

DUTY COUNSEL AND THE UNREPRESENTED DEFENDANTS IN THE N.S CRIMINAL COURT

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THE ARGUMENT

PHASE ONE: THE UNREPRESENTED IN CRIMINAL COURT HAS BEEN A MAJOR AND GROWING PROBLEM IN HRM

- THE NUMBERS.
- BASICALLY IN HRM.
- STRONG CONSENSUS RE CAUSES AND REMEDIES

PHASE TWO: IN THE PAST FOUR YEARS THAT CHALLENGE HAS BECOME LESS DOMINANT

- THE DUTY COUNSEL SYSTEM (NSLA)
- EARLY CASE RESOLUTION (PPS)
- NUMBERS AND THE HARD CORE
- THE PRIORITIES NOW?

THREE CENTRAL RESEARCH PIECES PERTINENT TO THE THESIS

1. THE UNREPRESENTED AND THE UNBUNDLING OF LEGAL SERVICES (2004)
2. ASSESSING THE DUTY COUNSEL PILOT PROJECT (2006)
3. ASSESSING THE EARLY RESOLUTION PROJECT: IMPACT AND FUTURE DIRECTIONS (2008)

TYPES OF METHODOLOGIES USED

- 1. THE CANADIAN CONTEXT VIA LITERATURE REVIEW, TELEPHONE AND E-MAIL**
- 2. SECONDARY AND NEW DATA SETS
- JOIS, JEIN AND PPS + SURVEY**
- 3. INTERVIEWS WITH ALL COURT ROLE PLAYERS.**
- 4. COURTHOUSE OBSERVATION**

THE UNREPRESENTED STUDY

1. **METHODS AS ABOVE PLUS ONTARIO FIELDTRIP**
2. **UNREPRESENTED ELSEWHERE**
(#s, Issues, Strategies)
3. **COURT ADM STATISTICS** -
JOIS 2002-2003 -
OFFENCES AND ACCUSED'S
CHARACTERISTICS BY TYPE OF
REPRESENTATION
4. **VIEWS OF 48 CJS OFFICIALS –
CONSENSUS RE CAUSES AND SOLUTIONS**
5. **INTERVIEWS WITH 100 DEFENDANTS –
TWO CATEGORIES**

THE DUTY COUNSEL ASSESSMENT

1. USUAL METHODS PLUS SURVEY OF CLOSED CASES
2. DUTY COUNSEL ELSEWHERE: TYPES, ISSUES, THE UNREP,
3. DC MODEL IN HRM: EVOLUTION
4. VIEWS OF CJS OFFICIALS
5. 28 INTERVIEWS & 152 DEFENDANT SURVEY
6. IMPACT ON UNREPRESENTED ISSUE

EARLY CASE RESOLUTION AND THE UNREPRESENTED

- **USUAL METHODS PLUS REPRESENTATIVE SAMPLE OF CLOSED CASES**
- **THE ER FORMAT AND COMPARISONS (BY CITY, ACCEPTANCE, REJECTION)**
- **IMPACT ON THE UNREPRESENTED CHALLENGES**

PRE DUTY COUNSEL – Table 1

Province-wide Statistics, JOIS. Fiscal 2002- 2003.

Feature		Charges*		N (Case)*	
		#	%	#	%
Offences	Serious-Person	4,200	18 %	1,657	14 %
	Other (Save MV)	16,107	68 %	8,490	72 %
	CC Driving	3,199	14 %	1,605	14 %
Representation	NSLA	11,501	51 %	4,839	44 %
	Self	5,756	26 %	3,839	35 %
	Private	5,132	23 %	2,345	21 %
Disposition	Convicted	11,107	49 %	6,596	60 %
	Acq/Dism/With'd	11,542	51 %	4,397	40 %

* Total # charges in data set is 23,506 including adults (83%) and youth (17%).

** The total number of cases are 11,751.

PRE DUTY COUNSEL – Table 2 (Part A)
Provincial Tabulations, JOIS. Fiscal 2002- 2003, Charges

Feature		Age	
		18-31	31+
Offence Type	Serious - Person	1837 (28%)	1478 (16%)
	Other	6964 (60%)	6121 (66%)
	CC Driving	1195 (12%)	1921 (20%)
Representation	NSLA	5007 (54%)	3896 (42%)
	Self	2457 (25%)	2680 (30%)
	Private	2057 (21%)	2528 (28%)

PRE DUTY COUNSEL – Table 2 (Part B)

Provincial Tabulations, JOIS. Fiscal 2002- 2003, Charges

	Offence Type		
Representation	Serious - Person	Other	CC Driving
NSLA	2224 (54%)	8654 (57%)	623 (20%)
Self	435 (11%)	3550 (20%)	1771 (56%)
Private	1397 (35%)	2972 (23%)	763 (24%)

	Representation		
Disposition	NSLA	Self	Private
Convicted	5800 (51%)	2697 (51%)	2392 (47%)
Acq/Dism/With'd	5567 (49%)	2520 (49%)	2628 (53%)

PRE DUTY COUNSEL – Table 3

Cross Tabulations, JOIS. Fiscal 2002- 2003 Cases.

Representation and Disposition Controlling for Selected Offences and Age

		Representation					
Feature		NSLA		Self		Private	
Category Offence	Disposition	#	%	#	%	#	%
Serious-Person Offence: 18-31 Defendant	<i>Convicted</i>	232	61 %	61	61 %	112	57 %
	<i>Acd/Dism/With'd</i>	148	39 %	37	37 %	84	43 %
CC Driving: 18-31 Defendant	<i>Convicted</i>	63	65 %	256	69 %	65	58 %
	<i>Acd/Dism/With'd</i>	34	35 %	112	32 %	48	42 %
Serious-Person Offence: 32+ Older Defendant	<i>Convicted</i>	149	62 %	54	60 %	92	49 %
	<i>Acd/Dism/With'd</i>	89	38 %	36	40 %	96	51 %
CC Driving: 32+ Older Defendant	<i>Convicted</i>	86	61 %	387	70 %	161	58 %
	<i>Acd/Dism/With'd</i>	55	39 %	171	30 %	113	42 %

PRE DUTY COUNSEL – Table 4
Representation and Recidivism Analysis, JOIS.
Fiscal 2002 - 2003 Data, Cases, Province-wide

Feature	One Timer		Single “Repeat Offender”		Multiple Repeat Offender		Row Totals
	#	%	#	%	#	%	#
Counsel	1812	30 %	520	51 %	480	68 %	2812
Self-Rep	2984	48 %	288	28 %	93	13 %	3365
Private	1438	23 %	224	21 %	132	19 %	1794
Total	6234	101	1032	100	705	100	7971

DUTY COUNSEL B:

AFTER THE IMPLEMENTATION OF THE DUTY COUNSEL

- Table 5, Charges, HRM

- Representation Type by Pre and Post Duty Counsel Initiation*

Representation	Pre-Duty Counsel 042002/032003 N=8641	Post Duty Counsel 2005 N=8955
Legal Aid	43 %	53 %
Private Bar	21 %	28 %
Self-Rep	35 %	18 %

*The data refer to adult closed files in the HRM jurisdiction.

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL
- Table 6 (Part A) Interview-based - Court Experiences, Closed Cases,
November 2004 to January 2006 (N=152)

Representation Experience	#	% Yes
Represented at Any Time in Proceedings:		
Yes	104 (152)	68%
If Unrepresented at All Stages:		
Did You want to be Represented?	13 (48)	27%
Did You Want to Present Your Own Case?	32 (47)	68%
Did You Think it Important That you have a Lawyer?	23 (46)	50%
Would you have been able to Afford Private Counsel?	26 (46)	56%
Did Costs Influence Your Decision Not to Have Counsel?	20 (46)	44%
Were You Eligible For Legal Aid?	10 (42)	24%
Aware That You Could Access Free Legal Advice from a Duty Counsel?	17 (47)	36%

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL

- Table 6 (Part B) Interview-based- Court Experiences, Closed Cases, November 2004 to January 2006 (N=152)

Any Representation Experience Ever?	#	% Yes
Previous Experience as Accused	14 (38)	37%
Represented in Previous Case	4 (13)	30%

Spontaneous Reasons for Not Retaining Counsel	#	% Yes
The Legal Aid/ Private Counsel "Gap"	9 (45)	20%
Confidence in Self-Representing	8 (45)	18%
Perceived Certainty of Guilt/ Desire to Plead Guilty	20 (45)	44%
Other	8 (45)	18%

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL
- Table 7 (Part A) Interview Data- Comparison of Those With Representation
and Those Without Representation, Closed Cases (N=152)

Feature	Represented (N=104) % Yes	Unrepresented (N=48) % Yes
Pre-Arrest Activity:		
Consulted Private Counsel	48%	25%
Contacted Crown for Disclosure	35%	20%
Phoned Legal Referral Service	18%	6%
Inquired About Legal Aid	45%	15%
Inquired About Diversion	15%	10%

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL

- Table 7 (Part B) Interview Data- Comparison of Those With Representation and Those Without Representation, Closed Cases (N=152)

Feature	Represented (N=104) % Yes	Unrepresented (N=48) % Yes
At Plea:		
Had a Good Sense of the Crown's Case Against You	82%	89%
Had a Good Sense of How the Crown Was Going to Proceed	65%	66%
Had a Good Sense of the Sentence Crown Would be Recommending	74%	66%
Motor Vehicle or 'Other' Criminal Code	25%	52%
Under 30 years of Age	30%	23%
Post-Secondary Education	50%	48%
Unemployed	30%	15%
Chief Household Earner	60%	62%
Been a Defendant Previously	53%	37%
Were you Represented Then?	80%	30%

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL - Table 8
- Characteristics of Those Who Were Unrepresented and Also Had No Duty Counsel Contact

Feature	% Yes (N= 44)
Male	89%
Caucasian	89%
Previous Appearance as Accused	39%
Had Legal Counsel Before	11%
Accused of Minor Offense	100%
Facing Motor Vehicle Charge	47%
Over 30 Years of Age	77%
Post-Secondary Education	51%
Unemployed	14%
Managerial/Executive/ Professional/Self-Employed	47%
Chief Income Earner	67%
Aware of Duty Counsel Program	23%

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL – Table 9
- Characteristics of Users and Non-Users of Duty Counsels
(Who Were Aware of the Option).

Feature	Used (N=35) %	Did Not Use (N=28) %
% Male	83%	82%
% Caucasian	85%	86%
% Black	12%	11%
% Over 30 years old	46%	64%
% Post-Secondary Education	39%	34%
% Unemployed	42%	18%
% Chief Income Earner	60%	59%
% Charged with Major Offence	17%	7%
% Repeat Accused	54%	40%
% Represented by Lawyer at Any Stage	56%	64%

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL

- Table 10 (Part A) Interview data- Users of Duty Counsel Services: Contact and Meetings

Item	% Yes (N=35)
How Contacted:	
Directed by Judge/Crown	39%
Approached by Duty Counsel	32%
Approached Duty Counsel	29%
Understood the Service Duty Counsel Could Provide	67%
Did Duty Counsel Assist You in Arranging] Legal Aid?	48%
Did Duty Counsel Discuss Disclosure with You?	54%
Did Duty Counsel Discuss Your Plea?	58%
Did Duty Counsel Speak at Your Sentencing?	36%
Did Duty Counsel Connect you with Private Counsel?	3%
Did Duty Counsel Speak to the Prosecutor for You?	39%
Did Duty Counsel Introduce You to Diversion?	12%
Did Duty Counsel Help You Understand the Legal Issues in Your Case?	48%

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL
- Table10 (Part B) Interview Data- Users of Duty Counsel Services:
Contact and Meetings

Item	% Yes (N=35)
For How Many Minutes Did You Speak with the Duty Counsel?	
< 5 Minutes	45%
6 – 20 Minutes	39%
> 20 Minutes	16%
On How Many Different Days?	
Just One Day	66%
Two or More Days	34%
Where did the Meeting Occur?	
Halls/ Court Room	35%
Interview Room/ Office	55%
Multiple Places	10%

DUTY COUNSEL A: UPON IMPLEMENTATION OF DUTY COUNSEL – Table 11
- Users of Duty Counsel Services: Assessment of the Service

Item	% Yes (N=35)
Found the Duty Counsel's Advice Helpful	88%
Found Best About Duty Counsel	
Personal Style	40%
Specific Help in Court	40%
Other	20%
Enough Time to Talk with Duty Counsel?	81%
Felt Pressured to Decide on Plea?	6%
Should Duty Counsel be Better Advertised or Promoted?	81%
Should the Duty Counsel have a Higher Profile at the Court House?	70%
Are Different Facilities Required?	32%
Should More Time be Afforded to Duty Counsel Contacts?	50%

**DUTY COUNSEL B:
3 YEARS AFTER THE IMPLEMENTATION OF THE DUTY COUNSEL**

- Table 12

- Representation Type by Pre and Post Duty Counsel Initiation*

Representation	Pre-Duty Counsel 042002/032003 N=3828	Post-Duty Counsel 2006&2007 N=1195
Legal Aid	49 %	59 %
Private Bar	20 %	22 %
Self-Rep	30 %	19 %

*The data refer to closed cases in the HRM jurisdiction. For the fiscal year 2002-03 all such cases are represented while in 2006&2007 only a representative sample of initially 1270 cases are considered. Only adult cases are referred to.

DUTY COUNSEL B: 3 YEARS AFTER THE IMPLEMENTATION OF THE DUTY COUNSEL – Table 13 (Part A)

Representation Types and Other Variables – Completed Cases 2006 & 2007*

Variables	Legal Aid (N=716)	Private Counsel (N=258)	Self- Represented (N=221)
Gender - % Male	76 %	83 %	88 %
Domestic Violence – Yes	19 %	22 %	20 %
Person Violence	33%	33%	28%
Motor Vehicle Crime	7 %	28 %	41 %
Age - Older Adult	65 %	67 %	61 %
0 Previous Convictions	17 %	42 %	37 %
Days Case Processing - Less than 60 days	39 %	42 %	55 %
Three or Fewer Court Appearances	37 %	49 %	68 %

* These data constituted a representative sample of 1270 cases. Only homicide and sexual assault cases are excluded as well as provincial and municipal infractions.

DUTY COUNSEL B: 3 YEARS AFTER THE IMPLEMENTATION OF THE DUTY COUNSEL – Table 13 (Part B)
Representation Types and Other Variables – Completed Cases 2006 & 2007

Variables – ER Offer Total Sample	Legal Aid (N=421)	Private Counsel (N=108)	Self- Represented (N=87)
Accept ER	30 %	44 %	60 %
Minor Offences – Accept ER	32 %	47 %	63 %
Accept ER: 3 or less Appearances	54%	79%	80%
Accept ER: Less than 60 days	68%	76%	90%
Accept ER: Less Severe Sentence than ER Recom	5%	6%	2%

DUTY COUNSEL B: 3 YEARS AFTER THE IMPLEMENTATION OF THE DUTY COUNSEL – Table 13 (Part C)

Representation Types and Other Variables – Completed Cases 2006 & 2007

Variables – ER Offer Rejected Sub-Sample	Legal Aid (N=293)	Private Counsel (N= 60)	Self-Represent (N= 35)
Not Convicted	25 %	42 %	35 %
Reject ER – Got Less Severe Sentence than ER Recommended	35 %	32 %	32%
Reject ER – Less Severe Outcome than ER Recom**	60%	73%	68%
Reject ER – 3 or fewer Appearances	28%	40%	51%
Reject ER – 60 days or less Case Processing	19%	14%	17%

** Outcome includes whether the sentence received was less than the ER recommendation and whether there was withdrawal/acquittal/dismissal.

SOME CONCLUSIONS

1. **IMPROVING RE THE UNREPRESENTED**
 - THE THREE STRATEGIES USUALLY CITED.

2. **STATUS OF THE UNREPRESENTED ISSUE IN PROVINCIAL CRIMINAL COURT**
 - THE UNDERREPRESENTED
 - THE HARD CORE UNREPRESENTED

3. **THE CASE PROCESSING ISSUES**
 - EVIDENCE HERE / YOUTH AND ADULT CASES

4. **THE PRIORITIES FOR PROVINCIAL COURT/JUSTICE DEPT**
 - PROBLEM - SOLVING COURTS,
EXTRA - JUDICIAL PROGRAM ETC.