lawyers who can be called at anytime.
Newfoundland	No	- Toll free 24 hours per day, usually routed to St. John's Legal Aid office during day. - After hours, calls are routed by answering service to

		<p>staff lawyers who accept calls on weekly stints.</p> <p>- Police also maintain lists of private lawyers.</p>
Ontario	No	<p>- Legal Aid offices during day.</p> <p>- Toll free 24 hour provincial wide line, staffed by three staff lawyers in Toronto.</p> <p>- Local police also maintain lists of Legal Aid lawyers and private bar willing to accept calls after hours.</p>
Alberta	\$15/call, Ceased July 92.	<p>- Legal Aid offices (Edmonton and Calgary) during day.</p> <p>- Police maintain lists of private lawyers <u>provided by Legal Aid.</u></p>
British Columbia	No	<p>- Toll free 24 hour assistance offered from Vancouver. Summary advice followed by referral to local bar.</p>
New Brunswick	\$25/call	<p>- Legal Aid during day.</p> <p>- Local police have lists of private lawyers performing duty counsel after hours.</p>

Table 2-8 demonstrates lawyers' perceptions of the extent to which the *Brydges* decision is being supported in their province.

**Table 2-8**     **Support of *Brydges***

	<b>Percent Yes</b>
Nova Scotia (n = 24)	0%
Prince Edward Island (n = 2)	0%
Saskatchewan (n = 25)	60%
Manitoba (n = 37)	27%
Newfoundland (n = 31)	97%
Ontario (n = 159)	67%
Alberta (n = 107)	55%
British Columbia (n = 92)	46%
New Brunswick (n = 42)	57%
Overall (n=519)	55%

*Brydges* has had the following impacts:

- A majority of respondents reported an increase in the overall demand for legal aid.



The increased awareness of the right to counsel may be partly attributable to *Brydges*.

- Some believe there are fewer unrepresented accused in Canadian courts, while others think there has been no change.
- It has prompted an increase in the demand for duty counsel because of the police requirement to inform all accused of their right to counsel. Whether telephone consultation, evening or weekend service, *Brydges* has led to more accused requesting services immediately after arrest. Twenty-four hour lines which were set up prior to *Brydges* had significant increases in calls following the ruling.
- There is a strong perception among some legal aid management that the combination of *Brydges* and a cap on federal contributions for legal aid have placed added pressure on budgets.
- The impact of *Brydges* on police practices is less obvious. Certainly, police departments are reading the cautions with increased diligence and a number of police complained that it has made police work more complicated. A few also candidly stated that although the warnings are read, they believe it is "fair game" to continue to ask questions after, regardless of whether accused have talked to a lawyer.

Clients we spoke to confirmed that in a majority of cases, they recall being read their rights and being allowed to talk to counsel. A small minority stated they had not been issued such warnings. It is extremely difficult to assess the validity of these claims.

- There is little evidence to support the claim that *Brydges* has altered actual charging practices, and therefore *Brydges* appears to have had no impact on the volume of cases moving through the system. The fact that accused get legal advice sooner may actually speed the case flow: court time is wasted when accused attempt their own defence and the court has to pause to explain procedures.

Most judges we talked to had no idea of whether *Brydges* was being properly implemented. In cases where it was alleged that the warnings were not observed properly by police, one judge stated that, since most of the time there are no independent witnesses, determining the truth of the allegation was simply a matter of testing the credibility of the complainant and arresting officer.

We cannot determine whether the *Brydges* decision is being uniformly implemented across Canada or within any jurisdiction. There may be considerable variability based on provincial legal aid policies, rural/urban factors, and individual police commitment.

## **Askov**

A number of Crowns and judges believe that *Askov* has had an important impact on case flow and the use of duty counsel. The *Askov* decision stated that there is a time

within which cases must be tried. The result has been increased interest in diversion programs and using duty counsel to explore whether a guilty plea is warranted.

The advice provided by duty counsel on the plea is a very important determinant of how a case proceeds. As mentioned previously, experienced duty counsel who command the respect of the accused will often persuade a client who has admitted responsibility to plead guilty. Many accused we interviewed readily admitted their actions and "*just wanted to get it over with.*" Skilful duty counsel could also negotiate with the Crown to produce outcomes not requiring trials that tie up court time. Inexperienced duty counsel were often sharply criticized because they would press for adjournments so that a case could be examined more deliberately, often on a legal aid certificate. However, in some jurisdictions, there are structural contradictions. Although duty counsel can expedite cases that would result in guilty pleas, some manuals warn that clients wishing to plead guilty at first appearance should be encouraged to reappear after consultation with counsel.

It was reported that private lawyers acting as duty counsel who are allowed to represent accused as continuing clients have a special interest in prolonging a case. However, staff lawyers providing duty counsel services were also criticized by their colleagues for disposing of too many cases in the form of guilty pleas. In these instances, other staff lawyers, some who were described as "playing the certificate game", seemed to be expressing a concern that such behaviour would not maintain the number of legal aid certificates and could, therefore, affect government funding for legal aid. In the absence of proper monitoring by legal aid societies, there is no way that the accuracy of such perceptions can be determined.

All duty counsel we talked to were very aware of their responsibilities to act for the client and not simply expedite the court process. There is a very fine line between these two. There are many pressures on duty counsel to process cases quickly and encourage guilty pleas, not the least of which are legal aid managers trying to cope with deficits. Even more than *Brydges*, *Askov* has influenced the role of duty counsel by placing increased demands to expedite cases. However, this does not always fit with the basic rationale for the service; that is, to ensure that no one is denied justice.

### **3.8 Client Interviews**

As stated in the methodology, we undertook interviews with clients. The data emerging from these interviews is highly impressionistic by virtue of how it was collected. However, a consistent pattern emerged from the 150 interviews we had with accused across Canada.

Remarkably, accused in criminal courts as well as petitioners and respondents in family matters had little reluctance in having their case discussed within earshot of others. Very few duty counsel refused our request to attend their discussion with accused and most clients agreed to a short interview.

It is likely that all would have preferred consultations with duty counsel to have

occurred away from others attending the court. Those court sites with interview rooms were appreciated by counsel. It seems that the best facilities for conducting interviews were in the courts that were least busy.

As emphasized above, the interviews of clients were executed in highly uncontrolled settings. The information obtained varied among accused depending on whether they were detained. Because of the variability of the sampling procedures, the following represents a summary of the interviews completed in terms of the main points.

- Those who had been arrested had a wide range of recollections about the warnings provided by police. Half stated readily they had been warned, but a large number also stated they could not recall. A small number, less than 10 percent, asserted they had not been warned at all. It is important to emphasize that many of those who are arrested were under the influence of drugs or alcohol at the time.

Therefore, while not conclusive, it appears that police are reading warnings to detainees in accordance with *Brydges*. However, on additional probing, it became apparent that police also tend to pursue questioning after reading the warning. The provision of answers by accused appears to be taken as implicit waiver of *Brydges* rights. This evidence is also mixed. Some accused responded affirmatively that they had been questioned after the warning (and before consulting with a lawyer), while others also stated the police had asked no further questions once the warning had been given.

Clearly the particulars of the case are pertinent to assessing whether *Brydges* had been violated. Since this could not be pursued, it remains a gap in the information. Accused are generally well informed of the need for being "read their rights", but this is probably due to an awareness of such rights from United States television rather than an understanding of *Brydges*.

- The reaction of accused to duty counsel varied with the complexity of the case and the knowledge of the accused. In some cases, those with court experience (i.e., criminal records) refused to see duty counsel believing that any court appointed lawyer was inadequate. Others who had a lawyer still used duty counsel to arrange adjournments, and in a few rare cases, to speak to show cause when their "regular" lawyer could not attend.

Most appeared to appreciate the assistance offered. Those accused with no experience are often very confused about the process. Some believe they will be able to tell their story to a judge and expect to be able to resolve the problem immediately. They are surprised that they should seek a two or three week adjournment before they enter a plea.

- Most accused believed they had received some service from the duty counsel. Many remarked that they had little time to explain their case. Typically, when questioned whether they believed that duty counsel understood their situation, the response was "*well, enough in the time we had.*" Since clients without prior records did not understand the process, it was difficult to judge whether they had received good advice.

There was a clear correlation between this type of response from accused and the time duty counsel had spent with the accused. Also, the context, general approach, and manner used by duty counsel influenced the response. Interviews which occurred in private rooms by a duty counsel who used a disciplined approach to gather information, was clear in the information, and laid out the options concisely, was seen to be good service. Hurried consultations in the hall with cursory notes and little time to exchange information invariably resulted in the accused giving a mixed review to the service provided.

- Those with criminal records used duty counsel for specific purposes such as obtaining a remand and had well defined expectations which were satisfied. These interactions were often very businesslike and the level of dialogue on legal points was quite high. It was apparent that many accused who have records also know the law.

### ***Example***

*In one case, an accused who had a prior record of possession and trafficking in drugs, reviewed with duty counsel (an experienced criminal lawyer) the advantage of pleading guilty as a way to do "federal time." This individual wished to try and "kick the habit" and complete a Master's Degree in English. A longer sentence in a federal penitentiary would place him in an institution with more treatment service as well as an environment where the advanced degree could be completed.*

- Respondents in family maintenance matters were difficult to interview as they were often in a highly emotional state. Many (mostly men) had failed to pay maintenance and were being called before the court. In the current recession, a number were struggling to maintain payments set on the basis of a full-time job which they no longer had and hoped to be able to explain their situation to the judge. Often these respondents encountered implacable family service workers and judges who insisted that orders be formally varied. The court hearing was usually not the venue for such an application and to make a formal application required legal assistance. By the time the matter comes to court many are several thousands of dollars behind in their payments. Often the only legal assistance these individuals would obtain was the summary advice of duty counsel who had little time to gather enough information to make a good case for variance.
- We interviewed some youths alone, but more often interviews were with their parent/guardian. Youths who have been charged under the *Young Offenders Act* and who do not have representation have legal assistance appointed by the judge. Parents were often at variance with the proceedings in the criminal justice system; many desired strict and immediate punishment. At times they had to be asked to leave as duty counsel was working on behalf of the young offender. Other parents expressed frustration at the process and treatment of their child as a criminal. Duty counsel were often asked to assist parents as much as young persons. We observed a number of highly skilled counsel mediating between parent, child and criminal justice system.

### 3.9 The Role of Duty Counsel in Legal Aid Costs

As provinces expanded their range of services, costs have generally increased. In some jurisdictions, such as British Columbia and Ontario, legal aid costs have increased sharply in the last few years. Duty counsel play an integral role in case management, the costs of the overall criminal justice system, and the costs of legal aid.

To a certain extent, duty counsel services can replace certificates. Some area directors appear to motivate duty counsel to seek immediate guilty pleas which may have occurred at a later stage. In this way, a duty counsel can advise the client, consult with the Crown, and speak to sentence. If this can be done within the terms for duty counsel, and without compromising the rights of the accused, overall legal aid and court costs will obviously decline. In some courts, emphasis is clearly on processing cases and duty counsel are expected to persuade accused to plead guilty if the facts point in that direction. Many accused also seem to wish to get the matter behind them, especially if the case has been remanded several times, or if they have to travel long distances to court.

Some defence counsel, Crowns and judges expressed misgivings at this process. They felt that a too aggressive pursuit of guilty pleas in the interest of efficiency would undermine justice.

The criminal justice system has not been subject to the same kind of cost review that the health system is currently experiencing. Many legal and court practices are rooted in tradition and have not been scrutinized to determine processes which will lower costs without reducing the rights of accused. For some, any reduction in the rights of accused is unacceptable, but this position is untenable in the face of limited budgets. If hospitals can be asked to judge the level of effort appropriate to saving a life, the criminal justice system must answer the question of how much legal services are required to protect rights.

Some anomalies appear within the system. The poor can obtain legal services under a legal aid certificate; those who are well-off can purchase services. Those in the middle who are not eligible for legal aid but also can not afford the services of a lawyer, receive assistance from duty counsel (in most provinces) only at their first appearance. When certificates are constrained as they have been in some jurisdictions, it may be cost effective to have duty counsel provide some "expanded services" to those not normally eligible for legal aid. We observed this at two sites in particular and it appeared to work very effectively.

Duty counsel expenditures are presented in some annual reports, but other jurisdictions, primarily those with staff duty counsel, do not isolate the costs. Those systems using the private bar on a judicare model present the billings by these lawyers which range from about three or four percent of the legal aid costs in British Columbia to just under 20 percent in New Brunswick.

The duty counsel share of legal aid costs depends on a number of factors. The tariff increases in British Columbia over the last year have had a dramatic impact on both legal aid and duty counsel costs in that province. In Ontario, the range of services offered

by duty counsel includes advice to artists, psychiatric patients, and prison inmates. Finally, the share of duty counsel costs rises as legal aid is restricted. This is most apparent in New Brunswick where cases, which might otherwise be handled by legal aid certificates in another province, are handled by duty counsel.

Based on the information available, there is little point in comparing costs per assist among the jurisdictions; the provinces with staff models do not present sufficient detail. Even where fees paid to the private bar are documented and comprise the totality of lawyer costs, overheads are not allocated to duty counsel. There is little doubt, based on other studies and information in selected annual reports, that the cost per assist of staff counsel is much less than the fees incurred by a private lawyer. This might be taken as evidence that a public defender type model is superior, but until legal aid systems across Canada produce the same data, such a comparison is premature.

### **Quality Control/Performance Monitoring**

It is also important to include measures of the quality of service, without which cost comparisons make little sense. Most comparisons between the public defender and judicare models assume that quality of service will be the same. Yet, without monitoring of performance, there is no evidence to support claims for or against assertions that staff counsel get "burned out" or that private bar place pecuniary interests before the public interest.

Legal aid plans perform minimal quality control and performance monitoring under the belief that professional practice ought not to be systematically scrutinized. Aside from the anecdotes about duty counsel being late, absent, or doing a poor job, the performance of duty counsel is an important determinant to overall court functioning.

Accordingly, legal aid management and law societies should consider a much more active involvement in quality control. Duty counsel need to be evaluated regularly and those who fail to perform the function well should be replaced.

### **Standards**

Quality control and performance monitoring require standards, but these do not exist for duty counsel. Some jurisdictions provide information outlining the duties in the form of a manual, pamphlet, or letter. Ontario's manual is the most thorough in detailing the nature of the work. However, there are no measures implemented by any jurisdiction which allow one to assess the performance of duty counsel in general or individually.

The task of developing standards of performance is not simple. However, there are obvious measures such as appearing on time, and completing a stint. Then there is the more complex task of determining whether an accused was provided with good advice. This can only be done on a sampling audit basis where specific cases are examined. Most important are standards which assess the performance of duty counsel in assisting the courts to manage case flow without compromising the rights of accused. Therefore, legal aid societies need to define standards and make their expectations explicit.

## 4.0 CONCLUDING OBSERVATIONS

This study has identified a number of strengths and weaknesses of the duty counsel system across Canada. The strengths are quite straightforward.

- Legal aid plans have provided more consistent service to those appearing in court without representation. In terms of providing for the basic right that accused have representation, significant improvements in the provision of justice have occurred over the last two decades because of duty counsel systems.
- Duty counsel also provide critical support to the flow of court work and are material in case management in all jurisdictions.

On these two points there is a high degree of agreement among all those involved in the court system. Further, recent decisions such as *Brydges* and *Askov* provide a legal framework for duty counsel. The need to expedite cases and an emerging awareness of the costs of the justice system are defining a role for duty counsel in managing case flow.

A number of weaknesses and problems have been identified in the course of this research. In part these are problems associated generally with the court system, and in part there are unique problems with duty counsel. Of particular importance are:

- Variations in competency and commitment of individual duty counsel were apparent. In general, judges, Crown attorneys, other court personnel, and direct observation confirmed the fact that there are many highly skilled lawyers, staff and private, offering duty counsel services. However, there are also indifferent lawyers offering services in areas where they have little expertise or interest. These latter counsel frustrate case management, increase costs, and impair the delivery of justice.
- Court procedures and facilities are often problematic. These range from poor interviewing facilities with no privacy to unclear instruction on how to deal with clients. The persistence in using technical terms such as "duty counsel" when it is not well understood is puzzling, as is continuing to have notices of appearance that do not explain the need to arrive early to consult with the "legal aid lawyer." Simple remedies exist to such problems but there is often reluctance to recognize and respond to the problems.
- Duty counsel often get involved in complex areas requiring a range of skills in addition to a knowledge of specialized areas of the law. Family court frequently demands negotiation and interpersonal skills as well as an awareness of the social services system. Duty counsel with such ability can often suggest compromises to parties involved in disputes over maintenance or custody which can obviate the need for a court hearing. However, the lack of experience and background of many lawyers who are serving as duty counsel was pointed out by others involved in the court system.

- Case management and administrative burden are a problem in some courts. In Toronto the sheer volume of cases is causing serious stress. In other areas, the process of setting dates for appearance often causes fluctuations in work load, which reduces the service to the accused and to the court regardless of the ability of the duty counsel.
- Legal aid directors often have little basis on which to monitor quality of duty counsel services. Many tend to be reluctant to judge their colleagues. Further, there is no consistent costing within the justice or legal aid systems which allows analysis of how various elements of services interact. Some see the possibility for trading off duty counsel with legal aid costs; others are worried that the emphasis on case management and efficiency will prejudice the rights of accused.

The implications of this report are clear. Whether it is a formal system, or embedded within legal aid such as in Saskatchewan and Nova Scotia, accused without representation require assistance at their first appearance. Furthermore, there is no question that duty counsel is a significant factor in processing cases and disciplining the costs of the court processes. There are many improvements which are needed. Legal aid societies and participants in the criminal justice system need to consider what it means to offer legal services and to develop more complete notions of service and costs. Quality control, standards, and training are important to developing and maintaining effective duty counsel. It is highly probable that efforts spent in this area will be returned by lower overall costs in the criminal justice system.

Fundamentally, duty counsel provides an essential service in Canadian courts, without which many accused would not receive justice, and cases before the courts would become more costly and time consuming.