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Sarah Heath

AUTEUR DE LA THÈSE / AUTHOR OF THESIS

M.A. (Criminology)

GRADE / DEGREE

Department of Criminology

FACULTÉ, ÉCOLE, DÉPARTEMENT / FACULTY, SCHOOL, DEPARTMENT

Court Culture as an Explanation of Case Processing Efficiency:
An Exploratory Study of the Applicability of Leverick and Duff's Typology of Court Culture to Bail Courts in Ontario

TITRE DE LA THÈSE / TITLE OF THESIS

Cheryl Webster

DIRECTEUR (DIRECTRICE) DE LA THÈSE / THESIS SUPERVISOR

CO-DIRECTEUR (CO-DIRECTRICE) DE LA THÈSE / THESIS CO-SUPERVISOR

Anthony Doob

Ross Hastings

Gary W. Slater

Le Doyen de la Faculté des études supérieures et postdoctorales / Dean of the Faculty of Graduate and Postdoctoral Studies

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Sarah Heath

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Department of Criminology
Social Sciences
University of Ottawa

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TABLE OF CONTENTS

LIST OF TABLES

LIST OF ABBREVIATIONS AND ACRONYMS

ICON:	Integrated Court Offences Network
MAG:	Ministry of Attorney General
YCJA:	Youth Criminal Justice Act

ABSTRACT

In June 2008 the Ontario Ministry of the Attorney General announced their *Justice on Target* strategy to reduce the amount of time and number of appearances required to resolve a case in the Ontario criminal court system. The premise put forth by this strategy suggested that the structural and administrative changes implemented by the Ministry would elicit greater court efficiency. However, this belief is in contradiction to recent research on court delay which suggests that such changes are only effective when there is a court culture in place that supports such practices. This new literature emphasizes the central importance of a local informal discretionary system of expectations, norms and relationships on the efficiency of case processing.

This thesis examines the possible relationship between court culture and court efficiency. Through a comparison of two Eastern Ontario bail courts, this study explores a number of cultural characteristics of both an efficient and less inefficient court that have been identified in previous research on court culture, most notably Leverick & Duff's (2002) analysis of passive and proactive Scottish magistrate courts. In particular, detailed qualitative and quantitative data were gathered for this purpose through semi-structured interviews with key stakeholders. The study found that the efficient court had more proactive indicators and the inefficient court had more passive indicators. This finding suggests that courts of varying efficiency have distinct cultures and that Leverick & Duff's passive-proactive typology is an effective tool for measuring court culture in Ontario bail courts.

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INTRODUCTION

In an effort to appear more transparent to the general public, the Attorney General's office of Ontario released - in the Spring of 2008 - various statistics for the previous seven years of court activity. Comparisons of these data over time, particularly with respect to the number of appearances and the time to disposition in Ontario criminal courts, raised significant concern among criminal court practitioners, including those who work for the Ontario Ministry of the Attorney General (henceforth referred to simply as the Ministry). Indeed, the Ministry noted that from 1992 to 2007, the average number of court appearances required to bring a criminal charge to completion increased from 4.3 court appearances to 9.2 appearances, and the average time needed to reach disposition rose from 115 days to 205 days[1].

These statistics are indicative of a decreasing ability to process criminal cases in an efficient manner. Not surprisingly, they have recently prompted a (re)newed focus on court (in)efficiency. Operationally, an efficient court can be defined as one in which there is little or no delay in processing cases. Precisely because everyone is ready at the first possible opportunity, neither court party has to wait to proceed. Inefficiencies in criminal case processing are of significant concern because they can lead to a number of detrimental effects for the courts, the accused, and the general public. Criminal court cases can be terminated because of the inability to efficiently process cases, resulting in the violation of s. 11b of the Canadian Charter of Rights and Freedoms – the right to be tried within a reasonable time (The Constitution Act, 1982). Further, lengthy case processing times risk the

[1] For these statistics as well as other related data, see, www.attorneygeneral.jus.gov.on.ca.

denial of the fundamental right to justice, and by extension, the loss of public confidence in the criminal justice system. Indeed, the efficiency of a court can significantly impact the overall quality of justice experienced by the accused and potentially lead to a perception by the public that the criminal justice system is unfair (Kenneth, 1997; Ryan et al., 1981).

Within this context, special attention has recently been given to bail court. Indeed, this stage of the criminal court process has also been shown to have substantial delays in case processing. Considering that the accused is being held in custody while still under the presumption of innocence, a lengthy deprivation of liberty raises problematic ethical questions (Doob & Myers, 2006; Hucklesby, 1997; Rumgay, 1995; Trotter, 1999; Varma, 2002; Webster, 2007). Further, court delay in bail can be detrimental because the accused - while in custody - is unable to contribute to society, particularly in terms of keeping a job and supporting his/her family. Additionally, individuals being held in custody awaiting a bail hearing or trial have been shown to be subjected to presumptions of guilt that could result in negative consequences for the accused. For instance, research has linked time spent in pre-trial custody with eventual trial outcome and sentence length, suggesting that the longer accused are kept in custody due to continual remanding or denial of bail, the more likely they are to be eventually found guilty and receive harsher sentences (Hagan & Morden, 1981).

This evidence of increasing inefficiency among and within Ontario criminal courts and the negative effects associated with inefficient case processing – particularly in bail court – led to the creation of the *Justice on Target* initiative in June 2008 by the Ministry in an attempt to reduce court delay. Indeed, a closer examination of the types of court appearances and appearance outcomes that were contributing to the province's current average number of

appearances required to reach disposition revealed that over half (6 appearances) of the 9.2 appearances were adjournments. In addition to increasing the number of appearances required to complete a case, adjournments are generally seen as an inefficient use of court resources because the resources which court staff invest to adjourn a case from one day to the next frequently do not lead to any advancement in the case (Webster, 2007)[2]. Not surprisingly, a main focal point of the *Justice on Target* strategy is to 'target' these unproductive adjournments. Logically, a reduction in the number of these adjournments and the consequent reallocation of court resources to other – more productive - court processes could bring about a decrease in the overall number of appearances and in the time required for a case to reach disposition. In fact, the Ministry expects strategies such as this one to reduce the provincial average number of days and court appearances needed to complete a criminal case by 30 per cent over the next four years.

To facilitate this exercise and determine how to best reduce the number of appearances (thus allowing resources to be redirected), an expert advisory panel of criminal justice practitioners from all over the criminal justice system was created. Invitations were not only extended to those whose job is specific to the courts, but also to police and correctional representatives. This broader inclusion of representatives on the advisory panel is an acknowledgement by the Ministry that the efficiency of the criminal court system goes beyond one particular court or one particular office, and that it is instead a result of issues that are present in the criminal justice system as a whole.

[2] Appearances of this sort (i.e. appearances which do not advance the case and, as such, do not contribute to moving the case toward completion) have been referred to as "unproductive appearances" (Doob, 2005; Webster, 2007).

The concern for and improvement of court efficiency within the criminal justice system appears to have gone beyond the Ontario context. Indeed, the announcement of this province's *Justice on Target* strategy provided an opportunity to examine the Canadian criminal justice system as a whole. Specifically, the (in)efficiency of Ontario's criminal courts was seen as part of a wider national problem of delay within the criminal justice system. Indeed, in addition to statistics on the (in)efficiency of Ontario courts, the Ministry released data which indicated that "across Canada in 2006-2007, it took an average of eight months (240 days) to complete a criminal case in adult court" (Ontario Ministry of the Attorney General, 2009). In response, provinces and territories committed to the sharing of best practices for efficient case processing in an effort to combat the issue of court delay from a national perspective (Ontario Ministry of the Attorney General, 2009).

The expert advisory panel identified successful practices from other provinces and territories across Canada, and proposed a list of specific areas of intervention in criminal courts where attempts could be made to reduce the number of adjournments and to reallocate resources in Ontario. In May 2009, the Ministry announced seven initiatives that would be implemented in a select number of courts to tackle delays in the processing of criminal court cases. These included (Ontario Ministry of the Attorney General, 2009):

- **On-Site Legal Aid and Simplified Online Application Process** – Ontarians will be able to apply for Legal Aid on-site and on-line. This will cut the time needed to process applications by clients who clearly qualify for Legal Aid.
- **Two-Stage Disclosure** – An initial disclosure package will ensure that everyone has the information they need to make timely decisions and minimize unnecessary delays.
- **Meaningful First Appearances** – Parties will agree if any work can be done up front so that the first court appearance makes real progress towards the resolution of the case.

- **Three-Appearance Standard** – Parties will know that there is a "three-appearance standard" for straightforward cases. This will allow resources to be redirected to complex cases.
- **Crown Access Commitment** – All parties will commit to exploring a resolution early in the process.
- **Increased Availability of Plea Courts** – Help to ensure plea courts are available when an accused wants to plead guilty at a scheduled appearance.
- **Direct Accountability** – Measures to hold offenders directly accountable to their community rather than going through the traditional court process. New guidelines will ensure that decisions regarding direct accountability measures are made earlier in the process – before the first appearance, if possible.

The majority of these initiatives focus on targeting changes in the administrative and structural features of a court as a means of reducing adjournments. The assumption appears to be that changes in the way in which resources are divided among the court and/or the addition of particular court procedures and practices will have an impact on court efficiency.

This focus on administrative and structural factors is not surprising given the large body of literature focused on procedure and resource-related causes of delay and delay reduction practices (Church, 1982, Church et al., 1978b; Klemm, 1986; Luskin & Luskin, 1986; Mahoney et al., 1981). Research focused on structural explanations for court delay suggests that the efficiency of a court is affected by the formal organization and procedures within the court. Consequently, structural factors such as calendaring systems, charging practices, speedy trial provisions, and record keeping practices have been linked to improved efficiency in the processing of criminal cases (Church, 1982; Church et al., 1978b; Luskin & Luskin, 1986; Mahoney et al., 1981). In contrast, administrative explanations for court delay argue that inefficiencies are rooted in the resource and workload characteristics of a court. Research in this area has focused primarily on four specific factors: case characteristics,

defendant characteristics, court size and administrative workload (Church, 1982; Church et al., 1978b; Klemm, 1985, Steelman, 1997).

The emphasis placed on administrative and structural changes to criminal courts is not without its own problems. In particular, the seven central initiatives of the Ministry's *Justice on Target* strategy largely reflect a lack of recognition of another body of criminological literature on factors impacting court efficiency which has recently received renewed attention. Indeed, an awareness of the limitations of early administrative and structurally based initiatives encouraged new research on court culture as an explanatory factor of court delays (see, for example, Church, 1982; Church et al., 1978a; 1978b; Klemm, 1986; Mahoney et al., 1981, 1988). This perspective emphasized the central importance of a local informal discretionary system of expectations, norms and relationships on the efficiency in case processing (Church, 1978a). Introduced initially in the mid-1980s, this new body of criminological literature rooted in behavioural research gained renewed attention in the late 1990s (Church, 1978a). The focus of recent investigations into determinants of case processing time suggests that the local legal mentality of a court – the court culture – has a significant impact on court efficiency (Leverick & Duff, 2002; Webster, 2007).

However, the broader application of this body of literature to the study of court efficiency and the development of strategies to reduce court delay is not without its own limitations. Most notably, there have been few empirical studies which have identified the specific cultural components of criminal courts that affect case processing efficiency and which unique interventions to improve court delay would target (Church, 1982, 1985; Steelman, 1997). This lack of empirical research is rooted primarily in the difficulties surrounding the

measurement of the central construct of 'court culture'. There is a lack of consensus from the research community over the meaning of this term. In fact, it has been suggested that it is precisely due to this ambiguity that research has rarely attempted to explore the concept as anything more than a residual cause of court delay, found only if other causes of inefficiency were not evident (Church, 1982; Church et al., 1978b; Luskin & Luskin, 1986).

In this context, it is not surprising that the Ministry would choose to implement initiatives based on traditional explanatory factors of court delay which are easy to describe, measurable, and associated with directly observable causes of delay. Yet, the analyses of court culture found in the literature as well as the rare empirical research on its impact on court efficiency suggest that there is still merit in considering whether the court efficiency issues experienced by the Ontario courts are also in part the result of cultural influences as opposed to simply structural and administrative inadequacies.

Research findings relative to administrative and structural initiatives have also argued that these traditional predictors of court delay do not account for all of the variability in case processing efficiency (Church, 1982; Doob, 2005; Mahoney et al., 1981; Webster & Doob, 2003). Several scholars (Church, 1982; Church et al., 1978a; Klemm, 1986; Mahoney et al., 1981, 1988) have proposed that the ways in which a court deals with administrative and structural factors, and whether the court allows those factors to slow down the pace of case processing is more significant than the factors themselves. In other words, this perspective suggests that the relationship between administrative and structural factors and court

efficiency may be spurious[3] in nature whereby the impact of these traditional factors is mitigated or qualified by a court's culture. Within this context, the ability of administrative and structural elements to affect court efficiency is, in fact, seen to be largely a result of the culture within a court. By extension, any delay-reduction techniques focused exclusively on these traditional factors would be less likely to be effective in reducing court inefficiencies unless they take into account the comprehensive system of informal expectations, practices and relationships of court practitioners – the local discretionary system – that governs such reforms (Church, 1982, p. 398).

There may be reason to believe that the structurally and administratively based initiatives of the *Justice on Target* strategy alone will not produce the significant reductions (30% reduction in four years) in the number of appearances and time to disposition to which the Ontario government has committed itself. Indeed, it is plausible that without changing the informal expectations, practices and relationships that support or discourage administrative and structural initiatives, only minor reductions in case processing time will result. Further investigation of cultural explanations of court delay - particularly in Ontario courts - is needed to determine whether culturally based initiatives should also be included as part of the overall strategy in order to ensure the government's ability to meet its promised goals.

Unfortunately, this task faces a number of challenges within the present context. Most obviously, there are very few operational measures of court culture – a necessary component

[3]We are using the term 'spuriousness' loosely to simply suggest that the bivariate correlation between administrative/structural factors and court efficiency may not constitute a direct causal relationship. Rather, there may be alternative or more complex explanations rooted in the existence of antecedent, intervening or control variables which specify the nature of the original correlation. For a more detailed discussion of the issue of spuriousness as part of the elaboration process, see, for example, Frankfort-Nachmias & Leon-Guerrero, 2006, p. 195-208).

of any research purporting to examine the impact of this theoretical construct on court efficiency in Ontario. The most recent and arguably the most empirically-based attempt at developing such a measure of court culture is Leverick and Duff's (2002) passive-proactive typology of Scottish criminal trial courts. These scholars examined four Scottish Magistrate courts with varying degrees of efficiency in the processing of their cases and found that courts in which there were very few adjournments (and, as such, quicker case processing times) had a culture or way of operating distinct from those in which there was a greater number of adjournments (and, consequently, slower case processing times). They described the efficient court as being proactive in nature while the inefficient court was depicted as passive in nature. This study provided empirical evidence supporting the notion that court culture (as measured by their proactive-passive dichotomy) does, in fact, affect court efficiency.

This study also provides an instrument for measuring the theoretical construct of court culture. Their qualitative descriptions of their four Scottish Magistrate courts revealed that the principal cultural element impacting court delay was rooted in a passive versus a proactive mentality. However, the applicability of this conclusion to the Canadian context has never been tested. Certainly given the numerous differences in the legal systems of Scotland and Canada, it is unclear whether this same court culture typology would be useful in distinguishing courts of differing case processing efficiency in Canada. The primary purpose of this research project is to assess whether Leverick and Duff's (2002) passive-proactive court culture typology helps to explain the distinction between efficient and inefficient criminal courts in Ontario. This study will focus exclusively on bail court.

Chapter two of this thesis presents a summary of the research on explanatory factors of court efficiency (from a structural and administrative focus to a cultural focus), and identifies some of the challenges for understanding cultural explanations of court delay. Chapter three describes the data collection and data analysis procedures used to investigate court culture and court efficiency in two Eastern Ontario bail courts, including an in-depth discussion on the research setting and principal measures used for this analysis. The fourth chapter of this thesis showcases the interview data which were collected, and provides a quantitative analysis of the applicability of Leverick and Duff's court culture typology and a qualitative description of the differences in court culture between the two courts under study. Drawing on the empirical findings of this study, Chapter five summarizes the results of this analysis and discusses their theoretical, methodological and practical relevance to our understanding of the relationship between court culture and court efficiency. The final chapter of this thesis addresses several of the limitations of this study, and offers suggestions for future research.

CHAPTER TWO: REVIEW OF LITERATURE

It is not surprising that court efficiency is usually discussed in relation to court delay. This area of inquiry has received considerable attention from scholars as well as practitioners (Baar, 1997; Church, 1982, 1985; Church et al., 1978a, 1978b; Doob, 2005; Doob & Webster, 2006; Klemm, 1986; Leverick & Duff, 2002; Luskin & Luskin, 1986; Ministry of the Attorney General, 2009; Ryan et al., 1981; Steelman, 1997; Taxman & Elis, 1999; Webster & Doob, 2003, 2004; Webster. 2006). The majority of studies on court efficiency assume that a court's inability to process cases in a reasonable period of time is amenable to solutions based on the results of empirical, action-oriented research (Church, 1982; Cohen, 2002; Milakovich, 1991). Sometimes this belief has led research on court efficiency to be conducted in pursuit of an operational solution to a 'pressing' social problem (Church, 1982; Leverick & Duff, 2002; Mahoney, 1988).

Although some academic research (Leverick and Duff, 2002; Ryan et al., 1981; Taxman & Elis, 1999) has mentioned the positive effect that efficiency can have on the overall quality of justice experienced by the accused, a significantly larger amount of pragmatic research exists on the negative effects of inefficiency on the quality of justice for the offender, victims and society (see, for example, Church, 1982, 1985; Church et al., 1978a, 1978b; Doob, 2005; Doob & Webster, 2006; Klemm, 1986; Leverick & Duff, 2002; Luskin & Luskin, 1986; Ryan et al., 1981; Steelman, 1997; Webster & Doob, 2003, 2004; Webster. 2006)[4].

[4] There is also a third stream of research which focuses on the positive effects of slower case processing, such as taking time to assess risk (especially in the face of public safety/concern). This perspective associates faster case processing times with less justice (i.e. reduced ability to defend oneself, reduced opportunities to seek legal help, undue pressure on accused persons to plead guilty and a loss of opportunities for negotiation between

A rapid glance at the historical development of the court efficiency literature reveals that the concern of court delay is not unique to the twentieth century (Reed, 1973). For instance, as far back as 42 A.D. the Emperor Tiberius Claudius Nero Caesar urged the Roman Senate to pass a law setting up a summer session for the congested Roman Courts (Reed, 1973). More recently, the poet and statesman Johann Wolfgang von Goethe wrote in his autobiography of the serious problem of delay in the German Courts. In fact, he noted that it was not unusual in eighteenth-century Germany for cases to remain on the docket for over 100 years. So what makes the current concern over court efficiency so unique?

One reason for the recent attention focused on the question of court delay in Canadian criminal courts is rooted in the creation of case law that permits (if not demands) the termination of criminal cases that are not processed in an efficient manner. According to the Supreme Court of Canada's decision in *R v. Askov*, [1990] 2 S.C.R. 1199, the accused has a right to a trial within a reasonable time, which has been defined by the court to be eight to ten months from arrest to trial. Cases which take longer may be dismissed on the grounds that section 11(b) of the Canadian Charter – the right 'to be tried within a reasonable time' - has been infringed. Certainly in light of the fact that one fifth of provincial court cases took more

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prosecution and Defence) (for example, see Edwards, 1999; Ostrom & Hanson, 2000; Raine, 2000). While also a worthy avenue of inquiry, the perspective followed in this thesis is that increasing the pace required to process cases will have a positive effect on the quality of justice (i.e. solicitors will be better prepared for trials when there is a reasonable expectation that they will actually go ahead as planned rather than being adjourned). While the relationship between efficiency and justice is clearly more complex (and arguably non-linear in nature), the perspective of this thesis reflects the predominant view by scholars. For a more nuanced discussion of this relationship, see, for example, Church, 1982; Church et al., 1978b; Leverick & Duff, 2002; Ryan et al., 1981).

than eight months to be resolved in 2002[5] (Webster & Doob, 2003), many cases may be at risk of an 'Askov' violation.

In addition to denying one's fundamental rights, court delay also has a negative effect on the overall quality of justice experienced by the accused. For example, a lengthy passage of time between the commission of the alleged offence and an eventual hearing increases the likelihood that witnesses will be untraceable or that their memories of events will fade, rendering their evidence less reliable (Leverick & Duff, 2002). For accused persons who are eventually found guilty, the association between any sentence passed and the original offence becomes weaker as the time period between these two events increases. As such, any ability for the criminal justice system to deter additional crimes by the individual or crimes by the general public is reduced. Similarly, for those found to be innocent, time spent - either in or out of custody - waiting for the case to conclude is likely to cause significant emotional and financial stress (Leverick & Duff, 2002).

Court delay has also been thought to influence the public's perception of and confidence in the criminal justice system (Kenneth, 1997). For example, the efficient processing of cases coincides with society's interest in ensuring that those who have 'broken' the law have been tried promptly, fairly, and on the appropriate merits. Indeed, the community at large consistently monitors whether the justice system works fairly, efficiently and is responsive to the needs of its citizens. If cases were repeatedly stayed for unreasonable delay, and these

[5] It is important to note that only delay which is rooted in events that are beyond the control of the accused (and/or the accused's lawyer) (i.e. administrative delays in scheduling a trial) is considered in this calculation. Any increase in the length of time to process a case which is deliberately produced by unnecessary actions/decisions by the accused/accused's lawyer are not counted as part of the eight month limit. Given this caveat, it is unlikely that the entire one fifth of the aforementioned provincial cases is in danger of an Askov challenge. Having said this, the potential risk for many cases cannot be overlooked.

alleged 'lawbreakers' were released not because of their merits, but as a result of a legal technicality, public confidence in the justice system would soon diminish (Department of Justice, 2007).

Public perceptions of the criminal justice system are also affected by the misuse of limited state resources in cases with unreasonable delay. As the number of court appearances required to resolve a case increases, costs associated with a case escalate for both the justice system and for defendants (Office of the Auditor General of Ontario, 2008). Increased court appearances also place additional resource demands on the local municipal police forces whose officers may be required to testify in court and/or transport defendants between correctional facilities and courthouses as well as detain them in custody at courthouses (Office of the Auditor General of Ontario, 2008).

These potential negative effects of court inefficiency are even more evident in bail courts. Unreasonably long delays in resolving bail for those in remand can have devastating effects on a person's life (Trotter, 1999). Beyond the possibility of job loss and its associated effects on family members relying on this income, the stigmatization of the accused (and family) has also been noted in the literature (Manns, 2005; National Council for Welfare, 2000). Lengthy bail processes may also negatively impact the ability of the accused to defend him/herself by rendering it more difficult to hire and communicate with a lawyer, find evidence or witnesses to support one's case or engage in other activities which would demonstrate intent to effectively contribute to society (Hagan & Morden, 1981; Hill et al., 2004; Trotter, 1999). Likewise, anecdotal evidence (Kellough & Wortley, 2002; Ritchie, 2005) suggests that pre-trial detention even for short periods of time is onerous for the accused who is often housed

in overcrowded detention centres with no recreational, educational or rehabilitative programs. Indeed, time on remand is often referred to as "dead time" because the accused is housed in facilities designed for short-term detention without access to these necessary social and psychological amenities (Department of Justice, 2007).

In Ontario, these concerns are particularly troublesome in light of the substantial rise in the proportion of cases taking many court appearances to complete the bail process. The proportion of cases with four or more bail appearances rose by approximately 6-7% over a five year period (Webster, 2007). This increase has affected Ontario's remand population, which has increased threefold since 1981 (Webster & Doob, 2006). As a result, there are presently a greater number of people being held in remand, awaiting bail determination or trial, than there are offenders actually serving post-conviction custodial sentences in provincial institutions (Doob, 2007b; Webster, 2007).

Doob (2007b) and Webster (2007) suggest that this remand population is being compensated for their increased pre-trial detention with 'time served' credits at sentencing[6]. This has created an inversion of the central principle of justice – the presumption of innocence - because accused end up serving time before they have been found guilty (Doob, 2005; Friedland, 1965). Clearly, this consequence of the bail system is exacerbated by delays in the processing of bail cases. This would seem particularly true for cases in which the accused is ultimately found not guilty or the charges are withdrawn (Ashworth, 1994).

[6] This practice credits pre-trial detention on the basis of two days credit for each day served (Manson, 2001).

Finally, the substantial increase in the number of accused in pre-trial custody (those with their bail undetermined or denied) creates additional strain on the ability of detention centres to effectively manage this prison population and their unique characteristics (i.e. unpredictability in terms of length of stay; the need for separation from sentenced offenders; inaccessibility of activities and/or programming) (Webster, 2007). Beyond the obvious concerns with the maintenance of order and discipline and, by extension, the safety of those (working) in these facilities, this rise in the remand population has significant cost implications for tax-payers who are forced to 'pay' the consequences of court delay.

2.1 Early Explanations of Court Delay

Early research on court efficiency focused on structural and administrative factors within a court to explain delays. Research within the structural domain noted that the efficiency of a court was affected by the formal organization and procedures of the court. Although the terminology used by these early researchers seems to differ, structural factors generally include the following correlates to the (in)efficient processing of criminal cases: calendaring systems, charging practices, speedy trial provisions, and record keeping practices (Church, 1982; Church et al., 1978a ; Luskin & Luskin, 1986; Mahoney et al., 1981).

Case scheduling practices are thought to affect the way in which available in-court time is utilized, and in this way, influence the length of time needed for a case to reach disposition (Mahoney et al., 1981, p. 61). It was argued that the calendaring system of a court - the organization of case processing within a court - has an impact on the speed at which cases reach disposition (Church et al., 1978b, p. 36). Generally, cases are assigned to individual staff and remain with them until the case reaches disposition (i.e. individual calendar), or

they are assigned at each stage of the court process to a team that specializes in one stage of court processing (i.e. master calendar).

Master systems are argued to be more efficient in their use of judicial resources. As soon as cases are ready, they are sent to a free judge for particular action, instead of remaining with one particular judge over the entire court proceedings (Church et al., 1978a, p. 31; Church et al., 1978b). This process is flexible and uniform and allows adjustments to be made for slow judges as well as individual dockets which are delayed by complex trials or judge absence (Church et al., 1978a, p. 31; Church et al., 1978a). For instance, if a case were to collapse, it is hypothesized that the next case waiting to be heard could be dealt with immediately by the newly available judge, potentially decreasing the waiting time required for a case to get to trial (Hausner & Seidel, 1981; Mahoney et al., 1981)

Police and prosecutorial charging practices are another structural variable thought to affect case processing time. Specifically, the initial decision with respect to whether to charge a defendant - and, if so, with which offence(s) - can have a significant effect on court workload. In cases in which charges are laid without sufficient consideration of the likelihood that a prosecution will succeed, a significant amount of time is added to the court process in order to build the case and solidify sufficient evidence (Mahoney et al., 1981, p. 58).

Speedy trial provisions are also thought to influence the pace of litigation in a particular court. Probably the most common solution invoked by legislatures to the problem of delay is the imposition of speedy trial standards. Although courts differ in the phrasing of these

statues, each places a limit on the number of days or the amount of time required for a case to move from arrest to trial. These rules are based on the premise that court inefficiency is the result of a lack of understanding of the acceptable amount of time required to process a case. In explicitly stipulating an appropriate (or, more likely, a maximum) length of time to dispose of a case, it is thought that the fear of having a case dismissed would force participants to move more expeditiously (Church et al., 1978a, p. 28, 1978b).

The last commonly cited structural factor linked to court efficiency is the record keeping procedures of a court. The lack of available data on the case-related activities of a court as well as the major events in individual cases may affect waiting times in significant ways. If a court does not have information on the size and nature of its caseload, or the age of its pending cases, court officials will be unable to determine whether a problem is becoming more or less serious, and, by extension, develop viable plans for reducing delays (Church et al., 1978, p. 34; Mahoney et al., 1981, p. 65).

Problems associated with identifying structural factors also relate to the identification of specific administrative factors that influence court efficiency. Research in this area has focused primarily on four specific factors: case characteristics, defendant characteristics, court size and administrative workload. Research on the first group of administrative factors - case characteristics – argues that each individual case has certain properties affecting case processing time, properties over which the court has no control (Klemm, 1985, p. 10). The most common characteristic studied is offence type. Theoretically, different types of offences present different problems for Prosecutors and courts and may, by extension, require different processing times (Hausner & Sidel, 1981; Klemm, 1985, p. 10).

Two other offence characteristics that have been examined are charge seriousness and case complexity. It is thought that more serious and more complex cases require more time to complete (Klemm, 1985, p. 10). In terms of seriousness, defendants charged with more serious crimes risk a greater penalty and may find delay more attractive. In addition, there is a presumption that serious cases are likely to consume more attorney preparation time. In particular, Prosecutors tend to process serious cases more slowly in order to satisfy their own sense of justice as well as decrease the likelihood of any complaints from the public or police suggesting that the case was not handled appropriately (Church et al. 1978b, p. 30; Luskin & Luskin, 1986, p. 194).

Some cases are simply more complex and consequently more time consuming than other cases. Indeed, it is argued that criminal cases differ in levels of complexity and that variation in complexity will likely influence the time frame for case preparation and court disposition (Taxman & Elis, 1999, p. 33). For instance, cases with multiple defendants tend to exacerbate problems of scheduling and coordination (Luskin & Luskin, 1986, p. 195). In fact, both the number of co-defendants and the number of charges have been found to lengthen case processing time (Hausner & Seidel, 1981).

As a case unfolds, the actions of some participants may also prolong the processing time of a case (Luskin & Luskin, 1986, p. 195). It is believed that the inclusion of a trial or preliminary inquiry increases the total number of court appearances and total elapsed time to resolve a case (Luskin & Luskin, 1986; Webster & Doob, 2003). Elections can also impact on case processing times. Specifically, Crowns who elect – in the case of hybrid offences – to

proceed by indictment (instead of by summary conviction) or defendants who elect – in the case of a trial – for judge and jury (instead of a judge only) increase the number of days required to complete the case (Doob, 2005; Webster & Doob, 2003). Indeed, research (Doob, 2005; Webster & Doob, 2003) focused on provincial court efficiency in Canada suggests that indictable cases take longer to process than summary cases, and judge and jury trials take longer to reach disposition than judge only trials.

The next set of administrative factors discussed in the court efficiency research focuses on the characteristics of the defendants themselves and, in particular, on the impact of factors such as whether the defendant has been released on bail, has a previous criminal record and the type of attorney secured for representation (Luskin & Luskin. 1986; Mahoney et al., 1981). Supporters of this perspective also believe that because some Defence Attorneys are overburdened, they are often unprepared to proceed with scheduled appearances or are scheduled to appear in multiple courtrooms at once, causing last minute adjournment requests (Mahoney et al., 1981, p. 59)

In contrast, the fact that defendants are awaiting disposition in prison (i.e. in pre-trial detention) is thought to affect both their own motivation as well as the motivation of others to move the case quickly toward final resolution. Research (Church et al., 1978a, p. 21; Luskin & Luskin. 1986, p. 194) had indicated that in addition to a defendant's desire to have his/her case processed quickly, Judges, Prosecutors and Defence Attorneys may also be under pressure to prioritize such cases at the expense of delaying others, simply because of legislative restrictions on pre-trial detention as well as limited jail space.

Finally, the defendant's prior record is also mentioned in this research as a factor resulting in court delay. Indeed, it was found that a defendant with numerous prior convictions would probably receive a more severe sentence if convicted, and thus might be more inclined to tolerate pre-trial incarceration, financial hardship, or extended uncertainty in return for a higher probability of acquittal, dismissal, or favourable plea bargain (Church et al., 1978a, p. 21; Luskin & Luskin. 1986, p. 195). Additionally, it has been noted that cases in which the court is ready to settle the matter but requires additional information on the defendant, are often adjourned, typically for several weeks, to enable the court to obtain what it requires (Mahoney et al., 1981, p. 54)

The third administrative factor believed to affect court efficiency is court size. Early reports on court efficiency argued that delay was predominantly a problem in large courts (Church et al., 1978b; Mahoney et al., 1981). Expeditious disposition of cases was believed to only be possible in smaller courts that handled a smaller volume of less serious or less complex cases. Indeed, it was assumed that large courts with numerous cases and with comparatively serious crimes could not be expected to dispose of cases as expeditiously as smaller courts (Church et al., 1978b, p. 21). Further, it was argued that in addition to larger and more complex caseloads, larger courts were likely to also suffer an imbalance of court resources to caseloads. Indeed, this literature is riddled with references to overworked judges and understaffed courts. In this light, it is not surprising that many scholars concluded that delay would be reduced with the mere addition of staff and facility resources (Church et al., 1978b, p. 24; Mahoney et al., 1981, p. 57).

The final administrative factor discussed in the early court efficiency literature is the administrative workload of a court. It is thought that as proceedings for handing cases become more complex, additional time will necessarily be spent on case administration. The volume of this type of work clearly increases as the total volume of cases increases. Indeed, by removing a large portion of the court's available staff resources (such as the availability of staff for in-court functions), it is assumed that the speed with which cases are processed decreases (Church et al., 1978b; Mahoney et al., 1981, p. 57).

2.2 Limitations of These Early Explanations

A number of court efficiency researchers (Church, 1982; Church et al., 1978a, 1978b, p. 49; Klemm, 1986 Luskin & Luskin, 1986; Mahoney, 1988; Mahoney et al., 1981) were critical of these explanations of court delay. They found little compelling empirical support for administrative and structural causes of court delay and argued for the development of a new approach to explaining court delay. Specifically, structural and administrative factors were consistently found to have a relatively weak effect on court delay (Church, 1982; Church et al., 1978a, 1978b, p. 49; Church, 1982; Klemm, 1986 Luskin & Luskin, 1986; Mahoney, 1988; Mahoney et al., 1981). Further investigation of possible explanations for the existence of these (weak) correlations helped to identify an alternative element that each of these factors had in common: the informal attitudes, practices and relationships shared by all members of the local legal community within the court (Church 1982; Church et al., 1978a, 1978b; Klemm, 1986; Mahoney, 1988; Mahoney et al., 1981).

For instance, in order to increase case processing time, scholars have argued that it is not sufficient simply to assign control of a case to an individual through a calendaring system.

Rather, court staff must also intentionally exercise control over that particular case. In fact, judges who are individually assigned cases and exhibit extensive independent control of their calendar tend to feel more responsible for their caseload and are more likely to dispose of their cases more quickly than those who do not exert such control (Church et al., 1978b, p. 42, 45). Similarly, it is believed that speedy trial rules alone do not improve the pace of litigation. Rather, it is only when such rules are paired with an operational requirement that they be followed that case processing speed does, in fact, increase (Church et al., 1978b, p. 48). For example, if the local Prosecutor or Judge imposes a time limit of his/her own that is considerably more restrictive, even in courts with longer time requirements, the court tends to move at a faster pace than do those courts that have a strict state provision with little operational effect (Church et al, 1978b, p. 49). Further, it is the threat of operational consequences which cannot be easily waived by the Defence, such as the threat of an early trial, which appears to facilitate this faster processing of cases (Church et al, 1978b, p. 46, 49).

In a similar vein, data-processing systems to record how quickly cases are processed help to ensure that time standards are met. However, the value of this recorded information is dependent on the desire of staff to reflect and act on the information (Church et al, 1978b, p. 42, 43). Additionally, discussions on operational directions, consequences and areas for improvement are more likely to occur in smaller courts because of the increased likelihood of communication amongst court staff given their significant exposure to one another (Mahoney et al., 1981, p. 64).

This is not to say that the other administrative and structural factors such as the complexity of the case or prior record of the accused do not have an impact on court efficiency. Rather, it is the way(s) in which a court deals with these factors and whether the court allows them to slow down the pace of case processing which is more significant than the factors themselves (Church, 1982; Church et al., 1978b; Mahoney et al., 1981; Steelman, 1997). In this way, any delay reduction techniques focused exclusively on structural and administrative factors are arguably less likely to succeed if they do not take into account the comprehensive system of informal relationships, norms and practices of court practitioners through which such reforms would operate (Church, 1982, p. 398).

This suggests that the ability of these factors to affect court efficiency is dependent on the culture that exists within a court. For instance, the impact of speedy trial rules on the (in)efficiency of case processing is moderated or mitigated by the type of informal norms/practices adopted by the court. In courts with a strong authority figure who imposes these rules and punishes transgressions, cases are processed more quickly. Conversely, in courts in which personnel regularly 'accommodate' mutual requests for adjournments, cases are processed more slowly, despite the existence of speedy trial rules.

In light of these findings, a new approach to explaining court delay began to focus on the impact of the local legal culture of a court on court efficiency (Church, 1982; Church et al, 1978a, 1978b, p. 49). As such, for a brief period of time in the mid 1970s and 1980s, and again in the late 1990s, the criminal court system was the subject of a body of behavioural research. In addition to a growing number of general analyses of existing criminal court systems, studies have focused on sentencing (Eisenstein & Jacob, 1977; Heumann, 1978;

Rumgay, 1995), plea bargaining (Blumberg, 1967, Eisenstein & Jacob, 1977; Heumann, 1978; Hucklesby, 1997; Mather, 1979), and the consequences of various reform efforts (Lippincott & Stoker, 1992; Nimmer, 1976; Mahoney, 1988; Mahoney et al., 1981; Steelman, 1997; Taxman & Elis, 1999). Most of this research has emphasized the central importance of a local discretionary system in understanding these phenomena (Church et al, 1978b, p. 59).

Within this broader context, special attention has been given to the relationship between court culture and court efficiency. Most of this work has focused on three principle themes: attitudes and expectations, practices and incentives, and relationships. It has been argued that court culture takes into consideration collective attitudes and views which are shared among court personnel, including an understanding of what constitutes acceptable and unacceptable behaviour, or an acceptable speed of case processing (Church, 1982; Rumgay, 1995). Attitudes and views are developed informally between court personnel over time and are sometimes agreed upon amongst all court personnel or imposed or dictated by another court player with a higher degree of power (i.e. the Judge or Justice of the Peace) (Levin, 1975). For example, by setting tight deadlines for case preparation or refusing to grant adjournments, judges are able to informally regulate the behaviour of Prosecutors and Defence Agents when processing cases (Raine & Wilson, 1996).

Expectations are also believed to be determined through what one observes in court on a regular basis and how that shapes beliefs about what will likely happen in the future. For instance, solicitors' beliefs regarding whether a request will be granted or denied or whether the other party will oppose their request are arguably based on the experiences that they have

had in court. Collectively, these experiences build the group standard of what is appropriate (Church, 1982).

Expectations are influenced by the effect of direct experience on what is acceptable (Church, 1982). For example, to enforce a strict continuance policy, a Justice of the Peace must uphold a rule that adjournments are only allowed in emergency situations. Such a rule would not be successful unless there is a consistent change in the day-to-day realities experienced by court personnel. If Justices of the Peace continue to grant continuances in non-emergency situations (despite the new policy), adjournments would continue to be requested given the expectation created by the 'lived' reality. Thus, the addition of the new policies and resources to reduce court delay must be accompanied by a change in court personnel expectations (Sipes et al., 1980).

Some court culture researchers (Church, 1982; Church et al., 1978b; Mahoney et al., 1981; Steelman, 1997) argue that a regular set of informal practices exists in each court, reflecting a number of unspoken incentives. The practices of counsel, the accused, the Judge and other court staff are believed to affect the speed of case processing. For instance, retained Attorneys may handle cases more slowly than court-appointed counsel because they are paid directly by clients, who generally need time to request financial support and who may be less eager to pay once the case is resolved (Luskin & Luskin, 1986, p. 194). Defendants released prior to trial may also wish to slow the pace of case processing to delay a possible conviction and sentence. And finally, Prosecutors may delay the processing of a case because of a fear of reprisal and consequent need to ensure that the case is prepared properly (Church et al, 1978b, p. 30; Luskin & Luskin, 1986, p. 194; Mahoney et al., 1981).

Moreover, it has been argued that informal practices often emerge in social institutions as a means of accomplishing the immediate goals of court personnel. Over time, these short-term objectives may become the central focus of the key players, and as a result, the broader purposes of the institution can gradually became lost or re-defined. In this way, over-arching principles and objectives (i.e. court efficiency) might be replaced by more individual, vested interests (Webster, 2007).

In slow courts, efficiency itself may not be seen as an incentive for practitioners to exert themselves. For example, court personnel may justify a request for a continuance by arguing that any questioning surrounding whether continuances are necessary wastes more time than simply remanding the case to another day or another docket (Steelman, 1997; Church, 1982). Conversely, in fast courts, where the overarching goal of efficiency is still central to the actions of court personnel, court efficiency is seen as a positive incentive for court personnel to work together to manage the processing of their cases and avoid any unforeseen delay (Ryan et al., 1981).

Beyond these more individual values or motivations, courtroom workgroups consisting of Judges, Justices of the Peace, Clerks, Prosecutors and Defence Agents are thought to have an influence on the pace of litigation (Lipetz, 1980). Professional courtesy within a workgroup is believed to produce mutual accommodation among court personnel (Church 1978a; Cohen, 2002). Often, this accommodation results in one court actor accepting the behaviour of another in order to keep a positive relationship with that person. This can cause frequent and unnecessary adjournment requests to go unopposed simply to please the other court party

within the workgroup (Lipetz, 1980; Lippincott & Stoker, 1992; Rumgay, 1995). Further, any threat to the existing routine of a workgroup, such as the appearance of a new member or new organizational policy, will not have a lasting impact upon court routine because of the need for all group members to accept a common set of group norms (Church, 1982; Eisenstein & Jacob, 1977; Lipetz, 1980; Searle et al., 2005). Court delay reduction initiatives that focus on implementing a new organizational policy may only change behaviour for a limited period of time if the existing courtroom workgroup is adverse to such change (Lipetz, 1980, p. 53).

For instance, a procedural factor discussed frequently in the delay reduction literature to distinguish faster courts from slower courts is the existence of case-management controls (see for example, Church, 1982; Church et al., 1978b; Mahoney, 1988; and Steelman, 1997). These can be anything from time standards (a.k.a 'speedy trial rules') written into legislation requiring the completion of a case within a certain period of time in order to avoid the termination of the case or internal rules, guidelines, or protocols mandated by Judicial committees, to the establishment of case quotas set by a particular court or office (Doob, 2007b; Mahoney, 1988; Steelman, 1997; Webster, 2007). Case-management controls assume that the court has responsibility for the expeditious disposition of its cases from the commencement of the litigation to final disposition (Church, 1982, p. 405). Not surprisingly, these so called 'stringent controls' on the pace of criminal litigation are only effective when the expectations, norms, and relationships of the legal community support such goals.

In court systems in which these 'controls' are employed, but where expectations, norms and relationships within the court are consistent with a leisurely pace of case processing, court

participants fail to act on these controls and the pace of litigation remains unchanged (Church et al, 1978b, p. 60-61). Within these courts feelings of responsibility for expediting cases are not shared among court personnel, and there is a general agreement that cases cannot move any faster than they do at present. In contrast, faster courts are differentiated from slower courts not so much in terms of the existence of operational requirements (i.e. case-management controls) but rather in terms of whether the expectations, norms and relationships of court system participants support them (Church et al, 1978b, p. 61; Department of Justice, 2007).

2.3 Limitations to Understanding Court Culture

Our understanding of the relationship between court culture and court efficiency is based on only a limited number of empirical studies. This lack of empirical research is believed to be largely a result of the ambiguity of the term 'court culture'. Indeed, researchers investigating court efficiency sometimes avoid studying court culture due to the threats surrounding construct validity[7] posed by the concept (Church, 1982; Church et al., 1978b). Ironically, a number of authors working in the area of court efficiency have noted that because of the ambiguity around this construct, it is often easier to investigate structural and administrative explanations of court delay because there is a clear consensus from the research community over the meaning of each term. Within this context, it is not surprising that when a study does mention 'court culture', it is usually not the primary concept under investigation.

[7] Construct validity refers to the degree of confidence which we have that the way in which a hypothetical construct has been operationalized or measured accurately captures the underlying theoretical concept. Weak construct validity reduces the ability of the researcher to generalize his/her research findings beyond how they were measured in the particular study (Bachman & Schutt, 2007, p. 86; Maxwell & Babbie, 2008, p. 134; Webster, 2007).

Rather, it is viewed simply as a possible contributor – in lieu of more popular explanatory factors (Church, 1982; Leverick & Duff, 2002; Steelman, 1997).

As an illustrative example, Klemm's (1986) investigation of case processing time compared various structural and administrative characteristics among five different courts. She found no significant evidence that these factors were responsible for the differences in processing times across these courts. In conclusion, Klemm suggested that in lieu of structural and administrative differences, variations in processing speed must simply be the result of variations in culture. Similarly, Taxman and Ellis (1999) carried out an evaluation of a structurally based delay reduction initiative. They concluded that the ineffectiveness of the delay reduction initiative under investigation was not a result of the initiative itself, but of the ways in which it was implemented and the pre-existing norms of the court. Although Taxman and Ellis implicated court culture in their analysis, they failed to describe the particular cultural aspect(s) which affected the ability of the initiative to reduce delay.

Most available studies examine the construct of court culture by hypothesizing about theoretical links between the informal attitudes, practices and relationships of court personnel and their potential effects on case processing time. Although this work has established the theoretical basis for the empirical testing of the relationship between court culture and court efficiency, there are few studies which have focused on the identification and measurement of particular cultural components. In fact, research on court culture and court efficiency has generally failed to identify the specific cultural elements or factors that distinguish courts of varying efficiency (Church, 1982; 1985; Steelman, 1997).

The notable exception is a study conducted by Leverick and Duff (2002) of Scottish magistrate courts. Their research identified a number of court culture variables correlated with courts of varying efficiency levels, and identified two distinct court cultures across the four courts which they studied. On the one hand, they identified what they termed a 'passive' court culture in three of the courts studied. These courts also had the longest case processing times. In these courts, Judges rarely questioned adjournment requests as long as they were not opposed by either Defence Counsel or the Crown Attorney. Indeed, they saw their role as only adjudicating over *disputed* adjournment requests. The behaviour of the Prosecutors and Defence was also influenced by the attitude of the Judge, and as a result, both parties were more likely to request an adjournment, even in situations in which it was unnecessary. In these courts, there was also an informal expectation that the first trial date would be adjourned and a certain number of adjournments were considered 'normal' in order to complete the day. In fact, there was a perception that if adjournments were not granted, there would simply be too many trials to complete in one day and some trials would be adjourned regardless, due to lack of court time (Leverick & Duff, 2002, p. 47).

Adjournments also tended to be agreed upon by all parties prior to the court appearance and an unspoken agreement seemed to exist between the Prosecutors and Defence Counsel that "if you don't oppose my adjournments, I won't oppose yours". However, this was only possible if both parties had a good relationship (Leverick & Duff, 2002, p. 48). Although in many cases the witnesses were informed in advance not to attend court in order that the Judge would not regard this type of adjournment as problematic, there was still the possibility that, with additional effort, the adjournment could have been ultimately avoided.

On the other hand, Leverick and Duff also identified what they referred to as the 'proactive' culture in one of the courts under study. This court also had the shortest case processing time of the four courts. Leverick and Duff (2002) found that adjournments were rare in this court. Judges were proactive in questioning the need for adjournments, even if they were not opposed by either party. Further, court parties admitted that they would not even request adjournments in cases in which they thought that they would not be granted (which represented the vast majority of cases). The culture of this court was judge-led and judges tried to deal with as many cases on the docket each day as possible in order to avoid adjournments.

Although it was sometimes unpleasant to be reprimanded in court when an adjournment request was made, the views of Prosecutors and Defence Agents in this court indicated that there was also some advantage to the certainty of knowing whether or not adjournments would be allowed. As a result, adjournments in this court were only asked for when it was absolutely necessary. Even then, adjournments were more likely to be granted for earlier, rather than later, dates (Leverick & Duff, 2002).

Leverick and Duff's (2002) study goes beyond the limitations of other studies in this area of inquiry by not only providing empirical support for the relationship between court culture and court efficiency but also, and potentially more importantly, by identifying specific cultural factors associated with (in)efficiency. The problem for our current purposes is that we have very little knowledge regarding the generalizability of the findings of this study to other realities. Certainly given the recent concern in Canada with court delay, a greater understanding of those factors which impact on court efficiency would seem timely.

Unfortunately, the assumption that the same relationship between court culture and court delay which has been empirically supported in Scotland would also exist in Canada is problematic. Indeed, differences in criminal law, court structures, and the wider societal context between these two countries might mean that the cultural characteristics associated with court efficiency as described by Leverick and Duff (2002) may not be present in Canadian courts. It is possible to assume that the informal expectations, practices and relationships within a Canadian criminal court would differ from those of a Scottish court simply because of differences in roles, responsibilities, court experiences and criminal procedures (Barr, 1997).

The work of Leverick and Duff (2002), like other studies on court culture and court efficiency, is focused on overall case processing time (that is, the total number of court appearances to complete the entire criminal court process). As a result, we do not know whether the relationship between court culture and court efficiency also holds true for any specific stage of criminal court processing (Church et al., 1978b; Feltes, 1992; Leverick & Duff, 2002; Steelman, 1997). It is plausible that the impact of court culture on court efficiency is diffused throughout the entire criminal process, but, it is equally possible that cultural factors only influence the speed of case processing in particular stages of the criminal court process (i.e. at trial).

Within the current Canadian context, the dramatic increases in the number of cases being held for a bail hearing as well as the time and number of appearances required to complete this process (Doob, 2005; Ministry of the Attorney General, 2009) make knowledge of those factors affecting court delay essential to our ability to intervene in this crisis. However, it is

unclear whether the impact of court culture on case processing in bail court in Canada is similar to that in trial court in Scotland. For example, it would be reasonable to assume that the informal expectations, practices and relationships of a Justice of the Peace (who generally presides over bail court in Ontario) could diverge from those of a Judge (who generally presides over the other stages of the criminal court process) (Trotter, 1999).

Additional research is needed to extend these empirical findings on the relationship between court culture and court efficiency to the Canadian context. To this end, this thesis investigates the applicability of Leverick and Duff's proactive-passive typology of court culture to Ontario bail courts. More specifically, it is a case study of the relationship between court culture (as measured by Leverick and Duff's court culture classification) and court delay (as measured by two bail courts in Ontario of differing case processing efficiency).

CHAPTER THREE: METHODOLOGY

3.1 Characterization of the Empirical Study

3.1.1 Overall Objective of the Research

This study aims to assess whether Leverick and Duff's typology - which assumes that variations in court efficiency are a result of differences in court culture - is applicable to bail courts in Ontario. The central hypothesis of this study is rooted in the proposition that a court's (in)ability to efficiently process cases can be a result of the informal attitudes, practices and relationships of court personnel.

Within this context, it is reasonable to expect that the presence of proactive informal attitudes, practices and relationships of court personnel could lead to the efficient processing of cases. Indeed, it is the general hypothesis of this study that the informal cultural characteristics of efficient bail courts are primarily proactive in nature, and the cultural characteristics of an inefficient bail court are primarily passive in nature.

3.1.2 Principal Aim of the Research

The primary intent of this investigation is to expand current knowledge of the relationship between court culture and court efficiency and to test the conceptual framework that has been put forth in previous research (see for example Church, 1982; Leverick & Duff, 2002; Steelman, 1997; Webster, 2007; and Webster & Doob, 2003). In this way, hypotheses can be tested and further theories can be developed about the impact of court culture on court efficiency. The thesis will test the generalizability of Leverick and Duff's findings to bail courts in Ontario. The findings of this study could aid in the resolution of the current court

delay problems experienced by criminal courts in Ontario. Indeed, by isolating the factors more likely to be associated with an efficient court, this work will be of great interest to criminal court practitioners concerned with effective strategies for the efficient processing of cases.

3.1.3 Principal Purpose of the Research

This thesis presents a case study of court culture as it relates to court efficiency in two Ontario bail courts, and, as such, it is primarily exploratory in nature. More specifically, the classification of this study as exploratory is rooted in two distinct yet interrelated factors. On the one hand, it relates to the over-emphasis of non-cultural factors on court efficiency (i.e. administrative and structural explanations), and the cognizant dearth of empirical studies on the impact of court culture on case processing time.

Equally, the broader studies on court culture and court efficiency have – until recently – been largely outdated, reflecting the general lack of attention that this area of study received during the 1990s and the difficulty associated with the operationalization of such a complex construct. Similarly, the wider research on this relationship has commonly been carried out in jurisdictions and courts which are not directly comparable to Canadian bail courts, further limiting our current knowledge on the topic and, by extension, our ability to design a more extensive, systematic study.

Additionally, the exploratory nature of this study reflects the limitations inherent in its sample. In particular, the external validity of this empirical investigation is problematic given our inability to generalize the results beyond the strict limits of this examination. Indeed, this

study is carried out in only two bail courts in the province of Ontario. Further, both of the courts under study are considered to be small courts, which we know to have a different range of efficiency and inventory of cultural characteristics than medium and large courts (Doob, 2005, 2007; Webster, 2007). Beyond simply constituting a quantitative problem (two courts among many), this option also raises concerns of a more qualitative nature. Effectively, several of the characteristics of the particular courts under study might make them distinct from many of the other courts. For example, in addition to restricting our sample to small courts, this research was also carried out exclusively in Eastern Ontario bail courts. This designation refers to the location of the court in Ontario. Ontario courthouses are administratively divided into East, Central East, Central West, North East, North West, Toronto, and West. The former category is distinguished from the six latter categories on a number of dimensions. Most obviously, bail courts may arguably demonstrate variations in the way(s) in which cases are processed - particularly given the influence of Québec (and its roots in the civil law tradition) as well as the thriving francophone heritage of court staff and clientele in the area.

Similarly, the focus of this study is on the processing of adult cases in bail court. As such, the experiences involved in processing youth cases are not examined. There is reason to believe that youth cases may be processed differently in bail court because of the emphasis placed on the strict restrictions on the use of pre-trial custody for youth stipulated in the Youth Criminal Justice Act (YCJA) (Bala, 2003). In fact, one of the main goals of the YCJA is to avoid, if at all possible, the use of pre-trial detention for youth who come into conflict with the law (Doob & Cesaroni, 2004, p. 165).

3.2 Research Setting

3.2.1 Bail Court in Canada

The legislation governing bail specifies that when someone is arrested, the Police Officer may simply issue the accused a summons or an appearance notice requiring him/her to appear in court at a later date (*Criminal Code*, R.S.C. 1985, c. C-46, s.497). Alternatively, the Officer in Charge can release the individual at the police station on a promise to appear or a recognizance requiring the individual to abide by certain terms while on release awaiting trial (*Criminal Code*, R.S.C. 1985, c. C-46, s.498–502). In contrast, the Officer (or Officer in Charge) may detain the accused and bring him/her before a Justice of the Peace within 24 hours of the person's arrest (*Criminal Code*, R.S.C. 1985, c. C-46, s.503). Under this option, it is the Justice who decides whether to release the individual or detain him/her in custody pending the determination of his/her case (subject to a bail appeal). This judicial determination must be based on one of the legislated grounds for detention (*Criminal Code*, R.S.C. 1985, c. C-46, s.515).

In fact, the Justice in bail court must order the release of the accused on his/her own undertaking without conditions unless the Crown Attorney shows cause as to why the detention of this person in custody is justified or why an order (conditions) on release should be made[8]. There are three grounds for detention which the Justice must consider when deciding whether to release or detain an individual until trial. The justice must consider the likelihood that the accused will return to court (primary grounds), the likelihood that he/she

[8] While the onus is generally on the Crown Attorney to justify to the court why the accused should be detained, it is important to note that in certain (uncommon) cases, the onus shifts to the accused. Specifically, the onus is on the accused to demonstrate to the court why his/her detention is not justified on the primary, secondary or tertiary grounds. This shift is referred to as a reverse onus situation and it is triggered when the accused is charged with a particular offence outlined in section 515(6) of the Criminal Code or is in breach of a bail condition (Hill et al., 2004).

will commit another offence while awaiting trial (secondary grounds) and the potential consequence of the decision to release or detain the accused on the public's perception of justice (tertiary grounds) (Hill et al., 2004; Trotter, 1999).

This process of determining bail involves several court personnel. The Justice of the Peace has the final authority in bail court not only in terms of making the final decision to release or detain an accused, but also in terms of granting or denying requests from court personnel during the bail process (e.g. adjournments[9]). In contrast to trial court, cases in bail court are often overseen by a Justice of the Peace, as opposed to a Judge. The Justice of the Peace is tasked with the responsibility of ensuring that the operations of the court are consistent with the overall values of the court and the principles of justice.

The Crown Attorney reviews the State's case against the accused and the accused's circumstances, and provides an assessment on behalf of the State as to whether the accused should be released or not. In this way, the Crown Attorney plays a crucial role in the bail process because he/she decides whom the Crown Attorney's Office will consent to release and whom it will seek to detain pending trial (e.g. Varma, 2002, p. 150). To assist the Crown Attorney in this bail decision, the police often prepare a brief synopsis for the Crown, occasionally presented in bail court, that usually includes a summary of the offence, the criminal record, the accused's background, and the police's recommendation on release.

[9] In bail court, an adjournment is the process of moving a case off one bail court docket to another day's docket. Adjournments are generally requested by Defence Counsel to provide them with additional time to complete the necessary preparation to further the case (e.g. contact potential sureties, investigate the charges, etc.). Adjournments are not automatically granted; they must be requested by counsel and are ultimately granted or denied by the Justice of the Peace. Although Defence Counsel are not legally obligated to provide justification for their adjournment requests, opposing counsel and the Justice of the Peace may request that justification be indicated on the court record.

The accused is generally represented by Defence Counsel[10] (either a private Defence Attorney or a Duty Counsel) who will argue on his/her behalf. Duty Counsel is a Defence Attorney who is paid by Legal Aid to assist accused persons without counsel in bail court. Finally, Court Clerks, Police Officers, Bail Supervision Workers[11] and Victim Assistance Workers[12] also appear in bail court to assist with the court process.

In theory, the process of determining bail is expected to take only one to two appearances. The most expeditious situation occurs when the Crown consents to the release of the accused and the Justice accepts this decision. In this case, the individual will most likely be released on the same day in which he/she appears in bail court, although it is common for the Justice to place some conditions on the accused while in the community (e.g. keep the peace, abstain from using alcohol or drugs, reside at a specific address). Indeed, consent releases are generally a result of negotiations between Defence Counsel or Duty Counsel and the Crown's office to determine an appropriate set of conditions which the accused must adhere to while out of custody. These conditions usually increase the Crown's willingness to release

[10] Although some accused will have no formal representation whereby they represent themselves.

[11] A Bail Supervision Worker typically assists the accused and counsel in arranging the conditions required by the court for his/her release (i.e. a surety, counselling services, rehabilitation services, a place to reside, etc.). In some cases, the accused is released to the bail supervision worker and required to report to him/her on a regular basis, and demonstrate that he/she has been following any imposed bail conditions. Bail Supervision Workers are typically employed by non-profit community agencies that are mandated to assist accused persons. For additional information, see the Bail Supervision Program run by the John Howard Society (http://www.johnhoward.ca).

[12] A Victim Assistance Worker attends court to provide support and assistance to any victims who are associated with cases that are being heard in court. In bail court, the role of the Victim Assistance Worker is to ensure that the victim's wishes are communicated to the Crown and are taken into consideration by the court when deciding the potential release and release conditions of the accused. Victim assistance programs are organized by provincial/territorial governments. For additional information on Ontario's Victim Assistance Program, see the Ministry of the Attorney General of Ontario's website (http://www.attorneygeneral.jus.gov.on.ca).

the accused precisely because they provide some guarantee that the accused will appear in court or refrain from either committing another offence or harming the public. In some cases, bail conditions are not stringent enough for the Crown to agree to the release of an accused. In these cases, the accused is often also obligated to deposit a (large) sum of money, or sign a bond in which the individual commits to paying a certain amount of money if he/she fails to appear in court.

However, even this situation of a consent release can require an additional court appearance. The Crown Attorney may only consent to an accused's release if the accused has a surety - a person known to the accused and who is willing to ensure that the accused abides by the bail conditions and/or sign a bond or deposit a sum of money that may have to be paid to the Court if the accused breaches any of the conditions of release (Trotter, 1999)[13]. In order to be able to fulfil this requirement for release, the case is often adjourned to another day to provide the accused with an opportunity to contact a possible surety and arrange to have the surety appear in court.

Alternatively, the Crown may decide to contest the release of an accused. As most accused wish to be released prior to their trial, the Crown Attorney's office is required to hold a formal bail hearing – often referred to as a show-cause hearing – to show cause why an accused should be detained. In this case, the Crown must provide evidence as to why the Crown's Office believes that the accused would fail to appear in court, commit another

[13] In other words, a surety is someone who agrees to be responsible for the person accused of a crime. Specifically, the surety promises the court that he/she will ensure that the accused obeys all of the conditions of release and is present for all future court appearances. A surety is often required if an accused is charged with a more serious offence, has a lengthy criminal record, or has a record for noncompliance with court orders. (Trotter, 1999).

offence, or harm the public if released on bail. Defence Counsel will attempt to demonstrate that these grounds for detention have not been satisfactorily met[14]. Often, this bail hearing will be adjourned to another day to allow both parties to prepare their arguments.

3.2.2 Bail Court in Ontario

Although hearings related to the release of the accused prior to trial can occur in both provincial and superior criminal courts, the focus of this thesis is on provincial courts. Release proceedings heard in Superior Court are primarily focused on bail reviews and appeals. While this level of court also processes particular cases in which the accused is charged with an offence listed in section 469 of the Criminal Code (as per *Criminal Code*, R.S.C. 1985, c. C-46, s.522 (1)), these types of cases are very rare[15]. Given that the central hypothesis of the current thesis is rooted in the case processing efficiency of 'typical' decisions regarding the liberty of the accused pending trial, only provincial courts were examined.

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[14] Much like a trial, a 'show-cause' hearing begins with a Court Officer reading out the charges faced by the accused and the Police Officer's notes from the incident from which the charges were laid. Additionally, the Crown and Defence Counsel/Duty Counsel are allowed to call and question witnesses, object to lines of questioning and present closing arguments. The Justice of the Peace then provides his or her ruling to either release or detain the accused pending trial. At this hearing, the Justice of the Peace does not attempt to determine the guilt or innocence of an accused. Rather, it is the court's role to make a predictive inquiry based on the evidence about what an accused may do if he/she is released on bail.

[15] For instance, Superior Court processed less than 2% of all adult Criminal Code offences entering provincial court between 1998 and 2000 in Canada. Further, the s.469 offences would constitute a tiny proportion of these cases. On the types of offences processed in provincial and superior courts in Canada, see, for instance, Webster and Doob (2003).

Currently, there are 65 provincial criminal courts across Ontario (Ontario Ministry of the Attorney General, 2009). Each of these will operate at least one bail court. The breakdown of provincial criminal courts by region is as follows[16]:

Region	Number of Ontario Court of Justice Locations
Central East	8
Central West	10
East	13
North	16
Toronto	6
West	12

For purposes of empirical analysis (particularly as related to court efficiency), provincial courts are often organized into various categories according to size (i.e. small, medium and large) (Doob, 2007b; Webster, 2007). Court size is determined according to the number of cases processed annually in each court. Large courts have been defined for the purposes of this study as those with a caseload of greater than 7,000 adult Criminal Code cases in any given year, accounting for approximately 55% of all Criminal Code adult cases in 2007. An example of a large court would be College Park which processed 7,726 adult Criminal Code cases in 2007. Medium-sized courts have been defined as those whose caseload is between 3,000 and 7,000 cases in a given year, accounting for roughly 20% of the caseload in 2007. An example of a medium-sized court would be Barrie which processed 6,526 adult Criminal Code cases in 2007. Small courts can be classified as those with a caseload of fewer than

[16] For a complete list of all 65 criminal court locations in Ontario as well as a number of their respective caseload characteristics, see Appendix A.

3,000 cases per year, accounting for approximately 25% of all adult Criminal Code cases in 2007. An example of a small court would be Cornwall which completed 2,403 adult Criminal Code cases in 2007.

Overall, Ontario provincial courts processed 210,416 criminal cases in 2007 of which 114,347 were dealt with in large courts, 42,658 in medium-sized courts and 53,411 in small courts. Bail court figures show that 105,823 of these cases were processed in Ontario bail courts in 2007. Of these cases, 58,616 were processed in large bail courts, 22,660 in medium bail courts and 24,547 in small bail courts.

3.3 Research Design

This study is a comparative analysis of two courts of differing degrees of efficiency. The principal objective is to determine whether these two courts also differ in terms of their culture. The research design is correlational in nature; the study focuses on examining whether there is an association between court culture and court efficiency, without making any inferences about the causality of the relationship.

The disadvantage of this research design is the inability to determine a causal relationship between court culture and court efficiency. For example, even if our two courts (of varying efficiency levels) differ in terms of their respective court cultures, thus indicating a relationship between court culture and court efficiency, there is always the possibility that other non-cultural variables are producing this association.

Despite the correlational nature of this study, several attempts were made to control for a number of non-cultural variables which may also affect the efficiency in which cases are processed in the two courts under study. Particular care was taken in selecting two courts which were as comparable as possible in order to minimize the number of non-cultural factors which may be impacting on their respective court efficiencies. As such, while causal statements cannot be made, one can have greater confidence in linking or associating variations in one variable (i.e. court culture) with variations in the other variable (court efficiency). Indeed, by choosing relatively comparable courts, the principal variables under investigation could be isolated, at least to some degree.

3.4 Principal Measures

3.4.1 Court Culture

One of the principle variables in this study is court culture. Leverick and Duff's (2002) typology operationalizes court culture as a dichotomous variable: proactive or passive court cultures. They provide qualitative descriptions of these two 'types' of court cultures which highlight their differences. The limitation of Leverick and Duff's operationalization is that it only provides a qualitative picture of a passive or proactive court culture, but fails to operationalize the theoretical construct of court culture in a way which would permit direct empirical measurement.

To resolve this issue, this study attempted to quantify the principal traits of passive and proactive court cultures as described by Leverick and Duff (2002) by fleshing out the main characteristics of each 'type' of court culture. In order to reduce the likelihood of any distortion or misinterpretations of these principal traits as described by Leverick and Duff,

this creation of specific indicators was rooted in the court culture literature. This process was conducted in two stages.

First, a detailed review of Leverick and Duff's passive and proactive court descriptions was conducted and specific differences between the two court types were identified. The differences were subsequently grouped into the three broad court culture descriptors from the literature previously outlined: expectations and understandings, practices and policies, and roles/workgroup relationships. Each set of differences was then matched with the literature corresponding to the overall descriptor and an interpretive set of indicators was created.

For example, in their description of what was termed to be a 'passive' court, Leverick and Duff noted:

> ... at one of the courts the adjournment of a certain number of scheduled trials was to a certain extent accepted as necessary in order that the day's business could be completed. There was a perception that if adjournments were not granted then there would simply be too many trials to complete in one day and some trials would be adjourned anyway due to lack of court time. (Leverick & Duff, 2002, p. 47)

It would seem apparent that Leverick and Duff are describing a particular set of expectations in the passive court, as opposed to practices or relationships. More specifically, Leverick and Duff are describing differences in expectations, particularly with respect to the normalcy or expected occurrence of requests for adjournments on the first appearance and the use of more than one court appearance to resolve bail, as well as the common or shared understanding

that adjournments relieve the court of too many scheduled appearances and that adjournments would result regardless of court activity.

According to the court culture literature, expectations reflect direct experiences in court that shape one's beliefs about what will likely happen in the future. In courts in which staff repeatedly see the use of adjournments as a means of getting through the docket, an expectation develops that 'adjournments are necessary and not problematic', and the group standard on what is appropriate is that adjournments must occur in order to arrive at the resolution of a case in bail court (Church, 1982).

From this particular description of a passive court, several indicators were created. Specifically, a passive court culture would be one in which adjournments are expected or normal, perceived as necessary and not considered to be a problematic occurrence. These operationalizations of a passive court culture appear to be supported by the criminological literature. Further, these indicators can be used to empirically measure or capture the construct of a 'passive court culture' in the sense that researchers can identify their presence or absence in particular courts.

Following the same process, it was possible to identify 12 indicators of a passive court and 12 indicators of a proactive court[17]. Each of these operationalizations was directly linked to the criminological literature on court culture to increase its validity.

[17] Refer to Appendix B for the complete list of court culture indicators developed from Leverick and Duff's (2002) court culture typology.

3.4.2 Court Efficiency

The second measure in this study is court efficiency. For the purpose of this study, court efficiency has been dichotomized as either inefficient or efficient. Two bail courts were selected which had different levels of court efficiency. The selection of an efficient and an inefficient court began with a list of all provincial courts in Ontario which was retrieved from the Ontario Ministry of Attorney General website[18]. The list was subsequently narrowed to ensure feasibility (i.e. location and time restrictions). Of the 65 provincial courts across Ontario, only 13 courts were located within the Eastern region of Ontario. This decision to only consider courthouses in this region was to ensure that the researcher had adequate resources to physically attend the courts on numerous occasions for the purposes of data collection. This would not have been possible in any other region.

Additionally, it was decided that courts that processed large caseloads would be too difficult to study in the limited time required to complete this thesis. The 13 remaining courts were reviewed based on their 2007 adult Criminal Code caseload. Only small courts were considered. Further, small courts that processed more than 2,000 adult Criminal Code cases in 2007 were eliminated as even this caseload would require a reasonably large courthouse which could not be examined in any detail within the limited time period of the study. As such, eight of the 13 Eastern Ontario provincial courts remained on the list.

Further reduction of this narrowed list of small Eastern Ontario provincial courts was rooted in the various ways in which scholars have operationalized court efficiency (in terms of the processing of cases). Court efficiency, has most commonly been defined in the literature as

[18] www.attorneygeneral.jus.gov.on.ca

the number of appearances required to dispose of a case or the total elapsed time from the first appearance of a case in criminal court to completion (Church et al., 1978a; Doob, 2005; Koza & Doob, 1975; Luskin, 1978; Mahoney et al., 1981; Steelman, 1997; Webster & Doob, 2003; 2004). These measures are often correlated (i.e. cases with a large number of appearances take longer to process) (Doob, 2005; Webster & Doob, 2003). 'Total elapsed time' focuses on 'how many days are required to resolve a case', and total 'number of appearances' focuses on determining 'how many court appearances are required to resolve a case'. It is the latter which is of interest to this thesis.

Indeed, one advantage of the 'number of appearances' rather than 'elapsed time' is its ability to reflect unproductive appearances (i.e. appearances which do not contribute to the resolution of the case in any obvious way), which are not directly captured by 'elapsed time' (particularly if unproductive appearances are quickly followed by productive appearances). Indeed, studies (Doob, 2005; Webster, 2006; Webster & Doob, 2003) have demonstrated that the problem of court efficiency is not simply one of the amount of time required to secure available court resources (i.e. court, staff, etc.). Rather, the problem appears to be rooted primarily in the number of court appearances necessary to dispose of a case in provincial court. Webster et al. (2009) found that the amount of time to final disposition of a case which had been held in remand for at least some number of days did not appear to have increased between 2001 and 2007 in Ontario. In contrast, the average number of court appearances that this type of case took to be completed in bail court in Ontario during the same period showed a considerable increase (Webster et al., 2009).

Of equal note, a return to the original context for our investigation – to analyze the court efficiency strategy purposed by the Ontario Attorney General – reminds us that the Ministry is primarily focused on reducing the unnecessary drain on court resources that results from unproductive appearances. Indeed, every time that a case appears in court, resources are used for that appearance, whether it is a productive appearance or not. Within this context, an inefficient court would be defined as one with many unproductive appearances and an efficient court would have few or no unproductive appearances. In this sense, efficiency represents not simply a minimal use of court time, but also of court resources (Department of Justice, 2007, p. 2). Therefore, for the purposes of this study, the number of appearances required to complete the bail process will be used to operationalize the construct 'court efficiency'.

Scholars (Doob, 2007a; Doob & Myers, 2006; Webster, 2006; 2007) have operationalized the number of court appearances in several ways. This study will use the percentage of cases resolved in the first bail court appearance and the percentage of cases taking in 5 and/or more bail court appearances in 2007 as its measure of court efficiency.

Of the few studies (Doob, 2005; Doob & Myers, 2006; Webster, 2006; 2007) that have focused on the number of appearances required to resolve bail, some have suggested that most courts take between 2-4 appearances to resolve the majority of their bail cases (Doob, 2005; Webster, 2006). Therefore, to identify the least and most efficient courts for the purpose of this study, it would seem reasonable to select the court with the highest percentage of bail cases resolved in the first appearance and the lowest percentage of bail cases resolved in five or more appearances as an efficient court and the court with the lowest

percentage of bail cases resolved in the first appearance and the highest percentage of cases resolved in the fifth or more appearance as an inefficient or, less efficient court.

This operationalization may also be supported by previous research (Doob, 2005, 2007a, 2007b; Webster, 2007) that has linked court culture with a court's ability to resolve bail on the first appearance. Indeed, some jurisdictions are more likely to be able to dispose of cases in one appearance (Doob, 2007b, Webster, 2007). Previous researchers (Doob, 2005, 2007a, 2007b; Webster, 2007) have been unable to determine why this variation in "one-appearance" cases exists. However, it is suspected to have less to do with the operations of the courts per se than it does with the rest of the organization or functioning of the court and the interactions between key players in the court process (Doob, 2005).

There are various ways of examining court data; one can use either case-based data or charge-based data (Webster, 2007). Cases and charges represent two very different ways of approaching and understanding the court system. Not surprisingly, each paints a different picture of the court process. A 'case' is defined as all charges on a single Information related to a single person in a particular courthouse whose criminal proceedings are completed in Provincial Court. The Ministry of Attorney General's website reports charge-based data which are gathered from a central system - the Integrated Court Offences Network (ICON) - that is designed to support the administrative activities of the Ontario Court of Justice. Specifically, it assists with court scheduling and statistical analysis of workload, etc.

Unfortunately for our current purposes, a charge-based calculation is not a particularly useful unit of analysis. Especially for cases in the bail process, an accused may have more than one

information which would be addressed at the same time in court but which would be treated in a charge-based definition as two separate cases. In this way, a charge-based definition would slightly over-estimate the number of bail cases (Webster, 2007).

Conversely, the case-based definition that combines all charges on a single Information related to a single person in a particular Provincial Court will under-estimate, to a small degree, the complexity of bail cases. For instance, cases with S.524 applications (most commonly for subsequent charges of violations of bail conditions) which typically amalgamate additional charges with the initial ones for which bail conditions had been assigned would not be reflected in a case-based definition. Even with these limitations, a case-based definition is arguably superior to one which is charge-based as it more accurately reflects the way in which the courts conceptualize and process the accused.

Our selection of the two bail courts to be included in this study was based on two principal considerations: 1) a notable difference in efficiency between the courts to be selected and 2) reasonable comparability between the two courts to be selected on a number of structural and administrative factors. To select both an efficient and inefficient court to include in the study, the remaining eight courts were subsequently matched with their 2007 percentage of bail cases completed on the first appearance. The court with the highest percentage of cases completed on the first appearance in 2007 and the lowest percentage of cases that took 5 or more appearances to complete and the court with the lowest percentage of cases completed on the first appearance and highest percentage of cases that took 5 or more appearances to complete in 2007 were selected from the eight remaining courts.

The court with the highest percentage of cases completed on the first appearance in 2007 (60.7%) and lowest percentage of cases resolved in five or more appearances (3.5%)[19] was labelled the efficient court and the court with the lowest percentage of cases completed on the first appearance (29.9%) and highest percentage of cases resolved in five or more appearances (13.2%) was labelled the inefficient court[20]. The efficient court is considerably more efficient than the courts in Ontario generally (in which only 38.4% of cases on average were completed on the first appearance). Further, the inefficient court is slower than the Provincial courts in Ontario generally (in which only 12.4% of cases on average were completed in five or more appearances)[21]. Additionally, the average number of appearances required to resolve the bail process in the two courts selected also corroborates the selection process. Indeed, the efficient court required – on average – significantly fewer appearances in 2007 than did the inefficient court (1.7 vs. 2.6) to complete the bail process[22].

Following this selection, six weeks of observation was carried out to gather general information on both courts in an attempt to further assess their broad comparability. Data were gathered about each court through courtroom observations. A standardized form was used to record these observations which were – almost exclusively – focused on structural and administrative factors[23]. In particular, information pertaining to each day in which the observations were carried out was collected on the start and end times of court, the number

[19] Eastern Court 'F' had a lower percentage of cases that took 5+ appearances to resolve. However, this percentage represented only 2 cases (out of only 34 cases in the entire court) and, as a result, this percentage arguably did not provide an accurate comparison (these figures are presented in Appendix C).
[20] These data are also consistent over time (see 2001-2007 data in Appendix C).
[21] These data (and subsequent data relative to the number of appearances in bail court) were taken from a dataset used in a wider research project commissioned by the Ontario Ministry of the Attorney General. For a more detailed discussion of this dataset, see, in particular, Webster (2007).
[22] See Appendix C for the raw numbers used in this calculation.
[23] A sample of this form can be found in Appendix D.

of all court officials present in bail court, the number of cases heard, the outcome of the cases heard, the details of the outcome (including any conditions, etc.), and the details of adjournments (if a reason was provided, who requested it and why, and if anyone questioned it and what they said)[24]. These data were used to understand the various calendaring systems, charging practices, speedy trial provisions, record keeping practices, case characteristics, defendant characteristics, court size and administrative workload associated with each court. Each court was observed for eight days, over a period of six weeks.

As Table 3.1 illustrates, both bail courts dealt with almost the same number of bail cases (455 and 546) in 2007 and had a similar number of Crowns (4 and 5), local Defence Counsel (3 and 5), Duty Counsel (1 and 1) and Justices of the Peace (1 and 1) during the observation period. Further, they were similarly influenced by their proximity to Québec and the Francophone heritage of their staff and clientele. Additionally, both courts spent approximately the same amount of time on each case (7:57 and 7:06 minutes on average). Similar case outcomes were also observed. For instance, consent releases, showcause hearings, adjournments and 'other[25] daily outcomes occurred in both courts and both courts used recesses[26] fairly regularly. Although the efficient court occasionally heard cases using their video remand system, the inefficient court was not equipped with the proper video equipment to hear video remand cases[27].

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[24] A summary of these initial court observations are presented in Appendix E.
[25] Bail condition variations, non-bail cases and cases on the docket in error.
[26] Recesses are formal breaks in the court's proceedings and are often used to allow counsel to discuss a case with the opposing party or acquire information that will ultimately help them resolve cases that remain on the docket. Recesses can be requested or suggested by any member of the court (including the Justice of the Peace) and are granted or denied by the Justice of the Peace.
[27] Specific details on these courts can be found in Appendix E (see supra note 24).

Table 3.1 Descriptive Information on Structural and Administrative Elements of the Efficient and Inefficient Court

Characteristic	**Efficient Court**	**Inefficient Court**
Number of Bail Cases (2007)	455	546
Number of Local[28] Justices of the Peace	1	1
Number of Full and Part-Time Crowns	3 full-time 1 part-time	4 full-time 1 part-time
Number of Duty Counsel[29]	1	1
Number of Local Defence Counsel That Regularly Attend Bail Court	3	5
Location	Eastern Ontario	Eastern Ontario
Languages Spoken (staff and clientele)	English and French	English and French

It appears that the two courts are quite comparable on a number of non-cultural (i.e. structural and administrative) variables. Although several administrative and structural differences continue to exist for the cases observed (in particular, structurally, the courts differed by bail outcome, number of appearance, use of recesses, and adjournment length; and administratively, time spent in court, time spent dealing with cases, and adjournment reasoning varied), it would seem reasonable to consider these two courts relatively similar on a number of variables which might have an impact on their respective efficiencies in processing bail cases. This comparability provides additional confidence in any correlation which might be found between court culture and court efficiency (as measured by these two courts).

[28] Although Justices of the Peace tend to rotate through the various courts in one region, some Justices are scheduled in one court on a regular basis, based on where they reside.
[29] Although many Defence Counsel also work as Duty Counsel on an ad hoc basis.

3.5 Data Sources/Analysis

3.5.1 Interviews

The main data source for this study is interviews that were conducted with court staff. Data on court culture were collected through qualitative semi-structured interviews conducted with key court personnel from each court. Potential informants knowledgeable about the particular culture of their court were first solicited for their participation through email. The Senior Crown of each court was informed of the study by the Research Supervisor and asked for authorization to contact potential participants within the Crown Attorney's Office and to provide their contact information. Other court staff were approached on an individual basis during the 6-week period of court observations. Further, initial interviewees were also asked to recommend additional court personnel who might be appropriate for the study and provide their contact information. Potential participants were contacted about their availability and an interview was scheduled. Prior to conducting the actual interviews, the participants were informed of their rights and were required to give their informed consent to participate in the study. In addition, they were asked to sign the consent form as approved by the Human Research Ethics Committee of the University of Ottawa and give their permission to have the session recorded[30].

In total, twelve interviews were conducted - six in each court. Two Crowns, two Defence Counsel, one Duty Counsel and one Justice of the Peace were interviewed from each court. Interview sessions lasted approximately 45-90 minutes and participants were asked a number of questions on the informal norms, attitudes, views, expectations, practices and roles in their

[30] A copy of this form approved by the Human Research Ethics Committee of the University of Ottawa is contained in Appendix F.

court. The questions were derived from the literature review on court efficiency and court culture. Although some questions were predetermined, others followed from the participants' responses[31]. After completion of the interview, each interview recording was transcribed.

3.5.2 Content Analysis

The interviews were analysed through a content analysis. This type of data analysis involved a process of classifying the various themes expressed by those interviewed. First, the interview transcripts were carefully reviewed, a list of reoccurring themes was established, and descriptive terms evident in the statements made by court personnel were identified. Initially these terms were quite literal, corresponding to the words that appeared in the transcripts. They formed the initial set of themes. Next, the court culture literature presented in the literature review was used to construct a focused set of interpretive themes by categorizing and comparing the various themes. A theme was considered to be a string of words with a subject and a predicate and only manifest content was considered (Berg, 2007, p. 312). Manifest content includes those elements that are physically present and countable, whereas latent content requires interpretive reading of the symbolism and underlying message in the data.

Together, these themes created a coding guide used to perform a content analysis. After this initial review, each theme was given a numerical code and listed on a coding guide. A coding template[32] was then created in which the numerical code and theme could be listed along with the specific text analyzed. Each transcript was subsequently reviewed. For themes that

[31] The list of the initial questions that were asked is contained in Appendix G.
[32] A sample of the coding template is located in Appendix H.

appeared in the transcript, the thematic code, theme, and location of text in which the theme was mentioned were listed on the coding template. Although some researchers only count the primary theme expressed in a piece of text under analysis, it was decided for the purposes of this analysis that each theme which appeared would be counted. Indeed, it was found that one piece of text often portrayed more than one theme and each theme captured a different and relevant component or element of court culture. The number of occurrences of each theme was then tallied on the coding template for each transcript. The 24 indicators constructed from Leverick and Duff's passive and proactive court descriptions were also part of this list.

These data were subsequently used for two distinct purposes. On the one hand, they were used to conduct a quantitative analysis using a number of inferential statistical tests (i.e. an independent two-sample t-test and a chi-square test) in order to identify any statistically significant differences in the prevalence of themes between the two courts. The primary purpose of this analysis was to test the applicability of Leverick and Duff's typology to these two Ontario bail courts and demonstrate that these two courts are different in terms of their respective court cultures. To this end, the 24 indicators developed from Leverick and Duff's typology were identified in the list of themes on the coding template, and the number of passive and proactive indicators expressed in the interviews was tallied for each court describing the number of times that the 12 proactive and the 12 passive indicators were mentioned.

To standardize these totals (in order to take into account the simple fact that some interviewees had longer interviews and, as such, had a greater opportunity to make reference

to these 24 indicators), they were converted into proportions. In other words, the variable 'amount of time each participant talked', a factor which was irrelevant to the objective of this study, was controlled[33]. To create these proportions, the total number of proactive statements (as identified by Leverick and Duff and operationalized in this study into 12 empirical indicators) was tallied for each interviewee. This number was divided by the total number of both proactive and passive statements which this same study participant made over the course of the interview. This calculation expresses the percentage of proactive statements made by each respondent and provides a standardized way of comparing across the two courts (with different lengths of interviews)[34]. This study would hypothesize that the inefficient court would have a lower percentage of proactive indicators than the efficient court. By quantifying both the proactive and passive statements, this hypothesis can be empirically tested.

Beyond the advantage of providing a standardized means of comparing across the two courts, this option of using the total percentage of proactive statements rather than the total number of proactive statements expressed by each interviewee has an additional statistical virtue. If one were to use the raw numbers (rather than the percentages), the range of responses across respondents would be much greater. In using percentages, we reduce this variance. Indeed,

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[33] In fact, this danger was immediately visible in reviewing the number of proactive and passive statements made by the interviewees from each court. In one of the two courts, the study participants made – in total – 149 proactive and passive statements. In contrast, the interviewees in the other court only made 107 such statements.

[34] As an illustrative example, imagine that a particular interviewee from one of the courts made a total of 30 proactive and passive statements of which 20 of them corresponded to Leverick and Duff's proactive court culture. Imagine that an interviewee from the other court made a total of 3 statements – 2 of which reflected proactive indicators. Using only the raw numbers, the first court would have 20 proactive statements while the second court would only have 3. However, the first court is no more 'proactive' (as expressed by the study participants) as the second court. Indeed, both of them made 66% proactive statements. Based exclusively on the raw numbers, and assuming that the first court corresponded to the more efficient court, we would have erroneously concluded that efficient courts were more proactive than less inefficient courts.

the range of responses across interviewees is restricted to a greater degree. This smaller variance is particularly important to this study because of the small number of people in our sample – only 6 interviewees in each court. A low variance ensures the greatest likelihood of detecting a significant difference in proactive/passive statements across the two courts if, in fact, one actually exists. In fact, greater variance reduces statistical significance because we are less confident that our sample estimate reflects the true population value.

The data obtained from the content analysis of the interviews were also used to conduct a qualitative analysis. A rich description of the two court cultures was created based on all of the various themes (including the 24 passive-proactive indicators derived from Leverick and Duff's work) which were expressed in the interviews. This qualitative analysis was intended as a supplement to the quantitative component of this study. In particular, the quantitative analysis would determine whether the two courts under study had different court cultures as measured by Leverick and Duff's passive/proactive typology. However, this type of analysis gives the reader very little sense of what these two distinct court cultures might actually look like in reality.

CHAPTER FOUR: DATA ANALYSIS

4.1 Quantitative Analysis of Court Culture

The primary purpose of this thesis is to investigate the applicability of Leverick and Duff's proactive-passive typology of court culture to Ontario bail court. To this end, it will first test whether there are significant differences between the 2 courts in terms of the passive and proactive indicators derived from Leverick and Duff's court culture typology (2002). As a first step, each interview was analysed in terms of the number of times in which the 12 proactive and the 12 passive indicators were mentioned by each respondent. Subsequently, the percentage of the total number of these statements mentioned by each interviewee which are proactive was calculated for each court. Similarly, the percentage of the total number of passive and proactive statements mentioned by each interviewee which are passive was calculated for each court. The tables below present this breakdown for court personnel in the efficient court and court personnel in the inefficient court.

Table 4.1: Percentage of Passive and Proactive Indicators for the Efficient Court

Individual	**Passive Indicators Mentioned**	**Proactive Indicators Mentioned**	**Total**
Crown 1A	14 (48.28%)	15 (51.72%)	29 (100.00%)
Crown 2A	4 (11.43%)	31 (88.57%)	35 (100.00%)
Defence 1A	7 (31.82%)	15 (68.18%)	22 (100.00%)
Defence 2A	10 (41.67%)	14 (58.33%)	24 (100.00%)
Duty Counsel A	2 (10.00%)	18 (90.00%)	20 (100.00%)
Justice of the Peace A	3 (15.79%)	16 (84.21%)	19 (100.00%)
Total	40 (26.85%)	109 (73.15%)	149 (100.00%)

Table 4.2: Percentage of Passive and Proactive Indicators for the Inefficient Court

Individual	Passive Indicators Mentioned	Proactive Indicators Mentioned	Total
Crown 1B	7 (63.63%)	4 (36.36%)	11 (100.00%)
Crown 2B	10 (58.82%)	7 (41.18%)	17 (100.00%)
Defence 1B	15 (71.43%)	6 (28.57%)	21 (100.00%)
Defence 2B	9 (39.13%)	14 (60.87%)	23 (100.00%)
Duty Counsel B	17 (62.96%)	10 (37.04%)	27 (100.00%)
Justice of the Peace B	1 (12.50%)	7 (87.50%)	8 (100.00%)
Total	59 (55.14%)	48 (44.86%)	107 (100.00%)

Table 4.3 presents a summary of these data. Specifically, it shows the total percentage of all statements made by the court personnel in each court which were proactive or passive in nature.

Table 4.3: Total Percentage of Proactive and Passive Indicators for Each Court

	% of Proactive Indicators	% of Passive Indicators
Efficient Court	73.15%	26.85%
Inefficient Court	44.86%	55.14%

According to this table, the total percentage of proactive indicators mentioned in the interviews is higher in the efficient court (73.15% vs. 44.86%) and the total percentage of passive indicators is higher in the inefficient court (55.14% vs. 26.85%). Indeed, proactive

indicators are more likely than passive indicators to be present in the statements made by court personnel in the efficient court and passive indicators were more likely than proactive indicators to be present in the statements made by court personnel in the inefficient court. This initial finding would appear to support this study's hypothesis that the cultural discourse of the efficient court is more proactive in nature than that of the inefficient court.

However, it is equally important to note that this hypothesis has only been tested for the 12 individuals interviewed in this study, and not for the two courts more generally. Indeed, these initial findings could arguably describe an unrepresentative sample of court personnel in each court and, by extension, constitute an inaccurate description of the wider court cultures. Said differently, this initial difference between the 2 courts may be the result of random (sampling or measurement) error and not a reflection of a real or significant difference between the percentage of proactive and passive indicators mentioned in each court. To test this hypothesis – that is, whether this difference between the two courts is statistically significant, suggesting that it exists beyond the 12 specific individuals interviewed in this study, an independent samples t test was conducted. This inferential test tells us the degree of confidence that we can have that any differences between these two courts in the average number of proactive/passive indicators mentioned by court personnel are not just a result of random error.

The null hypothesis for this analysis is that the average percentage of proactive/passive statements is the same in the efficient and inefficient courts, and that there is no difference between the two courts in terms of the average percentage of proactive or passive statements expressed by all court staff. The alternative hypothesis proposes that the average percentage

of proactive/passive indicators is different in the efficient and inefficient courts. It is only necessary to perform this inferential test on the average percentage of proactive indicators (and not necessary to replicate the analysis for the average percentage of passive indicators as well). Indeed, the results of the test would be the same if the average percentage of passive indictors were used as the measure of comparison instead of the proactive indicators.

Table 4.4: Descriptive Statistics on the Percentage of Proactive Indicators

Court	Total (N)	Mean	Standard Deviation
Efficient court	6	73.42	16.54
Inefficient court	6	48.59	21.92

Note: t =2.215, df = 10, p = .051

This table shows the mean for each court. According to the distinctive data presented in this table, there is a difference in the average percentage of proactive indicators between the efficient and inefficient courts for the 12 interviewees. More specifically, the efficient court had a higher mean percentage of proactive statements than the inefficient court (73.42 vs. 48.59). Therefore, the data presented in this table indicate that - on average - the 6 court personnel interviewed in the efficient court were more likely to mention proactive indicators than the 6 court staff interviewed in the inefficient court.

The results of the inferential test are interesting. From a purist perspective, the findings suggest that there is no significant difference in the average percentage of proactive statements expressed for the two courts as a whole. Specifically, the likelihood that the different sample means reflect a real or significant difference in the wider populations (and

not simply sampling error) is greater than 5% (p = .051). Indeed, with a 5.1% likelihood that the two samples were drawn from populations in which there is no difference between the average percentage of proactive statements mentioned, these findings would only be considered to be border-line significant[35].

However, this border-line finding could arguably reflect the power of the inferential test. Specifically, because there is such a small sample size (N=12), the test is limited in its ability to detect a real difference between these two courts if one actually exists. It is entirely possible that these two courts do, in fact, differ in their average percentage of proactive statements made and it is simply because the inferential test lacks power to detect this difference that the findings are not statistically significant[36].

Precisely because of this lack of power, many statisticians advocate using a less stringent cut-off point in determining whether or not to reject the null hypothesis. In particular, it is common practice – with very small sample sizes – to use $p<.10$ (Hagan, 1997). With this more relaxed significance level of an alpha of .10, this descriptive finding would be significant. That is, we would conclude that there is, in fact, a statistically significant

[35] The conventional cut-off for rejecting the null hypothesis is $p<.05$.

[36] Another reason the findings are not significant may be a result of the use of a two tailed test, instead of a one tailed test. A two tailed test would indicate no specific direction in the alternative hypothesis and it would be useful in this case because there is always the chance that the study's initial prediction is wrong. With the use of a directional test, the test results are limited to one conclusion - that the efficient court is not more proactive - without the capability to demonstrate whether the efficient court was, in fact, less proactive than the inefficient court. Therefore, this non-directional test (otherwise known as a two-tailed test) allows us to test this alternative hypothesis in case the initial prediction was inaccurate. However, this non-directional test is also more stringent than a one tailed directional test, and as a result, if a directional test was used in this case, a significant finding would have been found. While it would be possible to use a 1-tailed test we have chosen not to. Indeed, we recognize that a 2-tailed test is more appropriate because it allows us to test both types of outcomes – that the efficient court has a greater average percentage of proactive statements or a lesser average percentage than that of the inefficient court. In other words, we have chosen to be conservative in our choice of tests, rendering it more difficult to corroborate our (alternative) hypothesis.

difference in the average percentage of proactive statements made for the 2 courts whereby the discourse of the efficient court is – on average – more proactive than that of the inefficient court.

However, in order to be confident in this conclusion, a different test was used to corroborate the first finding. Specifically, the same data can be described with a contingency table. In this case, the two courts are compared on whether the majority of statements made by each respondent (> 50%) were proactive or passive in nature. Table 4.5 presents this description of the 2 courts.

Table 4.5: Crosstabulation of the Number of Interviewees who Made Mostly Proactive Statements

Court	**Majority of Statements Passive**	**Majority of Statements Proactive**	**Total**
Efficient Court	0 (0.00%)	6 (100.00%)	6 (100.00%)
Inefficient Court	4 (66.67%)	2 (33.33%)	6 (100.00%)

Note: $X^2 = 3.375$, df = 1, p = .061

According to this table, the number of interviewees whose statements were mostly proactive was higher in the efficient court than the inefficient court (6 respondents or 100.00% of respondents versus 2 respondents or 33.33% of respondents).

This descriptive statistic has the clear advantage over the last analysis (based on mean differences between the two courts) of providing a more detailed description of the proactive and passive statements made in the interviews. Using only the average percentage of

proactive statements as the way in which to describe the two courts, it was impossible to know how the data were dispersed. Specifically, the contingency table summarizes the location of each case. For instance, we know from Tables 4.1 and 4.2 that the majority of the statements made by Interviewee Crown 1A (51.72% vs. 48.28%), Crown 2A (88.57% vs. 11.43%), Defence Counsel 1A (68.18% vs. 31.82%), Defence Counsel 2A (58.33% vs. 41.67%), Duty Counsel A (90.00% vs. 10.00%), the Justice of the Peace A (84.21% vs. 15.79%), Defence Counsel 2B (60.87% vs. 39.13%) and the Justice of the Peace B (87.50% vs. 12.50%) were proactive[37]. In other words, the majority of the statements made by each of the 6 interviewees of the efficient court as well as 2 of those interviewed from the inefficient court were proactive.

Of note, this contingency table shows that there are two important reversals: two respondents from the inefficient court (i.e. Defence Counsel 2B and the Justice of the Peace B) made statements which were mostly proactive in nature. This observation provides some context for the lack of statistical significance found with the independent samples t-test above. Beyond the obvious fact that these two cases do not support the study hypothesis, it is equally relevant – from a statistical perspective – to note that one of these respondents constituted a dramatic outlier (87% of this interviewee's statements were proactive in nature). This case would have substantially increased the variance in the variable "court culture" (i.e. the average percentage of proactive statements). Coupled with the very small number of interviewees, this large variance is likely to also negatively affect the ability of the test to discern a significant difference.

[37] For a detailed listing of the percentage of passive and proactive indicators mentioned by each interviewee, refer to tables 4.1 and 4.2.

Despite this reversal though, the inferential test continues to show the difference between the 2 courts as border-line significant. Specifically, the Fisher's test has an exact probability (of getting our sample data presented in the contingency table above given that the null hypothesis is true) of $p=.061$. While it is still above the standard cut-off of $p<.05$, it is very close. Given the small sample size, it is still reasonable to expect that the lack of significance reflects – in large part – simply a lack of statistical power.

As a final test of the study hypothesis, a log transformation of the scores on the court culture variable was carried out. This statistical process is simply a way of reducing the variance caused by the extreme scores noted above (i.e. Defence Counsel 2B and the Justice of the Peace B in the inefficient court). In this case, it is justifiable because the reversal (anomalous condition) of these two cases in the inefficient court continues to exist even after the transformation. In other words, the log transformation does not remove the existence or the direction of this reversal. Rather, it simply reduces the overall variance of the court culture variable, increasing the power of the inferential test. Indeed, all the transformation does is change the relative size of the intervals[38], providing a more accurate assessment of significance.

[38] This log transformation is possible because the variable - 'percentage of proactive statements' - is not a true interval level variable (i.e. a difference of 10% from 40 to 50 is arguably not the same as from 85 to 95). As such, this variable can only be considered an ordinal level scale. As such, there is no bias when the relative size of the interval is changed, as long as the original ordering of the response categories is maintained.

Table 4.6: Descriptive Statistics on the Percentage of Proactive Indicators (transformed)

Court	Total (N)	Mean	Standard Deviation
Efficient court	6	4.27	.24
Inefficient court	6	3.81	.41

Note: t = 2.412, df = 10, p = .037

Table 4.6 above presents the findings of an independent samples t-test (using the log transformation of the court culture variable). The difference between the 2 courts in terms of the average percentage of proactive statements expressed is statistically significant (p= .037). This finding suggests that the borderline significance of the original independent samples t-test as well as the Fisher's Exact test was largely a problem of statistical power and not one of random error. While the small sample size could not be altered, the reduction in the amount of variance in the court culture variable was sufficient to detect a real difference between these 2 courts. These statistical findings corroborate the study hypothesis that the cultural discourse of the efficient court is, in fact, different from that of the inefficient court. Indeed, it would appear that on average, the court personnel in the efficient court express a higher percentage of proactive statements than the court personnel in the inefficient court.

More broadly, this statistically significant difference in the frequency of proactive indicators between the efficient and the inefficient courts supports Leverick and Duff's (2002) typology as a useful strategy for distinguishing these two courts. Indeed, the distinction between proactive and passive court cultures as defined by Leverick and Duff (and as operationalized in this study by our 12 indicators) appears to constitute a relevant explanatory factor of efficiency in processing cases in Ontario bail courts. Within this context, this study provides

limited quantitative support for the applicability of Leverick and Duff's court culture typology for bail court in Ontario.

4.2 Qualitative Description of Court Culture

From this statistical analysis, it is clear that significant differences exist between the efficient and inefficient courts. However, these differences only suggest that the 24 indicators created from Leverick and Duff's study vary across these courts, without providing an overall description of the culture in each court. To present this more in-depth analysis, this section will describe the themes discussed by court personnel in the semi-structured interviews.

Beyond the 24 indicators rooted in Leverick & Duff's court culture typology, all other (different) themes from the interviews were also coded. Perhaps not surprisingly, all of the themes from the interviews naturally grouped together into three broad classifications. These classifications correspond to the three principal themes found in the literature which describes the various characteristics or components of court culture. These three categories of court culture characteristics will be used to draw comparisons between the two bail courts in three areas: (1) expectations and understandings in each court, (2) practices and incentives in each court, (3) roles and workgroup relationships within each court.

Efficient Court

Many interviewees from the efficient court noted that the most important goal in bail court is the quick resolution of cases. For example, when asked if efficiency was discussed in this court, Duty Counsel answered, "... very much so, because we try to minimize adjournments and we try to get ... the case ... to a JP as quickly as possible. Most people know it's

important that the case gets moved" (DC A Pg 4, Ln 13). Indeed, ensuring that a case progresses quickly is a significant part of the work of court personnel in this court, and thus results in a small number of adjournments, and quick pace in getting the case to the Justice of the Peace.

The quick resolution of cases is also a central consideration for the Crown's office. When asked what the priority in bail court was, one Crown Attorney responded,

> Well of course the efficiency of the process, in having matters dealt with as soon as possible, which would include getting the Crown's position even before the case appears in court.... If the accused was going to be released ... you don't want delays, you want that to be as soon as possible. (CR1 A Pg 5, Ln 14)

The Crown shares this notion that bail matters should be dealt with as soon as possible and identifies the key role that they play in this process by providing the Crown's position before the case appears in court, thus allowing Duty Counsel or Defence Counsel to prepare the case before court and be ready to resolve the case on the first appearance.

The quick resolution of cases is important to court personnel and there is a strong desire by each actor in the bail process to minimize the use of custody. Each interviewee from the efficient court indicated that the fundamental principle guiding the operation and organization of this court is rooted in a need to minimize remand as much as possible and ensure that the liberty of the accused is only denied as long as absolutely necessary. Reflecting on the considerations of court personnel when deciding how to respond to requests in court, Duty Counsel notes that court personnel consider the liberty of the accused and act in a manner that minimizes time spent in custody:

> We try to minimize adjournments and ... try to minimize having people stay in jail too long... The Crown's the same way ... they don't want the person to stay in jail if they know ultimately ... it's either a very short period of jail or no jail at all. So that's always something that we are going to take into consideration. So, it's something that we do look at in order to avoid people having too much time in jail. (DC A Pg 7, Ln 33)

In fact, the operation and organization of the court is generally focused on expectations, practices and dynamics that ensure time in custody is minimized. The custody of the accused appears to be the primary consideration of all court personnel when deciding how to act, even if this priority requires that they go above and beyond their job description (e.g. working beyond regular hours). In sum it would seem that the concern with the liberty of the accused is one of the most powerful driving forces in ensuring the quick resolution of bail cases.

Inefficient Court

The majority of court personnel in this court mentioned that their priority in bail court was a focused attention on getting through the day's docket. This perspective seems to place the emphasis on dealing with each day as an isolated part of the bail process rather than a broader concern with the entire bail process. For example, when asked about his/her role in the operation of bail court, the Justice of the Peace said,

> As a JP you have to persuasively move the individuals along ...particularly when you get some Crowns that want to present all the evidence and you know you have a big

> list and you want to move through ... you have to be ... cognizant of their role to a certain degree until the decision is made and the docket is done. (JP B Pg 4, Ln 22)

Indeed, the role of the Justice of the Peace appears to be directed primarily at what is needed in order to get through the day's docket – such as speeding up the Crown and Defence in presenting their arguments.

In this court, the importance of completing the docket each day appears to be rooted in concerns for meeting the immediate operational needs. When asked if the Justice questions adjournment requests, one Defence Counsel responded,

> There's not much inquiry. The... Justice of the Peace has a line up of cases to hear, and... some are going to another day [so], they go to another day. The Justice of the Peace doesn't pay much attention to that, they just want the cases done. (DEF2 B Pg 5, Ln 16)

Because the Justice of the Peace is focused on the operational need to complete the day's docket and given the lengthy dockets in this court, it seems that adjournments are perceived as a 'necessary evil' for those cases which cannot be dealt with by a simple consent release. Indeed, it is seen to be operationally necessary to get through each case as quickly as possible each day, even if that requires a number of cases to be adjourned.

4.2.1 Expectations and Understandings

Expectations and understandings refer to the attitudes and beliefs held by court personnel regarding the goals that each court is expected to accomplish. The expectations of a court are drawn from previous interaction with court personnel. Not surprisingly, the predominant

expectations that the interviewees of each court expressed were consistent with the central goals of their respective courts.

Efficient Court

Expectation: Ready on the first appearance with a plan

Many court personnel who were interviewed from this court mentioned that each court actor is expected to be ready on the first appearance in bail court with a plan of action which will advance the case on that particular day. This allows court staff to take advantage of the first appearance to move the case forward immediately and reduce delay. For instance, Duty Counsel mentioned that,

> If it's a serious case and we can't [give a consent release], we adjourn for either a surety... [or] counsel ... but it goes pretty quickly. We know what should be run, what not and we can arrange to have the bail hearing proceed that day effectively. (DC A Pg 4, Ln 13)

Since court staff have already looked at the case and have an idea of the resolution possibilities and are able to prepare beforehand, the first appearance can be used productively to resolve or advance the case right away. This is important to the efficiency of the bail process as it reduces the likelihood of delay.

There is also an understanding in this bail court that all players will be ready to run a bail hearing - if possible - on the first appearance. Contrary to many bail courts in which there is a general understanding that bail hearings are never run on the first appearance, being ready on the first appearance in this court does not only mean being ready to adjourn for a surety/counsel or being ready to organize a consent release. It also suggests that counsel will

be prepared to run a bail hearing if there is no prospect of release. The expectation of having to run a bail hearing on the first appearance was illustrated by one Defence Counsel who stated:

> If ... we have a matter that is to proceed as a bail hearing and we have sureties all present we can do it right away. Often we are ready to proceed on the same day. You know the type of case, so you know whether you'll be able to convince the Crown to consent to their release... depending on who it is, and usually if it's somebody who's already on bail and picked up, I know right away there's going to be no chance of getting him out, so we will go talk about a plea. (DEF2 A Pg 1, Ln 5)

This ability to run a bail hearing on the first appearance reflects the fact that court personnel in this court have already looked at the case, developed a plan to proceed and are already organized to run the hearing. It is precisely because of this that court staff can immediately implement that plan, whether it is to adjourn for a surety, do a consent release, run a bail hearing or finalize a plea.

Understanding: Delays should be avoided

Another way in which court personnel in this court reduce delay is by using adjournments only when they are necessary to get additional details or assure the presence of a surety or bond to release the accused. For example, one Crown provided a scenario in which a surety was not able to arrive before the court ended for the day. As such, the court remained open beyond regular hours and held down the case to wait for the surety, instead of adjourning it to the next day. In his/her description of the scenario, the Crown Attorney said, "...what are you going to do with this individual, to spend 2 extra days in court just because the surety

didn't show up in time" (CR2 A Pg 7, Ln 31). Adjournments are thought of as a last resort and only to be used when there is no other alternative, even if that means going above and beyond regular practices.

In cases in which adjournments are needed to resolve the case, the adjournment is deemed acceptable as long as the court is assured that the time provided by the adjournment would move the case toward resolution. For instance, Duty Counsel said,

> Often the Crown will tell us, we are prepared to consent if there is a surety, but we were unable to get one before court, so then I would adjourn to get that person in, and then it's a sure thing ... the person is available to come tomorrow, so then tomorrow, we know it's an automatic release, so then we would do that as a sure thing. (DC A Pg 2, Ln 43)

This expectation is important as it ensures that adjournments are not used unproductively, but instead are used to assist in the earliest resolution of a case. In this particular example, since Duty Counsel is confident that he/she will be able to resolve the case at the next appearance because of the adjournment, the adjournment would be considered acceptable. Overall, adjournments in this court are used to allow finite events to occur which are expected to resolve the case.

Understanding: Flexibility in operations and roles

In cases in which a resolution is possible, court staff are also expected to do what is necessary to resolve it at that point in time. In many cases, this understanding requires

flexibility in traditionally defined roles. One Defence Counsel described the mentality of senior court staff in ensuring that cases proceed:

> In no other jurisdiction do you see the Senior Crown Attorney doing everything... He does bail hearings, he did the first appearances, the adjournments, he does trials, he's involved in everything, and ... if they're short somebody, he goes in and fills in himself. The Crown Attorney whose in charge in county X, you never see him in court, never, I have no idea what he does. (DEF2 A Pg 7, Ln 17)

In contrast to other courts in which the role of senior staff is limited to an advisory role, senior staff in this court are willing to go beyond what is typically expected of them and will involve themselves in many aspects of case processing which is not strictly within their job description in order to facilitate the early resolution of bail. Indeed, staff in this court appear to be willing to share in all of the work in order to resolve the case, even if that means carrying out tasks which are not normally those that they perform.

This expectation of flexibility also extends to formal procedures. For example, Duty Counsel said,

> Sometimes they [Crowns] are agreeing to release even though their first position was not. Or often we say we're not sure, we're going to run it and then we're running it and ... half-way during the... bail hearing the Crown will realize that our plan was a good plan and sometime he's [going to] stand up and say ... I think we're prepared to consent to release here at this point. (DC A Pg 6, Ln 22)

In this case, the Crown was contesting a release because of a particular concern. However, once that concern was addressed in detail by Duty Counsel, the court was able to proceed

with the release immediately, instead of requiring that the full formal hearing take place before a decision could be made.

In a similar vein, traditional procedures surrounding the interviewing of sureties can be rendered more flexible in the interests of efficiency. When describing his/her role in bail court, one Crown Attorney mentioned,

> I think the big difference here is I will meet with proposed sureties, and I will sort of have a bit of an informal interview [with them] ... and [I will] ask do you realize what he's [the accused has done] ... and ... do you think you can offer good guidance [to the accused], ... and I think ... it's another big difference [here]. (CR2 A Pg 6, Ln 45)

Formal proceedings dictate that potential sureties are interviewed by the Crown in court. However, 'informal' questioning before court by the Crown permits an additional opportunity to assess whether a formal bail hearing is actually necessary. In this way, cases in which the Crown is already satisfied with the surety through informal information gathering practices can be expedited.

Inefficient Court

Expectation: Decisions are variable in nature

Decisions in this court are perceived as variable in nature. Indeed, several court personnel spoke of the many contingencies that are associated with bail cases. More specifically, it is considered very difficult to foresee the potential outcome of a case because many aspects associated with a case are thought to be out of the control of counsel (e.g. the particular staff

who attend court, whether the case will be heard, if disclosure is provided, etc.). As a result, adjournments are a necessary and natural occurrence in bail court. For example, one Defence Attorney said:

> There's a lot of publicity about court efficiency, but ...there's a lot of variables that counsel cannot control, they cannot control how quickly disclosures given to the Defence, they cannot control whether their lawyer is on holidays or the lawyer has to be engaged in a major trial that's going on for 2 months, or even if the case will be heard that day. So for all those reasons, you need adjournments. They can't control how fast legal aid goes, so they are inevitable... (DEF1 B Pg 6, Ln 38)

The expectation is that every case is a new situation, with its own contingencies, and each case must be treated as unique. As a result, it appears that adjournments are seen as necessary to accommodate the individual needs of each case.

Court personnel here consider the practice of processing cases too quickly – before all of the contingencies are known – to be a risky behaviour. Duty Counsel referred to this concern and argued adjournments were necessary in order "to get more information about the case in some respect or another ...depending on the need to get a sense of the risks involved and so forth" (DC B Pg 9, Ln 31). Indeed, the variable nature of the decisions results in the need for additional appearances so court staff can spend a greater amount of time preparing cases and thus avoid the potential risks associated with running a bail hearing without knowing what to expect.

This underlines the perceived importance of taking the time to obtain counsel and prepare the case thoroughly before holding a bail hearing. This perspective was clearly illustrated by one Defence Counsel who noted that:

> It's pretty much common practice for Duty Counsel to say we need to put this over for tomorrow because his lawyer's not available today and will be available tomorrow to do the bail hearing. And remember that, for the most part, you get 1 bail hearing. There is a process where you can refute the bail in superior court - that's for sure - but it's a difficult process and really, your best opportunity for bail is that 1 bail hearing you get in front of the Justice of the Peace ... it is better to have your lawyer there to do it and [if] your lawyer is ... on top of the case and presents a good plan, the client will be released. (DEF2 B Pg 4, Ln 37)

In fact, not knowing what to expect in court and acting too quickly before being prepared is thought to result in an unfavourable bail hearing/outcome for the accused. Therefore, this court supports the notion of taking time during the initial appearances to first obtain counsel, and allow counsel a significant number of appearances to prepare a good bail plan, instead of rushing the hearing in the first few appearances.

Staff in this court also appear to favour the practice of waiting for a consent release rather than risking a bail hearing. Indeed, Duty Counsel noted that this practice is common in this court and said that:

> In this court, the tendency is to try and wait for a consent agreement by adjourning it, rather than taking the risk of having a bail hearing, where you know it's a hearing and

> usually you can be pretty confident about the outcome, but you can always be surprised. (DC B Pg 4, Ln 6)

There is a sense that the safest option for court personnel is to adjourn the case until a consent release is offered by the Crown. The alternative of an early bail hearing is perceived as too risky as the accused may be denied bail.

Expectation: Adjournments are necessary

Another way in which this court meets the immediate operational needs of the court – completing the docket – is by adjourning cases to another day. Because this court frequently uses adjournments, a backlog of cases quickly develops. As a result, even more cases need to be processed through the court during any given day, and adjournments become necessary in order to get these additional cases off the docket.

In particular, the court is quick to adjourn the more complex cases as they take more time to deal with than the simple cases (e.g. in the case of a bail hearing). As Duty Counsel said,

> If it's complicated, likely to be opposed, the person has a significant prior record and has a relationship. Particularly a prior relationship with counsel, we would probably steer them towards getting counsel, rather than servicing them ourselves, because if we tried, we'd be here all day and we'd never get through the docket. (DC B Pg 1, Ln 46)

While this practice of dealing only with the simple cases facilitates the completion of the docket on any given day, the significant number of adjournments used in this process results in a backlog which creates a need for an even greater number of adjournments.

However, this practice does not appear to be of any particular concern for court personnel because of the perceived risks associated with advancing the case too quickly. In fact, there is an association of adjournments with the natural progression of a case. To illustrate, when asked if a reason is usually provided when requesting an adjournment, one Defence Attorney said,

> Yes, I mean normally ... the initial stages, maybe the first appearance, it might be obvious so you wouldn't need a reason, but the reason you have adjournments, the whole reason for it is so that the court can be appraised of the status of the case, that's the whole reason they're there. (DEF1 B Pg 4, Ln 3)

In this court, adjournments are seen as necessary in order to ensure that the case is not forgotten. From this perspective, adjournments are viewed in a positive light because they provide the court with an update of the case.

Understanding: Quick bail resolution is not important

Because the use of adjournments allows the court to fulfill the operational goal of completing the docket each day, adjournments are not perceived as problematic. In fact, the system is perceived as achieving its goal, eliminating any need to focus on fixing/changing it. As one Defence Counsel noted:

> I think, if there was some inquiry into the need for each adjournment, yeah, you might be able to decrease the number from ... 6-4. But, what's the problem? If it's 6 or, or it's 4? . . . . What's broken? I mean why bother...cause it's a JP court, ... we're not taking the judge's time. We're taking the Justice of the Peace's time-whose remanding things anyway... There's no logic, so why spend all this effort on reducing remand from 6-4, like remand? [laughing]. (DEF2 B Pg 10, Ln 25)

Indeed, adjournments are seen as a normal and acceptable (if not necessary) practice in this court. It is possible that part of this view of adjournments is rooted in the perceptions in this court of the importance of bail within the wider court process. In fact, court staff generally noted that the bail stage is not a significant event in the progression of a case. While contemplating the concept of efficiency in bail court, one Defence Counsel noted,

> And, if you asked me [whether] going faster ... make[s] a matter better, is it going to make any difference, in my opinion, going from 6-4 [appearances in bail] would make very little difference and the difference between going 6 and the effect on the court resources is pretty minimal here. It's not remand time we're worried about. It's trial time and finding time to do trials. (DEF2 B Pg 12, Ln 6)

Indeed, the mentality of this court appears to be that a reduction in one to two appearances is not important because each appearance in bail is insignificant within the broader criminal court process.

4.2.2 Practices and Incentives

This sub-section describes the concrete practices designed to fulfill the overall goals of the court and the incentives which drive those practices. In particular, this section portrays the ways in which the overall or primary court goals are translated into practice by court personnel.

Efficient Court

Practice: Out of court discussions prior to the first appearance

One daily practice that seems to occur in this court is the use of out-of-court discussions prior to the first appearance to allow court personnel to put together a mutually agreed upon plan of action. This practice was noted by the majority of court personnel in their interview responses. An illustration was provided by one Crown Attorney:

> Often we are proceeding [with a case] and we're going to be telling each other what the issues are that we are going [to] give ... I know in some courts ... Crown and Defence don't talk to each other and there's big surprises along [the way] ... [Here], the Crown's going to tell me right away, I'm proceeding on ... ground number one and number two and this is why I'm proceeding. And I will say okay, ... I understand that and ... this is my surety and he's going to be saying x, x, x ....(DC A Pg 6, Ln 9)

Court staff meet (inside of the courtroom but outside of court time) before each court appearance in order to discuss their respective positions and negotiate a possible resolution or ways in which to advance the case (i.e. securing a surety, holding a bail hearing, etc.). As a result, when the case appears in court on the first appearance, it can be resolved immediately because a resolution or acceptable case trajectory has been discussed previously.

Practices: Case preparation occurs prior to first appearance

It appears that staff in this court also prepare or organize what is needed to execute the potential bail plan before the first appearance. For example, if Defence Counsel thinks that the Crown will release the accused with a surety, Defence Counsel begins contacting

potential sureties even before the first appearance. Indeed, a few court personnel indicated that they followed this practice. For example, when asked what happens once the accused has informed his/her counsel of the arrest, one Defence Attorney replied, "First you get the call, then you get all the details from the client and I start right away calling the family, to make sure sureties are there and we can do it quickly...It's not necessary, just in their interest" (DEF2 A Pg 1, Ln 14). Indeed, by securing a surety before the first appearance, Defence Counsel increases the accused's likelihood of being released that day.

On a similar note, several court personnel indicated that they often spend time before the first appearance getting additional information. Sometimes a decision regarding the release of the accused cannot be made until additional details are gathered in order to accurately assess whether a release is possible. Instead of waiting until the first or second appearance to obtain this information, court personnel in this court begin making calls and gathering information (e.g. disclosure) before the first appearance so that a decision will not be delayed. Consequently, when asked, "Can you gauge what percent of cases move on to that second appearance?", one Defence Counsel responded, "10% maybe. It would be the exception because we get a pretty fair assessment before the first appearance" (DEF1 A Pg 2, Ln 4).

Precisely because staff are already in possession of the necessary details of the case to make a fair assessment before court, they are able to carry out negotiations/discussions with counsel and prepare for a bail hearing on the first appearance. As one Crown confirmed,

> We look at the files in advance, ... but, if, for example, there's no record, ... something can be [done], like suitable conditions can be put in place, and everyone

agrees with that, we will talk about it before the first appearance and we will try and release the person on the first appearance. (CR2 A Pg 2, Ln 9)

Indeed, these early actions help reduce the number of appearances needed to resolve the case.

Practices: Accepted role of Duty Counsel to run bail hearing

Another way in which this court attempts to reduce any delay in determining the bail of an accused is in the accepted role of Duty Counsel in running bail hearings when Defence Counsel is absent. For those cases in which it is likely that the accused will be released, it is expected that Duty Counsel will substitute Defence, rather than adjourn the case to another day in which Defence is able to attend court. One Defence Counsel mentioned:

> Duty Counsel wouldn't keep someone [inside], ... she wouldn't adjourn matters for the purpose of having counsel, she would make sure that if she knows the client is going to be released, she'll do the bail hearing or, do the consent release and then from there direct them to their respective counsel. (DEF1 A Pg 10, Ln 37)

This practice is important because it reduces the need for additional appearances to wait for Defence Counsel simply because they are not there.

This involvement of Duty Counsel also occurs in more complex cases. While other courts adjourn cases for the accused to find counsel, Duty Counsel in this court will either act for the accused or find them counsel. One Defence Counsel noted that:

> I see some people that don't have a lawyer, it gets remanded because they don't have counsel. If they're from out of town, but that's the thing about here, ... if somebody needs a lawyer, [Duty Counsel will] act for them or find them a lawyer. Whereas, I

notice in [another court], people get remanded from video to video and they say, well I still haven't been able to find a lawyer or get a lawyer yet. (DEF2 A Pg 11, Ln 32)

Indeed, in this court, Duty Counsel is available to assist the accused by handling their case or assisting them with finding counsel. This practice is important because it means that the case can be resolved early on, instead of waiting until Defence Counsel can be found.

Incentives: Adjournments are monitored, questioned and restricted

It also appears that adjournments are monitored, questioned, and restricted in this court. Indeed, a few court personnel mentioned that counsel keeps track of the number of court appearances for each case. In fact, court staff readily acknowledged the need to follow the progression of the case to ensure that it is being advanced and not taking more time than necessary. One Crown indicated that "... we're not going to adjourn just to adjourn, at one point you need to get the show on the road" (CR2 A Pg 8, Ln 8).

This general practice of monitoring case processing was illustrated by the Justice of the Peace who stated that, "it's [court efficiency] understood and known. The Defence knows that the Crown will not grant, 5, 6 and 7 adjournments, they know that before, so they ... know that when they do approach the Crown, where the Crown stands, and what they can expect from the Crown's office" (JP A Pg 3, Ln 1). Precisely because counsel knows that the Crown is likely to oppose repeated requests for adjournments, there appears to be a strong incentive to resolve issues at the earliest point in time.

The majority of court personnel also indicated that adjournment requests are not automatically granted in this court. Rather, reasonable justification must be provided for

requests to be granted. In fact, adjournments are not granted unless a reason is provided and it is recognized by court staff as necessary to advance the case. This practice of reviewing adjournments was described by one Defence Counsel who said, "The JPs see the need to have some justification, they can't get it automatically" (DEF2 A Pg 10, Ln 20). This 'requirement' was confirmed by one Crown who noted that in the absence of any justification provided, "...the JP will most likely ... ask for the reason of the adjournment because ... they have to make sure ..." (CR1 A Pg 4, Ln 30). This 'public' request for justification would appear to discourage the use of adjournments unless they are necessary for the advancement of the case. When reflecting on why he/she would grant an adjournment, the Justice of the Peace stated:

> Well it's the preparation, ...that's the ... key, there's no other reason for an adjournment, it has to be case preparation, and I won't let anything else go through. And case preparation means ... you would adjourn because of potential witnesses not available, sureties not available, lack of disclosure... a change of lawyers, to me they should have great consideration. (JP A Pg 4, Ln 14)

Although court staff attempt to resolve the case as early as possible, it is also recognized that there are still occurrences in which adjournments are required. This 'restriction' on the use of adjournments appears to reduce the number of non-productive adjournments, while permitting those which do, in fact, contribute to the early resolution of the case.

Several court personnel also mentioned that adjournments are typically only granted for short periods of time. In describing such a scenario, one Crown noted that "We're allowed up to 3 days, but we don't even get 3 days. JPs will ask questions and [say] ... I'm giving you one day. So I'll give you tonight and come back tomorrow" (CR2 A Pg 8, Ln 31). This practice

allows adjournments so that necessary events/work can occur, but restricts the amount of time for the adjournment to ensure that cases are still resolved quickly.

Incentives: Court is prepared to run matters outside of regular court schedule

In this court, it seems as though the court is prepared to take exceptional measures to avoid delay. A few court personnel mentioned incidents in which court ran late in an attempt to complete the docket. In many courts, cases which are not completed during the regular court day are adjourned until the next day. However, in this court, presumably because of the guiding principles which emphasize the importance of the accused's liberty, court staff often stay to deal with any remaining cases in order to help resolve bail immediately. For instance, when asked if adjournments ever occur in this court as a result of a lack of court time to hear the cases, one Defence Counsel said, "Very rarely ... I've stayed here until 7pm to hear cases... for ...everybody, you can usually convince them to wait because it's not fair to the accused!" (DEF2 A Pg 10, Ln 42). Court staff are willing to work beyond their regular hours to resolve bail instead of adjourning the case to another day.

This practice is not isolated to extending regular court hours. Indeed, one Defence Counsel recalled an occasion in which court staff worked through lunch. He/she said, "We just did one [hearing] at 12 because the surety had to go back to work. We had set it at 1, but ...the surety arrived and said he had to be back at work for 1. But he has to be there for legal purposes, to sign the new recognizance, so our Justice of the Peace said ... we'll do it now" (DEF2 A Pg 4, Ln 35). It would appear that court staff are willing to adjust their working schedule to accommodate what is necessary in order to resolve cases immediately.

Practices: Hold-downs are used as a second attempt to resolve the case

It also appears that hold-downs are used as a second attempt to resolve the case on the first appearance. More specifically, a few court personnel mentioned occasions in which this practice was exercised. If a case cannot be dealt with when it is initially called, court staff have an opportunity to either put the case aside until later in the day (i.e. a hold-down) or adjourn the case to another day. In this court, staff often hold down this type of case so that further information can be gathered or the case can be discussed at greater length in order to resolve it instead of adjourning it to another day. For example, one Crown Attorney described the following scenario when asked what he/she thought was a necessary adjournment in this court:

> Sometimes what happens ... Duty Counsel will say, I haven't been able to call anyone, ...reach anyone, I've made a few phone calls and they're not returning my calls. So we'll put it down the list, see what we can do in the meantime and come back to it. The individual will say... try my boss, try my mom, try my brother ... we will try to put a plan in place and if that cannot be done, then we adjourn for the next day. (CR2 A Pg 2, Ln 26)

Although Duty Counsel discussed the case before the first appearance and put together a bail plan, the case could not be advanced when called. The extra time provided by the hold-down allows Duty Counsel to investigate further and attempt other options in order to consequently decrease the need for a second appearance.

Inefficient Court

Practices: Case preparation begins at/after the first appearance

It appears that in this court, case preparation does not begin until the first appearance, and the majority of court staff noted a lack of communication regarding the case before that point. There is no expectation that the case will advance on the first appearance and most court personnel spend the first couple of appearances gathering information. For example, Duty Counsel said, "sometimes, like I said, the best information you have at the very early stage is the type of thing you would get from the Police Officer anecdotally about the nature of the case, what the investigation is, if they do have concerns, why they have concerns" (DC B Pg 9, Ln 31). Because court staff rarely meet outside of court, the first few court appearances appear to be used primarily to prepare the case and gather additional information. As a result, at least one additional appearance (in addition to these first 'exploratory' appearances) is required to resolve the case as it is unlikely that one would have enough information to resolve the case on the first day.

Part of the reason for this delay may reside in the processes used to obtain information about the accused. It would appear that court staff in this court prefer to rely on formal (rather than informal) communication which takes more time to arrange/prepare and disseminate. For instance, while reflecting on his/her role in bail court, Duty Counsel claimed:

> It would be nice if there was always a formal bail report that was available on the first appearance, but it's usually that the police and Crown's office are just cobbling that together, on the very first appearance, so a lot of time, the info is obtained from sort of informally talking to Police Officers who's arrested [the accused], what the circumstances were, whether the person has a record, trying to get as much

> background on the individual and the circumstances [as] possible, but you can't always rely on that. (DC B Pg 1, Ln 9)

Out-of-court discussions with the various key players in the bail process to obtain information do not appear to be a common practice, and this appears to add time/appearances to the case.

Some court staff suggest that there is very little point engaging in case preparation until they have met with the client at the first appearance and begun to understand their circumstances. This practice was depicted by Duty Counsel who noted:

> From the timing standpoint, you don't have a lot of opportunity to dig in the bail cases until particularly that first appearance and it can be very difficult to do very much in some cases until you actually meet the person in the bail court and start to understand the circumstances...The difficulty is obviously that sometimes it creates a situation where they are not able to put a bail plan forward on the first appearance. And sometimes that means you'll have to adjourn the matter. (DC B Pg 1, Ln 24)

As Duty Counsel notes, the result of waiting until the first appearance to begin preparing the case means that the likelihood of resolving the case on the first day is low. Indeed, it is considerably more likely that the case will be adjourned.

Incentives: Adjournments are not justified or questioned

Precisely because there are no shared expectations that require that the case be resolved on the first or second appearance, nor any practices which would facilitate early resolution (e.g. going beyond one's typical role, informal out-of-court discussions, etc.) there is no perceived need to question or justify initial adjournment requests. Therefore, court staff feel free to wait

until the third appearance to consider advancing the case. Indeed, there appears to be a shared expectation that cases should take at least several appearances. While contemplating the use of adjournments in this court, one Crown Attorney remarked, "Cause the first day is you've been arrested ... you've got to figure out what's going on. The second day, you're working on your plan, you ... need to get everyone there, a third adjournment I think would be realistic to run a bail" (CR2 B Pg 3, Ln 15).

In more difficult cases, adjournments also appear to be used to 'buy time'. Indeed, many court personnel noted that the use of adjournments is a viable option in cases in which staff are unclear about how to advance a case. When asked if any cases go to a third appearance, one Crown responded,

> Oh yeah ... In this jurisdiction, if you're dealing with a lot of adjournments, they usually go to Friday. If they're realistically not going to be run, they're going to Fridays. And if you notice that Fridays, there aren't that many bails being held on Fridays, they're being put to that date because they're going to try and figure out what they're going to do. (CR2 B Pg 1, Ln 19)

This practice of delays also seems to mean that cases will often appear repeatedly on the 'Friday' docket, being remanded week by week, until either the court acknowledges that too many adjournments are being used or Defence Counsel puts together a plan and places the case on the regular (Monday to Thursday bail) docket (or the case goes directly to plea court).

Even in the case that one of the court's players is ready to proceed on the first/second appearance (i.e. has prepared the case and gathered all of the necessary information), there is

still a reasonable likelihood that the case will be adjourned. Indeed, the sheer number of cases on the docket each day in this court (coupled with the court's unwillingness to extend regular working hours) increases the possibility that the court will simply not be able to deal with every case. Rather, adjournments are used to complete the docket. Indeed, one Defence Counsel claimed,

> So for cases that aren't terribly serious, you know you typically attend, you hope you ... can get a plan together and get a consent release ... And again if it's a case that's not terribly serious, you have a ... potential surety, and the Crown is opposing release, you hope you have time to get a show cause hearing, otherwise, the matter's adjourned. (DEF1 B Pg 1, Ln 17)

Clearly, the backlog of cases makes it difficult to resolve a case early, even if the intent to do so exists.

Precisely because staff in this court share the belief that adjournments are necessary and that decisions are subjective, adjournments are not often justified/questioned. Indeed, they are assumed to help in meeting the operational needs of the court. Further, they can be justified - if questioned - because of the unpredictability of decisions. As one Defence Attorney said, "... in fact, if someone inquired of why I'd want the adjournment, they usually don't, but if they did, than I can give a reason. Then, it's not just my client doesn't want to go ahead" (DEF2 B Pg 10, Ln 21). Indeed, there appears to be few expectations that cases will be resolved quickly. As such, court personnel do not seem particularly concerned with taking a number of appearances to complete the case.

Practices: Duty Counsel provides a triage capacity

Since there appears to be a generalized fear amongst court personnel that running a case that is not yet ready will result in a formal detention (with all of the associated negative consequences for the accused), Duty Counsel in this court seems to air on the side of caution, and appears to play predominantly an assessment and triage role in the absence of Defence Counsel. Indeed, the majority of court staff in this court indicated that Duty Counsel often provides the initial assessment of a case after meeting with the accused and - depending on the complexity of the cases - either recommends next steps (e.g. seek counsel, legal aid, find a surety) and adjourns the case, or does the consent release if the Crown agrees to it.

Indeed, Duty Counsel reported that:

> I've always viewed the function of Duty Counsel as a triage and I think this is a question of policy that legal aid has to look at, but we've always in this jurisdiction, maybe more so than some, viewed it as a form of triage and the complicated cases, we usually would recommend that the person obtain counsel rather than use Duty Counsel at the bail stage. (DC B Pg 1, Ln 41)

This use of Duty Counsel in predominantly a triage capacity (in the absence of counsel) decreases the likelihood of obtaining an early bail resolution for cases in which there is no consent release. It appears that the Duty Counsel does not feel comfortable dealing with the more serious cases.

Incentives: Adjournments are tracked, but not challenged

The majority of court personnel described incidents in which the progression of their case was tracked, but said that this tracking rarely resulted in the questioning or denial of an

adjournment request. For example, the Justice of the Peace noted, "so normally what happens is that we have a practice here that the clerk will flag [the number of court appearances] and tell us so they'll pass up the information so you know how many times this person has been here" (JP B Pg 1, Ln 28). Because there is a shared expectation that cases will take a number of appearances, this information may be tracked but it does not appear to have any consequences in terms of restricting its use through adjournment challenges or restrictions.

One of the reasons that adjournments are not challenged in this court may be because they are viewed as a necessary right of the accused. Indeed, some accused may feel that the chances of being released are better at a later date. Within this context, counsel or the Justice of the Peace may not challenge adjournments precisely because the accused has the right to wait until he/she has the greatest likelihood of being granted bail. One Crown mentioned:

> It's the accused's right ...he's entitled to have a bail hearing, if he doesn't have a plan together, running through a bail hearing is absolutely useless for him. And then he'll have to go to bail review. What would be helpful is if he can say okay it's the accused, yeah, I need to remand it, right, instead of just remanding it to Thursday, if you can know when your sureties are going to be ready, but often the accused aren't in that position, the accused isn't expecting to be behind bars, their sureties don't know they're behind bars, they don't know when they're going to be available. (CR2 B Pg 3, Ln 15)

In fact, there appears to be very few mechanisms in this court to assist the accused in putting together an acceptable plan or negotiating a reasonable outcome to resolve bail early. As such, there seems to be resistance in rushing a bail case as this practice may disadvantage the accused.

Incentives: Adjournments are acceptable

Adjournments also appear to serve other purposes beyond ensuring that the strongest case is put forward at a bail hearing. For instance, one Defence Counsel mentioned,

> When they're [the accused] in custody, the Crowns are loving it, so... in the initial 6-8 normal period of appearances, they're all with you for that. They don't have to worry about conducting a show cause hearing, the guy's in custody, guy or girl and that's exactly where they think they should be, so I don't get too much [resistance to adjournments]. (DEF1 B Pg 7, Ln 24)

At least from the perspective of the Crown, adjournments are perceived as advantageous in the sense that they ensure the safety of the public.

Further, adjournments may also be perceived as advantageous from the perspective of Defence Counsel, because they allow the accused to accumulate 'dead time' before conviction. Because any time spent in remand frequently accounts for twice as much jail time as time served after conviction, the more time that the accused spends in jail before his/her trial, the more time that he/she will ultimately receive off his/her sentence if convicted. One Defence noted that "...there's many accused who I've just said that for their own motives they're adjourning it - you get the two for one dead time and so a lot of accused are asking for adjournment after adjournment..." (DEF1 B Pg 3, Ln 21). As such, there is no incentive – even on the part of the accused – to resolve the question of bail at the earliest possible moment.

In addition to the collection of 'dead time', adjournments are often not a concern for the accused because they allow him/her to remain in the local geographical area while awaiting trial as opposed to being moved to a large regional detention centre farther away. This practice was discussed by the Justice of the Peace, who said,

> Well in this jurisdiction ... one of the other main ...reasons [for adjournments] is to stay in [X location], I mean it's a much easier place to do your time, because if you get shipped off to ...[Y location] and you're coming back here for a remand date, which is 9 o'clock ... they'll get you up at 4:30 in the morning and they'll get you on the bus to get you down here. ...that's why people want to be here, so that tends to be more of the reason, the accused won't say it, but you ... just know... he just wants to stay here, he doesn't want to go to [the large detention centre], he doesn't want to go to [another city], he just wants to stay here, to be close to his family, to see his kids and visit with his girlfriend. (JP B Pg 2, Ln 6)

Once again, there is little incentive to complete the bail process quickly. On the contrary, there appear to be 'rational' reasons to delay the resolution of bail.

4.2.3 Roles/Workgroup Relationships

The last category of comparison relates to the roles as well as the workgroup relationships that exist in each court. In particular, this category describes the context within which the practices previously discussed occur and how that context encourages or permits these practices. Furthermore, the work group dynamics facilitate the fulfillment of expectations by rendering particular practices workable.

Efficient Court

Workgroup Relationship: Cooperative and Friendly

First, staff in this court appear to be cooperative in nature. All interviewees noted that because staff in this court share the common purpose of resolving bail quickly, they work together and assist each other in achieving this goal. In other words, it appears that this common goal bonds staff in their work. For instance, the Justice of the Peace said, "Everybody works for the same goal here ... everyone knows what to expect from one another... In other jurisdictions, it's different. It's that you don't have this...bond between everyone" (JP A Pg 14, Ln 5).

Often this cooperative workgroup dynamic means that court staff will go beyond what is typically expected of them in order to resolve bail quickly. Defence Counsel described a scenario in which the Crown went beyond his/her role and worked hand in hand with Defence Counsel to resolve the case. Defence Counsel said,

> I actually had a case when I was doing the Defence and my client came up and I asked him all the questions and my client sat down and a Crown came over and said... you forgot to ask him this.... Oh ...yeah, so I stand up and ask that. And that's the crucial thing that he has to say before he can be acquitted right and they've done that. (DEF2 A Pg 6, Ln 14)

Although the Crown is not responsible for ensuring that Defence Counsel presents all of the appropriate information necessary for the release of the accused, it is precisely the Crown and Duty Counsel being united by the common desire to resolve bail at the earliest point in time that permits this inter-role assistance.

In this court, it also appears that staff are friendly to one another. Indeed, almost all court personnel provided incidents in which staff were friendly or collegial, rather than adversarial. Indeed, it seems that personnel in this court view each other as teammates who assist in the quick processing of cases – a practice that is only considered possible because of the contribution that each team member makes. As a result, staff view one another in a positive and respectful light. As one Crown noted, "Here it's very friendly … and there's teamwork, like Duty Counsel will propose a plan, the Crown will draft the conditions and the clerk will type them … so we get to know … how they like to work, so it is helpful" (CR2 A Pg 10, Ln 3). This sharing of the workload arguably reduces the time needed to resolve a case.

This notion of friendliness also extends to situations in which staff differ in their views and are unable to negotiate an outcome. For instance, one Defence Counsel explained that despite the fact that the Crown was contesting release in a particular scenario which he/she was recounting, a friendly demeanour was still present among court personnel. He/she said,

> So the next day I would go into court and see that Crown again and … there wouldn't be any animosity, or issues to work out or anything like that. Because I would probably tell the Crown why I'm opposed to and it's not a personality thing, certainly I … try and steer them [my clients] the best I can …and they [the Crown] have a job to do, I know their role, as long as their position is not driven by the personality of my client… it's not a personal thing. (DEF1 A Pg 11, Ln 13)

This mentality seems to be in contrast to other courts in which personality differences or personal motives impede mutual assistance or the ability to work together. In this court, even when a case cannot be negotiated outside of court and requires a third party (i.e. the Justice

of the Peace) to officiate, the professional and collegial manner of court personnel ensures that they never lose sight of their common goal of resolving bail as quickly as possible.

Workgroup Relationship: Consensual

Staff also appear to be consensual rather than conflictual in their dealings with one another. Indeed, all court personnel indicated their joint discussion and agreement upon plans. For the most part, decisions in the court are the result of a combined effort to resolve the case in which the Crown, as well as the Justice of the Peace and Defence Counsel are equally involved. For example, one Crown Attorney said:

> They [the Justice of the Peace] know we're working out something...we're trying to move a case along, get something going for this particular individual and ... we're working a plan for the individual...the Crown takes just as much part in the planning session ... as Duty Counsel.... Like Duty Counsel doesn't know this individual much more than we do sometimes, and ... we sort of guide Duty Counsel as to what we would like to see. (CR2 A Pg 4, Ln 21)

In fact, it would seem that discussion and negotiation constitute the normal practice in this court. When commenting on the occurrence of this practice, one Crown Attorney mentioned, "I would say maybe 90% of our cases are resolved by way of negotiations, throughout the court process. It's before court, it's between, we are asking for recess to discuss, because they didn't want a hearing date, I'm having a [bail] hearing tomorrow and we will discuss the case before to try and reach a resolution ... it's very helpful" (CR1 A Pg 6, Ln 26). Because of this joint participation in the development of a bail plan, it is more likely that the case will be resolved at the earliest possible point in time.

Workgroup Relationship: Trust

It appears that interactions that take place between court personnel are based on mutual trust. In fact, all court personnel described their dealings with each other as based on honesty and transparency. As one Crown mentioned, "If Defence Counsel or Duty Counsel tells me his mom's coming down, this is her name, this is what she's prepared to do, I know he spoke with her... He's not just saying that, no, no, he actually spoke with her. You know, there's a lot of trust" (CR2 A Pg 5, Ln 20). Indeed, negotiations and discussions in this court are based on honest interpretations of what should occur and what will occur. Information is not hidden by one actor from another, but instead openness is characteristic of the bail process.

Further, court staff have confidence that all court personnel will honour their statements and promises. For instance, while contemplating the values that exist in this bail court, one Crown Attorney noted:

> Being fair and truthful and straightforward and everything like that, those values I think are the base of it here... ethically, as a lawyer if you see somebody that says this is exactly what's going to happen, and you come in the next day and they're saying the opposite, you're not being ethical, so it's like a contract ... you're bound by your own ...words, here we take that ... very seriously, ... the basis of ... a good working relationship is ... truth and confidence. (CR1 A Pg 9, Ln 13)

Indeed, because the resolution of cases in this court rests so heavily on the ability of court staff to work together productively, it is essential that there is honesty and transparency in their actions to facilitate, as opposed to counteract, the fulfilment of their central goals.

A significant aspect is the transparency of the process; personnel in this court provide all relevant information to the other party, even if this transparency puts one's particular case at a disadvantage. Looking back the Justice of the Peace noted, "I don't think I can ever experience, you know, taking a rabbit out of a hat. ...All of the Defence lawyers are honest and they're straightforward and I haven't sensed that at all, that they're trying to pull a fast one on you, ... which means that it's the honesty between everyone here" (JP A Pg 3, Ln 15).

This type of transparency allows court personnel to trust each other, reducing the need to spend court time clarifying actions and increasing the likelihood that court staff will immediately act on what was agreed upon, allowing the case to be resolved. One Defence Attorney described what could be considered a necessary adjournment:

> It could be that the Crown's position will be okay, I'll release if there's a surety ... if there's a possibility of a surety then we'll adjourn it. If there's no possibility [I] might as well do bail [hearing] right away or go to plea....If you have a Crown and they say ... we would release your client if he had a surety, well then certainly, we wouldn't adjourn to have a surety if we weren't sure that that position wouldn't be maintained or we could get a surety in place. (DEF2 A Pg 9, Ln 11)

Indeed, it is precisely because of trust and transparency that staff in this court can predict decisions and, by extension, prepare their cases. In fact, predictability reduces the risks of moving a case ahead.

Transparency also appears to facilitate the preparation of cases in other ways. When asked if he/she would discuss his/her desire to request an adjournment for investigation reasons with Defence Counsel or Duty Counsel before court, one Crown replied,

> Oh, absolutely, oh, no, no surprises, oh yes and they will usually tell me, you know I have to object, yeah, yeah, that's fine, sometimes they'll even tell me, for the record I'll have to object but you'll probably get it because it makes sense, but I say no, that's absolutely fair, but we would absolutely tell them, I think that would be so unfair. (CR2 A Pg 8, Ln 37)

Indeed, court staff are able to prepare accordingly - even before court - to ensure that they already have a plan in place which responds to the questions or concerns that will be raised by the other party.

Role: Strong Justice of the Peace

This court appears to be characterized by a strong Justice of the Peace who controls, at least to a certain extent, the behaviour of the key personnel. Indeed, almost all court staff indicated that the Justice of the Peace regularly controls both processes (i.e. adjournments) and actors (i.e. denies requests). Although the responsibility of ensuring the progression of cases is shared by all court personnel in this court, court actors seem to recognize the Justice's specific authority to control the processing of cases and the behaviour of actors. For example, regarding a case that had been prolonged and was on its 12th appearance, one Crown Attorney mentioned,

> I don't want to put anyone on the spot but at one point this thing needs to get moving and the JP is probably in a better position to sort of track and ask those questions ...

> because it's his court, he's the boss, he's accountable, ... I expect that the next video remand will be setting the date [for the hearing]. (CR2 A Pg 4, Ln 8)

Indeed, in cases in which actions/behaviours prolong a case, the Justice has the recognized authority to deny a request and require that measures be taken to move the case forward.

The Justice of the Peace is also proactive in the sense that regular actions and behaviours that occur in court – even on the first or second appearance – are scrutinized for any potential delays that they could cause. As the Justice of the Peace said, "I always ask the question [why an adjournment is being requested] because ... it's always important to put on the record the reason and ensure that it is necessary, even on the first or second appearance ... that's very important" (JP A Pg 1, Ln 11). These actions by the Justice of the Peace as 'overseer' of the bail process, coupled with the recognized authority given to this court actor by the other players in the bail process, appear to ensure that cases progress and are never 'lost', 'forgotten' or 'delayed'.

However, the Justice of the Peace in this court is also sensitive to the expectations and practices of the other court personnel, and his/her approach is not authoritarian in nature. Illustratively, when asked when one would deny an adjournment in bail court, the Justice of the Peace replied:

> I have learned ... in my training ... that when you're in the Jones' court you do what the Jones' do. And ... I've always observed that. You don't walk into a courtroom and because you're a Justice of the Peace you change everything because you're in charge, I've never done it... but there are certain things that I like to be done in a courtroom, ... it's something that, for me, ...has to be done, that it's probably not

> done in another court, but you know, there [are] ways and means of doing things and we do things a bit faster here … so, here in [X court] there [are] certain things I will not allow and everybody knows now, the way I work and … they've adjusted and everything goes well. (JP A Pg 4, Ln 35)

The Justice of the Peace participates in the same workgroup dynamic, and seems willing to cooperate in a manner which promotes a friendly work environment based on consideration of others.

Inefficient Court

Workgroup Relationships: Adversarial

Several interviewees in this court noted that the predominant approach taken with regards to fulfilling their roles in the bail process was adversarial. Court personnel described scenarios in which not only staff worked against and in competition with other staff members but staff members were also viewed as obstacles to the fulfilment of competing interests/tasks in court. For example, when asked if they work past four o'clock, the Justice of the Peace said, "my personal preference is I'll keep going, because I know the Defence bar wants me to say no or I know the Crown wants to say … no we'd like to do it but we know the Justice has to leave" (JP B Pg 4, Ln 14). Indeed, this environment encourages behaviours that emphasize conflicting work/tasks, conflicting goals and conflicting attitudes. While the Justice may want to handle the remaining cases, Defence and the Crown prefer to leave and blame the Justice for this behaviour.

In fact, relationships between court staff seem to lack a sense of cooperation and mutual assistance. One Defence Attorney who, when asked about difficult times in court, said:

> ... if I'm dealing with one Crown Attorney versus another Crown Attorney, I will know that with this Crown Attorney, I have to patiently wait for this Crown Attorney to work through what he's working through and attempting to resolve and with this Crown attorney, I have to know that when she's saying that... [it will] soon ... pass and I'm not going to bite on that, I'll let her say what she wants to say because if I ... respond to it, I'll just be here longer [laughing]. (DEF2 B Pg 13, Ln 32)

Indeed, it appears that each player in the bail process carries out his/her role largely independent of the others. This workgroup dynamic minimizes the possibility of prior discussions or negotiation, and court time is the only forum in which court staff can present their arguments and discuss the case.

Further, this perception of other court personnel as adversaries or at least impediments to the fulfilment of desired outcomes can also produce additional delays in the bail process. As one Duty Counsel explained,

> There's some JPs who, if they're the ones sitting and it's a certain type of case and it's not an absolute slam dunk bail hearing, there won't be too much hesitation saying this is probably not the best draw. Even if it's a 10-15% better chance with someone else, it may make sense to put it over for a day and get the odds a bit more in your favour. So, that's another thing, there [are] some JPs ...[you] would not want to run certain types of cases in front of. (DC B Pg 9, Ln 40)

In these cases, adjournments are seen as an appropriate mechanism to acquire a more favourable Justice of the Peace.

Workgroup Relationships: Individualistic

Moreover, it seems that court actors work on an individualistic basis in this court. Indeed, several court personnel mentioned occasions in which staff acted in disregard of the intentions or actions of others. In fact, it may be that this individualist vision explains, at least in part, why the workgroups in this court are less cooperative and more adversarial. Each court actor appears to defend his/her own interests. As an illustration, when asked if the court gets adjournments late in the day just because there is no time to deal with them, one Defence Counsel responded:

> Yes, that's horrible and that's a very common scenario ...because court officially starts at 2:00 but realistically we don't start until 2:30 and if you've got three contested show cause hearings, and to be candid some Justices of the Peace are worst than others. Some are prepared to sit till 5:00, the ones we get from [a large court], I've seen them look at their watch, literally, I've seen them come in and say I'm out of here at 3:30... so it's 2:30, they've just told you that they're not sitting past 3:30 and you know, you've got two or three consent releases and you've got two show cause hearings, you're not going to get reached. So ... usually it's the person who's been in the longest that gets priority. (DEF1 B Pg 9, Ln 3)

While the accused is not necessarily neglected, it would seem that he/she is simply perceived as one other player in the bail process, one whose interests are in competition with those of the court staff.

General Workgroup Relationships: 'Tit for tat' system

It also appears that personnel in this court adhere to the mentality expressed in the colloquial phrase 'I'll scratch your back if you scratch mine' (a.k.a., the 'tit for tat' system). The form of cooperation amongst staff seems to be geared toward meeting their individual needs/goals (extra time to prepare case, time to contact surety, etc.) rather than meeting broader goals. As one Defence Counsel recounted, "sometimes the Crown will say no this is crazy and I'll put my hand right over the mic again, and say remember you promised me if I did this you would do that ... you know what I mean" (DEF1 B Pg 4, Ln 21). Indeed, workgroup relationships appear to be determined by the need to 'scratch someone's back' in order to ensure that this favour is returned. In this way, 'negotiations' will arguably be very one-sided (although the 'side' will regularly change), discouraging decisions or plans which promote wider goals. Similarly, the creation of a shared set of expectations and practices becomes more difficult if behaviour is guided by individual objectives.

Equally important, it appears that interactions between personnel in this court are based on secrecy and deceit. A few staff members described occasions in which they were asked not to discuss certain events or were unable to rely on the word of another court actor. This general characteristic was depicted by one Defence Attorney who commented that, "We find that the wheels of justice grind a little ... faster if ... they're oiled... Some Crowns will get up and say you know the Crown said this, but we have a big rule here, what is said off the record stays off the record unless... you have permission" (DEF1 B Pg 5, Ln 1).

Role: Lack of a strong Justice of the Peace

In this court, the Justice of the Peace refrains from taking a strong leadership role and is perceived to be more passive vis-à-vis decisions proposed by Defence and Crown Counsel. For example, when asked how he/she responds to an adjournment request, the Justice of the Peace replied, "I mean it's very hard to... if both counsel and Crown have agreed to the adjournment ...difficult to say no. And.... you can't force the person to have a bail hearing, I mean it's their choice (laughing) no I'm sorry, we're going to run your bail hearing today (laughing)" (JP B Pg 1, Ln 30).

This more passive role is also reflected in the lack of scrutiny exercised by the Justice of the Peace relative to requests for adjournments. When asked how the Justice of the Peace responds to an adjournment request, one Crown Attorney noted, "If it's unopposed, he's usually pretty pleased (laughing) because it reduces their list right? ...But I think in this jurisdiction... things may get a little put off to Fridays" (CR2 B Pg 2, Ln 35). Indeed, the role of the Justice of the Peace in this court does not appear to be perceived as a sort of 'overseer' of the entire bail process.

In fact, part of this may be a reflection of the ambiguous nature of the authority granted to the Justice of the Peace by the other court personnel. While contemplating the role of the Justice of the Peace in bail court, one Defence Attorney noted that,

> The Justice has the power to regulate the court...but it gets to the point you know, if you come down too hard, they say look I'm tired, we're going to set an in custody trial date now. If the guy doesn't have a lawyer or if the lawyer doesn't have full

disclosure, then you're just creating more headaches. Cause there'll be an appeal and, that's just going to cause more problems. (DEF1 B Pg 7, Ln 6)

Indeed, a more active role of the Justice of the Peace appears to be perceived to some degree in a negative light, and the court personnel do not seem to fully recognize or accept the Justice's specific authority to control the processing of cases and the behaviour of actors.

CHAPTER FIVE: DISCUSSION

This study examined whether the court culture typology presented by Leverick & Duff (2002) would be useful in distinguishing Canadian criminal courts of differing case processing efficiency. This research project focused on (efficient and inefficient) bail courts in Ontario.

The quantitative analysis presented in this study supports the applicability of Leverick & Duff's (2002) typology of court culture as a useful means of distinguishing between efficient and inefficient courts within the context of Ontario bail courts. It was found that the inefficient court had a significantly greater number of Leverick and Duff's (2002) passive indicators whereas the efficient court had a significantly greater number of Leverick and Duff's (2002) proactive indicators. Their typology (as operationalized in this study) supports the belief that court culture is related to court efficiency.

The qualitative analysis presented in this study provides additional corroboration for the relationship between court culture and court efficiency. A characterization of each court based on all of the themes taken from the interviews supports the conclusion that the efficient and inefficient courts are culturally different. Certain themes or traits (including Leverick and Duff's (2002) proactive indicators, but not exclusively) were clearly associated with the efficient court while different themes or traits (including Leverick and Duff's (2002) passive indicators, but not exclusively) were associated with the inefficient court.

This study has theoretical, methodological and practical relevance. Indeed, the findings of this study have contributed to: (1) identifying the specific cultural components of criminal courts that affect case processing efficiency, supporting cultural explanations of delay; (2) measuring the central construct of 'court culture'; and (3) clarifying the importance and development of cultural based initiatives to reduce bail court inefficiency in Ontario.

5.1 Theoretical Relevance

This study corroborates the notion put forth by other court culture theorists (Church, 1978a etc.) that court culture does, in fact, affect court efficiency. Indeed, it would appear that there is empirical support, both quantitative and qualitative, for the identification of specific cultural components of criminal courts that affect case processing efficiency.

5.1.1 Expectations and Understandings

Consideration given to the ways in which a particular action will affect the liberty of the accused person is a consistent and important part of the decision making process in efficient courts. Even when counsel has realistically done all that it can do to resolve the case, and therefore, an adjournment is considered to be necessary, efficient staff still go above and beyond what is normally expected of them in order to decrease the likelihood of having to postpone the case another day.

Indeed, building on the work of Church (1982) and Rumgay (1995), this examination appears to suggest that the existence of a common understanding of what is acceptable and unacceptable is a cultural characteristic that seems to have an impact on the processing of cases. More specifically, the results indicate that common notions of appropriateness are a

result of the existence of shared goals, priorities and beliefs, which provide staff with a guideline against which to assess their behaviour. In courts in which staff do not share common goals, priorities or beliefs, a clear understanding of what is appropriate or inappropriate behaviour does not exist, rendering case processing less efficient. Additionally, when this cultural characteristic is paired with goals, priorities and beliefs that emphasize the right of the accused person's liberty and the need for the quick resolution of a case, behaviours that could possibly prolong the life of a case are considered unacceptable.

In fact, the relationship between common goals, attitudes and communication appears to be more complex than originally theorized. This study tentatively adds to the notion of informal and shared attitudes and views originally conceived of by Levin (1975), and suggests that the acceptance of attitudes and views require that mechanisms of informal communication (i.e. daily out-of-court negotiations) simultaneously exist. In courts in which staff are not connected by a common set of goals, priorities or beliefs, in which attitudes and views are not consistent with those of other court personnel, or in which informal communication mechanisms do not exist, the processing of cases will be less efficient.

If attitudes or views emphasizing the quick resolution of a case in a court in which there is already a set of goals, priorities and beliefs shared by court personnel that are focused on respecting the accused person's liberty, and if staff communicate informally through out-of-court discussions on a regular basis, the efficient processing of cases is more likely. Informally communicated and accepted attitudes and views can assist with the processing of cases in a court by allowing court personnel to derive a clear hypothesis about the kinds of

decisions that will only benefit their client, or their office, or the judiciary, but also the kind of requests that will be granted and unopposed, ultimately saving court time.

5.1.2 Practices and Incentives

Similarly, the behaviours that one observes in court on a regular basis shape one's beliefs about the ways in which cases will and should be processed in the future. Expanding a notion originally introduced by Church (1982) and Farole et al., (2005), the findings of this study emphasize the importance of ensuring efficient practice on a daily basis. Indeed, the regular occurrence of efficient practices in court (e.g. the justification and questioning of adjournments) appears to lead staff to believe that efficient practices will take place in the future in that particular court and that only efficient practices will be accepted in that court. In fact, it seems that this 'modelling' of appropriate behaviour reinforces shared expectations, impacting on actual behaviour and practices in court.

Indeed, if court staff observe inconsistent practices, this study suggests they are likely to believe not only that inefficient practices will take place in the future but – perhaps more importantly - that inefficient practices should take place. Such a belief would be resistant to any new policies or notions suggesting that the practices in that particular court need to be improved, since court personnel have become accustomed to (and potentially have accepted as appropriate or acceptable) such inefficient practices.

Further, the existence of incentives for delaying the processing of a case also appears to impact on the speed of resolution of a case. In accordance with the work of Church, (1978a, p. 30), Luskin & Luskin (1986), and Mahoney et al. (1981), this study suggests that when the

accused, counsel and the Justice of the Peace benefit from keeping the accused in custody, case processing is dramatically delayed. For instance, in courts in which adjournments allow the accused to remain locally and collect 'dead time', adjournments are more likely to occur. Without shared attitudes and beliefs in the central importance of protecting the personal liberty of the accused, individual (or collective) interests appear to take precedence.

5.1.3 Roles/Workgroup Relationships

In a court that emphasizes competition between court personnel, staff view the failure to provide a sufficient argument or decision as a personal inability that carries significant negative consequences. And, as a result of this fear of reprisal, the ability to delay the processing of a case can be viewed by staff as beneficial. Indeed, such a course of (in)action allows them to avoid the responsibility of having to deal with the case immediately, incurring the risk of personal failure.

Case processing is also affected by the existence of operational requirements and sanctions. Following the work of Church (1978a, p. 42-43), the findings of this study suggest that in order to affect court behaviour, standards of what is expected in the court (e.g. the number of appearances that a case is expected to take to get to resolution) and mechanisms for reprimanding unacceptable behaviour (e.g. denying an adjournment request) must also exist. Indeed, consistent with Raine & Wilson (1996), this study corroborates the notion that reprimands are necessary in order to remind people of what is unacceptable when they stray from the overall goals and practices of the court.

Likewise, mutual accommodation between court personnel also impacts on case processing. In contrast to the notion suggested by Church (1978a), Cohen (2002), Lippincott & Stoker (1992), Lipetz (1980), and Rumgay (1995) who argue that mutual accommodation between court personnel leads to the acceptance of inefficient court practices, the findings of this study suggest that mutual accommodation among court personal can, in fact, lead to efficient case processing. Indeed, when court personnel in a court share a common vision of how to process cases and are willing to discuss and negotiate in order to reach consensual agreements, they are able to avoid long and drawn-out proceedings, saving court time and resolving the case at a faster rate. In the absence of mutual accommodation, court personnel view their role as distinct and see their colleagues as an obstacle to completing their work. As a result, cases end up being argued in court.

Further, court workgroups can influence the pace of case processing when staff are willing to go beyond their traditional role in court. Building on the notion of workgroups established by Church (1982), Eisenstein and Jacob (1977), Lipetz (1980), and Searle et al. (2005), this study suggests that workgroups succeed in influencing case processing when court staff involved in these groups are willing to do what is necessary to complete a case. Often, this willingness takes the form of stepping outside one's traditional role to assist others in meeting their responsibilities (e.g. filling in for staff who are absent; reminding other players in the court process about relevant issues that they may have missed).

When court personnel share a common desire to resolve cases quickly, are willing to share in the work necessary to resolve the case, and accept shared accountability for the resolution of cases, cases may be processed more efficiently. In contrast, workgroups have little bearing

on the efficient processing of cases in a court comprised of staff who view themselves as having fixed roles, preferring to work solely in the traditional role in which they are comfortable.

The orientation of a court can also affect case processing. Consistent with the perspective of Church (1982), when at least one individual is ultimately responsible for the broader process or wider goals of the court, case processing is more likely to be consistent with those wider objectives. For instance, although all court staff obviously play a role in the resolution of a case, if the orientation of the Justice of the Peace is to pay particular attention to whether the actions of counsel are consistent with the principles of justice and the principles of the court, and this role is accepted by the other key players, court behaviour will more likely be consistent with these principles (e.g. the quick resolution of cases). In courts without this orientation, no particular individual is responsible for the behaviour of the court as a whole and it is unlikely that court behaviour will be consistent with any particular guiding principles.

5.2 Methodological Relevance

This thesis has attempted to contribute to the development of operational definitions of court culture which can be used to empirically examine the relationship between cultural components of a court and the efficiency with which it processes its cases. This study found several limitations to Leverick & Duff's proactive-passive typology as it relates to Ontario bail courts. More specifically, several passive indicators identified by Leverick and Duff

(2002) can also be associated with efficient behaviour and many proactive indicators identified by Leverick and Duff can also be associated with inefficient behaviour[39].

For instance, the passive indicator 'Adjournment requests are not scrutinized' - noted by Leverick & Duff (2002) - was often found in many of the statements by interviewees in the efficient court. Because counsel has already spent a significant amount of time discussing the case outside of court and court staff trust one another to act appropriately, their actions are not scrutinized. Since there is a standard of appropriate versus inappropriate behaviour that is commonly known throughout the court, staff are confident that the decisions made by each other will reflect these shared expectations and beliefs. As such, actions are not frequently scrutinized. Additionally, because of the transparent nature of the court actors and the significant degree of communication amongst them, more information than necessary is always provided to the court, further limiting the need to scrutinize.

Conversely, in regards to Leverick & Duff's proactive indicator 'Justice of the Peace Oriented', the qualitative data presented in this study found that even when the Justice of the Peace is thought to control the behaviour in court, his/her actions may have little effect on the behaviour of other court personnel. Indeed, the Justice of the Peace in the efficient court spoke of the many ways that he/she believes he/she controls what occurs in court. However, this notion was not supported by other court staff who reported that the actions of the Justice of the Peace did not influence their behaviour. Similarly, the efficient court was Justice of the Peace oriented in the sense that the Justice of the Peace felt as though he/she ran the court and court staff were accountable to him/her. However, other court personnel felt as though

[39] For a complete listing of these indicators, see Appendix I.

they were only accountable to themselves and that the behaviour of the Justice of the Peace did not affect their expectations or actions.

It also appears that the typology brought forth by Leverick and Duff (2002) is missing several indicators that are indicative of passive and proactive court cultures in Ontario bail courts[40]. For example, the findings also seem to suggest that in an efficient court there is an expectation that all of the key court players in the bail process must be ready on the first appearance with a plan of action which will advance the case on that particular day. In the efficient court, staff acknowledge the importance of processing cases quickly in order to respect the liberty of the accused. To facilitate the fulfilment of this goal, there is a common understanding of what can be dealt with right away and what needs additional time to resolve. As a result, decisions that prolong a case are discouraged and court time is reserved exclusively for cases that cannot be resolved outside of court. Clearly, this characteristic is a subset of Leverick and Duff's (2002) proactive court culture indicator 'court appearances are a means to move the case along'. More specifically, requiring staff to be ready on the first appearance with a plan of action to advance the case ensures that court personnel view each court appearance – even the first appearance – as an opportunity to resolve the case. Indeed, the first couple of court appearances are not adjourned simply to obtain information and discuss the case with other court personnel.

The findings of this study also suggest that an inefficient court is characterized by the lack of early case preparation. One of the reasons that these practices go unnoticed is because the first couple of appearances in the inefficient court are not seen as 'real' appearances but as

[40] For a complete listing of these indicators, see Appendix I.

opportunities for court staff to triage the future direction of the case. In fact, the adjournment of a case until court staff are able to decide what to do is a common and acceptable practice in the inefficient court. This lack of advancement is not a concern for staff in the inefficient court because the time that this 'stalemate' provides is deemed necessary to allow counsel to prepare the case, meet with their client, and secure disclosure. One might cautiously conclude from this study that the first couple of appearances are usually adjourned to allow preparation activities to occur. Indeed, it is particularly the lack of early case preparation that creates adjournment requests when they could potentially have been avoided. This indicator is a subset of Leverick and Duff's (2002) passive indicator 'adjournments are requested when they could have been avoided'. More specifically, although court personnel could have prepared the case before the first appearance to avoid using adjournments, it is a common practice in this court to use the time between appearances to advance the case. This practice occurs because of the subjective nature of decisions in this court and the perceived risks involved in attempting to advance the case (and the resulting hope of being granted a consent release and avoiding a possible bail hearing).

There are also other possible explanations for these anomalies. For instance, it is plausible that Leverick and Duff's typology is not perfectly applicable to the Canadian (versus the Scottish) context, or to bail court specifically. Indeed, Leverick and Duff's study was carried out in trial courts (as opposed to bail courts) in which the presiding Justice was always a Judge. As such, their typology (at least the indicators related to the Justice) might not be as applicable to Justices of the Peace. Indeed, many Justices of the Peace (who generally lack legal training) are not attributed the same authority as Judges or, at the least, their authority is not generally recognized to the same extent by the key players in the bail process. To reduce

the opportunity for confusion, these indicators should be included in the typology, but further explanation and clarification is needed to rectify the issues identified.

In summary, Table 5.1 provides a listing of the following proactive and passive indicators that appear to be most relevant when describing efficient and inefficient court cultures in the 2 Ontario bail courts under study. The findings of this research appear to support the existence of additional proactive and passive indicators as an effective means of distinguishing between the two (efficient and less efficient) bail courts examined in the context of this study.

Table 5.1 Proactive and Passive Court Culture Indicators

Theme	***Proactive Court***	***Passive Court***
Expectations and Understandings	• Court Staff Deal with as Many Cases as Possible • Court Appearances are a Means to Move the Case Along • Delays Should be Actively Avoided • Court Behaviour is Consistent with Guiding Principles	• Adjournments are Necessary and Not Problematic • Court Actions are not Monitored or Assessed • Court Appearances are 'Attempts' to Advance a Case and are not a Concern • Decisions are Variable in Nature
Practices and Incentives	• Court Staff Follow a Number of Set Practices • Court Behaviour is Monitored • Adjournments are Only Requested/Granted for Exceptional Reasons • Justification for Adjournments Usually Provided or Questioned • Inconsistent Court Behaviour is Sanctioned	• Adjournments are Requested when They Could Have Been Avoided • Justifications are Only Provided in Disputed Cases • Adjournment Requests are not Scrutinized • Variation Exists Among Court Personnel • Court Behaviour is Only Tracked/Recorded (not acted on)

Roles/Workgroup Relationships	• Cooperative • Consensual and Trustworthy • Justice of the Peace Orientation/Accountability	• Adversarial • Individualist and 'tit for tat' system • No Particular Orientation/Accountability

5.3 Practical Relevance

The findings of this study appear to support the notion that the culture of a court plays a significant role in the efficiency of the court in processing its cases. By extension, any delay-reduction techniques focused exclusively on the traditional factors perceived to affect court efficiency (i.e. those of a structural and/or administrative nature) should also take into account the comprehensive system of informal expectations, practices and relationships of court practitioners that influence such reforms (Church, 1982, p. 398).

The administrative and structural modifications recommended in the Ministry's *Justice on Target* strategy should assist in improving court delay in Ontario bail courts. However, this study suggests that the impact of these traditional factors may only bring about small, incremental increases in efficiency. Larger improvements in the efficient processing of bail cases may only result when these administrative and structural modifications are accompanied by transformations in the culture of the court. Indeed, it is precisely the new values or expectations which can come from cultural change which give meaning to administrative and structural alterations as well as ensure commitment to them on the part of the key stakeholders (Webster, 2007). In a certain sense, it is this new mentality which re-focuses the principal players in the bail process on common, broader goals.

The pace of case processing in these courts is not just a reflection of the formal allocation of resources and legal mandates, it is also a reflection of the ways in which these courts are informally organized and operate. The courts do not purposively misuse the bail process, but adjournments are perceived of in a different way in each court, either a way of achieving the court's immediate goal of getting through the docket (in the case of the inefficient court) or as a last resort to ensure the progression of the case at the next appearance (in the case of the efficient court). The inefficient court has a court culture which results in the longer processing of cases; whereas in the efficient court, the court culture results in the shorter processing of cases. Certainly in terms of the wider objective of court efficiency, a court's mentality can either be supportive of or detract from efficiency. Despite numerous differences in the two courts, one aspect that sets the efficient court apart from the inefficient court is the existence of a set of guiding principles. While it is easy to assume that these can be written and applied by court actors, it is the common understanding and adherence among court personnel to these principles that has the greatest influence on efficiency.

This study recommends that consideration be given to the expansion of those strategies proposed by the *Justice on Target* initiative. While changes in the way in which resources are divided among the court and/or the addition of particular court procedures and practices will likely have some impact on court efficiency, it would certainly appear from the findings of this thesis that such structurally and administratively based initiatives alone will not produce the significant reductions (30% reduction in four years) in the number of appearances and time to disposition to which the Ontario government has committed itself. Without changing the informal expectations, practices and relationships that support or discourage

administrative and structural initiatives, it is plausible that only minor reductions in case processing time will result.

In terms of practical or policy recommendations, this study might be of assistance in identifying specific interventions which might target the cultural components of criminal courts that affect case processing efficiency. Indeed, strategies for change would need to encourage the development of those expectations, practices and workgroup dynamics found to be associated with efficiency.

First, it is suggested that time standards be created in each Ontario bail court. The collection and analysis of baseline data on the percentage of cases that a court resolves in the first, second, third, fourth and fifth or more appearances would provide information regarding the current ability of the court to efficiently process cases. Using these data as a basis, a goal could be set for that court, to increase the number of cases resolved in the first or second appearance by approximately 10-15% (depending on where the court is situated in comparison to other 'more efficient' Ontario courts). In theory, by providing court staff with a common goal should facilitate the development of guiding principles, shared expectations, set practices and positive workgroup dynamics that support this goal. However, the development of guiding principles, shared expectations, set practices and positive workgroup dynamics only occur when the goal is genuinely shared by all court personnel.

For instance, court staff in the efficient court did not simply rally around the goal of resolving bail quickly; indeed, it was derived from an underlying concern for the minimization of custody. Such a concern cannot be forcibly imposed upon court personnel.

Rather, it must develop naturally from changes in behaviour and expectations. Although a discussion of possible strategies to bring about such changes are beyond the scope of this thesis, it is possible that such initiatives as increased education and awareness of the potentially negative effects of pre-trial custody may challenge competing incentives.

Similarly, the findings of this thesis appear to suggest that the inclusion of a number of regular/set practices in bail court would be effective in minimizing delay in resolving bail. More specifically, ensuring that court staff get what is needed to execute the potential bail plan before the first appearance, using out-of-court discussions prior to the first appearance, having the court run matters late into the day, recourse to hold-downs as a second attempt to resolve the case on the first appearance, having Duty Counsel act in the place of absent Defence, and the monitoring, questioning, justifying and sanctioning of inappropriate behaviour are all practices that were associated with the early resolution of cases in the efficient court. However, much like the suggestion regarding a common goal described above, in reality, the imposition of such practices alone cannot reduce delay in the processing of cases. Rather, they have to be accepted by all court personnel and deemed necessary to fulfil common goals in order to be used and followed. Additionally, adherence to these practices must be monitored, challenged and sanctioned consistently to ensure that staff are aware of these practices and begin to develop corresponding expectations. To this end, it might be helpful to place a number of 'efficiency champions' in each court who are keen to model these practices consistently, as court staff often accept that what should happen in court is what actually happens in court.

In addition to the dissemination of a policy note initiating the practices mentioned above, it may be useful to hold training sessions for the Justices of the Peace underlying the need for these practices and their use. Further, training might be supplemented by attempts to monitor, question and sanction failure to adhere to these practices. Additionally, it is suggested that court personnel versed in these practices be brought into the court for a significant period of time to model the behaviour consistently with court personnel and ensure the fidelity of the implementation of these practices.

As a final suggestion, it might be beneficial to provide court personnel with opportunities to work together in the resolution of bail. Incentives to create positive workgroup relationships may assist court staff in recognizing the contribution of each team member as well as the ways in which their own work can be improved and completed more efficiently when the group dynamic is based on cooperation, consent, trust and friendliness, as opposed to competition, independence, controversy and isolation. Such practices might encourage staff to rely on one another and think about the need to be accountable to one another in the decisions that they make.

However, it is equally important to note that none of these strategies should be implemented in isolation of each other. In fact, the findings of this thesis suggest that initiatives focused on only expectations, practices, or workgroup dynamics cannot be implemented successfully without the simultaneous implementation of strategies that effectively target the other aspects of court culture. Indeed, these components of court culture are intrinsically linked whereby successful change in one is dependent on the simultaneous change in the others. An 'efficient' court culture is a multi-dimensional construct which will require changes at

multiple levels and on multiple fronts. The current strategies to reduce court delay in Ontario - based on structural or administrative modifications - would appear to have ignored this lesson. Piecemeal changes - without an over-arching change in the culture of the court - will be unlikely to bring about real, long-term reductions in court delay.

CHAPTER SIX: CONCLUSION

6.1 Key Findings

Overall, the findings of this study appear to suggest that an exclusive focus on structural and administrative factors may not be the most effective means of reducing court delay. Drawing from the study findings, one could cautiously conclude that court culture appears to impact on court efficiency. By extension, any initiatives aimed at reducing court delay which ignore this cultural component may not be as effective in reaching their goal. That is, the relationship between administrative and structural factors and court efficiency is influenced by a court's culture. Indeed, the ability of administrative and structural elements to affect court efficiency is argued to be largely the result of the particular culture that exits within a court.

Any delay-reduction techniques focused exclusively on these traditional factors would be less effective in reducing court inefficiencies than those which took into account the comprehensive system of informal expectations, practices and relationships of court practitioners that governs such reforms (Church, 1982, p. 398). In this case, current initiatives to reduce court delay in Ontario – such as the *Justice on Target* strategy - may be less effective than hoped in bringing about the desired 30% reduction in court inefficiencies precisely because they fail to address the broader cultural mentality which would give them context, purpose and continuity.

6.2 Future Research

The findings of this study also provide a basis for future studies on court culture and court efficiency, and suggest a number of areas of investigation that would further empirical support for this relationship.

This study was primarily exploratory in nature, and the findings were based on a case study. Additional research at the descriptive and, ultimately, the explanatory levels would clearly expand our knowledge on the relationship between court culture and court efficiency which would be essential in drawing conclusions of a more causal nature. In particular, such research could examine the relationship between court culture and court efficiency, controlling for alternative explanations or extraneous factors. This type of explanatory research would also be able to better investigate the inter-connections of the more traditional structural and administrative factors with court cultural influences. Specifically, more sophisticated multi-variate statistical analyses would permit a more extensive examination of the relative contribution of structural, administrative and cultural factors to case processing efficiency as well as potential interactions among them.

Further, research of an explanatory nature would be better able to examine the various elements or components of court culture which impact on court efficiency. In particular, such studies could focus on the weights or the individual contributions of each cultural factor. This advancement in knowledge would arguably provide direction in the development of culturally sensitive delay reduction initiatives to combat court delay.

Studies of a descriptive nature would provide a more systematic picture of the relationship between court culture and court efficiency. Indeed, research of this nature would be well suited to overcoming many of the limitations inherent in the present sample. In particular, the external validity of the present empirical investigation is problematic given our inability to generalize the results beyond the strict limits of this examination. Indeed, this study represented a case study of two particular Eastern Ontario bail courts. Conducting research on a broader level would provide further insight into whether the findings of this study are also generalizable to other bail courts in Ontario.

In fact, recourse to a representative (i.e. probabilistic) sample of criminal courts would broaden the scope of our understanding of the interaction of court culture and court efficiency. Indeed, it is entirely possible that the association between court culture and court efficiency varies across such factors as the size of the court, the location of the court or the types of accused (youth versus adult). As noted in the methodology chapter of this thesis, one of the threats to the external validity of this study is that it was conducted exclusively in two small Eastern Ontario bail courts. Therefore, to increase the generalizability of these findings, this study should also be conducted in large, medium and small courts, as well as in courts in differ regions.

Only 12 court personnel were interviewed in this study, and those interviewed worked specifically in one region in Ontario and dealt strictly with adult cases. There is no reason to believe that these 12 individuals interviewed are representative of all court personnel in Ontario, much less of all court personnel in bail court or even in their particular court. The

inclusion of a larger sample would increase our ability to generalize our findings to other court personnel.

Additionally, based on the unique remand problem in Ontario, there is also reason to believe that the relationship between court culture and court efficiency, as well as the ways in which one might define (and operationalize) court culture, might be different within courts in other Canadian jurisdictions. Therefore, similar studies could be conducted in other provinces/territories to further increase the generalizability of these study findings.

As an extension of the current findings – which focused exclusively on bail court – future research might examine the cultural influences or factors which affect case processing efficiency for the entire criminal court process. There is reason to believe that the specific cultural characteristics that affect case processing speed in bail court may differ from those within other stages of criminal case processing. Indeed, research on the relationship between court culture and court efficiency for other stages of the criminal court system would also be beneficial for the generalizability of these findings.

In sum, this study has focused on developing a preliminary understanding of the potential relationship between court culture and court efficiency in Canadian bail courts. Indeed, the theoretical, methodological and practical contributions of this study have set the stage for more advanced research in this area. However, this study has also served as a valuable attempt at extending research in the area of cultural factors affecting court efficiency which has been relatively ignored in the past. In fact, the impact of the culture of a court on the efficient processing of criminal cases is still arguably in its infancy. This study has tried to

move beyond the lack of operational definitions of the theoretical construct of court culture in order to develop an empirically-based study of the cultural factors impacting on court efficiency as well as more effective strategies for reducing court delay. While the findings of this thesis obviously need to be accepted with considerable caution, it is hoped that they constitute a promising avenue for those interested in improving criminal court efficiency.

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APPENDIX A

Table 7.A: List of All Ontario Provincial Court Locations and Their Respective Court Sizes

		Court Size			Total
Region	**Court Location**	All **Large** Courts, n=11 with >7,000 cases in 2007	All **Medium** Courts, n=9 with 3,000-7,000 cases in 2007	All **Small** Courts, n=45 with <7,000 cases in 2007	
TO	1000 FINCH AVENUE WEST	10020	0	0	10020
TO	1911 EGLINGTON AVENUE	7905	0	0	7905
TO	2201 FINCH AVENUE WEST	0	6004	0	6004
TO	311 JARVIS STREET	0	0	5	5
E	ALEXANDRIA	0	0	260	260
CE	BARRIE	0	6525	0	6525
E	BELLEVILLE	0	0	2146	2146
CE	BRACEBRIDGE	0	0	1106	1106
CW	BRAMPTON	15823	0	0	15823
CW	BRANTFORD	0	3138	0	3138
E	BROCKVILLE	0	0	1726	1726
CW	BURLINGTON	0	0	6	6
CW	CAYUGA	0	0	656	656
W	CHATHAM	0	0	2168	2168
CE	COBOURG	0	0	1218	1218
N	COCHRANE	0	0	748	748
TO	COLLEGE PARK	7726	0	0	7726
E	CORNWALL	0	0	2403	2403
N	DRYDEN	0	0	814	814
N	ELLIOT LAKE	0	0	317	317
N	ESPANOLA	0	0	233	233
N	FORT FRANCES	0	0	664	664
W	GODERICH	0	0	865	865
N	GORE BAY	0	0	541	541
W	GUELPH	0	0	2411	2411
N	HAILEYBURY	0	0	850	850
CW	HAMILTON	0	6757	0	6757
N	KENORA	0	0	2170	2170
E	KINGSTON	0	0	2535	2535
W	KITCHENER	8273	0	0	8273
E	L'ORIGNAL	0	0	1360	1360
CE	LINDSAY	0	0	2010	2010
W	LONDON	10715	0	0	10715
N	MARATHON	0	0	1	1
CW	MILTON	0	3419	0	3419
E	MORRISBURG	0	0	255	255
E	NAPANEE	0	0	956	956
CE	NEWMARKET	8824	0	0	8824

N	NORTH BAY	0	0	2254	2254
TO	OLD CITY HALL	15410	0	0	15410
CW	ORANGEVILLE	0	0	1475	1475
CE	ORILLIA	0	0	1435	1435
CE	OSHAWA	8764	0	0	8764
E	OTTAWA	13669	0	0	13669
W	OWEN SOUND	0	0	1358	1358
N	PARRY SOUND	0	0	732	732
E	PEMBROKE	0	0	1527	1527
E	PERTH	0	0	1153	1153
CE	PETERBOROUGH	0	3474	0	3474
E	PICTON	0	0	306	306
E	PRESCOTT	0	0	2	2
W	SARNIA	0	0	2588	2588
N	SAULT STE. MARIE	0	0	2558	2558
CW	SIMCOE	0	0	1132	1132
N	SIOUX LOOKOUT	0	0	850	850
CW	ST. CATHARINES	0	4662	0	4662
W	ST. THOMAS	0	0	1563	1563
W	STRATFORD	0	0	986	986
N	SUDBURY	0	4074	0	4074
N	THUNDER BAY	0	4605	0	4605
N	TIMMINS	0	0	1684	1684
W	WALKERTON	0	0	1036	1036
CW	WELLAND	0	0	731	731
W	WINDSOR	7218	0	0	7218
W	WOODSTOCK	0	0	1617	1617
		114347	**42658**	**53411**	**210416**

APPENDIX B

List of 24 Leverick and Duff Passive/Proactive Indicators

A. Expectations and Understandings	
Proactive	*Passive*
Court Staff Deal with as Many Cases as Possible	Adjournments are Necessary and Not Problematic
Court Appearances are a Means to Move the Case Along	Court Actions are not Monitored or Assessed
Delays Should be Actively Avoided	Court Appearances are 'Attempts' For Advancing a Case and are not Concerning
Court Behaviour is Consistent with Guiding Principles	Decisions are Variable in Nature
B. Practices and Incentives	
Proactive	*Passive*
Court Staff Follow a Number of Set Practices	Adjournments are Requested When They Could Have Been Avoided
Court Behaviour is Monitored	Justifications are Only Provided in Disputed Cases
Adjournments are Only Requested/Granted for Exceptional Reasons	Adjournment Requests are not Scrutinized
Justification for Adjournments Usually Provided or Questioned	Variation Exists Among Court Personnel
Inconsistent Court Behaviour is Sanctioned	Court Behaviour is Only Tracked/Recorded (not acted on)
C. Roles/Workgroup Relationships	
Proactive	*Passive*
Cooperative	Adversarial
Consensual and Trustworthy	Individualist and 'Tit for Tat' System
Justice of the Peace Orientation/Accountability	No Particular Orientation /Accountability

APPENDIX C

Table 7.C: Crosstabulation of the Number of Appearances to Complete Bail (2001-2007 case-based data) in the Efficient Court, Inefficient Court and All Other Ontario Provincial Court Locations

Comparison of Efficient and Inefficient and All other Courts				Number of Appearances to Complete Bail				Total
				One	Two	3-4	5+	
All Other Courts	Year case was completed	2001 00	Count	31735	20762	13421	5070	70988
			Row %	44 7%	29 2%	18 9%	7 1%	100 0%
		2002 00	Count	34486	22593	14429	5293	76801
			Row %	44 9%	29 4%	18 8%	6 9%	100 0%
		2003 00	Count	37108	23712	15838	6697	83355
			Row %	44 5%	28 4%	19 0%	8 0%	100 0%
		2004 00	Count	38071	24900	16688	8308	87967
			Row %	43 3%	28 3%	19 0%	9 4%	100 0%
		2005 00	Count	38408	25147	17985	9877	91417
			Row %	42 0%	27 5%	19 7%	10 8%	100 0%
		2006 00	Count	38029	27451	21845	12129	99454
			Row %	38 2%	27 6%	22 0%	12 2%	100 0%
		2007 00	Count	40347	28541	23036	12895	104819
			Row %	38 5%	27 2%	22 0%	12 3%	100 0%
	Total		Count	258184	173106	123242	60269	614801
			Row %	42 0%	28 2%	20 0%	9 8%	100 0%
Efficient Court	Year case was completed	2001 00	Count	287	94	45	7	433
			Row %	66 3%	21 7%	10 4%	1 6%	100 0%
		2002 00	Count	344	103	47	11	505
			Row %	68 1%	20 4%	9 3%	2 2%	100 0%
		2003 00	Count	243	103	42	9	397
			Row %	61 2%	25 9%	10 6%	2 3%	100 0%
		2004 00	Count	239	121	64	10	434
			Row %	55 1%	27 9%	14 7%	2 3%	100 0%
		2005 00	Count	227	103	39	21	390
			Row %	58 2%	26 4%	10 0%	5 4%	100 0%

		2006 00	Count	250	83	41	19	393
			Row %	63 6%	21 1%	10 4%	4 8%	100 0%
		2007 00	Count	276	110	53	16	455
			Row %	60 7%	24 2%	11 6%	3 5%	100 0%
	Total		Count	1866	717	331	93	3007
			Row %	62 1%	23 8%	11 0%	3 1%	100 0%
Inefficient Court	Year case was completed	2001 00	Count	268	152	86	27	533
			Row %	50 3%	28 5%	16 1%	5 1%	100 0%
		2002 00	Count	245	155	98	26	524
			Row %	46 8%	29 6%	18 7%	5 0%	100 0%
		2003 00	Count	257	165	109	47	578
			Row %	44 5%	28 5%	18 9%	8 1%	100 0%
		2004 00	Count	213	122	147	75	557
			Row %	38 2%	21 9%	26 4%	13 5%	100 0%
		2005 00	Count	227	145	136	64	572
			Row %	39 7%	25 3%	23 8%	11 2%	100 0%
		2006 00	Count	140	105	156	102	503
			Row %	27 8%	20 9%	31 0%	20 3%	100 0%
		2007 00	Count	163	163	148	72	546
			Row %	29 9%	29 9%	27 1%	13 2%	100 0%
	Total		Count	1513	1007	880	413	3813
			Row %	39 7%	26 4%	23 1%	10 8%	100 0%

Table 7.C.1: Crosstabulation of the Number of Appearances to Complete Bail (2007 case-based data) for All Small (< 2000 cases) Eastern Ontario Provincial Courts and All Other Courts

			Number of Appearances to Complete Bail				Total
			One	Two	3-4	5+	
Comparison of Small Eastern Ontario Courts and All other Courts	All Other Courts	Count	39593	27993	22663	12788	103037
		Row %	38.4%	27.2%	22.0%	12.4%	100.0%
	Efficient Court	Count	276	110	53	16	455
		Row %	60.7%	24.2%	11.6%	3.5%	100.0%
	Inefficient Court	Count	163	163	148	72	546
		Row %	29.9%	29.9%	27.1%	13.2%	100.0%
	Eastern Court C	Count	170	146	92	23	431
		Row %	39.4%	33.9%	21.3%	5.3%	100.0%
	Eastern Court D	Count	31	32	22	4	89
		Row %	34.8%	36.0%	24.7%	4.5%	100.0%
	Eastern Court E	Count	40	9	15	7	71
		Row %	56.3%	12.7%	21.1%	9.9%	100.0%
	Eastern Court F	Count	34	11	16	2	63
		Row %	54.0%	17.5%	25.4%	3.2%	100.0%
	Eastern Court G	Count	319	183	114	30	646
		Row %	49.4%	28.3%	17.6%	4.6%	100.0%
	Eastern Court H	Count	160	167	114	41	482
		Row %	33.2%	34.6%	23.7%	8.5%	100.0%
Total		Count	40786	28814	23237	12983	105820
		Row %	38.5%	27.2%	22.0%	12.3%	100.0%

Table 7.C.2: Comparison of the Number of Appearances to Complete Bail (2007 case-based data) for the Efficient Court, the Inefficient Court and All other Courts

		Comparison of Efficient Court and Inefficient Court and All other Courts			
		All Other Courts	Efficient Court	Inefficient Court	Total
Number of Appearances in Bail	1	40347	276	163	40786
	2	28541	110	163	28814
	3	15126	42	102	15270
	4	7910	11	46	7967
	5	4630	6	43	4679
	6	2826	3	10	2839
	7	1692	1	6	1699
	8	1054	1	8	1063
	9	729	3	1	733
	10	497	2	1	500
	11	393	0	2	395
	12	258	0	1	259
	13+	816	0	0	816
Total		104819	455	546	105820

APPENDIX D

OBSERVATIONAL PROTOCOL: Court Culture as a Correlate in Criminal Court Case Processing

Court of Activity (Efficient/Inefficient):

Time of Activity:

Length of Activity:

What events that occurred related to court efficiency and structural and administrative factors?

Descriptive Notes	***Reflective Notes***
Overview • # of cases • JP: • Crown: • Defence: • Duty Counsel:	i.e. statements made by court personnel, physical observations, etc.
Case 1 – Defence Counsel: • Case details (including offence, appearance number, statues cited, requests made, and any additional details presented in court) • Outcome (including conditions) • Returning date/location	
Case 2 – same as above	

APPENDIX E

Table 7.E: Description of Court Observations in the Efficient and Inefficient Court

Overview Information

Measure	Efficient Court	Inefficient Court
Number of days observed	8 days (2 Mondays, 1 Tuesday, 1 Wednesday, 1 Thursday, 3 Fridays)	8 days (1 Monday, 1 Tuesday, 2 Wednesdays, 2 Thursdays, 2 Fridays)
Bail Cases observed		
- Total number	40	59
- Median number of cases (in a day)	5.5	7
- Range in number of cases (in a day)	3 – 7	4 – 11
- Average number of cases (in a day)	5	7.4
Typical outcome of case observed		
- Adjournment	15 (37.5% of total)	41 (69.5% of total)
- Released	18 (45% of total)	15 (25% of total)
- Detained	1 (2.5% of total)	1 (2% of total)
- Other (variation of conditions, non bail case, on the docket in error)	6 (15% of total)	2 (3.5% of total)
Number of appearance observed (excluding 'other' cases)		
- First Appearance	24 (71%)	23 (40%)
- Second Appearance or More	10 (29%)	34 (60%)

Court Structure

Measure	Efficient Court	Inefficient Court
Number of days Bail court runs	5 days a week (as long as there are cases; most weeks, there is at least one case every week day)	5 days a week
Court atmosphere	- Friendly - Welcoming to outside counsel and sureties - Informal atmosphere/flexible - Discussions/negotiations go on in courtroom or in hallway outside court	- Antagonistic - Competitive and rude to particular court staff - formal atmosphere - discussions between court staff are rare and happen in offices/behind closed doors
Court Process	- Discussion between Crown and Def/DC - V/R cases - Consent Releases - Recess (more discussion) - Additional consent releases (if applicable) - Show cause hearings - Adjournments	- Whichever Def ready goes first - DC is assigned clients by court, if they have no counsel - Recess (DC meets with clients) - DC deals with their cases
Special days for Court activity	- No	- Fridays are reserved for weekly adjournments (AM) and only new bail cases (PM) - If a bail cases is set to move forward (i.e. bail hearing, surety to come in, etc.), it is not set for a Friday - It is difficult to tell whether the Friday AM cases have had their bail determined or not

Time in Court

Measure	Efficient Court	Inefficient Court
Median time from start to finish of the day	1:07	0:57
Mean time from start to finish of the day	1:08	1:08
Range time from start to finish of day	0:03 – 2:45	0:34 – 1:52
Number of days whose start to finish time:		
≤ 10 mins.	2	0
30 mins ≤ ≥ 11 mins.	0	0
50 mins ≤ ≥ 31 mins.	0	4
1 hr 10 mins ≤ ≥ 51 mins.	3	1
1hr 30 mins ≤ ≥ 1 hr 11 mins	1	0
1hr 50 mins ≤ ≥ 1 hr 31 mins	2	2
2hr 10mins ≤ ≥ 1 hr 51 mins	0	1
2hr 30mins ≤ ≥ 2 hrs 11 mins	0	0
≥ 2 hrs 31 mins	1	0
Median time dealing with cases	0:30	0:48
Average time dealing with cases	0:40	0:53
Number of days whose time dealing with cases:		
≤ 10 mins.	3	0
30 mins ≤ ≥ 11 mins.	1	1
50 mins ≤ ≥ 31 mins.	2	4
1 hr 10 mins ≤ ≥ 51 mins.	1	2
1hr 30 mins ≤ ≥ 1 hr 11 mins	0	0
1hr 50 mins ≤ ≥ 1 hr 31 mins	0	0
2hr 10mins ≤ ≥ 1 hr 51 mins	0	1
≥ 2 hrs 11 mins	1	0
Median number of recesses	1 (2 days without recesses, but court started at least 5 mins late every day)	1 (4 days without recesses, and court started on time 5/8 days)
Median time used for recesses	0:20	0:33
Average time used for recesses	0:27	0:30
Range of time used for recesses	0:20 – 1:15	0:03 – 0:50
Amount of time per case		
- overall	8:12 mins per case	7:19 mins per case
- median per day	5:00 mins per case	6:01 mins per case
- average per day	7:57 mins per case	7:06 mins per case
- range per day	1: 00 to 29:00 mins	4:55 to 14:00 mins
Number of days whose time dealing each case was:		
≤ 1 :00 min.	1	0

3 :00 mins ≤ ≥ 1 :01 mins.	1	1
5 :00 mins ≤ ≥ 3 :01 mins.	2	1
7 :00 mins ≤ ≥ 5 :01 mins.	2	3
10 :00 mins ≤ ≥ 7 :01 mins	1	2
12 :00 mins ≤ ≥ 10 :01 mins	0	0
15 :00 mins ≤ ≥ 12 :01 mins	0	1
20 :00 mins ≤ ≥ 15 :01 mins	0	0
25 :00 mins ≤ ≥ 20 :01 mins	0	0
25 :01 +	1	0

Adjournments

Measure	Efficient Court	Inefficient Court
Reasons for adjournment	**15**	**41**
- Lawyer unavailable	1 (6.5% of adjourn.)	7 (17% of adjourn.)
- To obtain counsel	4 (27% of adjourn.)	2 (5% of adjourn.)
- To get surety/plan	1 (6.5% of adjourn.)	14 (34% of adjourn)
- Investigation	0	2 (5% of adjourn.)
- Out of town lawyer	0	2 (5% of adjourn.)
- Young Person	0	1 (2.5% of adjourn.)
- To plea/pre-trial	3 (20% of adjourn.)	5 (12% of adjourn.)
- Not ready to run hearing today	0	2 (5% of adjourn.)
- Mental Health Assessment	1 (6.5% of adjourn.)	1 (2.5% of adjourn.)
- For bail hearing	5 (33.5% of adjourn.)	0
- No Reason		5 (12% of adjourn.)
Length of time of adjournments:		
- Median	2.5	2.1
- Mean	3.5	1.5
- Mode	2	1
Number of adjournments for:		
1 day	4	20
2 days	4	10
3 days	1	5
4-5 days	4	4
6-8 days	0	0
9 days	1	1
10 days +	1	0
		* 1 adjournment missing because it is unclear whether bail had previously been determined or not (20 day adjournment)
Who asked for the adjournment?	**15**	**41**
- Justice of the Peace	1 (7%)	1 (2.5%)
- Crown	0	1 (2.5%)
- Defence Counsel	3 (20%)	6 (15%)
- Defence Counsel for other Defence Counsel	2 (13%)	2 (5%)
- Duty Counsel	6 (40%)	20 (49%)
- Duty Counsel for Defence Counsel	3 (20%)	11 (26%)
Opposed or Questioned by:	**1**	**1**
- Justice of the Peace	1	0
- Crown	0	0
- Defence Counsel	0	1

- Duty Counsel	0	0
Granted or Denied - Granted - Denied	**15** 15 0	**41** 41 0
Number of adjournment requests made on: - First appearance - ≥Second appearance	 8 (53%) 7 (47%)	 16 (39%) 25 (61%)
Number of video remand cases: - from in person to V/R - from V/R to V/R - from V/R to in person	 5 4 2	N/A* no V/R

Releases and Contested Hearings

Measure	Efficient Court	Inefficient Court
Number of releases from:	**18**	**15**
- contested showcause hearing	2	0
- consent releases	16	15
Number of releases on:	**18**	**15**
- First appearance	15 (83%)	7 (47%)
- ≥Second appearance	3 (17%)	8 (53%)
Number of releases with:	**18**	**15**
- Surety and bond	13 (72%)	9 (60%)
- Bond only	5 (28%)	6 (40%)
Number of show cause hearings ended in:	**3**	**1**
- release	2	0
- bail denied	1	1

Court staff

Measure	Efficient Court	Inefficient Court
Number of days observed	**8**	**8**
Variation in Court Personnel observed		
- Number of JPs	3	3
- Number of Crowns	4	3
- Number of Duty Counsel	2	3
Who handled the case?	**40**	**59**
- Defence Counsel	14 (35%)	12 (20%)
- Duty Counsel	23 (58%)	36 (61%)
- Defence Counsel for Defence Counsel	2 (5%)	2 (3%)
- Duty Counsel for Defence Counsel	1 (2%)	9 (15%)

APPENDIX F

LETTER OF INFORMATION FOR PROSPECTIVE PARTICIPANTS
Semi-Structured Interview

Title: Court Culture as a Correlate in Criminal Court Case Processing

Investigators: Sarah Heath (Student Investigator, M.A. Candidate, Department of Criminology, University of Ottawa) and Cheryl M. Webster (Thesis Supervisor, Associate Professor, Department of Criminology, University of Ottawa).

Invitation to participate
You are invited to participate in a semi-structured interview on the informal beliefs, practices and expectations in your Ontario Provincial bail court, conducted by Sarah Heath (Master's student) and Cheryl M. Webster (Master's thesis supervisor). This project is part of a Master's of Arts thesis in Criminology from the University of Ottawa.

Purpose of this study
The purpose of the study is to understand the ways in which cultural factors (such as informal beliefs, practices and expectations) may contribute to the efficiency of Ontario Provincial bail courts. If a court is unable to process cases within a reasonable time, then the result could be the termination of cases, the denial of the accused and victim's fundamental right to justice and the potential perception by the public that the criminal justice system is unfair. The goal of this study is to advance the understanding of court efficiency in the field of criminology, to test if the theory of court culture is applicable to bail courts (and not only trial courts), and to locate places in these courts where intervention programs may be successful in decreasing court delay.

Participation
Should you agree to participate in this research study, your participation will consist of attending one semi-structured interview with the student investigator for a maximum of 60 minutes. During this time you will be asked questions regarding the informal beliefs, practices and expectations and general operation of your Ontario Provincial bail court. The interview session will be scheduled for a time and place of your choice, and the interview will be electronically recorded only with your consent and transcribed into written format.

Risks and Benefits
There are no known risks of harm or inconvenience associated with participation in this study. The interviews will provide a greater understanding of the informal norms and customs (court culture) that contribute to the efficiency of a Provincial bail court in Ontario. Further, this understanding can be used to suggest ways of increasing the efficiency of bail court, and consequently decrease the workload for the participants interviewed and other court personnel in Provincial bail courts across Ontario.

Anonymity and Confidentiality
All information exchanged in this interview will remain strictly confidential. The results of the study will be reported in a way that protects the anonymity of participants by removing all personally identifying information. Your comments expressed during the interview will not be quoted in the final written research report in any way which might identify you.

Conservation of data
Notes, audio recordings and transcripts of the interview will be kept in a secure manner in a locked cabinet and password enabled computer in the office of the thesis supervisor for 10 years after the results of the study are published or presented.

Compensation
Participants will not be compensated.

Voluntary participation
You are under no obligation to participate and participation in this study is voluntary. If you choose to participate, you can withdraw from the study at any time by refusing to participate in the interview or you can refuse to respond to any questions, during any point of the interview, without suffering any negative consequences. If you choose to withdraw, all data gathered until the time of withdrawal will be destroyed.

Further information
For further information on this study you can contact Sarah Heath
or Cheryl M. Webster by email or by phone at
If you have any questions regarding the ethical conduct of this study, you may contact the Protocol Officer for Ethics in Research, University of Ottawa, Tabaret Hall, 550 Cumberland Street, Room 159, Ottawa, ON K1N 6N5, Tel.: (613) 562-5841, Email: ethics@uottawa.ca

Next step
If you agree to participate in an interview for this research study, please sign the enclosed consent form stating that you have read this Letter of Information, have had the nature of the study explained to you, all questions have been answered to your satisfaction, and you consent to participating in the study.

CONSENT FORM FOR PROSPECTIVE PARTICIPANTS
Semi-Structured Interview

Title: Court Culture as a Correlate in Criminal Court Case Processing

I have read the Letter of Information, have had the nature of the study explained to me, and I agree to participate in an interview for the above research study conducted by Sarah Heath of the Department of Criminology at the University of Ottawa, whose research is under the supervision of Professor Cheryl M. Webster of the Department of Criminology at the University of Ottawa.

There are two copies of the consent form, one of which is mine to keep.

_____
Name of Participant

_____
Participant's signature

_____
Date

- -

I also give my permission for the interview to be recorded electronically.

_____
Participant's signature

_____
Date

Student Investigator:
Sarah Heath

Thesis Supervisor:
Cheryl M. Webster

APPENDIX G

INTERVIEW PROTOCOL: Court Culture as a Correlate in Criminal Court Case Processing

Time of Interview:

Date:

Interviewee Court (A/B):

You are under no obligation to participate and participation in this study is voluntary. If you choose to participate, you can withdraw from the study at any time by refusing to participate in the interview or you can refuse to respond to any questions, during any point of the interview, without suffering any negative consequences. If you choose to withdraw, all data gathered until the time of withdrawal will be destroyed.

The purpose of the study is to understand the ways in which cultural factors (such as informal beliefs, practices and expectations) may contribute to the efficiency of Ontario Provincial bail courts. The goal of this study is to advance the understanding of court efficiency in the field of criminology, to test if the theory of court culture is applicable to bail courts (and not only trial courts), and to locate places in these courts where intervention programs may be successful in decreasing court delay.

Expectations

1. What happens on the first, second and/or third appearance in bail court?
2. When do cases go past a third appearance?
3. Have you seen cases that were adjourned, when an adjournment was 'not necessary'?

Adjournments

4. When an adjournment is formally requested in court, is a reason provided?
5. Have you seen adjournment requests formally opposed in court?
6. How does the Justice typically respond when an adjournment is requested?
7. Why do most adjournments occur?
8. How inevitable do you think these adjournments are?
9. Do you see these adjournments as effective or are there areas where practice could be improved?
10. Have you seen other Crowns or Defence counsel ask for 'unnecessary adjournments'?
11. If you request an adjournment, do you expect others to consent?
12. Are your adjournment requests ever opposed by Defence counsel or the Justice?

13. Do other court personnel expect you to consent to adjournment requests?

14. When you're considering an adjournment request from another party, does there have to be a 'good' reason for you to consent?

15. Are there times when cases need to be adjourned because counsel failed to show up?

16. At what point in the day do cases get adjourned because of lack of court time?

Courtroom Workgroup

17. Have you worked in other offices? If so, how does practice/environment compare?

18. Do you feel that you know everyone who works in your court? If so, do you find it easier to work with the same people, who you know and see on a regular basis?

19. How would you describe the relationship between Defence Counsel and Crown Attorneys in here?

Roles

20. From your perspective and position in the court, what do you see as your 'role' in the bail process?

21. Scenario 1: In court, Defence counsel asks for an adjournment
    a. What are the factors you'd consider in deciding whether to oppose the request or not?

22. Scenario 2: You get to court and find that you have a visiting Justice from Ottawa, you've been told that this Justice does not usually grant adjournments
    a. Would you consider that information when deciding what to do with your cases or would that information not matter to you?

23. Do you consider the Justice to be the person who regulates or sets behaviour in your court?

NOTE: Some of these questions will only be relevant to some of the court personnel and not to all. Therefore, questions like these would be adapted to the roles that different people play in the operation of bail court.

Thank-you very much for participating in this interview. All information exchanged in this interview will remain strictly confidential. The results of the study will be reported in a way that protects the anonymity of participants by removing all personally identifying information.

APPENDIX H

Interview Coding Template

Court: A Interviewee: Defence Counsel 2

Indicator Type/Code	Theme	Example Quotations
Proactive 7	Efficiency stressed as important (e.g. cases can't be prolonged)	Pg 2, Ln 31 *"A very efficient court I think, well Crowns have a huge role in the administration of justice, to make it efficient. Ah, a JP, is efficient usually when he has a lot of experience also and he has good judgment."*
'Other' 21	Having the same 'key players' impacts on the court's ability to function	Pg 2, Ln 32 *"Um, also, efficiency of the court process is also helped when a everybody knows each other, like I think if the jp knows the Crown very well, and Defence counsel, well even Duty Counsel, at that point, we understand, everybody's role, very well and it's easier that way"*
Proactive 3	Presence of certainty (e.g. know ready to proceed, prepare cases that way, more thorough preparation and presentation)	Pg 2, Ln 36 *"I'm bond by Crown policies and probably everybody knows that, because I act accordingly to those, they will also know the type of judgment if they see a guy who has a violent offence for example with no record, well they will know that I'm maybe going to be concerned for secondary grounds anyway, even though he has no record, that's my job, I'm paid for that."*
Proactive 7	Efficiency stressed as important (e.g. cases can't be prolonged)	Pg 2, Ln 44 *"And the JP at that point, will know, if I'm running a bail he'll know that the Crown has serious concerns for the safety of the public, and for that reason, he's going to, well look at the file and will call it more carefully, instead of it being a big rigid jurisdiction where they don't really have the time to look at the file first of all, and they will just run basically everything. And at that point, your credibility as a Crown, is tinted in someway because they know that you can run anything, you see that's the difference.*

APPENDIX I

Additional Indicators of Court Culture (from the qualitative findings)

The findings of this study also suggest it would be possible to expand these original measures to include 9 other proactive and 7 other passive indicators not explicitly discussed by Leverick and Duff (2002). These additions to the original operational definition arguably constitute a more complete or enhanced measure. It is simply of note that several of these additional indicators of court culture represent merely more specific forms/types of the original 24 indicators rather than completely new factors.

Proactive Indicators

- *Quick resolution of cases*

First, the study findings appear to suggest that an efficient court can also be characterized as displaying a common belief that the most important goal in bail court is the quick resolution of cases. Additionally, this belief is the product of an understanding that the fundamental principle guiding this court is to ensure that the liberty of the accused is only denied as long as absolutely necessary. Time spent in custody is seen as a deprivation of the accused person's right to freedom. Staff in the efficient court recognize that by ensuring the efficient resolution of bail (e.g. by minimizing adjournments), the amount of time that the accused must stay in custody will likely be reduced. Interestingly, this indicator is an extension of Leverick and Duff's (2002) court culture typology proactive indicator 'court behaviour is consistent with guiding principles'. Indeed, court behaviour which minimizes delay in resolving the question of bail contributes to the wider guiding principles which recognize the accused's right to liberty. This fundamental objective defines acceptable and inacceptable behaviour.

- *Ready on the first appearance with a plan*

The findings also seem to suggest that in an efficient court there is an expectation that all of the key court players in the bail process must be ready on the first appearance with a plan of action which will advance the case on that particular day. In the efficient court, staff acknowledge the importance of processing cases quickly in order to respect the liberty of the accused. To facilitate the fulfilment of this goal, there is a common understanding of what can be dealt with right away and what needs additional time to resolve. As a result, decisions that prolong a case are discouraged and court time is reserved exclusively for cases that cannot be resolved outside of court. Clearly, this characteristic is a subset of Leverick and Duff's (2002) proactive court culture indicator 'court appearances are a means to move the case along'. More specifically, requiring staff to be ready on the first appearance with a plan of action to advance the case ensures that court personnel view each court appearance – even the first appearance – as an opportunity to resolve the case. Indeed, the first couple of court appearances are not adjourned simply to obtain information and discuss the case with other court personnel.

- *Flexibility in operations and roles*

Third, this study cautiously argues that an efficient court is distinguishable from an inefficient court by the existence of an expectation that staff are to do what is necessary to resolve each case immediately. This flexibility mans that counsel are actively involved in the processing of bail cases, often going above and beyond their technical job descriptions, especially when there is a high likelihood that the accused will be released from custody as a result of their actions. This common understanding among court personnel is based on

previous interactions with other court personnel. In fact, from interactions with other court personnel, there is an established understanding of what is appropriate and inappropriate behaviour and the nature of the court demands this flexibility as the appropriate way to respond to such situations. This indicator is an extension of Leverick and Duff's (2002) proactive indicator 'court staff deal with as many cases as possible'. Indeed, staff are able to deal with a large number of cases precisely because of their flexibility in the operations of the court and the roles that they perform which allows them to follow through with what is necessary in order to increase the likelihood that a case will be resolved. More specifically, if court staff believe that they have an opportunity to resolve a case by adjusting what they do or how they work, they are willing to do what is legally possible to reach an early (rather than later) resolution.

Court staff get what is needed to execute the bail plan before the first appearance

One might cautiously conclude from this study that court staff organize or arrange what is needed in order to execute the potential bail plan before the first appearance in an efficient court. Consequently, this characteristic is an expansion of Leverick and Duff's (2002) proactive indicator 'court staff follow a number of set practices'. In particular, the act of getting what is needed to execute the potential bail plan before the first appearance is one regular occurring practice that is necessary for the early resolution of cases because it enables court staff to resolve the case at the first opportunity.

- *Out of court discussions prior to the first appearance*

In the same way, the findings of this study suggest that an efficient court is characterized by the use of out-of-court discussions, prior to the first appearance to allow court personnel to

put together a mutually agreed upon plan of action. In fact, this routine practice by court personnel at the beginning of a case includes the immediate assessment of the case, out-of-court discussions and negotiation with court personnel, and preparation for a bail hearing, a plea or additional preparation work (e.g. contacting a surety or previous counsel in a serious case). As a result, the use of out-of--court discussions - prior to the initial court appearance - is another supplementary practice which would be included under the proactive indicator 'court staff follow a number of set practices' which was mentioned by Leverick and Duff in their court culture typology. Indeed, out-of-court discussions are a common practice that is essential to the timely completion of a case because they facilitate negotiation with other court personnel from the time of arrest. More specifically, once an individual is arrested, court personnel in the efficient court begin discussing the case with other court personnel in an effort to come to a common agreement regarding what is necessary to determine bail, even before the first appearance. As such, court staff are able to undergo the necessary preparation and resolve the issue of bail at the earliest point in time.

- *Accepted role of Duty Counsel to run bail hearings*

Additionally, the findings of this study highlight that in the efficient court, Duty Counsel will act for Defence Counsel, including running show cause hearings in the place of Defence. Specifically, it is viewed as inappropriate – in an efficient court - for Duty Counsel not to conduct the bail hearing or consent release, and instead wait for the accused to have his/her own counsel, if Duty Counsel believes that the release of the accused is likely. Moreover, in the efficient court the use of adjournments are only tolerated in exceptional cases, when all other options have been exhausted and an adjournment is the last resort to resolve the case. This indicator is also an extension of Leverick and Duff's proactive indicator 'adjournments

are only requested/granted for exceptional reasons'. More specifically, because Duty Counsel acts on behalf of the Defence (when the accused does not have his/her own counsel retained, or his/her retained counsel is unavailable), the need for an adjournment is avoided and the case is more likely to be dealt with at an earlier point in time.

- *Court is prepared to run matters outside of regular court schedule*

Further, an efficient court appears to be characterized by the willingness of court personnel to work beyond regular hours, if necessary, to complete the docket. Some cases cannot be resolved during regular working hours, and staff are often willing to work late in the day or during lunch if there is a possibility of resolving the case that day. As such, one suspects that being prepared to run matters outside of regular court time is another characteristic that extends Leverick and Duff's proactive typology indicator 'adjournments are only requested/granted for exceptional reasons'. In particular, the ability of staff to work late/irregular hours is essential to the ability to resolve the case. Indeed, staff in this court are expected to be flexible in their roles and operations, so staying additional time is not considered an exceptional reason for an adjournment if the case could be resolved that day.

- *Hold-downs are used as a second attempt to resolve the case on the first appearance*

Accordingly, in such a court, it appears that hold-downs are also used as a second attempt to resolve the case on the first appearance in order to reduce the likelihood of an adjournment. The use of hold-downs is another indicator that extends Leverick and Duff's (2002) proactive indicator 'adjournments are only requested/granted for exceptional reasons'. Indeed, they are used to allow additional time to gather information or wait for a surety in

order to advance/resolve the case that day, instead of adjourning the case to do so on another day.

- *Friendly workgroup dynamic*

Finally, as a result of this examination, one could tentatively presume that, in an efficient court, staff are friendly in their interactions with one another. Indeed, seeing the role of other court personnel as a contribution to one's work/role allows cooperative, consensual, trustworthy and accountable behaviour and workgroup practices to occur. In particular, the underlying concern for the amount of time in which the accused is in custody is shared by all court personnel in the efficient court and unites the work of staff in this court, often requiring them to work as a workgroup. In this workgroup, each individual has a role that aids the proper or desired functioning of the group. More specifically, the Justice of the Peace, Crown, Defence and Duty Counsel all have a role to play in the quick resolution of bail and no particular role/individual is viewed as more important than the other, nor can this central goal be achieved without the assistance of all court staff. Staff acknowledge that the existence of a friendly demeanour in interactions between court personnel facilitates this way of working. Any other action would be counter-intuitive to achieving the goal of the court, such as adversary behaviour which would require that additional time be spent arguing and debating various perspectives.

Clearly, the friendly manner of court staff is a subset of the 'cooperative' proactive indicator that was mentioned by Leverick and Duff (2002) because of the importance of a friendly demeanour/outlook to the functioning of a successful cooperative relationship. In particular, this indicator adds to Leverick and Duff's cooperative indicator because it specifically

highlights the need for a positive attitude of court personnel/between personnel that promotes a cooperative working relationship. Indeed, it is the ability to recognize the contribution of each other's role that distinguishes the cooperative behaviour of the efficient court, as opposed to the 'tit for tat' system of working together (i.e. if you do this for me, I'll do this for you' form of bargaining) of the inefficient court.

Passive Indicators

- *Completing the docket each day*

What seems to distinguish the inefficient court is a lack of broad principles or objectives, and a focus on immediate operational goals like completing the docket each day. Court staff appear to lack an overall vision of the entire process and instead focus largely on dealing with each day as an isolated part of the bail process. As such, complex cases and daily distractions are discouraged. Further, decisions appear to be based on individual and subjective assessments in which it is assumed that court personnel will act in the manner most likely to remove the case from the docket that day (including the use of adjournments).

This characteristic is a subset of Leverick and Duff's passive indicator 'decisions are subjective in nature'. Indeed, cases are dealt with variably, based on the number of cases that are on the docket each day and what can reasonably be dealt with in the time in which court operates. Such a practice results in the inability to develop a set of shared expectations. One's assessment of the appropriate decision in each individual case is likely to change in the inefficient court, depending on the discretion exercised by a particular court actor.

- *Existence of an adjournment feedback model*

Because the inefficient court uses adjournments with frequency, the dockets in the court are extensive and often require the further adjournments to complete the next day's docket. The way in which court personnel in this court go about 'doing business' delays the determination of bail, as court staff attempt to deal, as quickly as possible, with cases. That means that complex cases or cases which require longer time to resolve are adjourned for another day.

Clearly, this indicator is a subset of Leverick and Duff's (2002) passive indicator 'adjournments are necessary in the court and not problematic' because it provides a particular reason as to why adjournments are necessary in the court and not viewed as problematic. Indeed, what distinguishes the inefficient from the efficient court is the view of adjournments as necessary. In the former court, the need for adjournments is rooted in the feedback model. In the latter court, they are seen as a last resort.

- *Quick bail resolution is not important*

This study cautiously argues that an inefficient court is also distinguishable from an efficient court by the understanding that the quick resolution of bail is not a concern, and it is considered each court actor's right to choose the course of action he/she feels is necessary and that one's decision is based on sound reasoning and aimed at the positive progression of a case. The variables that are thought to reduce the speed of a case are also considered to be out of the control of court staff. Further, to many court staff in the inefficient court, focused attention on assessing and monitoring the progression of a case would be a waste of time as bail court is deemed to be insignificant in the larger arena of the criminal court process, and the deciding of guilt or innocence (i.e. what occurs at trial) is a more prominent event.

This characteristic is thought to be an extension of Leverick and Duff's (2002) passive indicator 'court appearances are attempts to advance the case and not a concern' because court personnel can only do what they can to attempt a resolution. Indeed, because of the inability to predict the contingencies associated with the case and the insignificance of the bail process – in retrospect of the entire court process – each particular appearance is merely a step forward.

- *Case preparation begins at/after the first appearance*

The findings of this study also suggest that an inefficient court is characterized by the lack of early case preparation. One of the reasons these practices go unnoticed is because the first couple of appearances in the inefficient court are not seen as 'real' appearances but as opportunities for court staff to triage the future direction of the case. In fact, the adjournment of a case until court staff are able to decide what to do with it is a common and acceptable practice in the inefficient court. This lack of advancement is not a concern for staff in the inefficient court because the time that this 'stalemate' provides is deemed necessary to allow counsel to prepare the case, meet with their client, and secure disclosure. One might cautiously conclude from this study that the first couple of appearances are usually adjourned to allow preparation activities to occur. Indeed, it is particularly the lack of early case preparation that creates adjournment requests when they could potentially have been avoided.

This indicator is a subset of Leverick and Duff's (2002) passive indicator 'adjournments are requested when they could have been avoided'. More specifically, although court personnel

could have prepared the case before the first appearance to avoid using adjournments, it is a common practice in this court to use the time between appearances to advance the case. This practice occurs because of the subjective nature of decisions in this court and the perceived risks involved in attempting to advance the case (and the resulting hope of being granted a consent release and avoiding a possible bail hearing).

- *Duty Counsel provides a triage capacity*

In the same way, the findings of this study suggest that the role of Duty Counsel in the inefficient court is primarily one of triaging cases. There are no shared expectations to guide behaviour in the court, and staff never know how a case will progress. Therefore, in the face of a potentially detrimental/risky bail hearing, the safest way to proceed and still advance the case at this early stage is to provide the accused with advice as to his/her next steps and adjourn the case.

This characteristic is clearly an extension of Leverick and Duff's (2002) passive indicator 'adjournments are requested when they could have been avoided'. Indeed, there is some cause to believe that if Duty Counsel acted – rather than simply assessed – cases, some of them could be resolved rather than adjourned. Said differently, it would appear that at least in some cases, Duty Counsel's emphasis on triaging cases results in adjournments being requested when they could have been avoided by acting on the case.

- *Adjournments are acceptable*

The analysis conducted herein would suggest that an inefficient court is also characterized by the perception that adjournments are a normal/acceptable practice. Indeed, adjournments are

not always a concern for accused persons because they allow them to amass a certain amount of time in custody before conviction. Because this 'dead time' is often credited on the basis of two days' credit for each day served, it is argued that the more time that the accused spends in jail before trial, the more time that he/she will ultimately receive off his/her sentence if convicted. Similarly, the postponement of a case through an adjournment is acceptable for court personnel because it provides additional time to prepare the case.

This characteristic is another passive indicator that should be added to Leverick and Duff's (2002) court culture typology. More specifically, this indicator differs from other passive indicators because it adds the court's perspective that the use of adjournments is also acceptable (in addition to necessary). Beyond being needed to get through the docket, adjournments also make other positive contributions (e.g. related to the location of detention of the accused, the collection of dead time for the accused, and the preparation time for counsel).

- *Competitive Workgroup Dynamic*

Finally, as a result of this examination, one could tentatively presume that in an inefficient interactions between court personnel are competitive in nature. More specifically, in this court there is reluctance to provide too much information from fear of exposing oneself to criticism and judgement. Indeed, each of the players sees him/herself in a competitive role. This way of working discourages openness and suggests the motives of court personnel are detrimental to the work of others. Indeed, court staff are discouraged from forming effective working relationships built on trust, as are unaware of the motives of one another and

preoccupied with the motives of their colleagues. This form of cooperation amongst staff is geared toward meeting their individual needs/goals rather than meeting broader goals.

Further, this characteristic is a subset of Leverick and Duff's (2002) passive indicator 'adversarial work group dynamic'. Indeed, it speaks to the fact that what distinguishes inefficient from efficient courts is not simply the adversarial nature between court personnel. Rather, the specific competitive nature in which staff see others also impedes their work. Specifically, because of this competitive nature, the differences between the roles of court staff are exacerbated whereby their interactions are reduced to a minimum and are formal in nature. Indeed, there are no out-of-court negotiations, nor in-court assistance (e.g. Duty Counsel running bail, Crown reminding Defence of missed arguments, etc.) in this court.

Problematic Typology Indicators (from the qualitative findings)

In addition to suggesting the inclusion of new indicators of court culture to distinguish an efficient court from an inefficient court, the qualitative findings from this study also appear to identify a indicators from Leverick & Duff's (2002) original 24 indicators that may not be individually effective in distinguishing between courts of different efficiency. Indeed, while Leverick and Duff's typology is still useful globally or as a collective set of measures, several of the individual proactive indicators may actually contribute to inefficiency, while some of the individual passive indicators may actually contribute to efficiency.

The first proactive indicator described by Leverick & Duff that was found to be related to inefficient behaviour was *'court behaviours consistent with guiding principles'*. More specifically, some staff in the inefficient court mentioned that their court behaviour was consistent with guiding principles, but that the guiding principles of their court limit their ability to reduce delay because they are focused on immediate operational goals. In the inefficient court, there were a set of principles that emphasized individual assessment by court personnel of what was necessary to resolve the case.

In regards to Leverick & Duff's proactive indicator *'Justice of the Peace Oriented'*, the qualitative data presented in this study found that even when the Justice of the Peace is thought to control the behaviour in court, his/her actions may have little effect on the behaviour of other court personnel. Indeed, the Justice of the Peace in the efficient court spoke of the many ways that he/she believes he/she controls what occurs in court. However, this notion was not supported by other court staff, who reported that the actions of the Justice

of the Peace did not influence their behaviour. Similarly, the efficient court was Justice of the Peace oriented in the sense that the Justice of the Peace felt as though he/she ran the court and court staff were accountable to him/her. However, other court personnel felt as though they were only accountable to themselves and that the behaviour of the Justice of the Peace did not affect their expectations or actions.

Similarly, although Leverick and Duff (2002) noted '*Inconsistent behaviour is sanctioned*' as one of their proactive indicators, the interviewee data from the inefficient court collected in this study suggests that even with the threat of sanctions, court behaviour will not necessarily change. Illustratively, court staff may simply find alternative means of acquiring the adjournment. For instance, instead of refraining from asking for an adjournment, court staff in the inefficient court would simply provide a reason that the Justice of the Peace could not refute, even though this 'justification' may not have an empirical basis. Again, it may not be sufficient to simply establish a system of tracking and monitoring requests for adjournments. Without a change in the expectations or shared perceptions of adjournments as non-problematic, inefficient practices are difficult to modify.

Several passive indicators identified by Leverick and Duff (2002) can also be associated with efficient behaviour. For instance, the passive indicator '*Adjournment requests are not scrutinized*' - noted by Leverick & Duff (2002) - was often found in many of the statements by interviewees in the efficient court. Because counsel has already spent a significant amount of time discussing the case outside of court and court staff trust one another to act appropriately, their actions are not scrutinized. Since there is a standard of appropriate versus inappropriate behaviour that is commonly known throughout the court, staff are confident

that the decisions made by each other will reflect these shared expectations and beliefs. As such, actions are not frequently scrutinized. Additionally, because of the transparent nature of the court actors and the significant account of communication amongst them, more information than necessary is always provided by the court, further limiting the need to scrutinize.

In the same way, the passive indicator *'No Particular Orientation'* was also mentioned by court actors in the efficient court since the Justice of the Peace is not perceived to be the only court actor to control court behaviour. In the efficient court, each person in the court appears to have a stake in what happens in court and how the court operates. Consequently, there is more of a collective (rather than an authoritarian or centralized) orientation in the efficient court. Each individual considers the appropriateness of his/her actions and the actions of his/her colleagues as well as the impact of his/her actions on his/her colleagues and abides by the need to ensure efficiency.

'Variation Exists Among Court Personnel' is another passive indicator discussed by Leverick & Duff (2002) which was found in many of the interview statements of actors in the efficient court. Specifically, staff mentioned that actors within the efficient court do vary (with out-of-town Defence appearing in the court or the rotational nature of the Justices-of-the-Peace). However, this variation was not perceived as problematic as it did not generally change the behaviour/actions of those appearing in this court. Indeed, the set practices which are followed and adherence to guiding principles of the court seemed to be sufficient to ensure consistent behaviour from the principal players in the bail process. Illustratively, in the case that a (new) Justice of the Peace did not allow recesses for staff to discuss/negotiate a case,

staff would simply find ways to meet and discuss the case regardless (e.g. meeting out in the hall or passing notes during court).

There are also other possible explanations for these anomalies. For instance, it is plausible that Leverick and Duff's typology is not perfectly applicable to the Canadian (versus the Scottish) context, or to bail court specifically. Indeed, Leverick and Duff's study was carried out in trial courts (as opposed to bail courts) in which the presiding Justice was always a judge. As such, their typology (at least the indicators related to the Justice) might not be as applicable to Justices of the Peace. Indeed, many Justices of the Peace (who generally lack legal training) are not attributed the same authority as judges or, at the least, their authority is not generally recognized to the same extent by the key players in the bail process. To reduce the opportunity for confusion, these indicators should remain in the typology, but include further explanation/clarification to rectify the issues identified above.